FEDERAL COMMUNICATIONS COMMISSION

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[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) comprehensively reforms and modernizes the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. The Commission adopts fiscally responsible, accountable, incentive-based policies to transition these outdated systems to the Connect America Fund, ensuring fairness for consumers and addressing the communications infrastructure challenges of today and tomorrow. The Commission uses measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed regulatory landscape, and establish a framework to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms such as competitive bidding.

DATES: Effective December 29, 2011, except for §§ 1.21001(b) through (d); 1.21002(c) and (d); 1.21004(a); 51.907(b)(1), (c)(1), and (d) through (h); 51.909(b)(1), and (c) through (k); 51.911(b) and (c); 51.915(e)(5) and (f)(7); 51.917(e)(6) and (f)(3); 51.919; 54.304; 54.312(b)(3); 54.313(a)(7) through (a)(11); 54.313(b) through (h); 54.314; 54.320(b); 54.1003; 54.1004(a), (c), and (d); 54.1005(a) and (b); 54.1006(a) through (e); 54.1007(a) and (b); 54.1008(d) and (e); 54.1009(a) through (c); 54.1010; 61.3(bbb)(2); and 69.3(e)(12) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, released on November 18, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.*

I. Executive Summary

A. Universal Service Reform

1. *Principles and Goals.* We begin by adopting support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act, and, for the first time, we set specific performance goals for the high-cost component of the USF that we are reforming today, to ensure these reforms are achieving their intended purposes. The goals are: (1) Preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.

2. *Budget.* We establish, also for the first time, a firm and comprehensive budget for the high-cost programs within USF. The annual funding target is set at no more than $4.5 billion over the next six years, the same level as the high-cost program for Fiscal Year 2011, with an automatic review trigger if the budget is threatened to be exceeded. This will provide for more predictable funding for carriers and will protect consumers and businesses that ultimately pay for the fund through fees on their communications bills. We are today taking important steps to control costs and improve accountability in USF, and our estimates of the funding necessary for components of the Connect America Fund (CAF) and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time. We anticipate that we may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.

3. *Public Interest Obligations.* While continuing to require that all eligible telecommunications carriers (ETCs) offer voice services, we now require that they also offer broadband services. We update the definition of voice services for universal service purposes, and decline to disrupt any state carrier of last resort obligations that may exist. We also establish specific and robust broadband performance requirements for funding recipients.

4. *Connect America Fund.* We create the Connect America Fund, which will ultimately replace all existing high-cost support mechanisms. The CAF will help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, including mobile voice and broadband networks in areas that do not, or would not otherwise, have mobile service, and broadband in the most remote areas of the nation. The CAF will also help facilitate our ICC reforms. The CAF will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.

5. *Price Cap Territories.* More than 83 percent of the approximately 18 million Americans that lack access to residential fixed broadband at or above the Commission's broadband speed benchmark live in areas served by price cap carriers—Bell Operating Companies and other large and mid-sized carriers. In these areas, the CAF will introduce targeted, efficient support for broadband in two phases.

6. *Phase I.* To spur immediate broadband buildout, we will provide additional funding for price cap carriers to extend robust, scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012. To enable this deployment, all existing legacy high-cost support to price cap carriers will be frozen, and an additional $300 million in CAF funding will be made available. Frozen support will be immediately subject to the goal of achieving universal availability of voice and broadband, and subject to obligations to build and operate broadband-capable networks in areas unserved by an unsubsidized

competitor over time. Any carrier electing to receive the additional support will be required to deploy broadband and offer service that satisfies our new public interest obligations to an unserved location for every $775 in incremental support. Specifically, carriers that elect to receive this additional support must provide broadband with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas. In addition, to ensure fairness for consumers across the country who pay into USF, we reduce existing support levels in any areas where a price cap company charges artificially low end-user voice rates.

7. *Phase II.* The next phase of the CAF will use a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service for five years. We expect that the CAF will expand broadband availability to millions more unserved Americans.

8. We direct the Wireline Competition Bureau to undertake a public process to determine the specific design and operation of the cost model to be used for this purpose, with stakeholders encouraged to participate in that process. The model will be used to establish the efficient amount of support required to extend and sustain robust, scalable broadband in high-cost areas. In each state, each incumbent price cap carrier will be asked to undertake a ''state-level commitment'' to provide affordable broadband to all high-cost locations in its service territory in that state, excluding extremely high cost areas as determined by the model. Importantly, the CAF will only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks. The CAF will not provide support in areas where unsubsidized competitors are providing broadband that meets our definition. Carriers accepting the state-level commitment will be obligated to meet rigorous broadband service requirements—with interim build-out requirements in three years and final requirements in five years—and will receive CAF funding, in an amount calculated by the model, over a five-year period, with significant financial consequences in the event of non- or under-performance. We anticipate that CAF obligations will keep pace as services in urban areas evolve, and we will ensure that CAF-funded services remain reasonably comparable to urban broadband services over time. After the five-year period, the Commission will use competitive bidding to distribute any universal service support needed in those areas.

9. In areas where the incumbent declines the state-level commitment, we will use competitive bidding to distribute support in a way that maximizes the extent of robust, scalable broadband service subject to an overall budget. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanies this R&O, we propose a structure and operational details for the competitive bidding mechanism, in which any broadband provider that has been designated as an ETC for the relevant area may participate. The second phase of the CAF will distribute a total of up to $1.8 billion annually in support for areas with no unsubsidized broadband competitor. We expect that the model and competitive bidding mechanism will be adopted by December 2012, and disbursements will ramp up in 2013 and continue through 2017.

10. *Rate-of-Return Reforms.* Although they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve. Rate-of-return carriers' total support from the high-cost fund is approaching $2 billion annually. We reform our rules for rate-of-return companies in order to support continued broadband investment while increasing accountability and incentives for efficient use of public resources. Rate-of-return carriers receiving legacy universal service support, or CAF support to offset lost ICC revenues, must offer broadband service meeting initial CAF requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, upon their customers' reasonable request. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, this flexible approach does not require rate-of-return companies to extend service to customers absent such a request.

11. Alongside these broadband service rules, we adopt reforms to: (1) Establish a framework to limit reimbursements for excessive capital and operating expenses, which will be implemented no later than July 1, 2012, after an additional opportunity for public comment; (2) encourage efficiencies by extending existing corporate operations expense limits to the existing high-cost loop support and interstate common line support mechanisms, effective January 1, 2012; (3) ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates, with a three-step phase-in beginning July 1, 2012; (4) phase out the Safety Net Additive component of high-cost loop support over time; (5) address Local Switching Support as part of comprehensive ICC reform; (6) phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012; and (7) cap per-line support at $250 per month, with a gradual phasedown to that cap over a three-year period commencing July 1, 2012. In the Notice, we seek comment on establishing a long-term broadband-focused CAF mechanism for rate-of-return carriers, and relatedly seek comment on reducing the interstate rate-of-return from its current level of 11.25 percent. We expect rate-of-return carriers will receive approximately $2 billion per year in total high-cost universal service support under our budget through 2017.

12. *CAF Mobility Fund.* Concluding that mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, we create the Mobility Fund, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking. Mobile broadband carriers will receive significant legacy support during the transition to the Mobility Fund, and will have opportunities for new Mobility Fund dollars. The providers receiving support through the CAF Phase II competitive bidding process will also be eligible for the Mobility Fund, but carriers will not be allowed to receive redundant support for the same service in the same areas. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

Phase I. We provide up to $300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction, which we expect to occur in third quarter 2012. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years, accelerating the migration to 4G. We also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award up to $50 million in additional universal service funding to Tribal lands to accelerate mobile voice and broadband availability in these remote and underserved areas.

Phase II. To ensure universal availability of mobile broadband services, the Mobility Fund will provide up to $500 million per year in ongoing support. The Fund will expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support. The Mobility Fund will include ongoing support for Tribal areas of up to $100 million per year as part of the $500 million total budget. In the Notice we propose a structure and operational details for the ongoing Mobility Fund, including the proper distribution methodology, eligible geographic areas and providers, and public interest obligations. We expect to adopt the distribution mechanism for Phase II in 2012 with implementation in 2013.

13. *Identical Support Rule.* In light of the new support mechanisms we adopt for mobile broadband service and our commitment to fiscal responsibility, we eliminate the identical support rule that determines the amount of support for mobile, as well as wireline, competitive ETCs today. We freeze identical support per study area as of year end 2011, and phase down existing support over a five-year period beginning on July 1, 2012. The gradual phase down we adopt, in conjunction with the new funding provided by Mobility Fund Phase I and II, will ensure that an average of over $900 million is provided to mobile carriers for each of the first four years of reform (through 2015). The phase down of competitive ETC support will stop if Mobility Fund Phase II is not operational by June 30, 2014, ensuring approximately $600 million per year in legacy support will continue to flow until the new mechanism is operational.

14. *Remote Areas Fund.* We allocate at least $100 million per year to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services. We propose in the FNPRM a structure and operational details for that mechanism, including the form of support, eligible geographic areas and providers, and public interest obligations. We expect to finalize the Remote Areas Fund in 2012 with implementation in 2013.

15. *Reporting and Enforcement.* We establish a national framework for certification and reporting requirements for all universal service recipients to ensure that their public interest obligations are satisfied, that state and federal regulators have the tools needed to conduct meaningful oversight, and that public funds are expended in an efficient and effective manner. We do not disturb the existing role of states in designating ETCs and in monitoring that ETCs within their jurisdiction are using universal service support for its intended purpose. We seek comment on whether and how we should adjust federal obligations on ETCs in areas where legacy funding is phased down. We also adopt rules to reduce or eliminate support if public interest obligations or other requirements are not satisfied, and seek comment on the appropriateness of additional enforcement mechanisms.

16. *Waiver.* As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

B. Intercarrier Compensation Reform

17. *Immediate ICC Reforms.* We take immediate action to curtail wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually:

• *Access Stimulation.* We adopt rules to address the practice of access stimulation, in which carriers artificially inflate their traffic volumes to increase ICC payments. Our revised interstate access rules generally require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if the following two conditions are met: (1) A LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year. These new rules are narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation.

• *Phantom Traffic.* We adopt rules to address ''phantom traffic,'' *i.e.,* calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. Specifically, we require telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and we require intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path.

18. *Comprehensive ICC Reform.* We adopt a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. Bill-and-keep has worked well as a model for the wireless industry; is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP. Moreover, we reject the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call. As a result, we now abandon the calling-party-network-pays model that dominated ICC regimes of the last century. Although we adopt bill-and-keep as a national framework, governing both inter- and intrastate traffic, states will have a key role in determining the scope of each carrier's financial responsibility for purposes of bill-and-keep, and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act. We also address concerns expressed by some commenters about potential fears of traffic ''dumping'' and seek comment in the Notice on whether any additional measures are necessary in this regard.

19. *Multi-Year Transition.* We focus initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today. This approach will promote migration to all-IP networks while minimizing the burden on consumers and staying within our universal service budget. For these rates, as well as certain transport rates, we adopt a gradual, measured transition that will facilitate predictability and stability. First, we require carriers to cap most ICC rates as of the effective date of this

R&O. To reduce the disparity between intrastate and interstate terminating end office rates, we next require carriers to bring these rates to parity within two steps, by July 2013. Thereafter, we require carriers to reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price cap carriers and nine for rate-of-return carriers. The framework and transition are default rules and carriers are free to negotiate alternatives that better address their individual needs. Although the R&O begins the process of reforming all ICC charges by capping all interstate rate elements and most intrastate rate elements, the Notice seeks comment on the appropriate transition and recovery for the remaining originating and transport rate elements. States will play a key role in overseeing modifications to rates in intrastate tariffs to ensure carriers are complying with the framework adopted in this R&O and not shifting costs or otherwise seeking to gain excess recovery. The Notice also seeks comment on interconnection issues likely to arise in the process of implementing a bill-and-keep methodology for ICC.

20. *New Recovery Mechanism.* We adopt a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo.* Although carriers will first look to limited increases from their end users for recovery, we reject notions that all recovery should be borne by consumers. Rather, we believe, consistent with past reforms, that carriers should have the opportunity to seek partial recovery from all of their end user customers. We permit incumbent telephone companies to charge a limited monthly Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of $0.50 for consumers and small businesses, and $1.00 per line for multi-line businesses, to partially offset ICC revenue declines. To protect consumers, we adopt a strict ceiling that prevents carriers from assessing any ARC for any consumer whose total monthly rate for local telephone service, inclusive of various rate-related fees, is at or above $30. Although the maximum ARC is $0.50 per month, we expect the actual average increase across all wireline consumers to be no more than $0.10–$0.15 a month, which translates into an expected maximum of $1.20–$1.80 per year that the average consumer will pay. We anticipate that consumers will receive more than three times that amount in benefits in the form of lower calling prices, more value for their wireless or wireline bill, or both, as well as greater broadband availability. Furthermore, the ARC will phase down over time as carriers' eligible revenue decreases, and we prevent carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers. We also seek comment in the Notice about reassessing existing subscriber line charges (SLCs), which are not otherwise implicated by this R&O, to determine whether those charges are set at appropriate levels.

21. Likewise, although we do not adopt a rate ceiling for multi-line businesses customers, we do adopt a cap on the combination of the ARC and the existing SLC to ensure that multi-line businesses do not bear a disproportionate share of recovery and that their rates remain just and reasonable. Specifically, carriers cannot charge a multi-line business customer an ARC when doing so would result in the ARC plus the existing SLC exceeding $12.20 per line. Moreover, to further protect consumers, we adopt measures to ensure that carriers must apportion lost revenues eligible for ICC recovery between residential and business lines, appropriately weighting the business lines (*i.e.*, according to the higher maximum annual increase in the business ARC) to prevent carriers that elect not to receive ICC CAF from recovering their entire ICC revenue loss from consumers. Carriers may receive CAF support for any otherwise-eligible revenue not recovered by the ARC. In addition, carriers receiving CAF support to offset lost ICC revenues will be required to use the money to advance our goals for universal voice and broadband.

22. In defining how much of their lost revenues carriers will have the opportunity to recover, we reject the notion that ICC reform should be revenue neutral. We limit carriers' total eligible recovery to reflect the existing downward trends on ICC revenues with declining switching costs and minutes of use. For price cap carriers, baseline recovery amounts available to each price cap carrier will decline at 10 percent annually. Price cap carriers whose interstate rates have largely been unchanged for a decade because they participated in the Commission's 2000 CALLS plan will be eligible to receive 90 percent of this baseline every year from ARCs and the CAF. In those study areas that have recently converted from rate-of-return to price cap regulation, carriers will initially be permitted to recover the full baseline amount to permit a more gradual transition, but we will decline to 90 percent recovery for these areas as well after 5 years. All price cap CAF support for ICC recovery will phase out over a three-year period beginning in the sixth year of the reform.

23. For rate-of-return carriers, recovery will be calculated initially based on rate-of-return carriers' fiscal year 2011 interstate switched access revenue requirement, intrastate access revenues that are being reformed as part of this R&O, and net reciprocal compensation revenues. This baseline will decline at five percent annually to reflect combined historical trends of an annual three percent interstate cost and associated revenue decline, and ten percent intrastate revenue decline, while providing for true ups to ensure CAF recovery in the event of faster-than-expected declines in demand. Both recovery mechanisms provide carriers with significantly more revenue certainty than the *status quo*, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

24. *Treatment of VoIP Traffic.* We make clear the prospective payment obligations for VoIP traffic exchanged in TDM between a LEC and another carrier, and adopt a transitional framework for VoIP intercarrier compensation. We establish that default charges for ''toll'' VoIP–PSTN traffic will be equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP–PSTN traffic will be the applicable reciprocal compensation rates. Under this framework, all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic.

25. *CMRS–Local Exchange Carrier (LEC) Compensation.* We clarify certain aspects of CMRS–LEC compensation to reduce disputes and address existing ambiguity. We adopt bill-and-keep as the default methodology for all non-access CMRS–LEC traffic. To provide rate-of-return LECs time to adjust to bill-and-keep, we adopt an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default bill-and-keep framework for non-access traffic exchanged between these carriers. We also clarify the relationship between the compensation obligations in section 20.11 of the Commission's rules and the reciprocal

compensation framework, thus addressing growing concerns about arbitrage related to rates set without federal guidance. Further, in response to disputes, we make clear that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Finally, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.

26. *IP-to-IP Interconnection.* We recognize the importance of interconnection to competition and the associated consumer benefits. We anticipate that the reforms we adopt will further promote the deployment and use of IP networks, and seek comment in the accompanying Notice regarding the policy framework for IP-to-IP interconnection. We also make clear that even while our Notice is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.

27. In addition, we adopt a limited exception to the phase-down of support for competitive eligible telecommunications carriers for Standing Rock Telecommunications, Inc. (Standing Rock), a Tribally-owned competitive ETC that had its ETC designation modified recently for the purpose of providing service throughout the entire Standing Rock Sioux Reservation. We find that granting a two-year exception to the phase-down of support to this Tribally-owned competitive ETC is in the public interest. For a two-year period, Standing Rock will receive per-line support amounts that are the same as the total support per line received in the fourth quarter of this year. We adopt this approach in order to enable Standing Rock to reach a sustainable scale so that consumers on the Reservation can realize the benefits of connectivity that, but for Standing Rock, they might not otherwise have access to.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

28. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The new requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis, infra.

B. Congressional Review Act

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

C. Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking (USF/ICC Transformation NRPM),* 76 FR 11632, March 3, 2011, in the *Notice of Inquiry and Notice of Proposed Rulemaking (USF Reform NOI/NPRM)*, and in the *Notice of Proposed Rulemaking (Mobility Fund NPRM)*, 75 FR 67060, November 1, 2010, for this proceeding. The Commission sought written public comment on the proposals in the *USF/ICC Transformation NRPM*, including comment on the IRFA. The Commission received comments on the *USF/ICC Transformation NPRM* IRFA. The comments received are discussed below. The Commission did not receive comments on the *USF Reform NOI/NPRM* IRFA or the *Mobility Fund NPRM* IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

D. Need for, and Objectives of, the R&O

31. The R&O adopts fiscally responsible, accountable, incentive-based policies to transition outdated universal service and intercarrier compensation (ICC) systems to the Connect America Fund (CAF), ensuring fairness for consumers and addressing the challenges of today and tomorrow, instead of yesterday. We adopt measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed landscape, and establish a regulatory framework which will ultimately distribute all universal service funding in the most efficient and technologically neutral manner possible.

32. For decades, the Commission and the states have administered a complex system of explicit and implicit subsidies to support voice connectivity to the highest cost, most rural, and insular communities in the nation. Networks that provide only voice service, however, are no longer adequate for the country's communication needs. Broadband and mobility have become crucial to our nation's economic development, global competitiveness, and civic life. Businesses need broadband and mobile communications to attract customers and employees, job-seekers need them to find jobs and training, and children need them to get a world-class education. Broadband and mobility also help lower the costs and improve the quality of health care, and enable people with disabilities and Americans of all income levels to participate more fully in society. Broadband-enabled jobs are critical to our nation's economic recovery and long-term economic health, particularly in small towns, rural and insular areas, and Tribal lands.

33. Too many Americans today, however, do not have access to modern networks that support mobility and broadband. Millions of Americans live in areas where there is no access to any broadband network. And millions of Americans live, work, or travel in areas without mobile broadband. There are unserved areas in every state of the nation and its territories, and in many of these areas there is little reason to believe that access to broadband service will be provided to these areas in the near future with current policies.

34. Consistent with the challenge of ensuring that all Americans are offered basic voice service and access to networks that support high-speed Internet access where they live, work and travel, extending and accelerating broadband and advanced mobile wireless deployment have been two of the Commission's top priorities over the past few years. The R&O focuses on those remote and expensive-to-serve communities where the immediate prospect for stand-alone private sector action is limited.

35. Our existing voice-centric universal service system is built on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape. As a result, the current system is not equipped to address the universal service challenges raised by broadband, mobility, and the transition to Internet Protocol (IP) networks.

36. With respect to voice services, consumers are increasingly obtaining such services over broadband networks as well as over traditional circuit switched telephone networks. In the R&O, the Commission amends its rules to specify that the functionalities of eligible voice telephony services. The amended definition shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.

37. With respect to broadband, the component of the Universal Service Fund (USF) that supports telecommunications service in high-cost areas has grown from $2.6 billion in 2001 to a projected $4.5 billion in 2011, but recipients lack any accountability for advancing broadband-capable infrastructure that delivers voice service. We also lack sufficient mechanisms to ensure all Commission funded broadband investments are prudent and efficient, including the means to target investment to areas that lack a private business case to build broadband. In addition, the ''rural-rural'' divide must also be addressed—some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access, because the existing program fails to direct money to all parts of rural America where it is needed. Similarly, the Fund supports some mobile providers, but only based on cost characteristics and locations of wireline providers. As a result, the universal service program provides more than $1 billion in annual support to wireless carriers, yet there remain many areas of the country where people live, work, and travel that lack mobile voice coverage, and still larger geographic areas that lack mobile broadband coverage.

38. For the first time, the Commission establishes a defined budget for the high-cost component of the universal service fund. Establishing a CAF budget ensures that individual consumers will not pay more in contributions due to the reforms we adopt today. We therefore establish an annual funding target, set at the same level as our current estimate for the size of the high-cost program for FY 2011, of no more than $4.5 billion. The total $4.5 billion budget will include CAF support resulting from intercarrier compensation reform, as well as new CAF funding for broadband and support for legacy programs during a transitional period.

39. In the R&O, the Commission adopts rules that transform the existing high-cost program—the component of USF directed toward high-cost, rural, and insular areas—into a new, more efficient, broadband-focused Connect America Fund (CAF). In particular, we adopt a framework for the Connect America Fund that will provide support in price cap territories based on a combination of competitive bidding and a forward-looking cost model.

40. In order to take immediate steps to accelerate broadband deployment to unserved areas across America, we modify our rules to provide support to price cap carriers under a transitional distribution mechanism, CAF Phase I, while the cost model is being developed and competitive bidding rules finalized. Specifically, effective in 2012, we freeze support to price cap carriers and their rate-of-return affiliates under our existing high-cost support mechanism: high-cost loop support (HCLS) including safety net additive (SNA), forward-looking model support, local switching support (LSS), interstate access support (IAS), and frozen interstate common line support (ICLS). In addition, we will dedicate up to $300 million in incremental support to price cap carriers each year of CAF Phase I, allocated to carriers serving areas with the highest costs; carriers accepting incremental support will be required to meet defined broadband deployment obligations.

41. We adopt an approach that enables competitive bidding for CAF Phase II support in the near-term in some price cap areas, while in other areas holding the incumbent carrier to broadband and other public interest obligations over large geographies in return for five years of CAF support. Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available. Second, using the cost model, the Commission will offer each price cap LEC annual support for a period of five years in exchange for a commitment to offer voice across its service territory within a state and broadband service to supported locations within that service territory, subject to robust public interest obligations and accountability standards. Third, for all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a competitive bidding mechanism.

42. We reform legacy support mechanisms for rate-of-return carriers to transition towards a more incentive-based form of regulation with better incentives for efficient operations. In particular, we implement a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs. Consistent with the framework we establish for support in price cap territories that combines a new forward-looking cost model and competitive bidding, we also lay the foundation for subsequent Commission action that will advance rate-of-return companies on a path toward a more incentive-based form of regulation.

43. We adopt the following reforms that will ensure that the overall size of the Fund is kept within budget while we transition a system that supports only telephone service to a system that will enable the deployment of modern high-speed networks capable of delivering 21st century broadband services and applications, including voice: First, we establish benchmarks that, for the first time, will establish parameters for what actual costs carriers may seek recovery under the federal universal service program. Second, we take immediate steps to ensure that carriers in rural areas are not unfairly burdening consumers across the nation by using excess universal service support to subsidize artificially low end-user rates. Third, we eliminate the safety net additive program, which is no longer meeting its intended purpose. Fourth, we eliminate local switching support in July 2012 whereby recovery for switching investment will occur through the ICC recovery mechanism. Fifth, we eliminate support for rate-of-return companies in any study area that is completely overlapped by an unsubsidized facilities-based terrestrial competitor that offers fixed voice as well as broadband services meeting specified performance standards, as there is no need for universal service subsidies in these cases. Sixth, starting January 1, 2012, support in excess of $250 per line per month will no longer be provided to any carrier.

44. We eliminate the identical support rule. Over a decade of experience with the operation of the current rule and having received a multitude of comments noting that the current rule fails to efficiently target support where it is needed, we conclude that this rule has not functioned as intended. Identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband. Because the explicit support for mobility that we adopt today will be designed to appropriately target funds to such areas, the identical support rule is

no longer necessary or in the public interest.

45. We transition existing competitive ETC support to the CAF, including our reformed system for supporting mobile service over a five-year period beginning July 1, 2012. We find that a transition is desirable in order to avoid shocks to service providers that may result in service disruptions for consumers. During this period, competitive ETCs offering mobile wireless services will have the opportunity to bid in the Mobility Fund Phase I auction in 2012 and participate in the second phase of the Mobility Fund in 2013. Competitive ETCs offering broadband services that meet the performance standards described above will also have the opportunity to participate in competitive bidding for CAF support in areas where price cap companies decline to make a state-level broadband commitment in exchange for model-determined support in 2013. With these new funding opportunities, many carriers, including wireless carriers, could receive similar or even greater amounts of funding after our reforms than before, albeit with that funding more appropriately targeted to the areas that need additional support.

46. For the purpose of this transition, we conclude that each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines as of year-end 2011, whichever is lower. Using a full calendar year of support to set the baseline will provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support. In addition, we limit the baseline to $3,000 per line in order to reflect similar changes to our rules limiting support for incumbent wireline carriers to $3,000 per line per year.

47. Competitive ETC support per study area will be frozen at the 2011 baseline, and that monthly baseline amount will be provided from January 1, 2012 to June 30, 2012. Each competitive ETC will then receive 80 percent of its monthly baseline amount from July 1, 2012 to June 30, 2013, 60 percent of its baseline amount from July 1, 2013, to June 30, 2014, 40 percent from July 1, 2014, to June 30, 2015, 20 percent from July 1, 2015, to June 30, 2016, and no support beginning July 1, 2016. The purpose of this phase down is to avoid unnecessary consumer disruption as we transition to new programs that will be better designed to achieve universal service goals, especially with respect to promoting investment in and deployment of mobile service to areas not yet served. We do not wish to encourage further investment based on the inefficient subsidy levels generated by the identical support rule. We conclude that phasing down and transitioning existing competitive support will not create significant or widespread risks that consumers in areas that currently have service, including mobile service, will be left without any viable mobile service provider serving their area. We do, however, delay by two years the phasedown for certain carriers serving remote parts of Alaska and a Tribally-owned competitive ETC, Standing Rock Telecommunications, that received its ETC designation in 2011.

48. We establish the Mobility Fund based on our conclusion that mobile voice and broadband services provide unique consumer benefits and that promoting the universal availability of advanced mobile services is a vital component of the Commission's universal service mission. The Mobility Fund, which will have two phases, will allow funding for mobility while rationalizing how universal service funding is provided, thereby ensuring that funds are cost-effective and targeted to areas that require public funding to receive the benefits of mobility. The purpose of the Mobility Fund is to accelerate the deployment of advanced mobile networks in areas where a private-sector business case is lacking. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

49. The first phase of the Mobility Fund will provide $300 million in one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. Eligible areas will include census blocks unserved today by advanced mobile wireless services. Carriers will be prohibited from receiving support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles, with the lowest per-unit bids winning. A 25 percent bidding credit will be available for Tribally-owned or controlled providers that participate in the auction and place bids for the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support. The auction will also help the Commission develop expertise in running reverse auctions for universal service support. We expect to distribute this support as quickly as feasible, with the goal of holding an auction in the third quarter of 2012. As part of this first phase, we also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award $50 million in additional universal service funding for advanced mobile services on Tribal lands and Alaska Native regions. We do so in order to accelerate mobile broadband availability in these remote and underserved areas.

50. We also establish a Mobility Fund Phase II, which will provide up to $500 million per year in ongoing support to ensure universal availability of advanced mobile services. The Fund will expand and sustain mobile voice and broadband service in communities in which service would be unavailable absent federal support. The Mobility Fund Phase II will include ongoing support for Tribal lands of up to $100 million per year, as part of the $500 million total budget. We also establish a budget of at least $100 million annually for CAF support in remote areas. This reflects our commitment to ensuring that Americans living in the most remote areas of the nation, where the cost of deploying wireline or cellular terrestrial broadband technologies is extremely high, can obtain affordable broadband through alternative technology platforms such as satellite and unlicensed wireless. By setting aside designated funding for these difficult-to-serve areas, we can ensure that those who live and work in remote locations also have access to affordable broadband service.

51. In the R&O, we also take steps to comprehensively reform the intercarrier compensation system to bring substantial benefits to consumers, including reduced rates for all wireless and long distance customers, more innovative communications offerings, and improved quality of service for wireless consumers and consumers of long distance services. The existing intercarrier compensation system—built on geographic and per-minute charges and implicit subsidies—is fundamentally in tension with and a deterrent to deployment of all-IP networks. And the system is eroding rapidly as demand for traditional telephone service falls, with consumers increasingly opting for wireless, VoIP, texting, email, and other phone alternatives. To address these issues, we take immediate action to combat two of the most prevalent arbitrage activities today, phantom traffic and access stimulation. We also launch long-term intercarrier compensation reform by adopting bill-and-keep as the ultimate uniform, national methodology for all

telecommunications traffic exchanged with a local exchange carrier (LEC). We begin the transition to bill-and-keep with terminating switched access rates, which are the main source of arbitrage today. We also begin the process of reforming originating access and other rate elements by capping all interstate rates and most intrastate rates. We provide for a measured, gradual transition to bill-and-keep for these rates, and adopt a recovery mechanism that provides carriers with certain and predictable revenue streams. We make clear the prospective payment obligations for VoIP traffic and adopt a transitional intercarrier compensation framework for VoIP. And finally, we clarify certain aspects of CMRS–LEC compensation to reduce disputes and eliminate ambiguities in our rules.

52. We first adopt revisions to our interstate switched access charge rules to address access stimulation. Access stimulation occurs when a LEC with high switched access rates enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and ''free'' conference calls. Consistent with the approach proposed in the *USF/ICC Transformation NPRM,* we adopt a definition of access stimulation which has two conditions: (1) A revenue sharing condition, revised slightly from the proposal in the *USF/ICC Transformation NPRM;* and (2) an additional traffic volume condition, which is met where the LEC either: (a) has a three-to-one interstate terminating-to-originating traffic ratio in a calendar month; or (b) has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year. If both conditions are satisfied, the LEC generally must file revised tariffs to account for its increased traffic and will be required to reduce its interstate switched access tariffed rates to the rates of the price cap LEC in the state with the lowest rates, which are presumptively consistent with the Act. The new access stimulation rules will facilitate enforcement when a LEC does not refile as required.

53. Next, we amend the Commission's rules to address ''phantom traffic'' by ensuring that terminating service providers receive sufficient information to bill for telecommunications traffic sent to their networks, including interconnected VoIP traffic. ''Phantom traffic'' refers to traffic that terminating networks receive that lacks certain identifying information. Collectively, problems involving unidentifiable or misidentified traffic appear to be widespread and this sort of gamesmanship distorts the intercarrier compensation system. To address the problem, we adopt the core of the proposal contained in the *USF/ICC Transformation NPRM*—we modify our call signaling rules to require originating service providers to provide signaling information that includes calling party number (''CPN'') for all voice traffic, regardless of jurisdiction, and to prohibit interconnecting carriers from stripping or altering that call signaling information. Service providers that originate interstate or intrastate traffic on the PSTN, or that originate inter- or intrastate interconnected VoIP traffic destined for the PSTN, will now be required to transmit the telephone number associated with the calling party to the next provider in the call path. Intermediate providers must pass calling party number or charge number signaling information they receive from other providers unaltered, to subsequent providers in the call path.

54. We adopt bill-and-keep as the methodology for all intercarrier compensation traffic, consistent with the National Broadband Plan's recommendation to phase out per-minute intercarrier compensation rates. Under bill-and-keep arrangements, a carrier generally looks to its end-users—who are the entities making the choice to subscribe to the carrier's network—rather than looking to other carriers and their customers to recover its costs. We have legal authority to adopt a bill-and-keep methodology as the end point for reform pursuant to our rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under other provisions of the Act, including sections 201 and 332.

55. We conclude that a uniform, national framework for the transition of intercarrier compensation to bill-and-keep, with an accompanying federal recovery mechanism, best advances our policy goals of accelerating the migration to all IP networks, facilitating IP-to-IP interconnection, and promoting deployment of new broadband networks by providing certainty and predictability to carriers and investors. We adopt a gradual transition for terminating access, providing price cap carriers six years and rate-of-return carriers nine years to reach the end state. We believe that initially focusing the bill-and-keep transition on terminating access rates will allow a more manageable process and will focus reform where some of the most pressing problems, such as access charge arbitrage, currently arise. The transition we adopt sets a default framework, leaving carriers free to enter into negotiated agreements that allow for different terms.

56. We conclude it is appropriate to clarify certain aspects of the obligations the Commission adopted in the 2005 *T-Mobile Order,* 70 FR 1641, March 30, 2005, especially as parties have asked the Commission to make clear when they have the ability to require other carriers to negotiate to reach an interconnection agreement. We reaffirm the findings in the *T-Mobile Order* that incumbent LECs can compel CMRS providers to negotiate in good faith to reach an interconnection agreement, and make clear we have authority to do so pursuant to sections 332, 201, 251 as well as our ancillary authority under 4(i). We also clarify that this requirement does not impose any section 251(c) obligations on CMRS providers, nor does it extend section 252 of the Act to CMRS providers. We decline, at this time, to extend the obligation to negotiate in good faith and the ability to compel arbitration to other contexts.

57. As part of our comprehensive reforms, we adopt a recovery mechanism to facilitate incumbent LECs' gradual transition away from existing intercarrier revenues. This mechanism allows the LECs to recover ICC revenues reduced due to our reforms, up to a defined baseline, from alternate revenue sources: reasonable, incremental increases in end user rates and, where appropriate, through ICC CAF support. The recovery mechanism is limited in time and carefully balances the benefits of certainty and a gradual transition with the need to contain the size of the federal universal service fund and minimize the overall burden on end users. The recovery mechanism is not 100 percent revenue neutral relative to today's revenues, but it eliminates much of the uncertainty carriers face under the existing ICC system, allowing them to make investment decisions based on a full understanding of their revenues from ICC for the next several years.

58. In setting the framework for recovery, we believe that carriers should first look to reasonable but limited recovery from their own end users, consistent with the principle of bill-and-keep and the model in the wireless industry, but take measures to ensure that rates remain affordable and reasonably comparable. Our recovery mechanism has two basic components. First, we define the revenue incumbent LECs are eligible to recover, which we refer to as ''Eligible Recovery.'' Second, we specify how incumbent LECs may recover Eligible Recovery through end-user charges and CAF support. Although we limit a specific recovery

mechanism to incumbent LECs, competitive LECs are free to recover their reduced revenues through end user charges.

59. Consistent with past ICC reforms, we permit carriers to recover a reasonable, limited portion of their Eligible Recovery from their end users through a monthly fixed charge called an Access Recovery Charge (ARC). We take measures to help ensure that any ARC increase on consumers does not impact affordability of rates and the annual increase is limited to $0.50 per month. To protect consumers, and to recognize states that have already rebalanced rates in prior state intercarrier compensation reforms, we adopt a $30 Residential Rate Ceiling to ensure that consumers paying $30 or more do not see any increases through ARCs as a result of our current reform. We also take measures to ensure that multi-line businesses' total subscriber line charge (SLC) plus ARC line items are just and reasonable, we do not permit LECs to charge a multi-line business ARC where the SLC plus ARC would exceed $12.20 per line. Although we limit a specific recovery mechanism to incumbent LECs, competitive LECs are free to recover their reduced revenues through end user charges.

60. The Commission has recognized that some areas are uneconomic to serve absent implicit or explicit support. As we continue the transition from implicit to explicit support that the Commission began in 1997, recovery from the CAF for incumbent LECs will be available to the extent their Eligible Recovery exceeds their permitted ARCs. For price cap carriers that elect to receive CAF support, such support is transitional and phases out over three years, beginning in 2017. For rate-of-return carriers, ICC-replacement CAF support will phase down with Eligible Recovery over time. All incumbent LECs that elect to receive CAF support as part of this recovery mechanism will have broadband obligations and be held to the same accountability and oversight requirements adopted in section VIII. Competitive LECs, which have greater freedom in setting rates and picking which customers to serve, will not be eligible for CAF support to replace reductions in ICC revenues.

61. We establish a rebuttable presumption that the reforms adopted in this R&O, including the recovery of Eligible Recovery from the ARC and CAF, allow incumbent LECs to earn a reasonable return on their investment. We establish a ''Total Cost and Earnings Review,'' through which a carrier may petition the Commission to rebut this presumption and request additional support. We identify certain factors in addition to switched access costs and revenues that *may* affect our analysis of requests for additional support, including: (1) Other revenues derived from regulated services provided over the local network, such as special access; (2) productivity gains; (3) incumbent LEC ICC expense reductions and other cost savings; and (4) other services provided over the local network.

62. Under the new intercarrier compensation regime, all traffic—including VoIP traffic—ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic. In particular, we address the prospective treatment of VoIP–PSTN traffic by adopting a transitional compensation framework for such traffic proposed by commenters in the record. Under this transitional framework: We bring all VoIP–PSTN traffic within the section 251(b)(5) framework; default intercarrier compensation rates for toll VoIP–PSTN traffic are equal to interstate access rates; default intercarrier compensation rates for other VoIP–PSTN traffic are the otherwise-applicable reciprocal compensation rates; and carriers may tariff these default charges for toll VoIP–PSTN traffic in the absence of an agreement for different intercarrier compensation. We also make clear providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP–PSTN traffic pursuant to compensation addressed in the providers' interconnection agreement, and address the application of Commission policies regarding call blocking in this context.

63. To adopt this prospective regime we rely on our general authority to specify a transition to bill-and-keep for section 251(b)(5) traffic. As a result, tariffing of charges for toll VoIP–PSTN traffic can occur through both federal and state tariffs. We do recognize concerns regarding providers' ability to distinguish VoIP–PSTN traffic from other traffic, and, consistent with the recommendations of a number of commenters, we permit LECs to address this issue through their tariffs, much as they do with jurisdictional issues today.

64. As part of our comprehensive ICC reform, we also believe it is also appropriate for the Commission to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers. Accordingly, we clarify that the compensation obligations under section 20.11 are coextensive with the reciprocal compensation requirements under section 251(b)(5). Although we have adopted a glide path to a bill-and-keep methodology for access charges generally and for reciprocal compensation between two wireline carriers, we find that a different approach is warranted for non-access traffic between LECs and CMRS providers for several reasons. We find a greater need for immediate application of a bill-and-keep methodology in this context to address traffic stimulation. In addition, consistent with our overall reform approach, we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. We adopt an additional measure to further ease the move to bill-and-keep LEC–CMRS traffic for rate-of-return carriers. Specifically, we limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs. We find that these steps are consistent with our overall reform and will support our goal of modernizing and unifying the intercarrier compensation system.

65. We address certain pending issues and disputes regarding what is now commonly known as the intraMTA rule, which provides that traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges. We resolve two issues that have been raised before the Commission regarding the correct application of this rule to specific traffic patterns. First, we clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Second, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception. In addition to these clarifications, we also deny requests that the intraMTA rule be modified to encompass a geographic license area known as the regional economic area grouping (REAG).

66. Finally, recognizing that IP interconnection between providers is critical, we agree with the record that, as the industry transitions to all IP networks, carriers should begin planning for the transition to all-IP networks, and that such a transition will likely be appropriate before the completion of the intercarrier

compensation phase down. Even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.

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

67. No comments were filed in response to the *Mobility Fund NPRM* IRFA. In response to the *USF/ICC Transformation NPRM* IRFA, four parties filed comments that specifically address the IRFA with respect to proposed universal service reform. Valley Telephone Cooperative, Cascade Utilities, Molalla Communications and Pine Telephone System filed identical but separate comments contending that, since the Commission's universal service proposals will cause significant financial difficulties for many small companies operating in rural America, the Commission's IRFA contained in the *NPRM* is inadequate. These commenters state that the Commission needs to do a full analysis of the effect that the proposals will have on small companies serving rural areas. In making the determinations reflected in the R&O, we have considered the impact of our actions on small entities.

68. In comments filed in response to the IRFA, concerns were also raised regarding the adequacy of the IRFA with respect to proposed intercarrier compensation reforms. Bluegrass Telephone Company stated that the IRFA was insufficiently specific regarding the proposed access stimulation rules, and that the Commission should decline to act on the proposed access stimulation rules until the Commission releases a more detailed analysis of the rules. Likewise, Furchtgott-Roth Economic Enterprises also states that the IRFA was insufficiently specific regarding the proposed rule for revenue sharing and access charges. We disagree: We believe that the IRFA was adequate and that the opportunity for parties, including small business enterprises to comment in a publicly accessible docket on the proposed rule revisions and other proposals contained in the *USF/ICC Transformation NPRM* was sufficient. The IRFA described that the *USF/ICC Transformation NPRM* sought comment on amendments to the Commission's rules to address access stimulation as well as a range of outcomes for access charge reform. The IRFA further identified carriers, including small entities as possibly being subject to these reforms, including projected reporting or other compliance-related requirements.

F. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

69. 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 proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

70. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

71. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

72. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. 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. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the R&O.

73. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. 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. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 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 rules adopted pursuant to the R&O.

74. We have included small incumbent 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.'' 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.

75. *Competitive Local Exchange Carriers (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. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72

carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the R&O.

76. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. 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. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the R&O.

77. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the R&O.

78. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the R&O.

79. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the R&O.

80. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. 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. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the R&O.

81. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

82. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

83. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved

small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

84. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

85. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

86. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

87. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the R&O.

88. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not

exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

89. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

90. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

91. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

92. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

93. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the R&O.

94. *Lower 700 MHz Band Licenses.* The Commission previously adopted

criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

95. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

96. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

97. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

98. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

99. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

100. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

101. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in

the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

102. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the R&O.

103. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the R&O.

104. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

105. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

106. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the R&O.

107. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

108. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we

established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

109. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

110. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

111. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

112. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

113. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

114. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

115. 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 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 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 rules adopted pursuant to the R&O.

116. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

117. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that

category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the R&O.

118. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the R&O.

119. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

120. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the R&O. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

121. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

122. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

123. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

124. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

125. This R&O has two components, modernization of the Commission's universal service system and reform of the Commission's intercarrier compensation mechanism. We summarize below the recordkeeping and other obligations of the R&O. Additional information on each of these requirements can be found in the R&O.

126. In the R&O, the Commission takes several steps to harmonize and update annual reporting requirements relating to universal service recipients. We extend current reporting requirements for voice service to all ETCs, and we adopt uniform broadband reporting requirements for all ETCs. We also adopt rules requiring the reporting of financial and ownership information to assist our discharge of statutory requirements.

127. We extend the current federal annual reporting requirements to all ETCs that receive high-cost support, except recipients of only Mobility Fund Phase I support, as a baseline requirement. We also revise the Commission's annual reporting and certification requirements and create new requirements applicable to all ETCs that receive high-cost support, except recipients of only Mobility Fund Phase I support, to ensure carriers are complying with public interest obligations, including new broadband-related requirements, and that they are using the funds they receive for the intended purposes. These requirements include reports and certifications concerning deployment, performance requirements, service quality, rates, and financial and ownership information. Included in these requirements is a requirement that recipients of funding test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company on an annual basis. These results will be subject to audit. We also create new reporting requirements for carriers electing to receive CAF Phase I incremental support. Specifically, carriers will be required to file notices identifying where they will deploy broadband to in connection with their incremental support, and they will be required, as part of their annual filings, to certify that they have met required deployment milestones. Mobility Fund recipients will be required to file annual reports demonstrating the coverage provided with the Mobility Fund support for a period of five years after qualifying for the support. These annual report must include information such as project descriptions and data from network coverage drive tests. We also establish certain reporting requirements for applicants seeking to participate in an auction to bid for Mobility Fund support. These requirements include the disclosure of information such as parties' ownership information and the source of the spectrum they plan to use to meet their Mobility Fund obligations in the particular area(s) for which they plan to bid. Winning bidders who apply for funds awarded through the reverse auction must satisfy additional reporting requirements, including the provision of detailed ownership information. These winning bidders must also provide an irrevocable stand-by Letter of Credit in an amount equal to the amount of Mobility Fund support as it is disbursed. All winning bidders, regardless of criteria such as capitalization level, will be required to meet the Letter of Credit requirement. The Commission concluded that limiting the requirement to bidders below a certain level of capitalization would likely disproportionately burden small business entities, even though small entities are often less able to sustain the additional cost burden of posting financial security while still being able to compete with larger entities.

128. Recognizing that existing five-year build out plans may need to change to account for new broadband obligations adopted in the R&O, we require all ETCs to file a new five-year build-out plan in a manner consistent with our rules. ETCs will also be required to include in their annual reports information regarding their progress on this five-year broadband build-out plan beginning April 1, 2014. We require all rate-of-return ETCs receiving support to include a self-certification letter certifying that they are taking reasonable steps to offer broadband service throughout their service area and that requests for such service are met within a reasonable amount of time. We also require all ETCs receiving CAF support in price cap territories based on a forward-looking cost model to include a self-certification letter certifying that they are meeting the interim deployment milestones as set forth under our revised public interest obligations and that they are taking reasonable steps to meet increased speed obligations that will exist for all supported locations before the expiration of the five-year term for CAF Phase II funding.

129. The rules adopted to address arbitrage practices will affect certain carriers, potentially including small entities. Carriers that meet the definition of access stimulation will generally be required to file revised tariffs to account for the change in the volume of their traffic. Further, the modifications to address phantom traffic will apply to all service providers, including small entities, that originate interstate or intrastate traffic on the PSTN, or that originate inter- or intrastate interconnected VoIP traffic. These measures will require service providers to transmit the telephone number associated with the calling party to the next provider in the call path and intermediate providers to pass calling party number or charge number signaling information they receive from other providers unaltered, to subsequent providers in the call path. Service providers, including small entities, may need to modify some administrative processes relating to their signaling and billing systems as a result of these rule changes.

130. As part of our comprehensive reform of the intercarrier compensation system, we establish a uniform, national transition for default intercarrier compensation rate levels. We set forth two separate transition paths—one for price cap carriers and competitive LECs that benchmark to price cap rates and one for rate-of-return carriers and competitive LECs that benchmark to rate-of-return rates. For the transition of default rates, carriers, including small entities, may be required to adjust their record-keeping, administrative and billing systems, and interstate and

intrastate tariff filings in order to effectuate necessary changes to rate levels. At the same time, carriers will remain free to enter into alternative intercarrier compensation agreements.

131. We also adopt a transitional recovery mechanism in order to facilitate incumbent LECs' gradual transition away from existing revenues. The mechanism will allow LECs to partially recover ICC revenues reduced as part of our intercarrier compensation reforms from sources such as reasonable increases to end user charges and, where appropriate, universal service support. As part of our recovery mechanism and to evaluate compliance with the R&O and rules, incumbent local exchange carriers electing to participate in the recovery mechanism, including small entities, will be required to file data annually regarding rates, revenues, expenses and demand with the Commission, states, and Universal Service Administrative Company (USAC), as applicable. These data are needed to monitor compliance as well as the impact of the reforms we adopt today and to enable the Commission to resolve the issues teed up in the FNPRM regarding the appropriate transition to bill-and-keep. To minimize any burden, filings will be aggregated at the holding company level when possible, limited to the preceding fiscal year, and will include data carriers must monitor to comply with our recovery mechanism rules. For carriers eligible and electing to receive ICC CAF support, we will ensure that the data filed with USAC is consistent with our request, so that carriers can use the same format for both filings. All such information may be filed under protective order and will be treated as confidential.

132. We adopt a prospective intercarrier compensation framework for VoIP traffic. Pursuant to this framework, we allow carriers to tariff default intercarrier compensation charges for toll VoIP–PSTN traffic in the absence of an agreement for different intercarrier compensation. VoIP and other service providers, including small entities, may need to modify or adopt administrative, record-keeping or other processes to implement the new intercarrier compensation framework applicable to VoIP traffic. Service providers may also need to revise their interstate and intrastate tariffs to account for these changes. For interstate toll VoIP–PSTN traffic, the relevant language will be included in a tariff filed with the Commission, and for intrastate toll VoIP–PSTN traffic, the rates may be included in a state tariff.

133. Finally, we clarify that the compensation obligations under section 20.11 of our rules, 47 CFR § 20.11 are coextensive with the reciprocal compensation requirements under 251(b)(5) and we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. To further ease the move to bill-and-keep LEC–CMRS traffic for rate-of-return carriers, we limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs. In addition, as described above, we make clarifications surrounding the intraMTA rule. As a result of these actions, service providers, including small entities, may need to modify some of their processes surrounding the billing and collection of intercarrier compensation.

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

134. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

1. Universal Service

135. The Commission is aware that some of the universal service proposals under consideration may impact small entities. The Commission held meetings with small carriers that operate in the most rural areas of the nation and considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation NPRM* and the *Mobility Fund NPRM,* in reaching its final conclusions and taking action in this proceeding. In addition, the Commission held a workshop in Nebraska in order to hear directly from small companies serving rural America. The Commission also held various meetings in Alaska and other rural areas, including those in South Dakota.

136. The Commission recognizes that, in the absence of any federal mandate to provide broadband, rate-of-return carriers have been deploying broadband to millions of rural Americans, often with support from a combination of loans from lenders and ongoing universal service support. Rather than establishing a mandatory requirement to deploy broadband-capable facilities to all locations within their service territory, we continue to offer a more flexible approach for these smaller carriers. They will be required to provide their customers with at least the same initial minimum level of broadband service as those carriers who receive model-based support, but given their size, we determine that they should be provided more flexibility in how they make incremental progress in edging out their broadband-capable networks in response to consumer demand; we do not adopt nor impose intermediate build-out milestones. The broadband deployment obligation we adopt is similar to the voice deployment obligations many of these carriers are subject to today.

137. The Commission also considered the economical impact on smaller rate-of-return carriers. Although they serve a smaller portion of access lines in the U.S, smaller rate-of-return carriers operate in many of the most difficult and expensive areas to serve. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, especially smaller carriers, our flexible approach does not require rate-of-return carriers to extend service to customers absent a reasonable request by customers. In addition, we also do not specifically shift these smaller rate-of-return carriers from current support mechanisms or shift them to a model or reverse auction mechanism because we realize that these smaller rate-of-return carriers are indeed unique.

138. Many small carriers operating in more remote rural areas have argued that universal service support provides a significant share of their revenues, and thus sudden changes in the current support mechanisms could have a significant impact on their operations. The reforms we adopt today are interim steps that are necessary to allow these rate-of-return carriers to continue receiving support based on existing mechanisms for the time being, but also begins the process of transitioning carriers to a more incentive-based form of regulation.

139. The Commission further recognizes that the existing regulatory structure and competitive trends places many small carriers under financial strain and inhibits the ability of these providers to raise capital. We take a number of important steps to enhance the sustainability of the universal

service mechanism in the R&O and are careful to implement these changes in a gradual manner so that our efforts do not jeopardize investments made consistent with existing rules. Our goal is to ensure the continued availability and affordability of offerings in the rural and remote communities served by many of these smaller carriers. We provide rate-of-return carriers the predictability of remaining under the legacy universal service system in the near-term, while giving notice that we intend to transition to more incentive-based regulation in the near future. We believe that this approach will provide a more stable base going forward for these carriers and the communities they serve. Today's package of universal service reforms is targeted at eliminating inefficiencies and closing gaps in our system, not at making indiscriminate industry-wide reductions.

140. The Commission also considered the significant economic impact of the CAF Phase I incremental support mechanism on small entities. Most price cap carriers that may receive support under the mechanism are not small. To the extent small carriers elect to receive incremental support, there are additional obligations on such carriers. However, the Commission believes that the burdens associated with meeting these obligations are outweighed by the support provided to meet those obligations, as well as the accompanying public benefits. Carriers may also decline to receive incremental support, and the obligations associated with such support, by filing a notice to that effect.

141. The Commission considered the significant economic impact of eliminating the identical support rule on small entities. Small entities here impacted include small competitive ETCs that receive high-cost universal service support pursuant to the identical support rule. Although retaining the identical support rule may have minimized the significant economic impact for some small competitive ETCs, the Commission concluded that the rule did not efficiently or effectively promote the Commission's universal service goals, including the deployment of mobile services. The Commission did, however, minimize the significant economic impact on small entities by phasing down support over a period of five years, by which time support will be available for many small entities pursuant to Mobility Fund Phase II, Tribal Mobility Fund Phase II, and CAF Phase II. We note that Tribal Mobility Fund Phase II will provide a dedicated form of support for areas that historically have been served by small entities.

142. Further, the Commission took steps to minimize significant economic impacts by automatically pausing the phase-down of support received pursuant to the identical support rule if the Mobility Fund Phase II or, for some small entities, Tribal Mobility Fund Phase II is not operational by June 30, 2014. In addition, the Commission delayed the phase-down for certain carriers serving remote parts of Alaska and a Tribally-owned competitive ETC, Standing Rock Telecommunications, that received its ETC designation in 2011. In the Commission's consideration, these small entities are potentially subject to significant economic impact as a result of an immediate commencement of the phase-down and the delayed phase-down will minimize the impact.

143. The R&O harmonizes and updates the Commission's Universal Service reporting requirements, extending current requirements for voice service to all ETCs. This extension of the reporting requirements will benefit the public interest. The R&O seeks to minimize reporting burdens where possible by requiring certifications rather than data collections and by permitting the use of reports already filed with other government agencies, rather than requiring the production of new ones. The R&O extends the record retention requirement from a period of five to ten years for purposes of litigation under the False Claims Act. The Commission believes that any burdens that may be associated with these requirements is outweighed by the accompanying public benefits.

2. Intercarrier Compensation

144. As a general matter, our actions in the R&O should benefit all service providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. In the *USF/ICC Transformation NPRM,* we encouraged small entities to bring to the Commission's attention any specific concerns that they had, including on any issues or measures that may apply to small entities in a unique fashion. As described below, in many cases, including for transition paths, recovery, and for certain reporting requirements, we sought to tailor the impact of our reforms to the needs of small entities. In other cases, however, we did not identify any feasible alternatives that would have lessened the economic impact on small entities while achieving the vital reform of the intercarrier compensation system.

145. We considered a range of alternative proposals in regard to our rules designed to address access stimulation. As detailed in the R&O, in response to the record, we found it appropriate to include a traffic measurement condition in the definition of access stimulation. Unlike some proposals in the record, however, as part of this measurement condition, we do not require all LECs, including small entities, to file traffic reports. Instead, we allow carriers paying switched access charges to observe and file complaints based on their own traffic patterns. We concluded that this approach is less burdensome to all LECs, including small entities, than a system that would require all LECs to file traffic reports, as some proposed in the record. Similarly, we also rejected the use of alternative definitional triggers for access stimulation, such as per line MOU limits, in part, to avoid the creation of new self-reporting requirements that could prove burdensome to carriers, including small entities. Finally, our access stimulation rules respond to a concern raised by the Louisiana Small Carrier Committee. Specifically, if a carrier terminates its access revenue sharing agreement before the date on which it would be required to file a revised tariff, then that carrier will not be required to file a revised tariff. This will serve to eliminate any potential to burden such carriers when there is no reason to do so.

146. In the R&O, we set forth default transition paths for terminating end office switching and certain transport rate elements as part of the transition to a bill-and-keep framework. In adopting these default paths, we take into account the unique concerns facing small entities, including many rate-of-return LECs as well as entities that operate in rate-of-return service areas. Accordingly, we set forth a six-year transition for price cap carriers and competitive LECs that benchmark to price cap rates. We adopt a longer nine-year transition for rate-of-return carriers and competitive LECs that benchmark to rate-of-return carrier rates. We found that additional time for rate-of-return carriers and those that benchmark to their rates recognizes the often higher rates of and circumstances unique to these carriers. The longer transition also provides them with a predictable glide path and appropriately balances any adverse impact that could arise from moving carriers too quickly from the existing intercarrier compensation system.

147. The R&O establishes a transitional recovery mechanism to help transition incumbent LECs away from existing revenues, but tailored by type of carrier. To this end, we set forth different methodologies for the calculation of Eligible Recovery for price cap carriers and rate-of-return carriers. As we describe in the R&O, for price cap carriers, our recovery mechanism will allow them to determine at the outset exactly how much their Eligible Recovery will be each year. For rate-of-return carriers, we adopt a recovery mechanism that provides more certainty and predictability than exists today and rewards carriers for efficiencies achieved in switching costs. Rate-of-return carriers will be able to determine their total intercarrier compensation and recovery revenues for all transitioned elements, for each year of the transition. We find that providing this greater degree of certainty for rate-of-return carriers, which are generally smaller and less able to respond to changes in market conditions than price cap carriers, is necessary to provide a reasonable transition from the existing intercarrier compensation system. And, we further tailor the obligations for broadband deployment applicable to rate-of-return and price cap carriers as well as the phase out period applicable to each for the receipt of CAF support. Whereas the phase out of CAF support for price cap carriers will be three years beginning in 2017, ICC CAF support for smaller rate-of-return carriers will phase down as Eligible Revenue decreases over time, but not be subject to other reductions. In addition, as we note above, we establish a presumption that our reforms allow incumbent LECs to earn a reasonable return on investment, but at the same time establish a ''Total Costs and Earnings Review'' through which a carrier may petition the Commission to rebut this presumption. This will ensure that individual carriers, including small entities, are able to seek additional recovery to prevent a taking, where necessary. For competitive LECs, which are not subject to the Commission's end user rate regulations and have greater freedom to set rates and determine which customer to serve, CAF support will not be available for recovery. Competitive LECs may recover lost intercarrier compensation revenues through their end user charges.

148. Above all, our tailored approach to transitional recovery is designed to balance the different circumstances facing the different carrier types and provide all carriers with necessary predictability, certainty and stability to transition from the current intercarrier compensation system. With regard to small carriers in particular, our transitional recovery mechanism includes an assortment of measures to moderate the impact of our reforms on small carriers and provide such carriers with certainty and predictability with regard to their recovery.

149. With respect to the prospective VoIP traffic, we believe that the VoIP–PSTN intercarrier compensation framework that we adopt best balances the policy considerations of providing certainty regarding prospective intercarrier compensation obligations for VoIP–PSTN traffic, while acknowledging the flaws with the current intercarrier compensation regimes. With regard to the scope of our reform, as intercarrier disputes have encompassed all forms of what we define as VoIP–PSTN traffic, including ''one-way'' VoIP services, we believe addressing this traffic comprehensively will help guard against new forms of arbitrage. As part of our reform, we adopt transitional rules that will specify, prospectively, the default compensation for VoIP–PSTN traffic. We reject approaches, including an immediate adoption of a bill-and-keep methodology for VoIP traffic or to delay reform of VoIP traffic to a future point on the glide path. Instead, the framework that we adopt in the R&O will provide greater certainty to service providers, including small entities, regarding intercarrier compensation revenue and reduce intercarrier compensation disputes. Our transitional VoIP–PSTN intercarrier compensation framework provides the opportunity for some revenues in conjunction with other appropriate recovery opportunities adopted as part of comprehensive intercarrier compensation and universal service reform. We rely on existing mechanisms, including tariffs to implement our approach. Carriers may tariff charges at rates equal to interstate access rates for toll VoIP–PSTN traffic in federal or state tariffs, though remain free to negotiate interconnection agreements specifying alternative compensation for that traffic. This prospective regime facilitates the benefits that can arise from negotiated agreements, without sacrificing the revenue predictability traditionally associated with tariffing regimes. In contrast to proposals to require certifications regarding carriers' reported VoIP–PSTN traffic, we also provide all carriers, including small entities, with tools to use in their tariffs to help distinguish VoIP–PSTN traffic. The transitional regime for VoIP–PSTN intercarrier compensation, which allows LECs to tariff charges, also mitigates the concerns of some commenters regarding disparate leverage that may exist in interconnection negotiations.

150. Finally, with respect to our reforms applicable to intercarrier compensation for wireless traffic, we note that our decision to treat ''reasonable compensation'' requirements under § 20.11, 47 CFR 20.11, as coextensive with the scope of reciprocal compensation requirements under section 251(b)(5) of the Act. We also find it in the public interest to set a default pricing methodology of bill-and-keep for LEC–CMRS intraMTA traffic, which shall reduce growing confusion and litigation for these carriers. This action presents a smaller risk of market disruption than would an immediate shift to bill-and-keep more generally and our recovery mechanism provides incumbent LECs with a stable, predictable recovery for reduced intercarrier compensation revenues and we further limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchange between CMRS providers and rural, rate-of-return LECs.

I. Report to Congress

151. The Commission will send a copy of the R&O, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the R&O and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 0

Authority delegations (government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

47 CFR Part 36

Communications common carriers, Reporting and Recordkeeping Requirements, Telephone, Uniform systems of accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and Recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 20, 36, 51, 54, 61, 64, and 69 to read as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.91 by adding paragraph (p) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(p) In coordination with the Wireless Telecommunications Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

■ 3. Amend § 0.131 by adding paragraph (r) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(r) In coordination with the Wireline Competition Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

■ 5. Add new subpart AA to part 1 to read as follows:

Subpart AA—Competitive Bidding for Universal Service Support

Sec.

§ 1.21000 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 of this chapter and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding.

§ 1.21001 Participation in competitive bidding for support.

(a) *Public Notice of the Application Process.* The dates and procedures for submitting applications to participate in competitive bidding pursuant to this subpart shall be announced by public notice.

(b) *Application Contents.* An applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, *i.e.,* the party that seeks support, including any required information regarding parties that have an ownership or other interest in the applicant;

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant;

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding;

(5) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

(6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks;

(7) Certification that the applicant will make any payment that may be required pursuant to § 1.21004;

(8) Certification that the individual submitting the application is authorized to do so on behalf of the applicant; and

(9) Such additional information as may be required.

(c) *Financial Requirements for Participation.* As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment that may be required pursuant to § 1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(d) *Application Processing.* (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications shall be reviewed or considered.

(2) An applicant will not be permitted to participate in competitive bidding if the application does not identify the applicant as required by the public notice announcing application procedures or does not include all required certifications, as of the deadline for submitting applications.

(3) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to § 1.21001(c), as of the applicable deadline.

(4) An applicant may not make major modifications to its application after the deadline for submitting the application. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity

of the applicant, or any changes in the required certifications.

(5) An applicant may be permitted to make minor modifications to its application after the deadline for submitting applications. Minor modifications may be subject to a deadline specified by public notice. Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, an applicant that will be permitted participate in competitive bidding shall be identified in a public notice.

§ 1.21002 Prohibition of certain communications during the competitive bidding process.

(a) *Definition of Applicant.* For purposes of this paragraph, the term ''applicant'' shall include any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

(b) *Certain Communications Prohibited.* After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the application pursuant to § 1.21001(b)(4).

(c) *Duty To Report Potentially Prohibited Communications.* An applicant that makes or receives communications that may be prohibited pursuant to this paragraph shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(d) *Procedures for Reporting Potentially Prohibited Communications.* Particular procedures for parties to report communications that may be prohibited under this rule may be established by public notice. If no such procedures are established by public notice, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division by the most expeditious means available, including electronic transmission such as email.

§ 1.21003 Competitive bidding process.

(a) *Public Notice of Competitive Bidding Procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding any time competitive bidding is conducted pursuant to this subpart.

(b) *Competitive Bidding Procedures.* The public notice detailing competitive bidding procedures may establish any of the following:

(1) Limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of such non-public information during such periods;

(2) The way in which support may be made available for multiple identified areas by competitive bidding, *e.g.,* simultaneously or sequentially, and if the latter, in what grouping, if any, and order;

(3) The acceptable form for bids, including whether and how bids will be accepted on individual items and/or for combinations or packages of items;

(4) Reserve prices, either for discrete items or combinations or packages of items, as well as whether the reserve prices will be public or non-public during the competitive bidding process;

(5) The methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person;

(6) The number of rounds during which bids may be submitted, *e.g.,* one or more, and procedures for ending the bidding;

(7) Measurements of bidding activity in the aggregate or by individual applicants, together with requirements for minimum levels of bidding activity;

(8) Acceptable bid amounts at the opening of and over the course of bidding;

(9) Consistent with the public interest objectives of the competitive bidding, the process for reviewing bids and determining the winning bidders and the amount(s) of universal service support that each winning bidder may apply for, pursuant to applicable post-auction procedures;

(10) Procedures, if any, by which bidders may withdraw bids; and

(11) Procedures by which bidding may be delayed, suspended, or canceled before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity, or any other reason.

(c) *Apportioning Package Bids.* If the public notice establishing detailed competitive bidding procedures adopts procedures for bidding for support on combinations or packages of geographic areas, the public notice also shall establish a methodology for apportioning such bids among the geographic areas within the combination or package for purposes of implementing any Commission rule or procedure that requires a discrete bid for support in relation to a specific geographic area.

(d) *Public Notice of Competitive Bidding Results.* After the conclusion of competitive bidding, a public notice shall identify the winning bidders that may apply for the offered universal service support and the amount(s) of support for which they may apply, and shall detail the application procedures.

§ 1.21004 Winning bidder's obligation to apply for support

(a) *Timely and Sufficient Application.* A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid.

(b) *Liability for Default Payment.* A winning bidder that defaults is liable for a default payment, which will be calculated by a method that will be established as provided in a public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.

(c) *Additional Liabilities.* A winning bidder that defaults, in addition to being liable for a default payment, shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart AA, competitive bidding for universal service support.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 6. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

■ 7. Amend § 20.11 by revising paragraph (b) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(b) Local exchange carriers and commercial mobile radio service providers shall exchange Non-Access Telecommunications Traffic, as defined in § 51.701 of this chapter, under a bill-and-keep arrangement, as defined in § 51.713 of this chapter, unless they mutually agree otherwise.

* * * * *

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 8. The authority citation for part 36 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

Subpart A—General

■ 9. Add § 36.4 to subpart A to read as follows:

§ 36.4 Streamlining procedures for processing petitions for waiver of study area boundaries.

Effective January 1, 2012, local exchange carriers seeking a change in study area boundaries shall be subject to the following procedure:

(a) *Public Notice and Review Period.* Upon determination by the Wireline Competition Bureau that a petitioner has filed a complete petition for study area waiver and that the petition is appropriate for streamlined treatment, the Wireline Competition Bureau will issue a public notice seeking comment on the petition. Unless otherwise notified by the Wireline Competition Bureau, the petitioner is permitted to alter its study area boundaries on the 60th day after the reply comment due date, but only in accordance with the boundary changes proposed in its application.

(b) *Comment Cycle.* Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

■ 10. Revise subpart F heading to read as follows:

Subpart F—High-Cost Loop Support

■ 11. Amend § 36.601 by adding the following two sentences at the end of paragraph (a) and removing paragraph (c) to read as follows:

§ 36.601 General

(a) * * * Effective January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as ''affiliated companies'' are defined in § 32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to § 54.5 and § 61.3(aa) of this chapter, respectively.

* * * * *

§ 36.602 [Removed]

■ 12. Section 36.602 is removed.

■ 13. Section 36.603 is amended by revising the section heading, and paragraph (a) to read as follows:

§ 36.603 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2003, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604. Beginning January 1, 2012, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the expense adjustment calculated for rate-of-return regulated carriers pursuant to this paragraph. Beginning January 1, 2012, rate-of-return local exchange carriers shall not include rate-of-return carriers affiliated with price cap local exchange carriers as set forth in § 36.601(a) of this subpart. Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604.

* * * * *

■ 14. Revise § 36.604 to read as follows:

§ 36.604 Calculation of the rural growth factor.

(a) Until July 30, 2012, the Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD–CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 36.611. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 36.611. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to § 36.601(a) of this subpart, the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to § 36.611.

■ 15. Amend § 36.605 by revising paragraphs (a) and (b), the heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 36.605 Calculation of safety net additive.

(a) *''Safety net additive support.''* Beginning January 1, 2012, only those local exchange carriers that qualified in 2010 or earlier, based on 2009 or prior year costs, shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. Local exchange carriers shall not receive safety net additive for growth of Telecommunications Plant in Service in 2011, as compared to 2010. A local exchange carrier qualifying for safety net additive shall no longer receive safety net additive after January 1, 2012 unless the carrier's realized total growth in Telecommunications Plant in Service was more than 14 percent during the qualifying period, defined as 2010 or earlier, pursuant to paragraph (c) of this section. A local exchange carrier qualifying for safety net additive that fails to meet the requirements set forth in the preceding sentence will receive 50 percent of the safety net additive that it otherwise would have received pursuant to this rule in 2012 and will cease to receive safety net additive in 2013 and thereafter.

(b) *Calculation of safety net additive support for companies that qualified prior to 2011:* Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart F in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year—Uncapped support in the base year)—(Capped support in the qualifying year—Amount of support received in the base year).

(c) *Operation of safety net additive support for companies that qualified prior to 2011:* (1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 36.603 a rate-of-return incumbent local exchange carrier, as set forth in § 36.601(a) of this subpart, shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period Telecommunications Plant in Service (TPIS), as prescribed in § 32.2001 of this chapter, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

* * * * *

■ 16. Amend § 36.611 by revising the first sentence of paragraph (h) to read as follows:

§ 36.611 Submission of information to the National Exchange Carrier Association (NECA).

* * * * *

(h) For incumbent local exchange carriers subject to § 36.601(a) this subpart, the number of working loops for each study area. * * *

■ 17. Amend § 36.612 by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 36.612 Updating information submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to § 36.601(a) of this subpart may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 36.611 one or more times annually on a rolling year basis according to the schedule. * * *

* * * * *

■ 18. Amend § 36.621 by revising paragraph (a)(4) introductory text and adding paragraphs (a)(4)(iii), and (a)(5) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a), to the unseparated gross telecommunications plant investment, as reported in § 36.611(f). Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001 and ending December 31, 2011, shall be limited to the lesser of § 36.621(a)(4)(i) or (ii). Total Corporate Operations Expense for purposes of calculating universal service support payments beginning January 1, 2012 shall be limited to the lesser of § 36.621(a)(4)(i) or (iii).

* * * * *

(iii) A monthly per-loop amount computed according to paragraphs (a)(4)(iii)(A), (a)(4)(iii)(B), (a)(4)(iii)(C), and (a)(4)(iii)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.

(A) For study areas with 6,000 or fewer total working loops the amount monthly per working loop shall be $42.337 − (.00328 × the number of total working loops), or, $63,000/the number of total working loops, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total working loops, the monthly amount per working loop shall be $3.007 + (117,990/the number of total working loops); and

(C) For study areas with 17,887 or more total working loops, the monthly amount per working loop shall be $9.562.

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(iii)(A), (a)(4)(iii)(B), and (a)(4)(iii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

(5) Study area unseparated loop cost may be limited annually pursuant to a schedule announced by the Wireline Competition Bureau.

* * * * *

■ 19. Amend § 36.631 by revising the introductory text of paragraphs (c) and (d) to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

* * * * *

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section.

* * * * *

PART 51—INTERCONNECTION

■ 20. The authority citation for part 51 is revised to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

■ 21. Add § 51.700 to subpart H to read as follows:

§ 51.700 Purpose of this subpart.

The purpose of this subpart, as revised in 2011 by FCC 11–161 is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of telecommunications traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

Note to § 51.700: See FCC 11–161, figure 9 (chart identifying steps in the transition).

■ 22. Revise § 51.701 paragraphs (a), (b) introductory text, add paragraph (b)(3) and revise paragraphs (c), (d), and (e) to read as follows:

§ 51.701 Scope of transport and termination pricing rules.

(a) Effective December 29, 2011, compensation for telecommunications traffic exchanged between two telecommunications carriers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access, is specified in subpart J of this part. The provisions of this subpart apply to Non-Access Reciprocal Compensation for transport and termination of Non-Access Telecommunications Traffic between LECs and other telecommunications carriers.

(b) *Non-Access Telecommunications Traffic.* For purposes of this subpart, Non-Access Telecommunications Traffic means:

* * * * *

(3) This definition includes telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic subject to section 251(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 251(b)(5), from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Non-Access Reciprocal Compensation.* For purposes of this subpart, a Non-Access Reciprocal Compensation arrangement between two carriers is either a bill-and-keep arrangement, per § 51.713, or an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic.

■ 23. Revise § 51.703 to read as follows:

§ 51.703 Non-Access reciprocal compensation obligation of LECs.

(a) Each LEC shall establish Non-Access Reciprocal Compensation arrangements for transport and termination of Non-Access Telecommunications Traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network.

(c) Notwithstanding any other provision of the Commission's rules, a LEC shall be entitled to assess and collect the full charges for the transport and termination of Non-Access Telecommunications Traffic, regardless of whether the local exchange carrier assessing the applicable charges itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Non-Access Reciprocal Compensation charges for the transport and termination of that Non-Access Telecommunications Traffic. In no event may the total charges that a LEC may assess for such service to the called location exceed the applicable transport and termination rate. For purposes of this section, the facilities used by the LEC and affiliated or unaffiliated provider of interconnected VoIP service or a non-interconnected VoIP service for the transport and termination of such traffic shall be deemed an equivalent facility under § 51.701.

■ 24. Revise § 51.705 to read as follows:

§ 51.705 LECs' rates for transport and termination.

(a) Notwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of § 51.701(b)(2) shall be pursuant to a bill-and-keep arrangement, as provided in § 51.713.

(b) Establishment of incumbent LECs' rates for transport and termination:

(1) This provision applies when, in the absence of a negotiated agreement between parties, state commissions establish Non-Access Reciprocal Compensation rates for the exchange of Non-Access Telecommunications Traffic between a local exchange carrier and a telecommunications carrier other than a CMRS provider where the incumbent local exchange carriers did not have any such rates as of December 29, 2011. Any rates established pursuant to this provision apply between December 29, 2011 and the date at which they are superseded by the transition specified in paragraphs (c)(2) through (c)(5) of this section.

(2) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(i) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511; or

(ii) A bill-and-keep arrangement, as provided in § 51.713.

(3) In cases where both carriers in a Non-Access Reciprocal Compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

(c) Except as provided by paragraph (a) of this section, and notwithstanding any other provision of the Commission's rules, default transitional Non-Access Reciprocal Compensation rates shall be determined as follows:

(1) Effective December 29, 2011, no telecommunications carrier may increase a Non-Access Reciprocal Compensation for transport or termination above the level in effect on December 29, 2011. All Bill-and-Keep Arrangements in effect on December 29, 2011 shall remain in place unless both parties mutually agree to an alternative arrangement.

(2) Beginning July 1, 2012, if any telecommunications carrier's Non-Access Reciprocal Compensation rates in effect on December 29, 2011 or established pursuant to paragraph (b) of this section subsequent to December 29, 2011, exceed that carrier's interstate access rates for functionally equivalent services in effect in the same state on December 29, 2011, that carrier shall reduce its reciprocal compensation rate by one half of the difference between the Non-Access Reciprocal Compensation rate and the corresponding functionally equivalent interstate access rate.

(3) Beginning July 1, 2013, no telecommunications carrier's Non-Access Reciprocal Compensation rates shall exceed that carrier's tariffed interstate access rate in effect in the

same state on January 1 of that same year, for equivalent functionality.

(4) After July 1, 2018, all Price-Cap Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Price Cap Carrier shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

(5) After July 1, 2020, all Rate-of-Return Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Rate-of-Return Carriers shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

§ 51.707 [Removed and Reserved]

■ 25. Remove and reserve § 51.707.

■ 26. Revise § 51.709 to read as follows:

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, where a rate for Non-Access Reciprocal Compensation does not exist as of December 29, 2011, a state commission shall establish initial rates for the transport and termination of Non-Access Telecommunications Traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in this section.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

(c) For Non-Access Telecommunications Traffic exchanged between a rate-of-return regulated rural telephone company as defined in § 51.5 and a CMRS provider, the rural rate-of-return incumbent local exchange carrier will be responsible for transport to the CMRS provider's interconnection point when it is located within the rural rate-of-return incumbent local exchange carrier's service area. When the CMRS provider's interconnection point is located outside the rural rate-of-return incumbent local exchange carrier's service area, the rural rate-of-return incumbent local exchange carrier's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. This paragraph (c) is a default provision and applicable in the absence of an existing agreement or arrangement otherwise.

■ 27. Revise § 51.711 paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 51.711 Symmetrical non-access reciprocal compensation.

(a) Rates for transport and termination of Non-Access Telecommunications Traffic shall be symmetrical, unless carriers mutually agree otherwise, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of Non-Access Telecommunications Traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

* * * * *

(b) Except as provided in § 51.705, a state commission may establish asymmetrical rates for transport and termination of Non-Access Telecommunications Traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

* * * * *

■ 28. Revise § 51.713 to read as follows:

§ 51.713 Bill-and-keep arrangements.

Bill-and-keep arrangements are those in which carriers exchanging telecommunications traffic do not charge each other for specific transport and/or termination functions or services.

■ 29. Revise § 51.715 paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(2), and revise the first sentence in paragraph (d) to read as follows:

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of Non-Access Telecommunications Traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by the incumbent LEC.

* * * * *

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of Non-Access Telecommunications Traffic at symmetrical rates.

* * * * *

(2) In a state in which the state commission has not established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall set interim transport and termination rates either at the default ceilings specified in § 51.705(c) or in accordance with a bill-and-keep methodology as defined in § 51.713.

* * * * *

(d) If the rates for transport and termination of Non-Access Telecommunications Traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. * * *

§ 51.717 [Removed and Reserved]

■ 30. Remove and reserve § 51.717.

■ 31. Add new subpart J to part 51 to read as follows:

Subpart J—Transitional Access Service Pricing

Sec.

51.919 Reporting and monitoring.

Subpart J—Transitional Access Service Pricing

§ 51.901 Purpose and scope of transitional access service pricing rules.

(a) The purpose of this section is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

(b) Effective December 29, 2011, the provisions of this subpart apply to reciprocal compensation for telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Note to § 51.901: See FCC 11–161, figure 9 (chart identifying steps in the transition).

§ 51.903 Definitions.

For the purposes of this subpart:

(a) *Competitive Local Exchange Carrier.* A *Competitive Local Exchange Carrier* is any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier .

(b) *Composite Terminating End Office Access Rate* means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(c) *Dedicated Transport Access Service* means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. *Dedicated Transport Access Service* rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in § 69.110 of this chapter, the dedicated transport rate elements specified in § 69.111 of this chapter, the direct-trunked transport rate elements specified in § 69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. Dedicated Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(d) *End Office Access Service* means:

(1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

Note to paragraph (d): For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(e) *Fiscal Year 2011* means October 1, 2010 through September 30, 2011.

(f) *Price Cap Carrier* has the same meaning as that term is defined in § 61.3(aa) of this chapter.

(g) *Rate-of-Return Carrier* is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(h) *Access Reciprocal Compensation* means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(i) *Tandem-Switched Transport Access Service* means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. *Tandem-Switched Transport* rate elements for an incumbent local exchange carrier include the rate elements specified in § 69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(j) *Transitional Intrastate Access Service* means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

§ 51.905 Implementation.

(a) The rates set forth in this section are default rates. Notwithstanding any other provision of the Commission's rules, telecommunications carriers may agree to rates different from the default rates.

(b) LECs who are otherwise required to file tariffs are required to tariff rates no higher than the default transitional rates specified by this subpart.

(1) With respect to interstate switched access services governed by this subpart, LECs shall tariff rates for those services in their federal tariffs. Except as expressly superseded below, LECs shall follow the procedures specified in part 61 of this chapter when filing such tariffs.

(2) With respect to Transitional Intrastate Access Services governed by this subpart, LECs shall follow the procedures specified by relevant state law when filing such tariffs, price lists or other instrument (referred to collectively as ''tariffs'').

(c) Nothing in this section shall be construed to require a carrier to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so under applicable law.

§ 51.907 Transition of price cap carrier access charges.

(a) Notwithstanding any other provision of the Commission's rules, on December 29, 2011, a Price Cap Carrier shall cap the rates for all interstate and intrastate rate elements for services contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. In addition, a Price Cap Carrier shall also cap the rates for any interstate and intrastate rate elements in the traffic sensitive basket'' and the ''trunking basket'' as described in 47 CFR 61.42(d)(2) and (3) to the extent that such rate elements are not contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. Carriers will remove these services from price cap regulation in their July 1, 2012 annual tariff filing.

(b) *Step 1.* Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall file tariffs, in accordance with § 51.905(b)(2), with the appropriate state regulatory authority, that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Price Cap Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in paragraph (b)(2)(i) of this section and the amount calculated in paragraph (b)(2)(ii) of this section.

(iv) A Price Cap Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 demand. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(v) In the alternative, a Price Cap Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(vi) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(c) *Step 2.* Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules:

(1) Transitional Intrastate Access Service rates shall be no higher than the Price Cap Carrier's interstate access rates. Once the Price Cap Carrier's Transitional Intrastate Access Service rates are equal to its functionally equivalent interstate access rates, they shall be subject to the same rate structure and all subsequent rate and rate structure modifications. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(2) In cases where a Price Cap Carrier does not have intrastate rates that permit it to determine composite intrastate End Office Access Service rates, the carrier shall establish End Office Access Service rates such that the ratio between its composite intrastate End Office Access Service revenues and its total intrastate switched access revenues may not exceed the ratio between its composite interstate End Office Access Service revenues and its total interstate switched access revenues.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) A Price Cap Carrier shall establish separate originating and terminating rate elements for all per-minute components within interstate and intrastate End Office Access Service. For fixed charges, the Price Cap Carrier shall divide the rate between originating and terminating rate elements based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Each Price Cap Carrier shall establish rates for interstate or intrastate terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 demand and the End Office Access Service rates at the levels in effect on December 29, 2011.

(ii) Each Price Cap Carrier shall calculate its 2014 Target Composite Terminating End Office Access Rate. The 2014 Target Composite Terminating End Office Access Rate means $0.0007 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and $0.0007 per minute.

(iii) Beginning July 1, 2014, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate.

(iv) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions increasing such rates.

(e) *Step 4.* Beginning July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall establish interstate or intrastate rates for terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate its 2015 Target Composite Terminating End Office Access Rate. The 2015 Target Composite Terminating End Office Access Rate means $0.0007 per minute plus one-third of any difference between the 2011 Composite Terminating End Office Access Rate and $0.0007 per minute.

(ii) Beginning July 1, 2015, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 Target Composite Terminating End Office Access Rate.

(2) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(f) *Step 5.* Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.0007 per minute. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) *Step 6.* Beginning July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall, in accordance with a bill-and-keep methodology, refile its interstate access tariffs and any state tariffs, in accordance with § 51.905(b)(2), removing any intercarrier charges for terminating End Office Access Service.

(2) Each Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than $0.0007 per minute.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(h) *Step 7.* Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in § 51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns.

§ 51.909 Transition of rate-of-return carrier access charges.

(a) Notwithstanding any other provision of the Commission's rules, on December 29, 2011, a Rate-of-Return Carrier shall:

(1) Cap the rates for all rate elements for services contained in the definitions of End Office Access Service, Tandem Switched Transport Access Service, and Dedicated Transport Access Service, as well as all other interstate switched access rate elements, in its interstate switched access tariffs at the rate that was in effect on the December 29, 2011; and

(2) Cap, in accordance with § 51.505(b)(2), the rates for rate all elements in its intrastate switched access tariffs associated with the provision of terminating End Office Access Service and terminating Tandem-Switched Transport Access Service at the rates that were in effect on the December 29, 2011,

(i) Using the terminating rates if specifically identified; or

(ii) Using the rate for the applicable rate element if the tariff does not distinguish between originating and terminating.

(3) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(b) *Step 1.* Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall file intrastate access tariff provisions, in accordance with § 51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Rate-of-Return Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(2)(i) of this section and the amount calculated in (b)(2)(ii) of this section.

(iv) A Rate-of-Return Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 intrastate switched access demand. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(v) In the alternative, a Rate-of-Return Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(3) Nothing in this section obligates or allows a Rate-of-Return carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) *Step 2.* Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules, Transitional Intrastate Access Service rates shall be no higher than the Rate-of-Return Carrier's interstate Terminating End Office Access Service and Terminating Tandem-Switched Transport Access Service rates and subject to the same rate structure and all subsequent rate and rate structure modifications.

(d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) Notwithstanding the rate structure rules set forth in § 69.106 of this chapter or anything else in the Commission's rules, a Rate-of-Return Carrier shall establish separate originating and terminating interstate and intrastate rate elements for all components within interstate End Office Access Service. For fixed charges, the Rate-of-Return Carrier shall divide the amount based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Nothing in this Step shall affect Tandem-Switched Transport Access Service or Dedicated Transport Access Service.

(3) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand and the interstate End Office Access Service rates at the levels in effect on December 29, 2011.

(ii) Each Rate-of-Return Carrier shall calculate its 2014 interstate Target Composite Terminating End Office Access Rate. The 2014 interstate Target Composite Terminating End Office Access Rate means $0.005 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate. and $0.005 per minute.

(iii) Beginning July 1, 2014, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 interstate Target Composite Terminating End Office Access Rate.

(4) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(e) *Step 4.* Beginning July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2015 interstate Target Composite Terminating End Office Access Rate. The 2015 interstate Target Composite Terminating End Office Access Rate means $0.005 per minute plus one-third of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and $0.005 per minute.

(ii) Beginning July 1, 2015, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(f) *Step 5.* Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.005 per minute. Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) *Step 6.* Beginning July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2017 interstate Target Composite Terminating End Office Access Rate. The 2017 interstate Target Composite Terminating End Office Access Rate means $0.0007 per minute plus two-thirds of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and $0.0007 per minute.

(ii) Beginning July 1, 2017, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2017 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2017 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(h) *Step 7.* Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2018 interstate Target Composite Terminating End Office Access Rate. The 2018 interstate Target Composite Terminating End Office Access Rate means $0.0007 per minute plus one-third of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and $0.0007 per minute.

(ii) Beginning July 1, 2018, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2018 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2018 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(i) *Step 8.* Beginning July 1, 2019, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate rates for terminating End Office Access Service that do not exceed $0.0007 per minute.

(j) *Step 9.* Beginning July 1, 2020, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall, in accordance with a bill-and-keep methodology, revise and refile its federal access tariffs and any state tariffs to remove any intercarrier charges for terminating End Office Access Service.

(k) As set forth in FCC 11–161, states will facilitate implementation of changes to intrastate access rates to ensure compliance with the Order. Nothing in this section shall alter the authority of a state to monitor and oversee filing of intrastate tariffs.

§ 51.911 Access reciprocal compensation rates for competitive LECs.

(a) *Caps on Access Reciprocal Compensation and switched access rates.* Notwithstanding any other provision of the Commission's rules:

(1) In the case of Competitive LECs operating in an area served by a Price

Cap Carrier, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011.

(2) In the case of Competitive LEC operating in an area served by an incumbent local exchange carrier that is a Rate-of-Return Carrier or Competitive LECs that are subject to the rural exemption in § 61.26(e) of this chapter, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011, with the exception of intrastate originating access service. For such Competitive LECs, intrastate originating access service subject to this subpart shall remain subject to the same state rate regulation in effect December 31, 2011, as may be modified by the state thereafter.

(b) Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules, each Competitive LEC that has tariffs on file with state regulatory authorities shall file intrastate access tariff provisions, in accordance with § 51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service. Each Competitive Local Exchange Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(1) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(2) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(3) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(1) of this section and the amount calculated in (b)(2) of this section.

(4) A Competitive Local Exchange Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal year 2011 intrastate switched access demand.

(5) In the alternative, a Competitive Local Exchange Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal year 2011 intrastate switched access demand

(6) Nothing in this section obligates or allows a Competitive LEC that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter.

§ 51.913 Transition for VoIP–PSTN traffic.

(a) Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate access charges specified by this subpart. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(b) Notwithstanding any other provision of the Commission's rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service. For purposes of this provision, functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service.

§ 51.915 Recovery mechanism for price cap carriers.

(a) *Scope.* This section sets forth the extent to which Price Cap Carriers may recover certain revenues, through the recovery mechanism outlined below, to implement reforms adopted in FCC 11–161 and as required by § 20.11(b) of this chapter, and §§ 51.705 and 51.907.

(b) *Definitions.* As used in this section and § 51.917, the following terms mean:

(1) *CALLS Study Area.* A *CALLS Study Area* means a Price Cap Carrier study area that participated in the CALLS plan at its inception. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96–262 and 94–1, Report and Order in CC Docket No. 99–249, Eleventh Report and Order in CC Docket No. 96–45, 15 FCC Rcd 12962 (2000).

(2) *CALLS Study Area Base Factor.* The *CALLS Study Area Base Factor* is equal to ninety (90) percent.

(3) *CMRS Net Reciprocal Compensation Revenues. CMRS Net Reciprocal Compensation Revenues* means the reduction in net reciprocal compensation revenues required by § 20.11 of this chapter associated with CMRS traffic as described in § 51.701(b)(2), which is equal to its Fiscal Year 2011 net reciprocal compensation revenues from CMRS carriers.

(4) *Expected Revenues for Access Recovery Charges. Expected Revenues for Access Recovery Charges* are calculated using the tariffed Access Recovery Charge rate for each class of service and the forecast demand for each class of service.

(5) *Initial Composite Terminating End Office Access Rate. Initial Composite Terminating End Office Access Rate* means Fiscal Year 2011 terminating interstate End Office Access Service revenue divided by Fiscal Year 2011 terminating interstate end office switching minutes.

(6) *Lifeline Customer.* A *Lifeline Customer* is a residential lifeline subscriber as defined by § 54.400(a) of this chapter that does not pay a Residential and/or Single-Line Business End User Common Line Charge.

(7) *Net Reciprocal Compensation. Net Reciprocal Compensation* means the difference between a carrier's reciprocal compensation revenues from non-access traffic less its reciprocal compensation payments for non-access traffic during a stated period of time. For purposes of the calculations made under §§ 51.915 and 51.917, the term does not include reciprocal compensation revenues for non-access traffic exchanged between Local Exchange Carriers and CMRS providers; recovery for such traffic is addressed separately in these sections.

(8) *Non-CALLS Study Area. Non-CALLS Study Area* means a Price Cap Carrier study area that did not participate in the CALLS plan at its inception.

(9) *Non-CALLS Study Area Base Factor.* The *Non-CALLS Study Area Base Factor* is equal to one hundred (100) percent for five (5) years beginning July 1, 2012. Beginning July 1, 2017, the *Non-CALLS Price Cap Carrier Base Factor* will be equal to ninety (90) percent.

(10) *Price Cap Carrier Traffic Demand Factor.* The *Price Cap Carrier Traffic Demand Factor,* as used in calculating eligible recovery, is equal to ninety (90) percent for the one-year period beginning July 1, 2012. It is reduced by ten (10) percent of its previous value in each subsequent annual tariff filing.

(11) *Rate Ceiling Component Charges.* The *Rate Ceiling Component Charges* consists of the federal end user common line charge and the Access Recovery Charge; the flat rate for residential local service (sometimes know as the ''1FR'' or ''R1'' rate), mandatory extended area service charges, and state subscriber line charges; per-line state high cost and/or state access replacement universal service contributions, state E911 charges, and state TRS charges.

(12) *Residential Rate Ceiling.* The *Residential Rate Ceiling,* which consists of the total of the Rate Ceiling Component Charges, is set at $30 per month. The *Residential Rate Ceiling* will be the higher of the rate in effect on January 1, 2012, or the rate in effect on January 1 in any subsequent year.

(13) *True-up Revenues for Access Recovery Charge. True-up revenues for Access Recovery Charge* are equal to Expected Access Recovery Charge Revenues minus ((projected demand minus actual realized demand for Access Recovery Charges) times the tariffed Access Recovery Charge). This calculation shall be made separately for each class of service and shall be adjusted to reflect any changes in tariffed rates for the Access Recovery Charge. Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.

(c) 2011 *Price Cap Carrier Base Period Revenue.* 2011 Price Cap Carrier Base Period Revenue is equal to the sum of the following three components:

(1) Terminating interstate end office switched access revenues and interstate Tandem-Switched Transport Access Service revenues for Fiscal Year 2011 received by March 31, 2012;

(2) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and

(3) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less fiscal year 2011 reciprocal compensation payments made by March 31, 2012.

(d) *Eligible recovery for Price Cap Carriers.*

(1) Notwithstanding any other provision of the Commission's rules, a Price Cap Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.

(i) Beginning July 1, 2012, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(C) A Price Cap Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues resulting from rate reductions required by § 51.705, other than those associated with CMRS traffic as described in § 51.701(b)(2), which may be calculated in one of the following ways:

(1) Calculate the reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 multiply by the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(ii) Beginning July 1, 2013, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:

(A) The cumulative amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(C) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal

compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(iii) Beginning July 1, 2014, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iii)(A) through (d)(1)(iii)(E), of this section, and then adding the amount in paragraph (d)(1)(iii)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2014 Target Composite Terminating End Office Access Rate, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the intrastate 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.

(iv) Beginning July 1, 2015, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(E) of this section and then adding the amount in paragraph (d)(1)(iv)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2015 Target Composite Terminating End Office Access Rate, the reduction in intrastate switched access revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor; and

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2015, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this

option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2013.

(v) Beginning July 1, 2016, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(v)(A) through (d)(1)(v)(E), of this section and then adding the amount in paragraph (d)(1)(v)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and $0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than $0.0007, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and $0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating intrastate end office minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2016, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2014.

(vi) Beginning July 1, 2017, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vi) through (d)(1)(vi)(F) of this section, and then adding the amount in paragraph (d)(1)(vi)(G) f this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to $0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(E) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(F) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2017, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(G) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2015.

(vii) Beginning July 1, 2018, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vii)(A) though (d)(1)(vii)(G) of this section, and then adding the amount in paragraph (d)(1)(vii)(H) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and:

(B) The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to $0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(E) The reduction in revenues resulting from moving from a terminating Tandem-Switched Transport Access Service rate tariffed at a maximum of $0.0007 to removal of intercarrier charges pursuant to § 51.907(h), if applicable, using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(F) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(G) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2018, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(H) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2016.

(viii) Beginning July 1, 2019, and in subsequent years, a Price Cap Carrier's eligible recovery will be equal to the amount calculated in paragraph (d)(1)(vii)(A) through (d)(1)(vii)(H) of this section before the application of the Price Cap Carrier Traffic Demand Factor applicable in 2018 multiplied by the appropriate Price Cap Carrier Traffic Demand Factor for the year in question, and then adding an amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1 two years earlier.

(2) If a Price Cap Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery.

(3) A Price Cap Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

(e) *Access Recovery Charge.* (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed an end user common line charge pursuant to § 69.152 of this chapter, to the extent necessary to allow the Price Cap Carrier to recover some or all of its eligible recovery determined pursuant to paragraph (d) of this section, subject to the caps described in paragraph (e)(5) of this section. A Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge.

(2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year in question may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) of this section for the year beginning on July 1.

(3) For the purposes of this section, a Price Cap Carrier holding company includes all of its wholly-owned operating companies that are price cap incumbent local exchange carriers. A Price Cap Carrier Holding Company may recover the eligible recovery attributable to any price cap study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users in any price cap study areas operated by its wholly owned operating companies that are price cap incumbent local exchange carriers.

(4) *Distribution of Access Recovery Charges among lines of different types.* (i) A Price Cap Carrier holding company that does not receive ICC-replacement CAF support (whether because it elects not to or because it does not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher fraction of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than:

(A) The number of Residential and Single-Line Business lines divided by

(B) The sum of the number of Residential and Single-Line Business lines and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.

(ii) For purposes of this subpart, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge and lines assessed the non-primary residential end user common line charge.

(iii) For purposes of this subpart, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.

(5) Per-line caps and other limitations on Access Recovery Charges

(i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge or a non-primary residential end user common line charge pursuant to § 69.152 of this Chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $0.50 per month for each line;

(B) Beginning July 1, 2013, a maximum of $1.00 per month for each line;

(C) Beginning July 1, 2014, a maximum of $1.50 per month for each line;

(D) Beginning July 1, 2015, a maximum of $2.00 per month for each line; and

(E) Beginning July 1, 2016, a maximum of $2.50 per month for each line.

(ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.152 of this chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $1.00 per month for each multi-line business end user common line charge assessed;

(B) Beginning July 1, 2013, a maximum of $2.00 per month for each multi-line business end user common line charge assessed;

(C) Beginning July 1, 2014, a maximum of $3.00 per month for each multi-line business end user common line charge assessed;

(D) Beginning July 1, 2015, a maximum of $4.00 per month for each multi-line business end user common line charge assessed; and

(E) Beginning July 1, 2016, a maximum of $5.00 per month for each multi-line business end user common line charge assessed.

(iii) The Access Recovery Charge allowed by paragraph (e)(5)(i) of this section may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling on January 1 of that year. This limitation applies only to the first residential line obtained by a residential end user and does not apply to single-line business customers.

(iv) The Access Recovery Charge allowed by paragraph (e)(5)(ii) of this section may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above $12.20 per line.

(v) The Access Recovery Charge assessed on lines assessed the non-primary residential line end user common line charge in a study area may not exceed the Access Recovery Charge assessed on residential end-users' first residential line in that study area.

(vi) The Access Recovery Charge may not be assessed on lines of any Lifeline Customers.

(vii) If in any year, the Price Cap Carrier's Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than $.0.50 per line per month for charges assessed under paragraph (e)(5)(i) of this section or $1.00 per line per month for charges assessed under paragraph (e)(5)(ii) of this section.

(f) *Price Cap Carrier eligibility for CAF ICC Support.*

(1) A Price Cap Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Price Cap Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once it makes the election not to receive CAFF ICC Support, it may not elect to receive such funding at a later date.

(2) Beginning July 1, 2012, a Price Cap Carrier may recover any eligible recovery allowed by paragraph (d) that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the Price Cap Carrier must impute the maximum charges it could have assessed under paragraph (e)of this section.

(3) Beginning July 1, 2017, a Price Cap Carrier may recover two-thirds (⅔) of the amount it otherwise would have been eligible to recover under paragraph (f)(2) from CAF ICC Support.

(4) Beginning July 1, 2018, a Price Cap Carrier may recover one-third (1/3) of the amount it otherwise would have been eligible to recover under paragraph (f)(2) of this section from CAF ICC Support.

(5) Beginning July 1, 2019, a Price Cap Carrier may no longer recover any amount related to revenue recovery under this paragraph from CAF ICC Support.

(6) A Price Cap Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1st of each subsequent year that it has complied with paragraphs (d) and (e) of this section, and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f) of this section.

§ 51.917 Revenue recovery for Rate-of-Return Carriers.

(a) *Scope.* This section sets forth the extent to which Rate-of-Return Carriers may recover, through the recovery mechanism outlined in paragraphs (d) through (f) of this section, a portion of revenues lost due to rate reductions required by § 20.11(b) of this chapter, and §§ 51.705 and 51.909.

(b) *Definitions.*

(1) *2011 Interstate Switched Access Revenue Requirement. 2011 Interstate Switched Access Revenue Requirement means:*

(i) For a Rate-of-Return Carrier that participated in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement associated with the NECA 2011 annual interstate switched access tariff filing;

(ii) For a Rate-of-Return Carrier subject to § 61.38 of this chapter that filed its own annual access tariff in 2010 and did not participate in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement in its 2010 annual interstate switched access tariff filing; and

(iii) For a Rate-of-Return Carrier subject to § 61.39 of this chapter that filed its own annual switched access tariff in 2011, its historically-determined annual interstate switched access revenue requirement filed with its 2011 annual interstate switched access tariff filing.

(2) *Expected Revenues.* Expected Revenues from an access service are calculated using the default transition rate for that service specified by § 51.909 and forecast demand for that service. Expected Revenues from a non-access service are calculated using the default transition rate for that service specified by § 20.11 of this chapter or § 51.705 of this chapter and forecast net demand for that service.

(3) *Rate-of-Return Carrier Baseline Adjustment Factor.* The Rate-of-Return Carrier Baseline Adjustment Factor, as used in calculating eligible recovery for Rate-of-Return Carriers, is equal to ninety-five (95) percent for the period beginning July 1, 2012. It is reduced by five (5) percent of its previous value in each subsequent annual tariff filing.

(4) *Revenue Requirement.* Revenue Requirement is equal to a carrier's regulated operating costs plus an 11.25 percent return on a carrier's net rate base calculated in compliance with the provisions of parts 36, 65 and 69 of this chapter. For an average schedule carrier, its Revenue Requirement shall be equal to the average schedule settlements it received from the pool, adjusted to reflect an 11.25 percent rate of return, or what it would have received if it had been a participant in the pool. If the reference is to an operating segment, these references are to the Revenue Requirement associated with that segment.

(5) *True-up Adjustment.* The True-up Adjustment is equal to the Expected Revenues less the True-up Revenues for any particular service for the period in question.

(6) *True-up Revenues.* True-up Revenues from an access service are equal to Expected Revenues minus ((projected demand minus actual realized demand for that service) times the default transition rate for that service specified by § 51.909). True-up Revenues from a non-access service are equal to Expected Revenues minus ((projected demand minus actual

realized net demand for that service) times the default transition rate for that service specified by 20.11(b) of this chapter or 51.705). Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.

(7) *2011 Rate-of-Return Carrier Base Period Revenue. 2011 Rate-of-Return Carrier Base Period Revenue* is the sum of:

(i) 2011 Interstate Switched Access Revenue Requirement;

(ii) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and

(iii) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less Fiscal Year 2011 reciprocal compensation payments paid and/or payable by March 31, 2012

(c) 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from access stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

(d) *Eligible Recovery for Rate-of-Return Carriers.*

(1) Notwithstanding any other provision of the Commission's rules, a Rate-of-Return Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.

(i) Beginning July 1, 2012, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;

(B) 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;

(C) CMRS Net Reciprocal Compensation Revenues; and

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) of this part resulting from rate reductions required by § 51.705, which may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2012, reflecting the rate reductions required by § 51.705;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2012, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 using projected 2012 demand; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(ii) Beginning July 1, 2013, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2013, reflecting the rate transition contained in § 51.909;

(B) 2011 Rate-of-Return Carrier Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2013.

(C) CMRS Net Reciprocal Compensation Revenues;

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2013, reflecting the rate reductions required by 51.705;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2013, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013 using projected 2013 demand; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(iii) Beginning July 1, 2014, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of the amounts in paragraphs (d)(1)(iii)(A) through (d)(1)(iii)(D) of this section, and by adding the amount in paragraph (d)(1)(iii)(E) of this section to that amount:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2014, reflecting the rate transitions contained in § 51.909 (including the reduction in intrastate End Office Switched Access Service rates), adjusted to reflect the True-Up Adjustment for Transitional Intrastate Access Service for the year beginning July 1, 2012;

(B) 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2014, adjusted to reflect the True-Up Adjustment for Interstate switched Access for the year beginning July 1, 2012;

(C) CMRS Net Reciprocal Compensation Revenues; and

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2014, reflecting the rate reductions required by 51.705 adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2014, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(E) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.

(iv) Beginning July 1, 2015, and for all subsequent years, a Rate-of-Return Carrier's eligible recovery will be calculated by updating the procedures set forth in paragraph (d)(1)(iii) of this section for the period beginning July 1, 2014, to reflect the passage of an additional year in each subsequent year.

(v) If a Rate-of-Return Carrier receives payments for intrastate or interstate switched access services or for Access Recovery Charges after the period used to measure the adjustments to reflect the differences between estimated and actual revenues, it shall treat such payments as actual revenue in the year the payment is received and shall reflect this as an additional adjustment for that year.

(vi) If a Rate-of-Return Carrier receives or makes reciprocal compensation payments after the period used to measure the adjustments to reflect the differences between estimated and actual net reciprocal compensation revenues, it shall treat such amounts as actual revenues or payments in the year the payment is received or made and shall reflect this as an additional adjustment for that year.

(vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. A Rate-of-Return Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

(e) *Access Recovery Charge.* (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed a subscriber line charge pursuant to § 69.104 of this chapter, to the extent necessary to allow the Rate-of-Return Carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section, subject to the caps described in paragraph (e)(6) of this section. A Rate-of-Return Carrier may elect to forgo charging some or all of the Access Recovery Charge.

(2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) of this section for the year beginning on July 1.

(3) For the purposes of this section, a Rate-of-Return Carrier holding company includes all of its wholly-owned operating companies. A Rate-of-Return Carrier Holding Company may recover the eligible recovery attributable to any Rate-of-Return study areas operated by its wholly-owned operating companies that are Rate-of-Return incumbent local exchange carriers through assessments of the Access Recovery Charge on end users in any Rate-of-Return study areas operated by its wholly-owned operating companies that are Rate-of-Return incumbent local exchange carriers.

(4) Distribution of Access Recovery Charges among lines of different types

(i) A Rate-of-Return Carrier that does not receive ICC-replacement CAF support (whether because they elect not to or because they do not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher ratio of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than the following ratio (using holding company lines):

(A) The number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), divided by

(B) The sum of the number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.

(5) For purposes of this subpart, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge.

(i) For purposes of this subpart, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.

(ii) [Reserved]

(6) *Per-line caps and other limitations on Access Recovery Charges.*

(i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge pursuant to § 69.104 of this chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $0.50 per month for each line;

(B) Beginning July 1, 2013, a maximum of $1.00 per month for each line;

(C) Beginning July 1, 2014, a maximum of $1.50 per month for each line;

(D) Beginning July 1, 2015, a maximum of $2.00 per month for each line;

(E) Beginning July 1, 2016, a maximum of $2.50 per month for each line; and

(F) Beginning July 1, 2017, a maximum of $3.00 per month for each line.

(ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.104 of this chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $1.00 per month for each multi-line business end user common line charge assessed;

(B) Beginning July 1, 2013, a maximum of $2.00 per month for each multi-line business end user common line charge assessed;

(C) Beginning July 1, 2014, a maximum of $3.00 per month for each multi-line business end user common line charge assessed;

(D) Beginning July 1, 2015, a maximum of $4.00 per month for each multi-line business end user common line charge assessed;

(E) Beginning July 1, 2016, a maximum of $5.00 per month for each multi-line business end user common line charge assessed; and

(F) Beginning July 1, 2017, a maximum of $6.00 per month for each multi-line business end user common line charge assessed.

(iii) The Access Recovery Charge allowed by paragraph (e)(6)(i) of this section may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling. This limitation does not apply to single-line business customers.

(iv) The Access Recovery Charge allowed by paragraph (e)(6)(ii) of this section may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above $12.20 per line.

(v) The Access Recovery Charge may not be assessed on lines of Lifeline Customers.

(vi) If in any year, the Rate of return carriers' Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than $0.50 per line for charges under paragraph (e)(6)(i) of this section or $1.00 per line for charges assessed under paragraph (e)(6)(ii) of this section.

(vii) A Price Cap Carrier with study areas that are subject to rate-of-return regulation shall recover its eligible recovery for such study areas through the recovery procedures specified in this section. For that purpose, the provisions of paragraph (e)(3) of this section shall apply to the rate-of-return study areas if the applicable conditions in paragraph (e)(3) of this section are met.

(f) *Rate-of-Return Carrier eligibility for CAF ICC Recovery.* (1) A Rate-of-Return Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Rate-of-Return Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once it makes the election not to receive CAF ICC Support, it may not elect to receive such funding at a later date.

(2) Beginning July 1, 2012, a Rate-of-Return Carrier may recover any eligible recovery allowed by paragraph (d) of this section that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the Rate-of-Return Carrier must impute the maximum charges it could have assessed under paragraph (e) of this section.

(3) A Rate-of-Return Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1st of each subsequent year that it has complied with paragraphs (d) and (e), and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f) of this section.

§ 51.919 Reporting and monitoring.

(a) A Price Cap Carrier that elects to participate in the recovery mechanism outlined in § 51.915 shall, beginning in 2012, file with the Commission the data consistent with Section XIII (f)(3) of FCC 11–161 with its annual access tariff filing.

(b) A Rate-of-Return Carrier that elects to participate in the recovery mechanism outlined in § 51.917 shall file with the Commission the data consistent with Section XIII (f)(3) of FCC 11–161 with its annual interstate access tariff filing, or on the date such a filing would have been required if it had been required to file in that year.

PART 54—UNIVERSAL SERVICE

■ 32. The authority citation for part 54 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart A—General Information

■ 33. Amend § 54.5 by adding definitions of ''community anchor institutions,'' ''high-cost support,'' ''Tribal lands'' and ''unsubsidized competitor,'' and by revising the definition of ''rate-of-return carrier'' to read as follows:

§ 54.5 Terms and Definitions.

* * * * *

Community anchor institutions. For the purpose of high-cost support, ''community anchor institutions'' refers to schools, libraries, health care providers, community colleges, other institutions of higher education, and other community support organizations and entities.

* * * * *

High-cost support. ''High-cost support'' refers to those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive and safety valve provided pursuant to subpart F of part 36, local switching support pursuant to § 54.301, forward-looking support pursuant to § 54.309, interstate access support pursuant to §§ 54.800 through 54.809, and interstate common line support pursuant to §§ 54.901 through 54.904, support provided pursuant to §§ 51.915, 51.917, and 54.304, support provided to competitive eligible telecommunications carriers as set forth in § 54.307(e), Connect America Fund support provided pursuant to § 54.312, and Mobility Fund support provided pursuant to subpart L of this part.

* * * * *

Rate-of-return carrier. ''Rate-of-return carrier'' shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter.

* * * * *

Tribal lands. For the purposes of high-cost support, ''Tribal lands'' include any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688) and Indian Allotments, *see* § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat. 108, *et seq.,* as amended.

Unsubsidized competitor. An ''unsubsidized competitor'' is a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.

* * * * *

■ 34. Revise § 54.7 to read as follows:

§ 54.7 Intended use of federal universal service support.

(a) A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(b) The use of federal universal service support that is authorized by paragraph (a) of this section shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services.

Subpart B—Services Designated for Support

■ 35. Revise § 54.101 to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) *Services designated for support.* Voice telephony service shall be supported by federal universal service support mechanisms. The functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

Subpart C—Carriers Eligible for Universal Service Support

■ 36. Revise § 54.202 to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1)(i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(b) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected Tribal government and Tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected Tribal government and Tribal regulatory authority, as applicable, by the most expeditious means available.

Subpart D—Universal Service Support for High-Cost Areas

■ 37. Amend § 54.301 by revising paragraph (a)(1), revising the first sentence of paragraph (b), and by revising the first sentence of paragraph (e)(1) to read as follows:

§ 54.301 Local switching support.

(a) * * *

(1) Beginning January 1, 1998 and ending December 31, 2011, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: The carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. Beginning January 1, 2012 and ending June 30, 2012, a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines and is not affiliated with a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support for local switching costs frozen at the same support level received for calendar year 2011, subject to true-up. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter. Beginning January 1, 2012, no carrier that is a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, or a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is affiliated with a price cap carrier, shall receive local switching support. Beginning July 1, 2012, no carrier shall receive local switching support.

* * * * *

(b) *Submission of data to the Administrator.* Until October 1, 2011, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing. * * *

* * * * *

(e) *True-up adjustment—(1) Submission of true-up data.* Until December 31, 2012, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the historical total unseparated dollar amount assigned to each account listed in paragraph (b) of this section for each calendar year no later than 12 months after the end of such calendar year. * * *

* * * * *

■ 38. Add § 54.302 to subpart D to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

(a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed $250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed $250 per-line plus one third of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed $250.

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605 and 36.631, of this chapter and §§ 54.301, 54.305, and 54.901 through .904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter.

(c) The Administrator, in order to limit support to $250 for affected carriers, shall reduce safety net additive support, high-cost loop support, safety valve support, and interstate common line support in proportion to the relative amounts of each support the study area would receive absent such limitation.

§ 54.303 [Removed]

■ 39. Section 54.303 is removed.

■ 40. Add § 54.304 to subpart D to read as follows:

§ 54.304 Administration of Connect America Fund Intercarrier Compensation Replacement.

(a) The Administrator shall administer CAF ICC support pursuant to § 51.915 and § 51.917 of this chapter.

(b) The funding period is the period beginning July 1 through June 30 of the following year.

(c) For price cap carriers that are eligible and elect, pursuant to § 51.915(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the carrier is eligible to receive pursuant to § 51.915 of this chapter.

(1) A price cap carrier seeking CAF ICC support pursuant to § 51.915 of this chapter shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the amount of the price cap carrier's eligible CAF ICC funding during the upcoming funding period pursuant to § 51.915 of this chapter. The amount shall include any true-ups, pursuant to § 51.915 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each price cap carrier one-twelfth (1/12) of the amount the carrier is eligible to receive during that funding period.

(d) For rate-of-return carriers that are eligible and elect, pursuant to § 51.917(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the rate-of-return carrier is eligible to receive pursuant to § 51.917 of this chapter.

(1) A rate-of-return carrier seeking CAF ICC support shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the rate-of-return carrier's projected eligibility for CAF ICC funding during the upcoming funding period pursuant to § 51.917 of this chapter. The projected amount shall include any true-ups, pursuant to § 51.917 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each rate-of-return carrier one-twelfth (1/12) of the amount the carrier is to be eligible to receive during that funding period.

■ 41. Amend § 54.305 by adding a sentence at the end of paragraph (a) and by adding a sentence at the beginning of paragraph (b) to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) * * * After December 31, 2011, the provisions of this section shall not be used to determine support for any price cap incumbent local exchange carrier or a rate-of-return carrier, as that term is defined in § 54.5 that is affiliated with a price cap incumbent local exchange carrier.

(b) Beginning January 1, 2012, any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less. * * *

* * * * *

■ 42. Amend § 54.307 by adding paragraph (e) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(e) *Support Beginning January 1, 2012.* Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support based on the methodology described in this paragraph and not based on paragraph (a) of this section.

(1) *Baseline Support Amount.* Each competitive eligible telecommunication carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve.

(i) ''Total 2011 support'' is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(2) *Monthly Support Amounts.* Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (e)(6) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) From July 1, 2013, to June 30, 2014, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) From July 1, 2014, to June 30, 2015, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(v) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(vi) Beginning July 1, 2016, no competitive eligible telecommunications carrier shall receive universal service support pursuant to this section.

(3) *Delayed Phase Down for Remote Areas in Alaska.* Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (e)(2) of this section.

(i) *Remote Areas in Alaska.* For the purpose of this paragraph, ''remote areas in Alaska'' includes all of Alaska except;

(A) The ACS-Anchorage incumbent study area;

(B) The ACS-Juneau incumbent study area;

(C) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(D) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matunuska Telephone Association incumbent study area.

(ii) *Carriers Subject to Delayed Phase Down.* A competitive eligible telecommunications carrier shall be subject to the delayed phase down described in paragraph (e)(3) of this section to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator. To the extent a competitive eligible telecommunications carrier serving Alaska is not subject to the delayed phase down, it will be subject to the phase down of support on the schedule described in paragraph (e)(2) of this section.

(iii) *Baseline for Delayed Phase Down.* For purpose of the delayed phase down for remote areas in Alaska, the baseline amount shall be calculated in the same manner as described in paragraph (e)(1) of this section, except that support amounts from 2013 shall be used.

(iv) *Monthly Support Amounts.* Competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (e)(4) through (e)(6) of this section.

(A) From January 1, 2014, to June 30, 2014, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(B) From July 1, 2014 to June 30, 2015, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(C) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(D) From July 1, 2016, to June 30, 2017, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(E) From July 1, 2017, to June 30, 2018, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(F) Beginning July 1, 2018, no competitive eligible telecommunications carrier serving remote areas in Alaska shall receive universal service support pursuant to this section.

(v) *Interim Support for Remote Areas in Alaska.* From January 1, 2012, until December 31, 2013, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive support as calculated pursuant to paragraph (a) of this section, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped.

(A) *Cap Amount.* The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of ''total 2011 support,'' as defined in paragraph (e)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(B) *Reduction Factor.* To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) *Further reductions.* If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(iv)(A) of this section.

(6) *Eligibility after Implementation of Mobility Fund Phase II.* If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month for which it receives Mobility Fund Phase II support.

(7) *Line Count Filings.* Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning January 1, 2014.

■ 43. Amend § 54.309 by adding paragraph (d) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

* * * * *

(d) *Support After December 31, 2011.* Beginning January 1, 2012, no carrier shall receive support under this rule.

§ 54.311 [Removed]

■ 44. Section 54.311 is removed.

■ 45. Section 54.312 is added to read as follows:

§ 54.312 Connect America Fund for Price Cap Territories—Phase I

(a) *Frozen High-Cost Support.* Beginning January 1, 2012, each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. For purposes of this section, price cap carriers are defined pursuant to § 61.3(aa) of this chapter and affiliated companies are determined by § 32.9000 of this chapter. Each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve. Beginning January 1, 2012, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) ''Total 2011 support'' is the amount of support disbursed to a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a price cap local

exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Access Support and Interstate Common Line Support equal to the amount of support the carrier to which the carrier was eligible under those mechanisms in 2011.

(b) *Incremental Support.* Beginning January 1, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's cost model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, as shown as unserved by fixed broadband on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by $775.

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are shown as unserved by fixed broadband on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.

(4) An eligible telecommunications carrier must complete deployment of broadband to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to comparable offerings in urban areas.

■ 46. Revise § 54.313 to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high-cost support shall provide:

(1) A progress report on its five-year service quality improvement plan pursuant to § 54.202(a), including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate;

(2) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the recipient's service areas that were unfulfilled during the prior calendar year. The carrier shall also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2);

(7) The company's price offerings in a format as specified by the Wireline Competition Bureau;

(8) The recipient's holding company, operating companies, affiliates, and any branding (a ''dba,'' or ''doing-business-as company'' or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of this paragraph, ''affiliates'' has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;

(9) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

(10) *Beginning April 1, 2013.* A letter certifying that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau; and

(11) *Beginning April 1, 2013.* The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1) through (7) of this section separately broken out for both voice and broadband service.

(b) In addition to the information and certifications in paragraph (a) of this section, any recipient of incremental CAF Phase I support pursuant to § 54.312(b) shall provide:

(1) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and

(2) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to those in urban areas.

(c) In addition to the information and certifications in paragraph (a) of this section, price cap carriers that receive frozen high-cost support pursuant to § 54.312(a) shall provide:

(1) *By April 1, 2013.* A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;

(2) *By April 1, 2014.* A certification that at least one-third of the frozen-high cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor;

(3) *By April 1, 2015.* A certification that at least two-thirds of the frozen-high cost support the company received in 2014 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor; and

(4) *By April 1, 2016 and in subsequent years.* A certification that all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.

(d) In addition to the information and certifications in paragraph (a) of this section, beginning April 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.

(e) In addition to the information and certifications in paragraph (a) of this section, any recipient of CAF Phase II support shall provide:

(1) *In the calendar year no later than three years after implementation of CAF Phase II.* A certification that the company is providing broadband service to 85% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(2) *In the calendar year no later than five years after implementation of CAF Phase II.* A certification that the company is providing broadband service to 100% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, and a percentage of supported locations, to be specified by the Wireline Competition Bureau, at actual speeds of at least 6 Mbps downstream/1.5 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(3) *Beginning April 1, 2014.* A progress report on the company's five-year service quality plan pursuant to § 54.202(a), including the following information:

(i) A letter certifying that it is meeting the interim deployment milestones as set forth, and that it is taking reasonable steps to meet increased speed obligations that will exist for all supported locations at the expiration of the five-year term for CAF Phase II funding; and

(ii) The number, names, and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.

(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) *Beginning April 1, 2014.* A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; and

(ii) The number, names, and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.

(2) *Privately held rate-of-return carriers only.* A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by a report of such audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue, including non-regulated revenue, by its sources.

(g) *Areas with No Terrestrial Backhaul.* Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the CAF, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs (e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section.

(h) *Additional voice rate data.* All incumbent local exchange carrier recipients of high-cost support must report all of their flat rates for residential local service, as well as state fees as defined pursuant to § 54.318(e) of this subpart. Carriers must also report all rates that are below the local urban rate floor as defined in § 54.318 of this subpart, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of January 1.

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator, and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

(j) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section no later than April 1, 2012, except as otherwise specified in this section to begin in a subsequent year, and thereafter annually by April 1 of each year. Eligible telecommunications carriers that file their reports after the April 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than July 1 shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than October 1 shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

(k) This section does not apply to recipients that solely receive support from the Phase I Mobility Fund.

■ 47. Revise § 54.314 to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

(a) *Certification.* States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Carriers not subject to State jurisdiction.* An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

(d) *Filing deadlines.* In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Upon the filing of the certification described in this section, support shall be provided in accordance with the following schedule:

(1) *Certifications filed on or before October 1.* Carriers subject to certifications filed on or before October 1 shall receive support in the first, second, third, and fourth quarters of the succeeding year.

(2) *Certifications filed on or before January 1.* Carriers subject to certifications filed on or before January 1 shall receive support in the second, third, and fourth quarters of that year. Such carriers shall not receive support in the first quarter of that year.

(3) *Certifications filed on or before April 1.* Carriers subject to certifications filed on or before April 1 shall receive support in the third and fourth quarters of that year. Such carriers shall not receive support in the first or second quarters of that year.

(4) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive

support beginning in the fourth quarter of that year. Such carriers shall not receive support in the first, second, or third quarters of that year.

(5) Certifications filed after July 1. Carriers subject to certifications filed after July 1 shall not receive support in that year.

(6) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

§ 54.316 [Removed]

■ 48. Section 54.316 is removed.

■ 49. Add § 54.318 to subpart D to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

(a) Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its flat rate for residential local service plus state regulated fees as defined in paragraph (e) of this section exceeds a local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in paragraph (f) of this section..

(b) Carriers whose flat rate for residential local service plus state regulated fees offered for voice service are below the specified local urban rate floor under the schedule below plus state regulated fees shall have high-cost support reduced by an amount equal to the extent to which its flat rate for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

(c) This section will apply to rate-of-return carriers as defined in § 54.5 and carriers subject to price cap regulation as that term is defined in § 61.3 of this chapter.

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 36.631 of this chapter and support provided to carriers that formerly received support pursuant to § 54.309.

(e) *State regulated fees.* (1) Beginning on July 1, 2012, for purposes of calculating limitations on high-cost support under this section, state regulated fees shall be limited to state subscriber line charges, state universal service fees and mandatory extended area service charges, which shall be determined as part of a local rate survey, the results of which shall be published annually.

(2) Federal subscriber line charges shall not be included in calculating limitations on high-cost support under this section.

(f) *Schedule.* High-cost support will be limited where the flat rate for residential local service plus state regulated fees are below the local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in this paragraph. To the extent end user rates plus state regulated fees are below local urban rate floors plus state regulated fees, appropriate reductions in high-cost support will be made by the Universal Service Administrative Company.

(1) Beginning on July 1, 2012, and ending June 30, 2013, the local urban rate floor shall be $10.

(2) Beginning on July 1, 2013, and ending June 30, 2014, the local urban rate floor shall be $14.

(3) Beginning July 1, 2014, and thereafter, the local urban rate floor will be announced annually by the Wireline Competition Bureau.

(g) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to § 36.631 of this chapter.

■ 50. Add § 54.320 to subpart D to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

(a) Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.

(c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

Subpart H—Administration

■ 51. Amend § 54.702 by revising paragraphs (a), (b), (c), and (h) to read as follows:

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

* * * * *

(h) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high-cost and insular areas.

* * * * *

■ 52. Amend § 54.709 by adding three sentences to the end of paragraph (b) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

* * * * *

(b) * * * The Commission may instruct the Administrator to treat excess contributions in a manner other than as prescribed in this paragraph (b). Such instructions may be made in the form of a Commission Order or a public notice released by the Wireline Competition Bureau. Any such public notice will become effective fourteen days after release of the public notice, absent further Commission action.

* * * * *

■ 53. Amend § 54.715 by revising paragraph (c) to read as follows:

§ 54.715 Administrative expenses of the Administrator.

* * * * *

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

Subpart J—Interstate Access Universal Service Support Mechanism

■ 54. Amend § 54.801 by adding paragraph (f) to read as follows:

§ 54.801 General

* * * * *

(f) Beginning January 1, 2012, no incumbent or competitive eligible telecommunications carrier shall receive support pursuant to this subpart, nor shall any incumbent or competitive eligible telecommunications carrier be required to complete any filings pursuant to this subpart after March 31, 2012.

Subpart K—Interstate Common Line Support Mechanism for Rate-of-Return Carriers

■ 55. Amend § 54.901 by adding paragraphs (b)(4), (c) and (d) to read as follows:

§ 54.901 Calculation of Interstate Common Line Support.

* * * * *

(b) * * *

(4) Beginning January 1, 2012, competitive eligible telecommunications carriers shall not receive Interstate Common Line Support pursuant to this subpart and will instead receive support consistent with § 54.307(e).

(c) Beginning January 1, 2012, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be limited to the lesser of:

(1) The actual average monthly per-loop corporate operations expense; or

(2) A monthly per-loop amount computed pursuant to § 36.621(a)(4)(iii) of this chapter.

(d) *Support After December 31, 2011.* Notwithstanding paragraph (a) of this section, beginning January 1, 2012, no carrier that is a rate-of-return carrier, as that term is defined in § 54.5 affiliated with a price cap local exchange carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support under this subpart.

■ 56. Add subpart L to part 54 as follows:

Subpart L—Mobility Fund

Sec.

Subpart L—Mobility Fund

§ 54.1001 Mobility Fund—Phase I.

The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through Phase I of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1002 Geographic areas eligible for support.

(a) Mobility Fund Phase I support may be made available for census blocks identified as eligible by public notice.

(b) Except as provided in § 54.1004, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each census block eligible for support.

§ 54.1003 Provider eligibility.

(a) Except as provided in § 54.1004, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase I support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase I support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for five (5) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase I in order to receive such support.

§ 54.1004 Service to Tribal Lands.

(a) A Tribally-owned or -controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in any Mobility Fund Phase I auction, including any auction for support solely in Tribal lands, by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive Mobility Fund Phase I support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or -controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1009(a)(5), and prior to disbursement of support, pursuant to § 54.1008(c), that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1005 Application process.

(a) *Application to Participate in Competitive Bidding for Mobility Fund Phase I Support.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase I support also shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support;

(5) Certify that it will not bid on any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012; and

(6) Make any applicable certifications required in § 54.1004.

(b) *Application by Winning Bidders for Mobility Fund Phase I Support.*

(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support shall file an application for Mobility Fund Phase I support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application Contents.*

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in the geographic areas for which it seeks support.

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is the winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and a certification that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support.

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, *e.g.,* network design, construction, deployment, and maintenance. The applicant shall indicate whether the supported network will provide third generation (3G) mobile service within the period prescribed by § 54.1006(a) or fourth generation (4G) mobile service within the period prescribed by § 54.1006(b).

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase I and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1007, or a written commitment from an acceptable bank, as defined in § 54.1007(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support.

(ix) Any applicable certifications and showings required in § 54.1004.

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(xi) Such additional information as the Commission may require.

(3) *Application Processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the

Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase I support after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or -controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase I support.

§ 54.1006 Public interest obligations.

(a) *Deadline for Construction—3G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide third generation (3G) service on the supported network shall, no later than two (2) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or a higher percentage established by Public Notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) *Deadline for Construction—4G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide fourth generation (4G) service on the supported network shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(c) *Coverage Test Data.* Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(d) *Collocation Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(e) *Voice and Data Roaming Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support.

(f) *Liability for Failing To Satisfy Public Interest Obligations.* A winning bidder authorized to receive Mobility Fund Phase I support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase I support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase I support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1007 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase I support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase I support shall maintain its standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008 plus the additional performance default amount described in § 54.1006(f), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1008(b)(3).

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is

(i) Any United States Bank that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

(A) Is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A- or better rating by Standard & Poor's, and

(D) Issues the letter of credit payable in United States dollars.

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase I support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase I support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1006 and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase I support to comply with any of the requirements set forth in § 54.1006 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase I support, will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase I support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1008 Mobility Fund Phase I disbursements.

(a) A winning bidder for Mobility Fund Phase I support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages.

(1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed unserved in the geographic area, when the winning bidder is authorized to receive support.

(2) One-third of the total possible support with respect to a specific geographic area when the recipient demonstrates coverage of 50 percent of the coverage requirements of § 54.1006(a) or (b), as applicable.

(3) The remainder of the total support, based on the final total units covered, when the recipient demonstrates coverage meeting the requirements of § 54.1006(a) or (b), as applicable.

(c) A recipient accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waives any claim for the remainder of potential Mobility Fund Phase I support with respect to that area.

(d) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(e) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that it requests the disbursement.

§ 54.1009 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than April 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the applicant offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1004; and

(6) Updates to the information provided in § 54.1005(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10–208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

§ 54.1010 Record retention for Mobility Fund Phase I.

A winning bidder authorized to receive Mobility Fund Phase I support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase I support for a period of not less than ten (10) years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase I support.

PART 61—TARIFFS

■ 57. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 58. Add § 61.3(bbb) to read as follows:

§ 61.3 Definitions.

* * * * *

(bbb) *Access stimulation.*

(1) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier engages in access stimulation when it satisfies the following two conditions:

(i) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and

(ii) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.

(2) The local exchange carrier will continue to be engaging in access stimulation until it terminates all revenue sharing arrangements covered in paragraph (a)(1)(i) of this section. A local exchange carrier engaging in access stimulation is subject to revised interstate switched access charge rules under § 61.38 and § 69.3(e)(12) of this chapter.

■ 59. Revise § 61.26 to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *CLEC* shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of ''incumbent local exchange carrier'' in 47 U.S.C. 251(h).

(2) *Competing ILEC* shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

(3) *Switched exchange access services* shall include:

(i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching;

(ii) The termination of interexchange telecommunications traffic to any end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.

(4) *Non-rural ILEC* shall mean an incumbent local exchange carrier that is not a *rural telephone company* under 47 U.S.C. 153(44).

(5) The *rate* for interstate switched exchange access services shall mean the composite, per-minute rate for these services, including all applicable fixed and traffic-sensitive charges.

(6) *Rural CLEC* shall mean a CLEC that does not serve (*i.e.,* terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(ii) An urbanized area, as defined by the Census Bureau.

(b) Except as provided in paragraphs (c), (e), and (g) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) In the case of interstate switched exchange access service, the lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

(c) The benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC. If an ILEC to which a CLEC benchmarks its rates, pursuant to this section, lowers the rate to which a CLEC benchmarks, the CLEC must revise its rates to the lower level within 15 days of the effective date of the lowered ILEC rate.

(d) Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Beginning July 1, 2013, all CLEC reciprocal compensation rates for intrastate switched exchange access services subject to this subpart also shall be no higher than that NECA rate.

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

(g) Notwithstanding paragraphs (b) through (e) of this section:

(1) A CLEC engaging in access stimulation, as that term is defined in § 61.3(bbb), shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the price cap LEC with the lowest switched access rates in the state.

(2) A CLEC engaging in access stimulation, as that term is defined in § 61.3(bbb), shall file revised interstate switched access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in § 61.3(bbb), or within forty-five (45) days of [date] if the CLEC on that date is engaged in access stimulation, as that term is defined in § 61.3(bbb).

■ 60. Revise § 61.39 paragraph (a) and add paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a*) Scope.* Except as provided in paragraph (g) of this section, This section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this part, and has not terminated its access revenue sharing agreement(s). A carrier so engaged must file interstate access tariffs in accordance with § 61.38, and § 69.3(e)(12)(1) of this chapter.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 61. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 254(k), 227; secs. 403(b)(2)(B), (c), 1302, Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, and 254(k) unless otherwise noted.

■ 62. In § 64.1600, redesignate paragraphs (f) through (j) as paragraphs (g) through (k) respectively and add new paragraph (f) to read as follows:

§ 64.1600 Definitions.

* * * * *

(f) Intermediate Provider. The term *Intermediate Provider* means any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic.

* * * * *

■ 63. Revise § 64.1601(a) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services, in originating interstate or intrastate traffic on the public switched telephone network (PSTN) or originating interstate or intrastate traffic that is destined for the PSTN (collectively ''PSTN Traffic''), are required to transmit for all PSTN Traffic the telephone number received from or assigned to or otherwise associated with the calling party to the next provider in the path from the originating provider to the terminating provider. This provision applies regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider. Entities subject to this provision that use Signaling System 7 (SS7) are required to transmit the calling party number (CPN) associated with all PSTN Traffic in the SS7 ISUP (ISDN User Part) CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 ISUP CN field to interconnecting providers for any PSTN Traffic where CN differs from CPN. Entities subject to this provision who use multi-frequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with all PSTN Traffic in the MF signaling automatic numbering information (ANI) field.

(2) Intermediate providers within an interstate or intrastate call path that originates and/or terminates on the PSTN must pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call. This requirement applies to SS7 information including but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to VoIP signaling messages, such as calling party and charge information identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in other VoIP signaling technologies, regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider.

* * * * *

PART 69—ACCESS CHARGES

■ 64. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403. 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 65. Add paragraph (d) to § 69.1 to read as follows:

§ 69.1 Application of access charges.

* * * * *

(d) To the extent any provision contained in 47 CFR part 51 subparts H and J conflict with any provision of this part, the 47 CFR part 51 provision supersedes the provision of this part.

■ 66. Revise § 69.3 paragraphs (e)(6) and (e)(9) and add paragraph (e)(12) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) Except as provided in paragraph (e)(12) of this section, a telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) Except as provided in paragraph (e)(12) of this section, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(12)(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged in access stimulation, as that term is defined in § 61.3(bbb) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (e)(9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged in access stimulation, as that term is defined in § 61.3(bbb) of this chapter.

(iii) Any such carrier(s) shall notify the association when it begins access stimulation, or on December 29, 2011 if it is engaged in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

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