

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA¹—Continued

Subpart	Source Category	LDEQ ^{2,3}
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
JJJJ	Paper and other Web Coating	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
FFFFF	Integrated Iron and Steel	X
JJJJJ	Brick and Structural Clay Products Manufacturing	X
KKKKK	Clay Ceramics Manufacturing	X
LLLLL	Asphalt Roofing and Processing	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X
PPPPP	Engine Test Facilities	X
QQQQQ	Friction Products Manufacturing	X
SSSSS	Refractory Products Manufacturing	X

¹ Program delegated to Louisiana Department of Environmental Quality (LDEQ).

² Authorities which may not be delegated include: 63.6(g), Approval of Alternative Non-Opacity Emission Standards; 63.6(h)(9), Approval of Alternative Opacity Standards; 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; 63.8(f), Approval of Major Alternatives to Monitoring; 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under “Delegation of Authority”) that cannot be delegated.

³ Federal rules adopted unchanged as of July 1, 2003.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 04–237]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses various petitions for reconsideration filed in response to the rules adopted in the *First Report and Order* and the *Fourth Order on*

Reconsideration. We grant, in part, a petition filed by American Public Communications Council (APCC) and deny petitions filed by APCC and others. We make minor clarifications to our rules based on the issues raised in these petitions as needed.

FOR FURTHER INFORMATION CONTACT:

Cathy Carpino, Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Order on Reconsideration*, in CC Docket No. 96–45, FCC 04–237, released November 29, 2004. 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.

I. Introduction

1. In this *Order on Reconsideration*, we address various petitions for reconsideration filed in response to the rules adopted in the *First Report and Order*, 62 FR 32862, June 17, 1997, in CC Docket No. 96–45 and the *Fourth Order on Reconsideration*, 63 FR 02093, January 13, 1998, in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72. We grant, in part, a petition filed by American Public Communications Council (APCC). Based on the record before us, we deny petitions filed by APCC, AT&T, Cellular Telecommunications and Internet Association (CTIA), Lan Neugent and Greg Weisiger (LN/GW), Mobile Satellite Ventures (MSV), National Public Radio (NPR), Puerto Rico Telephone Company

(PRTC), Rural Telephone Coalition (RTC), Southern Educational Communications Association (SECA), United States Telecommunications Association (USTA), Wireless Cable Association (WCA), and Wyoming Public Service Commission (Wyoming Commission); these petitions either raise no facts which have not previously been presented to the Federal Communications Commission (Commission) or are moot. We make minor clarifications to our rules based on the issues raised in these petitions as needed.

II. Discussion

2. In this *Order on Reconsideration*, the Commission addresses petitions for reconsideration of the Commission's *First Report and Order* and *Fourth Order on Reconsideration* to the extent described below.

A. Eligible Telecommunications Carrier

3. We deny MSV's petition for reconsideration of our determination regarding the eligibility of pure resellers to receive universal service support. MSV's petition does not rely on facts that have not previously been presented to the Commission. Rather, MSV merely wishes to argue its different interpretation of the statute. As the Commission already concluded, the statute expressly mandates that, in order to be eligible for universal service subsidies, a carrier must use its "own facilities" or a combination of its own facilities and another carrier's services in the provision of supported services. Resellers providing resold services from facilities-based carriers do not use their "own facilities" to provide the supported services. As such, pure resellers cannot receive support consistent with this statutory requirement.

4. Moreover, we decline to adopt MSV's request to conclude that advertising in a nationally circulated publication satisfies, *per se*, the statutory requirement to advertise the availability of supported services under section 214(e)(1)(B). In the *First Report and Order*, the Commission declined to adopt nationwide standards for interpreting section 214(e)(1)(B), because it agreed with the Joint Board that states are in a better position to evaluate local conditions and establish advertising guidelines appropriate for the state. MSV has presented no facts that were not previously considered by the Commission at that time. Accordingly, we deny MSV's petition for reconsideration.

B. Rural, Insular, and High Cost Support

1. Indexed Cap on High-Cost Loop Fund

5. We deny RTC's petition for reconsideration. RTC has presented no facts that have not already been presented to the Commission or that warrant reconsideration of the Commission's earlier determinations.

2. Sale of Exchanges

6. We conclude that the issues raised in RTC's supplemental comments concerning § 54.305 of the Commission's rules have already been addressed in the *Rural Task Force Order*, 66 FR 30080, June 5, 2001. RTC has presented no facts that were not already considered at that time. Moreover, RTC's assertion that the rule ignores the need for rural carriers to upgrade facilities they have acquired from non-rural carriers disregards the Commission's amendment of § 54.305 to provide additional funds in such instances. Finally, we note that the Commission recently asked the Joint Board to review whether to retain or modify § 54.305 and we expect that the Joint Board and the Commission will address this issue in that proceeding based on a fresh record. We therefore deny RTC's request.

3. Sufficiency of Support

7. We conclude that PRTC has presented no facts that were not previously considered by the Commission or would lead us to reconsider the Commission's decision in the *First Report and Order* not to treat PRTC as a rural carrier. PRTC simply reiterated previous arguments rejected by the Commission. We also note that PRTC raised similar arguments requesting to be treated as a rural carrier in response to the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, which the Commission denied. We therefore deny PRTC's request for reconsideration of this issue. We note that we do not address at this time PRTC's petition for clarification and/or reconsideration of the *Remand Order*, 68 FR 69622, December 15, 2003, or its request in an *ex parte* letter, filed on June 6, 2003, that the Commission create a separate category of "non-rural insular" carriers for purposes of intrastate high-cost support.

8. As the Wyoming Commission acknowledged in its supplemental comments, its specific concerns with the Commission's *First Report and Order* (i.e., the 25 percent limit for non-rural carriers described above and the decision to limit funding for the federal high-cost support mechanism to interstate revenues) have been

subsequently addressed. In these supplemental comments, the Wyoming Commission makes only general assertions about the continued insufficiency of the federal high-cost support mechanism for non-rural carriers and the affordability of the total bill to be paid by Wyoming consumers. We find that the Wyoming Commission fails to state with particularity the respects in which it believes the action taken should be changed and, therefore, we deny its petition for reconsideration of *First Report and Order*.

9. We note that since the Wyoming Commission filed its supplemental comments, the Commission has revisited how non-rural carriers receive high-cost support. In the *Remand Order*, the Commission modified the cost benchmark used to calculate support for non-rural carriers, established a rate review process to assess whether rates in rural areas served by non-rural carriers are reasonably comparable to urban rates nationwide, and concluded that states should be permitted to request further federal action, if necessary, based on a showing that federal and state action together are not sufficient to achieve reasonable comparability. The Commission sought further comment on the procedures for filing and processing state requests for further federal action, as well as additional inducements for state action, including additional targeted federal support. In the *Remand Order*, the Commission also denied the Wyoming Commission's petition for reconsideration of the *Ninth Report and Order*, in which the Wyoming Commission raised similar arguments regarding the sufficiency of support for non-rural carriers.

C. Schools, Libraries, and Rural Health Care Providers

1. Wide Area Networks

10. We deny SECA's petition for reconsideration of the *Fourth Order on Reconsideration*. We conclude that SECA failed to present facts that were not previously considered by the Commission or would lead us to reconsider the Commission's findings. Moreover, we note that, subsequent to the filing of SECA's petition for reconsideration, the Commission held that support may be provided under telecommunications service or Internet access for service provider charges for capital investments for WANs. This subsequent action effectively provided SECA an avenue to obtain support for the functionality provided by either a WAN or ITFS technology, thereby largely mooted its petition for

reconsideration. Therefore, we deny SECA's request to provide discounts to schools and libraries for either the purchase of WANs or ITSF systems. We note that pursuant to the *Third Schools Order and Second Further Notice*, 69 FR 6181, February 10, 2004, the issue of WAN's eligibility is currently under consideration by the Commission. SECA's concerns regarding this issue will be considered in that open proceeding.

2. Accounting and Reporting Requirements

11. We clarify requirements as set forth herein and otherwise deny USTA's petition for reconsideration in this area. With regard to USTA's request concerning record-keeping responsibility under the schools and libraries program, we note that § 54.501(d)(3) of the Commission's rules provides that service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part of a consortium. In the *Fifth Schools Order*, 69 FR 55097, September 13, 2004, the Commission amended § 54.516 of its rules to require both beneficiaries and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year. As a result, USTA's arguments in its petition concerning record-keeping are now moot.

12. As for the proper allocation of benefits, we note that as part of the application process for the schools and libraries program, an applicant is required to provide specific information on its FCC Form 471 about the eligible services that it has ordered, its cost, and the discount that it is requesting for such services. If the applicant is representing a consortium, the applicant is required to calculate either the specific discount for each member of the consortium or the shared discount for the consortium as a whole. The allocation methodology should be set forth in the contract for services executed with the service provider. If there is no contract for services, as might be the case with some tariffed services, the applicant should provide the service provider with a copy of its allocation methodology. After the applicant has received approval of its request for universal service support, it may notify the provider to begin service. Once the applicant receives service from the provider, the applicant must notify the Administrator to approve the flow of

universal service funds to the provider as set forth on its FCC Form 471.

3. Support for Advanced Services

13. We conclude that LN/GW raise no facts that have not previously been considered by the Commission or would warrant expanding the services eligible for discounts under the schools and libraries program at this time. In the *First Report and Order*, the Commission found that the broad purposes of section 254(h)(2) supported its decision to provide discounts for internal connections and Internet access. After analyzing the statute and the record, the Commission determined that the public interest would not be served at that time by providing discounts for additional non-telecommunications services. We find no reason to depart from the Commission's previous decisions in this area based on the current record. Accordingly, we deny LN/GW's request to redefine or expand the list of services that may be eligible for support under the schools and libraries program at this time. We note, however, that in the *Third Schools Order and Second Further Notice* the Commission formalized the process for updating the eligible services list, beginning with Funding Year 2005, in order to promote greater transparency of what is eligible for support under the schools and libraries support mechanism. Under the new rule, the eligible services list is open to comment on an annual basis, allowing any party to provide comments concerning the content and application of the eligible services list. As stated above, the issue of the eligibility of WANs is currently under consideration by the Commission, and LN/GW's concerns regarding this issue will be considered in that open proceeding.

D. Administration of Support Mechanisms

1. Contribution Methodology

14. We deny AT&T's petition to reconsider the universal service contribution methodology. The Commission released an order adopting interim modifications to the contribution methodology in December 2002. In that order, the Commission, among other things, eliminated the lag between the accrual and assessment of universal service contribution obligations as of April 1, 2003, by basing contributions on projected collected end-user telecommunications revenues. The Commission also explicitly rejected a collect-and-remit system. We note, however, that the Commission requested further comment on three specific connection-based proposals. We

find that AT&T raises no facts that were not considered and addressed in the *Contribution Methodology Order*, 67 FR 79525, December 30, 2002. Therefore, we dismiss AT&T's request to eliminate the lag as moot and deny the remainder of its petition.

2. Payphone Service Providers

15. We deny APCC's petition to reconsider the Commission's decision to require payphone service providers to contribute to universal service. APCC's petition does not rely on facts that have not previously been presented to the Commission. APCC merely disagrees with the Commission's policy decision.

16. We clarify, however, that to the extent an independent payphone service provider purchases telecommunications for resale in a payphone service and contributes directly to universal service, it should not be considered an end user for purposes of reporting assessable interstate telecommunications revenues and therefore should not be subject to federal universal service pass-through charges. Allowing such a practice results in a double burden for payphone providers that use resold telecommunications services. As described in more detail in the instructions to the Telecommunications Reporting Worksheet, FCC Form 499, such revenues are considered "carrier's carrier revenues" or "revenues from resellers." For example, if an independent payphone service provider purchased a payphone line from a local exchange carrier to provide payphone service and contributed directly to universal service for that line, that local exchange carrier should report the payphone line revenues on Line 115, "Telecommunications provided to other universal service contributors for resale" on the FCC Form 499-Q. Accordingly, that local exchange carrier would not be directly assessed on the basis of those payphone line revenues and should not pass through universal service charges for that payphone line to the independent payphone service provider. We, therefore, grant APCC's request for clarification as provided herein.

3. Broadcasters

17. We deny the petitions filed by NPR and WCA, to the extent described herein. Our rules already make clear that all broadcasters, including NPR and ITFS licensees, are not required to contribute to the universal service fund to the extent they provide interstate telecommunications on a non-common carrier basis. Since the release of the *Fourth Order on Reconsideration* and subsequent *Errata*, § 54.706(d) has

remained unchanged. To reiterate, the Commission found that the public interest would not be served if the Commission were to require broadcasters, including NPR, to contribute to universal service based on the provision of non-common carrier telecommunications. In addition, by specifically mentioning ITFS licensees in its discussion for why broadcasters should not have to contribute to universal service, the Commission intended to treat ITFS licensees in the same manner as other broadcasters for universal service purposes. As such, modification of § 54.706(d) is unnecessary.

4. Multipoint Distribution Service

18. Although we deny WCA's petition and do not revise our rules to include MDS licensees that lease capacity to wireless cable operators on the list of those entities exempt from universal service obligations, we clarify that MDS licensees are not required to contribute to the universal service fund on the basis of revenues derived from broadcasting services. We further clarify that MDS licensees providing interstate telecommunications to others for a fee on a non-common carrier basis will not be exempt from contribution requirements. Such a result is consistent with section 254(d) of the 1996 Act and §§ 54.706(b) and (c) of the Commission's rules. We find WCA has raised no facts that would prompt us to exempt an MDS licensee that chooses a non-common carrier status but provides services identical to a common carrier licensee, and thus competes with the common carrier, from universal service contribution obligations.

5. De Minimis Exemption

19. We conclude that CTIA has presented no facts that were not previously considered by the Commission or that warrant reconsideration of the Commission's determination that underlying carriers should account for revenues from resellers that fall under the *de minimis* exemption. Section 254(d) explicitly allows the Commission to exempt carriers or classes of carriers from contribution requirements if their contributions would be *de minimis*. Moreover, contrary to CTIA's assertions, directing underlying carriers to exclude revenues from *de minimis* resellers would reduce, rather than enlarge, the total contribution base. We therefore deny CTIA's request for reconsideration of this matter.

20. We clarify, however, that CMRS carriers are required to report revenues derived from providing

telecommunications to entities qualifying for the *de minimis* exemption as end-user revenues on the appropriate lines of the Telecommunications Reporting Worksheet. Nothing in the Commission's rules or implementing orders relieves CMRS carriers of this obligation. We further clarify that our current rules do not require underlying facilities-based carriers or CMRS carriers to identify specifically on the Telecommunications Reporting Worksheet their resale customers qualifying for the *de minimis* exemption.

21. The Commission will not send a copy of this *Order on Reconsideration*, in CC Docket No. 96-45, FCC 04-237, released November 29, 2004, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

III. Ordering Clauses

22. Pursuant to the authority contained in sections 1-4, 201-205, 218-220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 218-220, 214, 254, 303(r), 403, and 410, this *Order on Reconsideration* is adopted. Pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the petitions for reconsideration and supplemental notices of the petitions for reconsideration of the *First Report and Order* filed by the American Public Communications Council in CC Docket No. 96-45 is granted, in part, and denied, in part.

23. Pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the petitions for reconsideration and supplemental notices of the petitions for reconsideration of the *First Report and Order* filed by the AMSC/Mobile Satellite Ventures Subsidiary LLC, AT&T, Puerto Rico Telephone Company, Rural Telephone Coalition, United States Telephone Association, and Wyoming Public Service Commission in CC Docket No. 96-45 are denied.

24. Pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by the Cellular Telecommunications

and Internet Association, Lan Neugent and Greg Weisiger, National Public Radio, Southern Education Communications Association, and Wireless Cable Association in CC Docket No. 96-45 are denied.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04-3815, MB Docket No. 04-192, RM-10966]

Digital Television Broadcast Service; Honolulu, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pacifica Broadcasting Company, licensee of noncommercial educational station KALO(TV), substitutes DTV channel *10c for DTV channel *39c. *See* 69 FR 34112, June 18, 2004. DTV channel *10c can be allotted to Honolulu in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 21-23045 N. and 158-05-58 W. with a power of 25, HAAT of 577 meters and with a DTV service population of 767 thousand. With this action, this proceeding is terminated.

DATES: Effective January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04-192, adopted December 2, 2004, and released December 7, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 301-816-2820, facsimile 301-816-0169, or via e-mail joshir@erols.com.

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