

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 16, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, of the *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920(c) is amended to read as follows:

(a) Under Chapter 50, “General Administrative Procedures,” remove the entries for “401 KAR 50:030,” “401 KAR 50:032,” and “401 KAR 50:035”;

(b) Add, in numerical order, a new entry for “Chapter 52 Permits, Registrations, and Prohibitory Rules.”

§ 52.920 Identification of plan.

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(c) * * *

EPA-APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
401 KAR 52:001	Definitions for 401 KAR Chapter 52	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:030	Federally-enforceable permits for non-major sources	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:090	Prohibitory rule for hot mix asphalt plants	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:100	Public, affected state, and U.S. EPA review	01/15/01	12/30/02	[Insert FR page citation]
*	*	*	*	*

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[FR Doc. 02-32778 Filed 12-27-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170; FCC 02-329]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts several interim modifications to the existing federal universal service contribution system. The Commission concludes that these modifications to the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

DATES: Effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Acting Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170 released on December 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction and Overview

1. In this Report and Order, we take interim measures to maintain the viability of universal service in the near term—a fundamental goal of this Commission—while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) providers to assume that 15 percent of their telecommunications revenues are interstate. We also require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category. In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on

contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues. These changes will be implemented with the FCC Form 499-Q filed on February 1, 2003. We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

2. In light of these changes, we also conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor beginning April 1, 2003. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means.

II. Report and Order

3. As noted above, we adopt several modifications to the current revenue-based system to ensure the sufficiency and predictability of universal service while we consider reforms to sustain the universal service fund for the long term. To address concerns raised in the record that the current interim safe harbor for mobile wireless providers is inappropriate in light of changing market conditions, we raise the safe harbor from 15 to 28.5 percent. We establish an all-or-nothing rule for affiliated wireless telecommunications providers when determining whether to report actual interstate telecommunications revenues or to avail themselves of the wireless safe harbor percentages. We also modify the current revenue-based methodology by basing contributions on a percentage of projected collected, instead of historical gross-billed, interstate and international end-user telecommunications revenues reported by contributors on a quarterly basis. In light of the modifications adopted by the Commission, we conclude that carriers may not mark-up universal service line item amounts above the contribution assessment rate. Finally, we revise our Lifeline rules to prohibit all Eligible Telecommunications Carriers (ETCs) from recovering contribution costs from their Lifeline customers.

A. Modified Revenue-Based Assessment Methodology

1. Mobile Wireless Safe Harbor

4. Based on the record before us, we raise the current safe harbor for mobile wireless providers from 15 percent to 28.5 percent. We conclude that a 15 percent interim mobile wireless safe harbor no longer reflects the extent to which mobile wireless consumers utilize their wireless phones for interstate calls, particularly in light of the increased substitution of wireless for traditional wireline service. According to revenue data included on the latest FCC Form 499–Q, it appears that 43 percent of mobile wireless filers, representing 78 percent of mobile wireless end-user telecommunications revenues, currently avail themselves of the mobile wireless safe harbor. As noted by several commenters, revising the mobile wireless safe harbor is appropriate because it is no longer based on actual market conditions. Increasing the interim mobile wireless safe harbor will, therefore, help to ensure that universal service contributions remain equitable and non-discriminatory. Such action also will improve the near-term viability of the

universal service mechanisms by ensuring that the contribution base more accurately reflects today's marketplace.

5. Mobile wireless providers availing themselves of the revised interim safe harbor will be required to report 28.5 percent of their telecommunications revenues as interstate beginning with fourth quarter 2002 revenues reported on the February 1, 2003, FCC Form 499–Q. Mobile wireless providers will still have the option of reporting their actual interstate telecommunications revenues. We note that mobile wireless providers must provide documentation to support the reporting of actual interstate telecommunications revenues upon request.

6. In order to ensure that contributions remain equitable and nondiscriminatory, we also adopt an all-or-nothing rule for wireless telecommunications providers seeking to avail themselves of the safe harbors. Under this rule, wireless providers will continue to be permitted to report revenues at either the legal entity level or on a consolidated basis, but will be required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category (*i.e.*, 28.5 percent, 12 percent or 1 percent). We conclude, in the interests of consistency, equity, and fairness, that such a contributor that chooses to determine actual interstate telecommunications revenues for one of its affiliated entities must do so for all affiliated entities within the same safe harbor category. Likewise, wireless telecommunications providers must use the safe harbor for all affiliated carriers within the same category if they choose to use it for one. If a wireless telecommunications provider can and does separate its interstate revenues from intrastate revenues for universal service contribution purposes, we find that it is reasonable to presume that its affiliates subject to the same safe harbor can employ the same measures to report their interstate revenues. It is inappropriate, therefore, to allow affiliated wireless providers to “pick and choose” which entities use the interim safe harbors.

7. Beginning with the first Form 499–Q filing following the effective date of this Order, wireless providers, including mobile wireless providers, paging providers, and analog SMR providers, shall determine whether to report revenues based on the interim wireless safe harbors at the affiliated-company level, as opposed to the legal-entity level, as is the case today. Under this new requirement, if one wireless entity chooses to report and contribute based

on actual interstate telecommunications revenues, all affiliated companies subject to the same safe harbor must do the same. Conversely, if one wireless entity chooses to utilize the interim safe harbors, all affiliated companies in the same safe harbor category must also use the safe harbor. For purposes of this requirement and consistent with section 3(1) of the Act, we define “affiliate” as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

8. In addition to the universal service support mechanisms, consistent with existing Commission practice, revenues reported on the Form 499–A will continue to be used in administering the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability programs, as well as the regulatory fees administration program for wireline telecommunications providers. We can see no reason to permit carriers to use a different safe harbor for revenue reporting for purposes of these other programs. Thus, we conclude that our actions taken here to revise the interim mobile wireless safe harbor and modify the reporting of data by wireless providers on the 499–A also will apply to assessments for the mechanisms established for Telecommunications Relay Services, the North American Numbering Plan, and the Local Number Portability programs.

2. Assessment on Projected Collected Revenues

9. Based on our experience with the current collection methodology, we now find it appropriate to modify this aspect of the methodology to promote competitive neutrality and to simplify the assessment and recovery of universal service contributions for carriers and consumers. We therefore conclude that, instead of assessing universal service contributions based on revenues accrued as much as six months prior, the Universal Service Administrative Company (USAC) will assess contributions based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter. Because contributors will be assessed in the period for which revenues are projected, the modified methodology will eliminate the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues. The modified methodology also will result in minimal changes to current reporting requirements. The revised methodology

therefore will base assessments on revenue data that is more reflective of current market conditions, without significantly increasing administrative costs for contributors and USAC. We view this and other changes we make to the revenue-based system to be interim measures while we consider the approaches raised in the companion Second Further Notice of Proposed Rulemaking (*Second Further NPRM*) published elsewhere in the issue of the **Federal Register**.

10. We also conclude that the revised contribution methodology ensures that contributions to universal service support mechanisms continue to operate in a competitively neutral manner. As noted by several commenters, the current contribution system based on historical revenues creates competitive advantages for new entrants and contributors with increasing interstate telecommunications revenues, while disadvantaging those carriers with declining revenues. Interexchange carriers, for example, which currently contribute more than 60 percent of universal service contributions, are particularly disadvantaged by the so-called "lag" that results because they have experienced sharp declines in their interstate revenues. Because contributions are assessed on revenues from six months prior, carriers with decreasing revenues must recover their contributions from a revenue base smaller than the one assessed. By basing contribution assessments on projected collected end-user interstate and international telecommunications revenues, as opposed to historical gross-billed revenues, the modified mechanism mitigates the anti-competitive effects of the current system. This, in turn, helps to ensure the sufficiency and stability of the universal service fund.

11. For purposes of our revised contribution methodology, "collected end-user" revenues refers to gross-billed end-user interstate and international telecommunications revenues less estimated uncollectibles. We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. Contributors must make best efforts to collect interstate and international telecommunications revenues, including any federal universal service pass-through charges, before characterizing revenues as uncollectible. As we discuss below, these projected uncollectibles will be trued up against actual uncollectibles reported on the

FCC Form 499-A. This percentage should be calculated in accordance with Generally Accepted Accounting Principles. Contributors will report their uncollectible percent on the Form 499 filings (*i.e.*, Forms 499-Q and 499-A), which will be modified to collect additional information about uncollectibles consistent with the rules adopted in this Order.

12. Consistent with our existing policy, contributors will continue to file a Form 499-Q on a quarterly basis and the Form 499-A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499-Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499-Q.

13. We note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499-A submitted to the Administrator. We also will require an executive officer to certify that the projections of gross-billed and collected revenues included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures. To ensure that contributors report correct information on the FCC Form 499-A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499-A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499-Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.

14. Under the modified methodology, contributors will continue to include pass-through charges, if any, as part of their projection of collected end-user revenues. In order to eliminate circularity, however, the Administrator will reduce each provider's contribution obligation by a circularity discount factor representing the provider's projected contributions to universal service in the upcoming quarter. Prior to each quarter, we will announce a

contribution factor equal to the projected universal service funding requirement for the upcoming quarter (projected revenue requirement) divided by an adjusted contribution base. As discussed below, carriers will be prohibited from marking up their federal universal service line item above this contribution factor. In order to calculate an individual provider's contribution, USAC then will reduce the provider's unadjusted contribution obligation (*i.e.*, its projected collected end-user revenues times the contribution factor) by an amount equal to its contribution obligation times the circularity discount factor. The circularity discount factor will equal one minus an amount equal to the adjusted contribution base divided by total projected end-user interstate and international telecommunications revenues. USAC will send contributors a firm bill each month based on the above-described calculation. Therefore, we do not anticipate the need for a reserve fund, because contributors will be billed monthly based on their reported projected collected revenues, the same amounts used to calculate the contribution factor.

15. Although our modified mechanism relies on the ability of contributors to project gross-billed and collected revenues on a quarterly basis, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. Similar to existing policies, contributors will have an opportunity to correct their projections up to 45 days after the due date of each Form 499-Q filing and through the annual true-up process. We find it appropriate to modify the current requirement that revisions be filed by the due date of the next Form 499-Q (which effectively provides 90 days for revisions) in light of the changes to the methodology we adopt today. In particular, we believe it necessary to eliminate incentives for contributors to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter. USAC will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year. As necessary, USAC will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected

revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499-A), then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. This approach is consistent with the existing system.

16. We direct USAC to begin implementation of the revised reporting requirements, consistent with our modifications to ensure that carriers begin contributing based on projected collected end-user revenues, in the next quarterly filing to occur on February 1, 2003. Therefore, the contribution factor for the second quarter of 2003 will be based on projected collected end-user interstate and international telecommunications revenues. As part of the transition to the modified contribution system, contributors must begin providing information concerning their projected collected end-user interstate and international telecommunications revenues (*i.e.*, anticipated end-user revenues and estimated uncollectibles) for the upcoming quarter with the filing of the modified 499-Q on February 1, 2003, to reflect projections for the second quarter of 2003. In order to provide USAC with a full year of projected revenues with which to conduct the annual true up for 2003 revenues, contributors also will be required to include projected collected revenues for the first quarter of 2003 on the 499-Q that will be filed on February 1, 2003. As discussed above, subsequent 499-Qs will only include historical revenues from the prior calendar quarter and projected revenues for the upcoming quarter. The FCC Form 499-A, which must be filed on April 1, 2003, will include historical gross-billed revenues for the period of January 2002 through December 2002. Subsequent FCC Form 499-As will include historical gross-billed revenues and actual collected end-user interstate and international telecommunications revenues for the relevant reporting year.

B. Recovery of Universal Service Contributions

1. Recovery Limitations

17. In this Order, consistent with the goals of the Act and this Commission for universal service, we adopt rules related to contribution recovery that will ensure that federal universal service line items

on customer bills accurately reflect the extent of a carrier's contribution obligations, while at the same time maximizing fairness and flexibility for carriers. We conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Contributing carriers still will have the flexibility to recover their contribution costs through their end-user rates if they so choose and to recover any administrative or other costs they currently recover in a universal service line-item through their customer rates or through another line item. Contributors will also have the flexibility to express the line item either as a flat amount or a percentage, as long as the line item does not exceed the total amount associated with the contribution factor, or the actual percentage thereof.

18. Based on our experience over the course of the last three years, we believe it is necessary to provide greater clarity about the practices we deem reasonable to protect consumers. In light of the changes to the contribution methodology adopted herein, we conclude that the practice of marking up federal universal service line-item charges above the relevant assessment amount will be prohibited prospectively. Any carrier that applies a federal universal service line-item charge above the relevant assessment amount could be subject to enforcement action for violating the rules we adopt in the Order.

19. The elimination of mark-ups in carrier universal service line items will alleviate end-user confusion regarding the universal service line item. Specifically, the amount of a carrier's federal universal service line item will not exceed the relevant interstate telecommunications portion of the bill times the relevant contribution factor. This result should eliminate a significant portion of the consumer frustration and confusion pertaining to universal service line items. This requirement also should foster a more competitive market by better enabling customers to comparison shop among carriers. This furthers our goal of promoting transparency for the end user in order to facilitate informed customer choice.

20. Therefore, beginning April 1, 2003, carriers that elect to recover their contribution costs through a separate line item may not mark up the line item above the relevant contribution factor. To the extent that a carrier recovers its contribution costs through a line item, that line item may not exceed the

relevant assessment rate. So, for example, if the contribution factor is 7.28 percent, a carrier's federal universal service line-item cannot exceed 7.28 percent of the total amount of the interstate portion of charges for telecommunications service on each customer's bill. Likewise, if a carrier chooses to express its federal universal service line-item charge as a flat amount, that amount may not exceed the interstate telecommunications portion of the bill times the relevant contribution factor. In addition, we no longer will permit carriers—whether wireline or wireless—to average contribution costs across all end-user customers when establishing federal universal service line-item amounts. Similarly, because customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero.

21. We recognize that these changes may require modifications in billing practices for certain carriers. Accordingly, this requirement will not become effective until April 1, 2003. We will monitor closely carrier compliance with these new requirements and will take appropriate action if it appears carriers are not complying with our rules.

22. We stress that this rule only applies to carriers that choose to recover their contribution costs through a line item. Carriers will continue to have flexibility to recover their contribution costs through their rates or through a line item. In this way, we accommodate entities such as payphone and prepaid wireless providers that are unable, for practical or business reasons, to recover universal service contribution costs through a line item. In addition, carriers will have the flexibility to express the line item either as a flat amount or as a percentage, as long as the line item does not exceed the interstate telecommunications portion of a customer's bill times the relevant contribution factor.

23. Carriers that are not rate-regulated by this Commission, namely interexchange carriers, CMRS providers, and competitive local exchange carriers, will have the same flexibility that exists today to recover legitimate administrative and other related costs. In particular, such costs can always be recovered through these carriers' rates or through other line items. The rule that we adopt today does not prevent any legitimate cost recovery. Administrative costs of incumbent local exchange carriers (ILECs) subject to rate-of-return regulation solely related to

implementation and compliance with the contribution methodology will be included in their cost accounting and therefore will be part of their end-user revenue requirement. As for carriers subject to price cap regulation, we do not anticipate that administrative costs associated with our contribution methodology will be extraordinary. Nothing in this Order modifies our existing Truth-in-Billing requirements.

24. We emphasize that the rules we adopt today do not require the filing of new tariffs, but may result in revisions to existing tariffs. We note that the Commission has detariffed most interstate services offered by interexchange carriers. Further, CLECs and CMRS providers do not tariff their federal universal service line items with the Commission.

25. Because carriers cannot include mark ups in their federal universal service line item, we need not address whether such charges should be uniform across customer classes. We also need not adopt an interim safe harbor for mark ups.

26. Consistent with the record developed in this proceeding, we prohibit all eligible telecommunications carriers from recovering contribution costs from their Lifeline customers. Under our current rules, ILECs may not recover universal service contributions from Lifeline customers, while other carriers may do so. We find that extending the prohibition on recovery of universal service contributions from Lifeline customers to all ETCs, including CLECs and CMRS providers designated as ETCs, will promote equitable and nondiscriminatory contributions, consistent with section 254 of the Act. Prohibiting recovery of universal service contributions from Lifeline customers also helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges, consistent with our rules. We also conclude that our actions here further the universal service goals of the Act by helping to ensure that low-income consumers have access to telecommunications and information services.

27. While we believe that the adoption of rules in this Order will greatly reduce the amount of customer confusion surrounding contribution recovery issues, the Consumer and Governmental Affairs Bureau will continue to monitor complaints and consumer calls received on this topic. In addition, the Consumer and Governmental Affairs Bureau will continue its educational and outreach programs regarding federal universal service. We expect the Consumer and

Governmental Affairs Bureau will educate consumers about the new rules adopted in this order. In this way we can monitor whether the policy goal of fostering competition through consumer choice is being met. If we observe a sustained marked increase in consumer complaints regarding the recovery of carrier contribution costs, we may revisit this issue at that time.

2. Labeling of Line-Item Charges

28. At this time, we decline to mandate a specific label for federal universal service line-items pursuant to our Truth-in-Billing rules. We will monitor how the reforms we adopt today affect carrier recovery practices and will take further action if necessary.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the First Notice of Proposed Rulemaking (*First Further NPRM*), 67 FR 1125, March 13, 2002. The Commission sought written public comment on the proposals in the *First Further NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

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

30. In this Order, we take interim measures to maintain the viability of universal service in the near term—a fundamental goal of this Commission—while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband PCS, and certain specialized SMRS providers to assume that 15 percent of their telecommunications revenues are interstate. We also will require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category. In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor provided projections of collected end-user interstate

telecommunications revenues, instead of historical gross-billed revenues. We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

31. We also take steps to protect consumers from unjust and unreasonable universal service contribution recovery practices. Specifically, we conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means. We find that our modified contribution methodology will simplify the assessment and recovery of universal service contributions for all carriers and consumers, including small entities.

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

32. The Commission received no comments specifically addressing the IRFA. We did receive, however, some general small entity-related comments. Some commenters, for example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *First Further NPRM*. Commenters also expressed general concerns about carrier recovery practices. Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission. In this Order, we modify the existing methodology; therefore, issues raised with respect to the impact of a connection-based assessment on small entity concerns are not directly implicated by our actions taken today. We do note, however, that the Commission, concurrent with the issuance of the Order adopted a companion *Second Further NPRM* that seeks comment on specific aspects of

three connection-based proposals in the record. To the extent that commenters continue to have small entity-related concerns, they may submit comments in response to the *Second Further NPRM*.

33. In the Order, we adopt certain modifications to the existing methodology. As noted in the Order, we, among other things, have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for all consumers, including small entities, about the amount of universal service contributions that are passed through by carriers, while maximizing fairness and flexibility for carriers. By allowing carriers to contribute based on projections of their collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate. We prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts.

3. Description and Estimate of the Number of Small Entities to which Rules will Apply

34. 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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities, total, in the United States. This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. In addition, the term "small

business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

35. We have included small incumbent local exchange carriers 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 local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

36. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers)*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers*. Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to our most recent data, there are 1,329 incumbent LECs, 532 CAPs, 229 IXCs, 22 OSFs, 936

payphone providers and 710 resellers. Of these, an estimated 1,024 incumbent LECs, 411 CAPs, 181 IXCs, 20 OSFs, 933 payphone providers, and 669 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 121 CAPs, 48 IXCs, 2 OSFs, 3 payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSFs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

38. *Wireless Service Providers*. The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 reported that they have 1,500 or fewer employees and 586 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

39. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequency 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 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 definition 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. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

40. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*, 65 FR 35843, 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. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined

under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

41. *Specialized Mobile Radio (SMR).* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service 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. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

42. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers,

supra—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 almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

43. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—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 definition.

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

44. Pursuant to the Order, contributions to the Commission's universal service will be based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues (*i.e.*, end-user telecommunications revenues less estimated uncollectibles). As noted in the Order, the modified methodology will result in minimal changes to current reporting requirements. Because the projected collection approach we adopt is similar to the existing contribution methodology, it will be relatively easy for both USAC and contributors to administer and implement this modification to our current methodology while we consider other reforms to the current system. Consistent with our existing policy, contributors will continue to file a Form 499-Q on a quarterly basis and the Form 499-A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499-Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with

current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499-Q.

45. As noted in the Order, we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499-A submitted to the Administrator. We also will require an officer to certify that the projections of revenue and uncollectibles included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures. To ensure the contributors report correct information on the FCC Form 499-A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499-A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499-Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

46. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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."

47. The Commission has taken numerous steps to minimize significant economic impact on small entities in adopting modifications to the revenue-based methodology for assessing and recovering contributions to the federal universal service mechanisms. In modifying the existing contribution system, we have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers, while ensuring that carriers continue to have the flexibility to recover legitimate administrative costs from consumers through other means. By allowing carriers to contribute based on projected collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts

in excess of the relevant assessment rate. In light of these changes, we prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. Consistent with the views expressed by many commenters, including small entity commenters, we find that the alternatives to revise or eliminate the *de minimis* exemption are not supported by the record developed at this time.

48. As discussed in the Order, we have also considered various alternative proposals on how to reform the universal service contribution system. We conclude that the modifications to the current revenue-based contribution methodology, as adopted in the Order will maintain the viability of universal service in the near term, while we continue to examine reforms that are more fundamental based on proposals submitted in the record in this proceeding.

6. Report to Congress

49. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

50. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

51. It is ordered that, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 403, and 405 of the Communications Act of 1934, as amended, this Report and Order is adopted.

52. Part 54 of the Commission's rules, is amended, effective January 29, 2003.

53. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, 254 unless otherwise noted.

2. Amend § 54.706 by revising paragraphs (b) and (c) to read as follows:

§ 54.706 Contributions.

* * * * *

(b) Prior to April 1, 2003, except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, except as provided in paragraph (c) of this section, every such provider shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Prior to April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers,

schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

2. Amend § 54.709 by revising paragraphs (a) introductory text, and (a)(1), and by removing the first sentence of paragraph (a)(2) and adding two sentences in its place to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions. (2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service

support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.

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3. Amend § 54.711 by revising paragraph (a) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the **Federal Register**. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

* * * * *

4. Add § 54.712 to subpart H to read as follows:

§ 54.712 Carrier recovery of universal service costs from end-users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) Eligible telecommunications carriers may not recover federal universal service contribution costs from Lifeline customers.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-1998-4898, Notice No. 5]

RIN 2130-AB57

Retention of Current Monetary Threshold for Reporting Rail Equipment Accident/Incidents During Calendar Year 2003 and Until Further Amended

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule with request for comments.

SUMMARY: This Interim Final Rule establishes at \$6,700 the monetary threshold for reporting certain railroad accidents/incidents involving railroad property damage that occur during calendar year 2003 and, until further notice, during subsequent calendar years. The 2003 threshold remains the same as the threshold for calendar year 2002 due to the unavailability of Bureau of Labor Statistics wage data that were previously used to calculate the threshold. FRA is not calculating a new threshold; rather, the old one is being retained as it is not possible to calculate a new threshold with the current formula due to the lack of BLS data. FRA will be providing notice and seeking comment at a future date to establish a new formula for calculating the monetary threshold for reporting rail equipment accidents/incidents. This action is needed to ensure and maintain comparability between different years of accident data by having the threshold