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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE.	DOCKET NO. RT-00000H-97-0137
IN THE MATTER OF THE INVESTIGATION OF THE COST OF TELECOMMUNICATIONS ACCESS.	DOCKET NO. T-00000D-00-0672 **ALECA'S INITIAL RESPONSES TO STAFF'S LISTS OF ISSUES**

Pursuant to the November 30, 2007 Procedural Order issued in the above-referenced consolidated dockets, the Arizona Local Exchange Carriers Association hereby submits its responses to the September 4 and November 19, 2007 Staff lists of issues.

RESPECTFULLY SUBMITTED this 7th day of January, 2008.

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ARIZONA UNIVERSAL SERVICE FUND ("AUSF")
ISSUES LIST
DOCKET NOS. T-00000H-97-0137 AND T-00000D-00-0672 (CONSOLIDATED)
SEPTEMBER 4, 2007/NOVEMBER 19, 2007

1. *What should the fund look like?*

ALECA RESPONSE: The AUSF should be a fund of money available for disbursement to local telephone companies defined as rural companies in the Telecommunications Act of 1996. AUSF monies should be disbursed to rural companies according to the costs they incur providing basic local exchange service and the revenue they forego bringing intrastate switched access rates into equality with interstate rates.

2. *What revenues should be assessed?*

ALECA RESPONSE: The AUSF should be financed through a surcharge or set of surcharges levied against intrastate, retail telecommunications services or revenues. The surcharge(s) should be broadly based; that is, telephone customers should not be able to escape paying a surcharge by substituting the services of competing providers and other services not subject to the surcharge.

The current AUSF rules provide for three surcharges that assess local exchange lines, intrastate toll revenue and interconnecting trunks utilized by wireless carriers. In 2004, ALECA recommended revising the AUSF rules to assess intrastate retail telecommunications revenue alone. No matter which approach is adopted, assessments should be broadly based, and the services and revenues assessed should include those of incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers, wireless carriers, providers of IP telephony and any other telecommunications service providers over which the Arizona Corporation Commission has jurisdiction.

3. *What should the AUSF reporting requirements be?*

ALECA RESPONSE: Reporting requirements should be tailored to fit the purposes the AUSF is designed to serve. In 2004, ALECA proposed revisions to the AUSF rules (that it hereby incorporates by this reference) that recommended establishing a support mechanism based on the extent to which rural carriers' embedded loop costs exceed the nationwide average embedded loop cost. One purpose served by ALECA's recommendation is to give rural carriers an incentive to invest in local exchange facilities in high cost areas. Since ALECA's proposal is nearly identical to the FCC's high cost loop support program, rural carriers in Arizona could file the same form they submit to NECA in July of each year.

Another useful public purpose of the AUSF is to compensate rural carriers for the loss of revenue associated with bringing their respective switched access rates into equality with interstate rates as ALECA proposed in its 2006 White Paper, a copy of which is attached as Exhibit A. In the case of using the AUSF to compensate for foregone intrastate switched access revenue, rural carriers should be required to report at the time of implementation and periodically thereafter the amounts of intrastate access revenues and quantities of access demand necessary to ensure neither over nor under collection.

4. *What should the rules be for companies serving high cost areas?*

ALECA RESPONSE: The AUSF rules for rural carriers should provide strong incentives for them to invest in local exchange facilities serving customers who are costly to reach and to extend facilities to unserved and underserved areas. ALECA's 2004 proposed AUSF rule revisions were designed to provide such incentives.

5. *Should all carriers be treated the same regardless of service area or technology used?*

ALECA RESPONSE: All carriers whose customers pay into the AUSF should have an opportunity to draw from the fund to recover the costs or foregone revenues from providing benefits to the public consistent with universal service objectives. For example, the Report and Recommendations of the Arizona Eligible Telecommunications Carriers (December 21, 2005)[1] proposed having the AUSF cover the costs of centralized administration and automatic enrollment of Lifeline and Link-Up through the Department of Economic Security ("DES"). While the details were not specified in the Report, it seems reasonable to assume that ETCs could pay DES for administering Lifeline and Link-Up and recover the administrative costs so incurred from the AUSF.

6. *What revisions to the existing AUSF rules should be made?*

ALECA RESPONSE: The existing AUSF rules should be modified in two major ways. First, the rules should be modified consistent with ALECA's 2004 proposed rule revisions by giving rural companies an incentive to build out local exchange facilities in high cost areas. As ALECA proposed in 2004, access to the AUSF for this first major purpose should not be conditioned upon having to undergo a rate case. Second, the existing rules should be revised so that rural carriers may draw from it to recover the sacrificed revenues from bringing their intrastate switched access rates into equality with interstate rates. Provided access reform is revenue neutral, there should be no need for rural companies to file rate cases in order to recover foregone revenues. In general, access to the AUSF to cover the costs incurred or revenue foregone achieving universal service

[1] *See,* http://images.edocket.azcc.gov/docketpdf/0000037930.pdf

objectives should be streamlined and simplified so as neither to discourage adoption of such goals nor to delay recovery unnecessarily.

7. *Should the fund allow upfront recovery of construction costs?*

ALECA RESPONSE: Yes. As ALECA proposed in 2004, the AUSF should be used to help defray the costs of line extensions to customers located some distance beyond existing local exchange facilities. ALECA's 2004 proposal was modeled after a section of the Utah Public Service Commission's "Universal Public Telecommunications Service Support Fund" Rule, specifically section R746-360-9 entitled "One-Time Distributions from the Fund." This section establishes a process whereby the Utah PSC pre-approves qualifying line extensions and apportions the financial burden between the company, the customer and the Fund. A copy of the Utah rule is attached as Exhibit B. ALECA recommends this Commission's costs of administering a similar process should be covered by the AUSF.

8. *Should a company be required to meet a set of criteria before they are allowed to obtain AUSF revenues to compensate it for reductions in access revenues resulting from access charge reform?*

ALECA RESPONSE: The only criterion a carrier required to reduce its access charges should have to satisfy in order to obtain reimbursement from the AUSF is that it must be a rural carrier as defined by the Telecommunications Act of 1996.

9. *Should AUSF funding be available to competitive eligible telecommunications carriers?*

ALECA RESPONSE: Yes. ALECA does not oppose competitive ETCs drawing from the AUSF for the purpose of serving rural areas and small communities, provided the support supplied to the competitive ETC is based on the competitive ETC's own costs.

10. *Should AUSF funding be provided to companies that are not certified as eligible telecommunications carriers?*

ALECA RESPONSE: No. Carriers that have not been designated as ETCs by this Commission do not have public service obligations consistent with universal service objectives.

11. *Should companies be required to file a rate case to obtain AUSF revenues?*

ALECA RESPONSE: No. Rural carriers receiving AUSF support in compensation for high loop costs or foregone access revenues should not be required to undergo individual company rate cases in order to qualify for AUSF

support. Whether to finance the provision of high cost loops or compensate for access reform, a generic proceeding is appropriate since all rural carriers as a class are affected. Multiple individual company rate cases processed simultaneously could overwhelm the Commission's resources. In addition, rate cases are unnecessary if access reform is revenue neutral and loop support is based on the capital expenditures and expenses incurred serving high cost areas.

12. *If a rate case is not required, what method should be used to determine whether a company should receive AUSF payments?*

ALECA RESPONSE: ALECA proposes two methods for rural carriers to prove a need for support from the AUSF. The first is to demonstrate that the rural carrier has loop costs greater than 115% of the nationwide average loop cost. ALECA included this method in its 2004 proposed AUSF rule revisions. The second is to calculate the amount of revenue foregone by bringing a rural company's intrastate switched access rates into equality with the company's interstate rates. The resulting support from the AUSF would be revenue neutral. ALECA proposed this manner in its 2006 White Paper (attached as Exhibit A.)

13. *Should the AUSF rules be amended to allow for the provision of telephone service in unserved or underserved areas?*

ALECA RESPONSE: Yes. ALECA included support for line extensions in its 2004 proposed AUSF rule revisions. ALECA also views the high loop cost component of its proposed 2004 AUSF rule revisions as a means of encouraging rural companies to build out to unserved and underserved areas.

14. *Should the AUSF rules be amended to allow for incentives to companies to provide telephone service in unserved or underserved areas?*

ALECA RESPONSE: Yes. Please refer to ALECA's response to Staff's AUSF Issue No. 13 above.

15. *Should the AUSF rules as proposed by ALECA be adopted?*

ALECA RESPONSE: Yes. The Commission should adopt ALECA's 2004 proposed rule revisions, or some variant of its proposal that preserves AUSF support for rural carriers based on embedded loop costs. In addition, as recommended in ALECA's 2006 White Paper, the Commission should also revise its existing AUSF rules to provide for replacement of any revenues sacrificed from bringing state access rates into equality with interstate rates.

16. *Should competitive bidding be a component of AUSF implementation?*

ALECA RESPONSE: No. There is no need to take such a drastic and unproven step in light of the proven methods in use for providing high cost support and revenue neutral access reform at the federal level and in other states.

17. *Should CLECs have to prove a need for AUSF revenues?*

ALECA RESPONSE: Yes. Please refer to ALECA's response to the Staff's AUSF Issue No. 9 above.

18. *What services should be eligible for inclusion in services supported by the AUSF?*

ALECA RESPONSE: The AUSF should support basic local exchange services and intrastate access charge reform.

19. *Should AUSF payments be used for line extensions and if so how should eligible costs be determined?*

ALECA RESPONSE: Yes. As ALECA recommended in its 2004 proposed rule revisions, the AUSF should help defray the costs of line extensions. ALECA envisions that carriers seeking support for particular line extensions would submit their costs and a plan for dividing those costs between the AUSF, the customers and the company for Commission approval.

20. *How should the AUSF surcharges be calculated?*

ALECA RESPONSE: The AUSF surcharges should be calculated to produce sufficient proceeds to pay for high cost loop support, revenue neutral access charge reform and the projected costs of qualifying line extensions. ALECA recommends the Commission continue to employ the AUSF rule's existing three-part surcharge mechanism. The existing three-part mechanism is consistent with ALECA's recommendation that such surcharges should be broadly based.

21. *Should a program to improve participation in Lifeline and Link-Up be supported by AUSF?*

ALECA RESPONSE: Yes. ALECA agrees with the recommendation of the team of Arizona ETCs ("the Team") that the AUSF should cover the costs of increasing enrollment in Lifeline and Link-Up through centralized administration and automatic enrollment.

22. *Should the enrollment program recommended by the ETCs be implemented or is there another more cost effective method for increasing Lifeline and Link-Up participation?*

ALECA RESPONSE: Yes. The enrollment program recommended by the Team should be implemented. ALECA is unaware of any alternative method of enrollment that would increase participation 30-40% as experienced in Texas and New York.

23. *If the funding mechanism for the enrollment program recommended by the ETCs is appropriate, should the cost be borne by the ETCs as a cost of doing business and being an ETC or is there some other method of funding that would be better?*

ALECA RESPONSE: As the Team recommended, the three AUSF surcharges currently in place represent a fair and economical way of recovering the costs of centralized administration and automatic enrollment.

24. *Are the projections for potential Lifeline and Link-Up customers reasonable or is there other data that would increase or decrease the cost/benefit estimates contained in the ETC Report? Please provide such data.*

ALECA RESPONSE: ALECA finds the enrollment projections provided by the Team reasonable and does not know of alternative data or method that could improve those cost/benefit estimates.

25. *Should the recommendations in the ETC's Report be implemented, how should the AUSF rules be modified to address the enrollment program and the payments that would be made to the Department of Economic Security ("DES") for its participation?*

ALECA RESPONSE: As the Team proposed in the ETC Report, the current AUSF rules are broad enough that the Commission has the authority to issue an order allowing immediate recovery of the costs of centralized administration and automatic enrollment. Thus, it is not necessary to modify the current AUSF rules to address payments to DES.

26. *Should there be a "cap" on the payments that could be made to DES for its participation in the enrollment program and, if so, how might such a cap be determined?*

ALECA RESPONSE: ALECA supports the Team's recommendation that if its enrollment program is adopted, DES should be required to submit proof of the costs the agency incurs administering the program to NECA (now Solix) for review. No additional restraint seems necessary.

27. *Should there be some form of a "sunset clause" that would end the enrollment program and, if so, what would be appropriate criteria for ending the program?*

ALECA RESPONSE: The current AUSF rules already provide for a review of the costs incurred every three years. Given this provision, a "sunset clause" is unnecessary.

28. *To what extent do other states promote enrollment in Lifeline and Link-Up as recommended in the ETC's Report and to what extent have such state efforts been effective, both from an enrollment and cost perspective?*

ALECA RESPONSE: In addition to the three states mentioned in the ETC Report, the State of Utah has also established centralized administration and automatic enrollment for Lifeline and Link-Up. Utah's program is administered by the Department of Community and Culture ("DCC"), and the Utah Public Service Commission's equivalent of the AUSF, the Utah Telephone Assistance Program, pays for the costs the Department incurs. Following DCC's takeover of the enrollment process in Utah, Frontier Communications of Utah, an affiliate of three of ALECA's members, experienced an increase in Lifeline participation consistent with the experiences in Texas and New York.

29. *To what extent have communication services from non-ETCs, such as prepaid wireless offerings as one example, become the service of choice for eligible Lifeline customers who otherwise may have subscribed to an ETC's Lifeline service?*

ALECA RESPONSE: ALECA has no knowledge of the extent to which communications services from non-ETCs may have substituted for the Lifeline offerings of its members, all of whom are ETCs.

UPDATED ACCESS CHARGE QUESTIONS
DOCKET NOS. T-00000H-97-0137 AND T-00000D-00-0672 (CONSOLIDATED)
SEPTEMBER 4, 2007

1. *Do you believe that the Commission ought to restructure access charges? Please explain your response.*

   ALECA RESPONSE: ALECA recommends that the Commission bring intrastate switched access rates into equality with interstate rates, where equality necessarily means matching both the level and structure of interstate rates. Over the last several years, the FCC has substantially reduced the interstate switched access rates of ALECA's member companies while their intrastate Arizona access rates have remained stable. At the same time, the FCC has restrained reciprocal compensation rates to levels even below interstate access rates and expanded the range of wireless calls subject to reciprocal compensation instead of intrastate access charges. The combined result has had two detrimental impacts on the intrastate access revenue streams of ALECA's member companies. First, the FCC's actions have given interexchange carriers, wireless providers and CLECs powerful incentives to misreport the jurisdictional nature of traffic and redirect traffic so as to disguise its true origin. Second, the FCC has handed wireless carriers a significant competitive advantage in the provision of in-state long-distance calling, not only further endangering access revenues but in this era of bundled pricing also depressing ALECA members' toll and local revenues. Since this Commission has set rates that have made ALECA's member companies heavily dependent upon in-state toll and access revenues, a significant reduction in those two revenue streams threatens the widespread affordability and availability of basic local exchange service in rural Arizona.

2. *What recommendation to the Commission would you make regarding how intrastate access charges should be reformed?*

   ALECA RESPONSE: ALECA recommends the Commission allow ALECA's member companies to undertake revenue neutral access charge reform. Specifically, ALECA recommends that the Commission permit its member companies to bring their state switched access rates into equality with their interstate rates. The difference in revenue produced at existing state access rates over an historical year and the same historical volume of traffic at current interstate rates should be made up from the AUSF. ALECA's recommendation would establish parity with interstate rates at a point in time and not require its members to follow any further reductions in interstate access, unless they are compensated for the additional lost access revenue. This approach not only reduces the level of intrastate rates for all of ALECA's member companies but also revises the structure of some companies' rates, since some member companies' state access tariffs do not reflect the local transport rate restructuring required by the FCC over a decade ago. ALECA's member companies should be

given the option of matching interstate rates at a single point in time, called a "flash cut," or matching them in equi-proportional steps over a period of time not to exceed three years.

3. *Would you recommend the Commission address both switched and special access in an access charge reform proceeding? If your response is yes, please explain.*

ALECA RESPONSE: No. ALECA does not recommend the Commission deal with special access in this proceeding. The FCC has not taken the actions it has regarding switched access in the arena of special access. For ALECA's member companies, the disparity between their intrastate and interstate special access rates is not as great as between their intrastate and interstate switched access rates. Moreover, because the FCC's rules classify dedicated circuits as wholly interstate if ten percent or more of the traffic carried is interstate, the bulk of the special access circuits of ALECA's member companies are leased pursuant to interstate tariffs. Thus, addressing special access rates in this proceeding would needlessly prolong it and further delay a much-needed review of state switched access rates.

4. *What is your current recommendation to the Commission on how access charges should be reformed?*

ALECA RESPONSE: Please refer to ALECA's response to Staff's Updated Access Charge Question No. 2 above.

5. *Please update your response to the questions and issues contained in the 12-3-01 Procedural Order in Docket No. T-00000A-00-0672 to the extent you feel they should be updated.*

ALECA RESPONSE: ALECA does not believe it is necessary to update its responses to the questions and issues contained in the earlier Procedural Order. ALECA's current position is set forth here in these comments and responses. Not only have circumstances changed in the intervening years since the earlier Procedural Order, but ALECA's membership has also changed.

6. *How would the FCC's proceeding to reform intercarrier compensation affect the ACC's actions to reform intrastate access charges?*

ALECA RESPONSE: ALECA recommends the Commission deal with the wide disparity that presently exists between intrastate and interstate switched access rates without waiting for the FCC to promulgate revised rules governing intercarrier compensation. The issues ALECA believes must be addressed have arisen as a result of past FCC actions, and there is little doubt the FCC will continue putting downward pressure on interstate switched access rates. Furthermore, most experienced FCC watchers agree the FCC will not take

significant action with respect to intercarrier compensation until after the 2008 elections.

7. *Do you believe that the carrier common line switched access charges ought to exist? Please provide your rationale for your position on this matter.*

ALECA RESPONSE: ALECA considers the issues raised by this question a potential distraction from the central issue of preserving and promoting the widespread availability and affordability of basic local exchange service in rural Arizona. Carrier common line ("CCL") charges are usage-based access rates designed to recover a portion of the costs of providing network access lines. Network access lines connect landline telephone subscribers' to the first switch in the network. A long-standing debate in the telecommunications industry revolves around whether network access line costs vary with usage, that is, vary with the number and duration of calls. In principle, costs that do not vary with usage should not be recovered from usage-based charges. In recognition of this principle, the FCC has re-assigned historical access line costs, or in FCC parlance "common line" costs, to the federal Universal Service Fund and provided for rate-of-return carriers to recover these costs from the Fund through Interstate Common Line Support ("ICLS") and for price cap carriers to recover them via Interstate Access Support ("IAS"). Thus, in the face of stable state access rates, the FCC's policies have opened up a wide gap between intrastate and interstate CCL charges and led to the incentives that currently threaten the very revenue streams ALECA's members need to support basic local exchange service in rural Arizona.

8. *Do you think that the notion of implicit subsidies ought to be a component of any analysis that the Commission?*

ALECA RESPONSE: As with the debate over the proper role of CCL charges, focusing on the notion of implicit subsidies detracts from the larger issue of preserving and promoting universal service. Whether or not classified as subsidies, there is little question that the contribution from switched access charges defrays a large portion of the costs ALECA's member companies incur supplying basic local exchange service in rural Arizona. Presently, this contribution is implicit in intrastate switched access rate elements. In other words, the contribution switched access rate elements make toward the recovery of ALECA's members' total costs is not readily apparent on their customers' retail bills. By moving the burden of this contribution from state access to the AUSF, ALECA's proposal makes the contribution needed to preserve and promote universal service explicit.

9. *Do you believe that the AUSF ought to pick up any revenue reduction that may occur as a result of the reform of access charges? Please provide the rationale for your response.*

ALECA RESPONSE: Yes. ALECA recommends the Commission provide for the recovery of the revenue deficiency produced by access charge reform from the AUSF. As ALECA's 2006 White Paper (attached as Exhibit A) emphasizes, support from state access revenues is so great that setting intrastate rates equal to interstate rates in 2005 would have produced a deficiency large enough that ALECA member companies' residential local exchange rates would have doubled on average if the deficiency had been spread evenly across all access lines. It seems unlikely local rate increases of this magnitude could occur in rural Arizona without jeopardizing universal service.

10. *If you believe that the AUSF ought to pick up any revenue reduction that may occur as a result of the reform of access charges, what parameters would you implement to determine what amount ought to be picked up by the AUSF?*

ALECA RESPONSE: ALECA recommends the Commission permit its members to recover from the AUSF the full amount of foregone intrastate access revenue produced by access reform.

11. *How would you quantify the reductions? Please explain your response to include items such as whether the AUSF amount would be based on current year switched access minutes, on current year access revenues, historical year access minutes, historical year access minutes, etc.*

ALECA RESPONSE: The amount ALECA's member companies draw from the AUSF should be based on the difference between test-year intrastate switched access demand evaluated at test-year intrastate rates and alternatively at interstate rates.

12. *Provide an estimate of the effect on access revenues for your company if access charges are reformed in the manner that you recommend to the Commission.*

ALECA RESPONSE: ALECA estimated the effect on its members' access revenues if intrastate switched access rates were brought into equality with interstate rates in its 2006 White Paper (attached as Exhibit A.) The White Paper concludes as follows at page 9: "Based on 2005 data, the amount of Arizona universal service support required for this shift is approximately $26.6 million annually."

13. *For companies that provide access service, please provide the dollar amount of revenues from intrastate switched access charges that you received by rate element, by month, for the period July 1, 2006 through June 30, 2007.*

ALECA RESPONSE: ALECA is an organization made up of members, and there are several reasons why ALECA cannot provide the requested information using the methodology requested in the question. ALECA's members do not in the normal course of business keep track of revenue by access rate element as the question requests. Each member would have to compile a response manually, and some members would have to engage an outside vendor to compile the information for them. In the case of some ALECA members, the information for many of the months requested is no longer maintained in a usable billing format but would require re-formatting even before a manual compilation process could begin. Moreover, ALECA would have to pay an outside consultant to confidentially gather the information from each member and aggregate the results. The entire process of confidentially compiling, gathering and aggregating the requested information would take up to three months.

Therefore, ALECA would propose providing information using the same methodology that it used in its 2006 White Paper (attached as Exhibit A) which utilizes revenue per minute as a surrogate and could make this information available in approximately 30 days if Staff agrees that this is an adequate substitute. ALECA will contact Staff to discuss this further.

14. *For companies that purchase access service, please provide the dollar amount of the payments for switched access charges that you made (by company, rate element, and by month) for the period July 1, 2006 through June 30, 2007.*

ALECA RESPONSE: Not applicable.

15. *Should additional considerations be taken into account when restructuring and/or setting access charges for small rural carriers? Please explain your response.*

ALECA RESPONSE: At this time, ALECA has no additional considerations that it recommends the Commission take into account when setting access charges for small, rural carriers except as set forth in these responses.

16. *Please comment on any other issues you believe may be relevant to the Commission's examination of intrastate access charges.*

ALECA RESPONSE: ALECA has no issues other than those set out in these comments that it wishes to raise at this time.

17. *Are there any other issues besides the rate restructuring and costing issues raised herein that should be addressed by the Commission in this Docket?*

ALECA RESPONSE: ALECA has no issues other than those it has set out in these comments that it wishes to raise at this time.

18. *Are there other State proceedings and/or decisions that you would recommend the Commission examine in this docket? Please attach any relevant State commission decisions to your comments.*

ALECA RESPONSE: Insofar as access reform in other states is concerned, ALECA recommends the Commission examine the New Mexico Rural USF rule, which is attached as Exhibit C.

19. *One of the stated objectives of the Qwest Price Cap Plan was to achieve parity between interstate and intrastate access charges. Is this something that should be looked at by the Commission in this proceeding?*

ALECA RESPONSE: Yes. ALECA recommends that its member companies' intrastate access rates be brought into equality with their interstate rates at an appropriate point in time.

20. *Parties who desire that switched access charges be reformed often state that switched access charges in general, and the CCL rate element in particular, contain implicit subsidies. Do you agree with this statement? Please provide an explanation of the rationale for your position, including any computations that you might have made.*

ALECA RESPONSE: Please refer to ALECA's response to Staff's Updated Access Charge Questions Nos. 7 and 8 above.

21. *Do you believe that the Commission should quantify implicit subsidies:*
    a. *At all?*
    b. *As part of this proceeding?*
    c. *As part of proceedings that address each carrier individually?*

ALECA RESPONSE: Please refer to ALECA's response to Staff's Updated Access Charge Questions Nos. 7 and 8 above.

22. *If you believe that the Commission should quantify implicit subsidies, what is the appropriate cost standard to be used to determine whether access charges are free of implicit subsidies?*

ALECA RESPONSE: ALECA believes it is not only unnecessary but also counterproductive to attempt to quantify implicit subsidies.

23. *What issues do you believe should be addressed in a proceeding to determine whether and to what extent intrastate access charges ought to be reformed?*

ALECA RESPONSE: The central issue in this proceeding is the preservation and promotion of basic local exchange service in rural Arizona in light of the threat that the wide disparity between intrastate and interstate access rates poses to the revenue streams traditionally relied upon to support that service.

24. *Do you believe that there is a difference in the costs of providing interstate switched access service versus intrastate-switched access service? In your response, please include a description of how costs are defined in your response and how those costs relate to costs allocated to the intrastate jurisdiction under the FCC's current rules.*

ALECA RESPONSE: ALECA's member companies use the same facilities they use to provide interstate switched access services when they provide intrastate access services; therefore, their costs of providing both types of service per minute of use should be identical under the same circumstances.

25. *Should the Commission address CLEC access charges as part of this Docket?*

ALECA RESPONSE: ALECA believes the primary focus of this docket should be preserving and promoting the widespread availability and affordability of basic local exchange service in rural Arizona. However, ALECA is not opposed to addressing the CLEC access charges in this Docket, provided doing so does not detract from the primary focus.

EXHIBIT A

The Case for Arizona Access Charge Reform

By the Arizona Local Exchange Carrier Association

Introduction

In today's world, innovation in telecommunications seems commonplace. Every week there is at least one innovation or product released intended to amaze and dazzle consumers. Even in the area of telecommunications regulation, changes appear at a relatively rapid pace. The Telecommunications Act of 1996 ushered in a series of reforms intended to provide and enhance telecommunications services. Since that watershed Act was passed, more attention than ever has been focused on the charges long distance carriers pay local exchange carriers. These charges are intended to compensate local exchange carriers for access to their networks in the origination and or termination of long distance calls. The concept of access charges seems simple enough – long distance uses local carriers' facilities and it is reasonable for long distance carriers to compensate local carriers for their network use. While simple in concept, the development of access charges, both for interstate long distance and long distance to and from customers in Arizona, has a complex history.

The members of ALECA consist of eleven (11) independent local exchange carriers (LEC) operating in Arizona,[1] plus three tribal companies.[2] ALECA members serve small towns and rural areas of Arizona, and all are rural carriers as defined by the Federal Communications Commission (FCC). All non-tribal ALECA members are regulated by the Arizona Corporation Commission (ACC) for intrastate activities, including state access charges. The ACC regulated ALECA members serve 187,500

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[1] The members of ALECA include: Accipiter Communications, Arizona Telephone Co., Citizens Utilities Rural, Copper Valley Telephone, CTC White Mountains, Midvale Telephone Exchange, Inc., Navajo Communications Company, South Central Utah Telephone Association, Southwestern Arizona Tel., Table Top Telephone Company, Inc. and Valley Telephone Cooperative, Inc..

[2] The ALECA tribal members include: Fort Mojave Telephone Company, San Carlos Apache Telecom Utility, Inc., and Tohono O'Odham Utility Authority.

lines throughout their Arizona communities. In contrast to Qwest which serves over 2,450,000 lines in Arizona,[3] the ALECA members' financial survival depends on access charges. Small local exchange carriers generally rely on three revenue streams to maintain their viability: local service revenues, universal service supports, and interstate and state access charge revenues. Access charges and universal service represent a significant majority of revenues received by rural carriers. Thus, the necessity of Arizona access reform for the ALECA members and our customers is paramount. Even though the ALECA members' customer base is small in comparison to those customers served by Qwest, the ALECA members' customer base is distinctively rural, sometimes remote, and hence telecommunications services are even more critical for consumers, businesses and emergency services. Further because it costs three to four times as much for our rural customers to place intrastate calls, our customers, who are more likely to need to place such calls, are disadvantaged.

The business circumstances surrounding state access charges in Arizona compels immediate reform. Consider for example, the disparity between access charges for interstate calls versus access charges for Arizona calls. Based on recent 2005 data from the ALECA members, the average access charge for interstate long distance is $0.0255 per minute of use; compared with the average access charge for Arizona long distance of $0.1193 per minute of use. This represents an average $0.0939 per minute of use difference in price for these two similar, if not identical services. The price difference between Arizona and interstate access charges creates an unstable business environment. The instability is seen most vividly when carriers who must pay these charges are given the incentive to seek ways to avoid payment of the Arizona charges. This type of regulatory arbitrage is not healthy for the industry and fuels the uncertainty ALECA members must face in today's climate of change.

Consumers of telecommunications typically fail to educate themselves about the inner workings of telecommunications regulations. Thus when they see the cost to make a long distance call through one of the ALECA members, compared to the cost to make a

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3 Phone Lines 2006, JSI Capital Advisors, LLC, Manchester New Hampshire (2006).

VoIP call, they are more likely to question their service from their local phone company. The ALECA members are forced to compete with these service providers and consumers, driven by price differences, opt for services that are less reliable and often lack critical emergency services. Thus ALECA members and Arizona's rural telecommunications consumers are disadvantaged by the state's antiquated access rate levels.

The ALECA members propose a plan that would reform Arizona's switched access charges. In this white paper, ALECA members seek to explain the immediate necessity of reform in Arizona state access charges in order to preserve and promote the availability of telecommunications services throughout the state.

Interstate Access Reform

The Federal Communications Commission (FCC) has taken significant steps to reform interstate access. Starting with the larger local exchange carriers (LECs) regulated under interstate price cap regulation, the FCC adopted a reform plan sponsored by the Coalition for Affordable Local and Long Distance Service (CALLS).[4] The CALLS plan was described by the FCC as its attempt to "undo the Gordian knot of determining the appropriate level of interstate access charges and converting implicit subsidies in interstate access charges into explicit, portable, and sufficient universal service support."[5] Relevant provisions of the CALLS plan are that it increased subscriber line charge (SLC) caps, reduced switched access charges, removed $650 million of implicit support contained in access charges and created an explicit universal service program funded at this same level. In exchange for these reforms that largely benefited the long distance carriers, these carriers committed to flow through reductions in access rates to customers over the life of the plan.

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[4] See In the Matter of 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*, Federal Communications Commission, FCC 00-193, May 31, 2000. (CALLS Plan)

[5] *Id.*, at 26.

In addition to the CALLS plan reform for price cap carriers, the FCC adopted reforms for rate of return carriers under the Multi-Association Group (MAG) Plan.[6] The FCC's action adopting portions of the MAG plan were motivated to "bring the American public benefits of competition and choice by rationalizing the access rate structure and driving per-minute rates towards lower, more cost-based levels, while furthering universal service goals."[7] Relevant features of the MAG Plan include: increased SLC caps for rate-of-return carriers, migration of revenues received from the carrier common line charges to an explicit universal service program and reform of local switching and transport rate structures to reflect more their costs basis.

All told, the FCC's reform of switched interstate access charges has created an environment whereby interstate access rates are far lower than existing Arizona switched access charges. As mentioned earlier, currently there is nearly a 10 cent price per minute differential between interstate access and Arizona access. The reason for this disparity is due to the fact that the interstate access regime has undergone significant reform in recent years. These interstate access reforms have migrated portions of interstate access costs from per minute of use recovery from the interexchange long distance carriers to increases in the subscriber line charge and the establishment of and increases to federal universal service programs. Critically, these changes have been performed on a revenue neutral basis for rate of return carriers without requiring a rate case; thereby allowing these carriers to preserve and advance the delivery of telecommunications services to their customers.

Intrastate Access Reforms

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6 See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, *Second Report and Order*, Federal Communications Commission, FCC 01-304, November 8, 2001. (MAG Plan)

7 *Id.*, at 1.

While actions at the FCC have reformed interstate access, Arizona's access charge regime remains largely untouched by reform. In many instances the ALECA rate levels and rate structures were established in the early 1990s. Due to competitive and regulatory pressures, ALECA members believe it is time for Arizona to reform its state switched access charge regime.

Other states around the nation have made similar reforms. New Mexico, for example, recently reformed its state switched access regime by reducing per minute charges, reforming its antiquated rate structure and establishing a state universal service program to permit carriers to recover their costs in a revenue neutral manner. New Mexico has reformed both its state access rate structure and rate level to mirror interstate rates. This reduction in state access revenues is recovered through a state universal service program amounting to approximately $22 million annually. The New Mexico reform effort is funded by a surcharge on all intrastate retail telecommunications revenue. This percentage surcharge is 3.32 percent. The New Mexico reform was a revenue neutral shift of switched access revenues to the New Mexico universal service program. Disbursements of the fund are portable under certain conditions, for example, a competitive carrier seeking disbursement from the New Mexico fund must provide the Commission a support level based on its own costs. Other states have performed similar reform efforts in keeping pace with interstate reform efforts.[8]

In its examination of reform just after passage of the Telecommunications Act of 1996, the Federal State Joint Board on Universal Service stated: "the onslaught of competition in the local market is likely to erode the ability of states to fund universal service through implicit support mechanisms. States possess the jurisdiction and responsibility to address the implicit support issues through appropriate rate design and

[8] States with existing high cost USF programs with a state access reform component include but are not limited to: New Mexico, Texas, South Carolina, Georgia, Pennsylvania, Idaho, Oregon and Washington.

other mechanisms within a state. . . . States should bear the responsibility for the design of intrastate funding mechanisms."[9]

In partial response to market trends, state reforms attempt to harmonize the state access rate levels and rate structures with the equivalent interstate offering. The FCC recognizes the need to harmonize interstate and intrastate access regimes. In its Further Notice of Proposed Rulemaking on intercarier compensation released March 3, 2005, the FCC established the need to reform intercarrier compensation that is currently governed by a complex system of mechanisms that distinguish among different types of carriers and different types of services based on regulatory classifications. The FCC states these "artificial distinctions distort the telecommunications markets at the expense of healthy competition."[10]

Changes to the universe of intercarrier compensation mechanisms will take considerable time and energy. One comprehensive reform proposal now being considered before the FCC is the Missoula Plan.[11] The prospects of the Missoula Plan before the FCC are not clear. The ALECA members understand that AT&T, a large supporter of the plan, now suggests that federal legislation will be necessary to implement the plan. If true, the Missoula Plan will not be implemented in the foreseeable future. Other aspects of the Missoula Plan will likely generate considerable debate leading to further uncertainty about the future of the plan.[12]

In response to the Montana Public Service Commission inquiry into matters concerning intercarrier compensation, the Montana Telecommunications Association stated: "the differences in intrastate and interstate access charges can no longer be

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[9] Federal-State Joint Board on Universal Service, *Second Recommended Decision*, 13 FCC Rcd 24744 (1998) at 25-26.

[10] In the Matter of Developing a Unified Intercarrier Compensation Regime, Federal Communications Commission, *Further Notice of Proposed Rulemaking*, FCC 05-33, Mar. 3, 2005, at 15.

[11] See Notice of Written *Ex Parte* in the Matter of Developing a Unified Intercarrier Compensation Regime, Federal Communications Commission, National Association of Regulatory Utility Commissioners, July 24, 2006. The FCC released a *Notice for Comment* on the Missoula Plan on July 25, 2006, DA 06-1510, initial comments are scheduled to be filed on October 25, 2006.

[12] One issue of considerable debate will be the development and funding of the restructure mechanism: whether it will be part of the interstate access regime or part of federal universal service.

sustained in a competitive environment, especially where technology has enabled telephone calls to circumvent access charges altogether" and providing as an example that "intra-MTA wireless traffic is subject to reciprocal compensation and is responsible for significant reduction in local exchange carrier intrastate access revenues" and that "VoIP traffic currently avoids access payments altogether."[13] ALECA agrees with this observation and believes that the pace of market changes necessitates prompt action in Arizona. Without action over time there will be an increased burden on end-user customers because end-user customers will bear an increased cost burden, which left unchecked will likely raise affordability issues in rural areas.

Recognizing the immediate necessity to reform Arizona access rate levels and rate structures, the ALECA members have considered all of the information available to them and propose that Arizona reform intrastate access using a clear and defined timeline not dependent on the vagaries of potential reform at the FCC.[14] In this vein, ALECA proposes Arizona Access Charge Reform.

Arizona Access Reform

To better outline the mechanics of Arizona access reform for ALECA members, ALECA has gathered information from its eleven regulated members. These data permit ALECA to calculate the composite interstate access rate per minute of use and compare this rate to the equivalent intrastate composite access rate per minute of use. Prior to examining the specifics of access reform; however, ALECA believes it prudent to provide some descriptive information regarding the ALECA members.

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[13] Comments of the Montana Telecommunications Association, Inquiry into Matters Concerning Intercarrier Compensation, Utility Division, Docket No. D2004.5.84, Second Notice of Inquiry and Notice of Public Workshop, Montana Public Service, June 17, 2005.

[14] The Missoula Plan as it is now proposed accommodates reform measures implemented by individual states through a provision labeled the Early Adopter Fund. Thus, immediate reform of Arizona access may be implemented with less concern about whether Arizona reform will be preempted by future federal actions.

As was noted earlier, ALECA members serve approximately 187,500 access lines in Arizona. The largest ALECA member is Citizens Utilities Rural and the smallest ALECA member is Accipiter Communications. The median for the ALECA members is 4,522 access lines. Despite the small size in access lines, the ALECA members serve a considerable portion of Arizona. All told, the ALECA members can be generally characterized as rural telephone carriers.

The ALECA members' basic residential monthly service rate is in line with national average residential rates. Data from the FCC show that in 2004 the representative monthly charge for residential service was $14.53 per month.[15] The average charge for residential service for ALECA members is $14.09 per month. These amounts do not include surcharges or taxes. These data suggest that ALECA members are currently providing residential service at a rate comparable to the national average rate for residential service.

With this basic information in mind, we now examine the composite interstate access rate for a minute of use. To compute this composite average, total interstate switched access revenues billed by each member was divided by total interstate switched access minutes originated or terminated by each member during 2005. This method accounts for the various differences in transport routes and best reflects the rate for which ALECA members charge for interstate access service.[16] As a basis for comparison, the national average per minute rate for switched access for rate of return carriers is approximately $0.0170 per minute.[17] The ALECA average interstate composite access charge is $0.0255 per minute of use. The difference between the ALECA average and the national average reflects differences in transport costs and the various banding placements for local switching rates.

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15 *Trends in Telephone Service*, Federal Communications Commission, April 2005. (This report is the most recent report available on the FCC website: www.fcc.gov/wcb/iatd/trends.htlml

16 Any differences in originating and terminating access rates are not captured with this approach because total switched access revenues is divided by total originating plus total terminating interstate switched access minutes.

17 The Missoula Plan uses this rate in estimating its recommended reform measures. See *The Missoula Plan for Intercarrier Compensation Reform*, Appendix D, page 110.

The average intrastate composite switched access rate for ALECA members is $0.1193 per minute of use. A larger portion of the difference between $0.1193 and $0.0255 is due to the significant reforms made by the FCC in recent years and not due to any differences in cost between providing interstate and intrastate access.[18] A large portion of the $0.09390 difference in rates represents past public policy decisions to have intrastate access charges support part the affordability of local exchange service for residents in Arizona. This nearly 10 cent per minute difference is not sustainable due to a variety of reasons. Foremost among them is the fact that customers now have options to avoid paying the higher Arizona access charges through a variety of means – bypass with wireless providers and or VoIP providers.

In order to provide immediate Arizona access rate reform, the intrastate composite rate needs to be at the level of the interstate composite rate. This reduction, if taken in isolation would cause significant economic hardship on the ALECA members and may cause the failure of these enterprises. This type of reform can only be successful if accompanied by a revenue offset which preserves revenue neutrality for rural carriers. To account for the revenue reductions in intrastate access, ALECA proposes a program similar to the New Mexico program where there was a revenue neutral shift between intrastate access and a state universal service program. Based on 2005 data, the amount of Arizona universal service support required for this shift is approximately $26.6 million annually. This amount is calculated subtracting each ALECA member's composite interstate rate from its composite intrastate rate and multiplying the difference by annual 2005 intrastate billed minutes. This amount represents an average annual support of $171.73 per line, or $14.31 per line per month. Without receiving Arizona universal service support, the average monthly residential local service rate of $14.09 would double – possibly causing undue economic hardship on customers, greatly exceed the national comparable rate, and cause significant rate shock on customers.

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[18] The composite interstate rate for NECA member companies has declined over 58 percent from 1998 to 2004. See *Table 1.4 Trends in Telephone Service, April 2005 and July 1998*, Federal Communications Commission.

Reform needs to reflect the fact that existing funding supports in Arizona intrastate access need to be made explicit. Rather than undertake a detailed study of these rates, it is appropriate to mirror the interstate rate levels and rate structure, combined with a revenue neutral state universal service program designed to recover these lost revenues. Currently Arizona has a modest universal service program that disburses funds to Frontier White Mountains – a very sparsely populated rural area of the state. The Arizona Universal Service Fund (AUSF) uses a three-part mechanism for funding which include: a per access line charge, a per interconnecting trunk charge (Category One) and a percentage of intrastate toll revenue (Category Two). These three mechanisms are designed to capture a large base of support for AUSF purposes. The contribution factors for these three mechanisms are: $0.007651 per line per month, $0.076513 per trunk per month and 0.2856 percent of intrastate toll revenues.

Based on the same relationship of the current funding mechanisms,[19] ALECA has estimated what the contribution factors would be to fully fund intrastate access reform with a revenue neutral shift of revenues from intrastate switched access revenue to an AUSF access reform program.[20] The total amount of funding required for current AUSF and added ALECA access reform is estimated to be $27,364,650 annually. One half of this support comes from Category 1 contributions. The per line rate would increase to $0.2720 per line per month and the trunk rate would increase to $2.72 per trunk per month. (This estimate is based on reported 2006 lines and a constant relationship between revenues derived from lines and those derived from trunk charges.) The other half of the AUSF funding will continue to come from Category 2 contributions. The intrastate toll revenue factor would be 10.16 percent. While the category 2 factor is relatively large, the contributing carriers would be the same carriers seeing a $26.6 million reduction in intrastate access charges paid to ALECA members. In total, the category 2 carriers should be able to reduce their toll charges to reflect a $13.3 million reduction in toll charges and still be held harmless with this new contribution factor.

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[19] At the time of distribution of this paper, the underlying data to calculate these factors have been reqeuested of Staff by ALECA but not received. When actual data becomes available these estimates will be updated as necessary.

[20] While other funding for access reform exist, *e.g.*, New Mexico uses a percentage of all intrastate revenues, this paper only examines the existing mechanisms used for AUSF funding.

Summary

Reform for Arizona's intrastate access charge regime is needed. The current regime lends itself to arbitrage due to its wide variance with identical interstate services. Arizona has a universal service program in place that can be used as a vehicle for intrastate access reform. Similar reform efforts have been taken in other states. Arizona regulators have the ability to effectuate this reform without federal intervention. In the event that federal intervention were to change regimes in the future with the adoption of the Missoula Plan, it is likely the efforts of Arizona would be accommodated within the federal changes.

Intrastate access reform is necessary and immediate reform can occur within the existing AUSF framework.. Intrastate access reform will create a more stable environment whereby ALECA members can preserve and promote telecommunications services throughout their service territory and continue to bring the marvels of telecommunications to the citizens of Arizona. Moreover, intrastate access rate reform serves the public interest and promotes an equitable regulatory regime.

EXHIBIT B

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by

January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.5 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission within 45 days after the end of each month.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved,

aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently

served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for

rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but

subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and

health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service
Date of Enactment or Last Substantive Amendment: August 1, 2006
Notice of Continuation: November 25, 2003
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

EXHIBIT C

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Utility Division.
[17.11.10.1 NMAC - Rp, 17 NMAC 13.10.1, 11/30/05]

17.11.10.2 SCOPE: This rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.
[17.11.10.2 NMAC - Rp, 17 NMAC 13.10.2, 11/30/05]

17.11.10.3 STATUTORY AUTHORITY: Sections 8-8-4 and 63-9H-6 NMSA 1978.
[17.11.10.3 NMAC - Rp, 17 NMAC 13.10.3, 11/30/05]

17.11.10.4 DURATION: Permanent.
[17.11.10.4 NMAC - Rp, 17 NMAC 13.10.4, 11/30/05]

17.11.10.5 EFFECTIVE DATE: November 30, 2005, except where a later date is cited within a section.
[17.11.10.5 NMAC - Rp, 17 NMAC 13.10.5, 11/30/05]

17.11.10.6 OBJECTIVE: The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund (fund), including the implementation of a specific, predictable and sufficient support mechanism that reduces intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensures universal service in the state.
[17.11.10.6 NMAC - Rp, 17 NMAC 13.10.6, 11/30/05]

17.11.10.7 DEFINITIONS: In addition to the definitions contained in Section 63-9H-3 NMSA 1978, as used in this rule:

A. "access line" means the connection of the end-user customer to the public switched network, and is not limited to wireline or any other technology;

B. "administrator" means the person designated by the commission to administer the fund;

C. "basic local exchange rate" means an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service;

D. "carrier" means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico;

E. "commercial mobile radio service (CMRS)" means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit;

F. "commission" means the New Mexico public regulation commission;

G. "contributing company" means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico;

H. "eligible telecommunications carrier (ETC)" means an entity with New Mexico operations that provides retail telecommunications services that has been designated by the commission as eligible to receive disbursements from the fund or from the federal universal service fund;

I. "exempt customer" means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico;

J. "fund" means the state of New Mexico universal service fund established pursuant to, Section 63-9H-6 NMSA 1978 and this rule;

K. "historical access rate" means the composite per-minute intrastate switched access charge in effect for a carrier as of July 1, 2005;

L. "historical collection factor" means the ratio, for calendar year 2004, of intrastate switched access charge revenue collected by a carrier to its gross charges for intrastate switched access, except that the historical collection factor may not exceed 1.0;

M. **"imputed benchmark revenue"** means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier's basic local exchange residential and business rates in effect as of July 1, 2005, multiplied by the number of basic local exchange residential and business lines served by the carrier as of December 31, 2004; imputed benchmark revenue shall not be less than zero;

N. **"interexchange carrier (IXC)"** means an entity that provides intrastate toll services in New Mexico;

O. **"intrastate retail telecommunications revenue"** means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico;

P. **"intrastate retail telecommunications services"** means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller ID; listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS or toll; CENTREX, Centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services;

Q. **"intrastate switched access charge"** means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission;

R. **"local exchange carrier (LEC)"** means an entity that provides local exchange service in New Mexico;

S. **"New Mexico operations"** means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

T. **"New Mexico telephone number"** means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address;

U. **"rural area"** means a local exchange carrier's study area that (1) does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or (b) any territory, incorporated or unincorporated, included in an urbanized area as defined by the bureau of census; (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (4) has less than 15 percent of its access lines in communities of more than 50,000;

V. **"service area"** means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

[17.11.10.7 NMAC - Rp, 17 NMAC 13.10.7, 11/30/05; A/E, 12/28/05]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:

A. Effective April 1, 2006, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less one-third of the difference between its historical access rate and the composite interstate switched access rate based on rates approved by the federal communications commission as of January 1, 2006.

B. Effective January 1, 2007, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less two-thirds of the difference between its historical access rate and the composite interstate switched access rate based on rates approved by the federal communications commission as of January 1, 2006.

C. Effective January 1, 2008, a local exchange carrier's intrastate switched access charges may not exceed the interstate switched access rates approved by the federal communications commission as of January 1,

2006, and its intrastate switched access elements and structure shall conform to the interstate switched access elements and structure approved by the federal communications commission.

D. A local exchange carrier may reduce its intrastate switched access charges to interstate levels and may adjust its intrastate elements and structure to conform to interstate elements and structure more rapidly than the minimum adjustments required by this section.

E. Prior to January 6, 2006, each local exchange carrier shall submit to the administrator and the commission the schedule of its intrastate access charge rate reductions in conformity with this rule and shall submit to the commission proposed tariff revisions reflecting the schedule of rate reductions and other changes necessary to assure that, upon completion of the reductions, all tariffed intrastate switched access charge elements and structure will match the tariffed interstate switched access charge elements and structure for that carrier as of January 1, 2006.

F. With respect to any local exchange carrier that opts to phase in its intrastate access charge rate reductions in conformity with the requirements of this section, any increase in its local residential and local business exchange rates toward the affordability benchmark rates and the carrier's imputed benchmark revenue shall be phased in on the same schedule as, and proportionately to, its intrastate access charge reductions.

G. The commission, on its own motion or on the motion of a party or the administrator, may order the revision of a local exchange carrier's intrastate access charge rate reduction schedule.

H. Each local exchange carrier must advise the commission in writing of the method or combination of methods that it elects and the timing of its revenue neutral recovery on or before January 6, 2006 and shall also so advise the administrator within a reasonable time following commencement of the administrator's duties; each carrier adjusting a local exchange rate pursuant to this rule shall timely file a revised tariff with the commission.

I. On or after May 1, 2008, the commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - N, 11/30/05; A/E, 12/28/05]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. The following residential and business rates are established as initial affordability benchmark rates to be utilized in determining the level of support available from the fund:

(1) the initial residential benchmark rate shall be equal to Qwest's basic residential exchange rate after Qwest's basic residential and business local exchange rates have been increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount; the rate used to determine the residential benchmark shall be the flat rated residential basic local exchange rate, excluding any extended area service (EAS) rates, vertical services, toll or other additional features or services;

(2) the initial business benchmark rate shall be carrier-specific and shall be equal to the existing business basic exchange rate of each local exchange carrier plus the difference between Qwest's existing basic business basic exchange rate and Qwest's basic business basic exchange rate after Qwest's rates are increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases are applied to Qwest's business and residential lines in an equal per line amount; the rate used to determine the business benchmark rate shall be the flat rated local one-party business exchange rate, excluding EAS rates, vertical services, toll or other additional features or services; if a carrier's tariffed business rate at the time of the effective date of this rule exceeds the Qwest business rate after the increases provided above, the carrier's initial business benchmark rate shall be its tariffed business rate on that date.

(3) each Qwest residential and business line that provides the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic local exchange service tariffs, shall be counted for the purposes of calculating the per line amount of revenue required to offset Qwest's loss of switched access charge revenue.

B. The commission may conduct a proceeding to establish new affordability benchmark rates not less than every three years.

C. With respect to any local exchange carrier that chooses to phase in its decrease of intrastate access charges incrementally as permitted by 17.11.10.8 NMAC, rather than implementing the full reduction of intrastate access charges to interstate levels immediately on April 1, 2006, the imputed benchmark revenue attributable to that carrier shall be phased in at the same times, and proportionately to, the reductions in intrastate access charges.

D. Each local exchange carrier that is an ETC reducing intrastate switched access charges pursuant to this rule may offset such reductions on a revenue neutral basis, if it is in compliance with its contribution

requirements under this rule, by (1) adjusting its residential and business basic local exchange rates up to levels not exceeding the affordability benchmark rates determined by the commission, or (2) obtaining support from the fund for the difference between the affordability benchmark rates and the residential and business basic local exchange rates that would be needed to accomplish revenue neutral offsets, or (3) a combination of the two methods stated herein.
[17.11.10.9 NMAC - N, 11/30/05; A/E, 12/28/05]

17.11.10.10 SELECTION OF ADMINISTRATOR: The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.
[17.11.10.10 NMAC - Rp, 17 NMAC 13.10.8, 11/30/05]

17.11.10.11 EXPENDITURE AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.
[17.11.10.11 NMAC - Rp, 17 NMAC 13.10.9, 11/30/05]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR: The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight;

B. establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions;

C. ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes;

D. establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule;

E. report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require;

F. prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time;

G. propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies;

H. create and maintain the databases necessary to administer the program and account for the funds;

I. develop appropriate forms for use in collecting information from contributing companies and ETCs;

J. pay administrative expenses out of the fund in accordance with the budget approved by the commission;

K. petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law;

L. conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

[17.11.10.12 NMAC - Rp, 17 NMAC 13.10.11, 11/30/05]

17.11.10.13 DISPUTE RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within ten (10) days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within sixty (60) days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least ten (10) days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17 NMAC 13.10.12, 11/30/05]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17 NMAC 13.10.13, 11/30/05]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17 NMAC 13.10.14, 11/30/05]

17.11.10.16 REVENUE REPORTS: Each ETC and contributing company shall submit on or before April 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.

[17.11.10.15 NMAC - Rp, 17 NMAC 13.10.15, 11/30/05]

17.11.10.17 OTHER REPORTS: On or before April 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. contributing companies, including ETCs, shall report the number and type of access lines or New Mexico telephone numbers subscribed to in total and within rural areas;

B. ETCs that are local exchange carriers shall report their number of intrastate switched access minutes;

C. contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule;

D. ETCs shall report:

(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC;

(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier;

(4) information sufficient to establish that payments from the fund were used to reduce intrastate switched access charges or to further universal service.

[17.11.10.17 NMAC - Rp, 17 NMAC 13.10.16 and 17 NMAC 13.10.17, 11/30/05]

17.11.10.18 CONTACT PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17 NMAC 13.10.18, 11/30/05]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator, or the commission, shall determine the amount of the fund for the nine-month period beginning April 1, 2006 and ending December 31, 2006 in sufficient time for contributions to be paid into and disbursements to be made from the fund. Thereafter, the administrator shall determine the amount of the fund annually, subject to commission approval, on or before October 1.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund size greater than that which the commission has previously established, the commission may order an adjustment to the size of the fund.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirements, calculated pursuant to this section, plus projected administrative expenses and a prudent fund balance.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established an alternative or an additional amount pursuant to 17.11.10.25 NMAC, the revenue requirement for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2004 intrastate access minutes multiplied by the difference between the allowable intrastate access rate and the carrier's historical intrastate access rate, with the product of this computation multiplied by the carrier's historical collection factor, and then reduced by the carrier's imputed benchmark revenue. The formula stated arithmetically is as follows:

((Historical Rate Minus Allowable Rate) Times minutes Times Collection Factor) Minus Imputed Benchmark Revenue

(1) for a local exchange carrier that is an ETC in the process of incrementally phasing in its reduction of intrastate switched access charges to interstate levels as permitted by 17.11.10.8 NMAC, the "allowable rate" in the foregoing formula shall equal the composite rate or rates called for in the relevant phase or phases of that carrier's transition to interstate access charge levels;

(2) once a local exchange carrier that is an ETC has reduced its intrastate switched access charges to interstate levels, the "allowable rate" equals the interstate switched access rate;

(3) where more than one allowable rate is applicable to a given carrier in a given year, the calculation shall be done in such a way as to apply each allowable rate to the portion of the year to which it applies;

(4) in determining revenue neutrality the administrator may consider appropriate out-of-period adjustments.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

[17.11.10.19 NMAC - Rp, 17 NMAC 13.10.23, 11/30/05]

17.11.10.20 DETERMINATION OF STATE USF SURCHARGE RATE AND CONTRIBUTION:

A. The administrator, or the commission, shall determine the state USF surcharge rate for the nine-month period beginning April 1, 2006 and ending December 31, 2006 is sufficient time for contributions to be paid into and disbursements to be made from the fund. Thereafter, the administrator shall determine the amount of the state USF surcharge rate annually, on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission.

B. Upon its determination of a USF surcharge rate, the administrator shall notify all contributing companies, ETCs, and the commission. The rate determined by the administrator shall go into effect unless modified or disapproved by the commission.

C. The surcharge rate shall be equal to the annual fund requirement divided by the sum of intrastate retail telecommunications revenue for all contributing carriers in New Mexico, and may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year.

D. Each contributing company's monthly contribution shall equal the state USF surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

E. If, for any month the administrator finds that the fund balance is insufficient to cover required disbursements plus administrative expenses, the administrator may, with the commission's approval, increase contribution requirements to make up the shortfall. If the fund accumulates a surplus beyond what the administrator and the commission believe is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

F. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator. Initial contributions to the fund shall be due as soon as practical, but in any event no later than May 31, 2006. The administrator may consider utilizing a portion of the balance transferred into the fund from the prior New Mexico universal service fund to support initial disbursements from the fund. The administrator shall inform the commission of its proposed schedule and any proposed use of the transferred fund balance by March 1, 2006.

[17.11.10.20 NMAC - Rp, 17 NMAC 13.10.20, 11/30/05]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp, 17 NMAC 13.10.21, 11/30/05]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator. The administrator shall inform the commission of its proposed schedule by March 1, 2006.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

E. If, for any month, the fund balance is insufficient to meet the sum of all ETCs' revenue requirements plus administrative expenses and maintain a prudent fund balance, the administrator shall prorate payments to each ETC, and, if indicated, shall propose an increase in the surcharge rate in accordance with Subsection E of 17.11.10.20 NMAC. Any reductions in payments to ETCs resulting from prorated disbursements shall be paid out at such time as sufficient monies have been paid into the fund.

[17.11.10.22 NMAC - N, 11/30/05]

17.11.10.23 DESIGNATION OF ETCS:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. Upon approval of a carrier for ETC status under these rules, the commission shall establish the carrier's support rate. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17 NMAC 13.10.25, 11/30/05]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

A. Any entity seeking designation as a state or federal ETC, or an existing ETC that is not an incumbent local exchange carrier which may receive support from the fund to achieve revenue neutrality in connection with its reductions in intrastate switched access rates and seeks support from the fund must file a petition with the commission. In the case of a petition for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in, 47 C.F.R. Section 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) demonstrate that the proposed designation is in the public interest;

(4) include financial and statistical information sufficient for the commission to establish an initial support rate;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and

(14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include financial and statistical information sufficient for the commission to establish a support rate; a precise description of how the petitioner intends to use support it receives from the fund; and such other information as the commission or the administrator may find appropriate.

C. Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall

specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp, 17 NMAC 13.10.27, 11/30/05]

17.11.10.25 PETITION FOR ADDITIONAL SUPPORT:

A. An ETC may petition the commission for support from the fund at a level greater than that provided for by Subsection C of 17.11.10.19 NMAC, when such an adjustment is necessary to ensure the availability of local telecommunications services at affordable rates in the state.

B. In a rate proceeding filed pursuant to Subsection F of Section 63-9H-7 NMSA 1978, an incumbent rural local exchange carrier may obtain additional support if the commission determines that payments should be authorized from the fund in order to ensure the widespread availability and affordability of rural residential local exchange services.

C. An ETC or incumbent carrier petitioning for support from the fund under this section shall submit historic and prospective information on its costs of providing services and shall demonstrate that it is providing services in the most prudent manner possible.

[17.11.10.25 NMAC - N, 11/30/05]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within twenty-one (21) days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17 NMAC 13.10.31, 11/30/05]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq. NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to preserve and advance universal service, that is, to provide, at reasonable and affordable rates, access by consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, to quality telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to services provided in other areas.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund.

[17.11.10.27 NMAC - Rp, 17 NMAC 13.10.32, 11/30/05]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three (3) days notice of its plans to inspect records in the offices of a contributing companies or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17 NMAC 13.10.33, 11/30/05]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND: For each year beginning with 2006, the administrator shall provide the commission with a financial statement of the fund and the administration of the fund by February 15. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17 NMAC 13.10.34, 11/30/05]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three (3) years. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

[17.11.10.30 NMAC - Rp, 17 NMAC 13.10.10, 11/30/05]

17.11.10.31 EMERGENCY AMENDMENTS: The commission finds that the amendments to this rule consisting of: (A) in Subsection M of Section 17.11.10.7 NMAC adding the words "local exchange" after the words "the carrier's basic, adding the words "basic local exchange" following the words "multiplied by the number of", and striking the words "with the number of business lines to include each line providing the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic business local exchange service tariff" following the words "as of December 31, 2004;" (B) at the end of Subsection F of 17.11.10.8 NMAC, deleting the words "except as provided for in Subsection E 17.11.10.9 NMAC of this rule;" (C) in Subsection A (2) of Section 17.11.10.9 NMAC, deleting the words "equal to Qwest's basic business exchange rate increased to compensate Qwest for that portion of its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount"

and adding in their place the words "carrier-specific and shall be equal to the existing business basic exchange rate of each local exchange carrier plus the difference between Qwest's existing basic business basic exchange rate and Qwest's basic business basic exchange rate after Qwest's rates are increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases are applied to Qwest's business and residential lines in an equal per line amount;" (D) at the end of Subsection A (2) of Section 17.11.10.9 NMAC, adding the words "if a carrier's tariffed business rate at the time of the effective date of this rule exceeds the Qwest business rate after the increases provided above, the carrier's initial business benchmark rate shall be its tariffed business rate on that date;" (5) at the end of Subsection C of 17.11.10.9 NMAC deleting the words "except as provided for in Subsection E of 17.11.10.9 NMAC of this rule;" (E) in Subsection D of 17.11.10.9 NMAC adding the word "local" following the words "adjusting its residential and business basic" and adding the word "local" following the words "and the residential and business basic;" and (F) deleting the entirety of Subsection E of 17.11.10.9 NMAC require immediate adoption for the preservation of the general welfare and therefore constitute an emergency amendment to this rule within the meaning of NMSA 1978, Section 8-8-15.C and 1.24.1.7 I NMAC. Specifically, the commission finds that failure to implement the changes immediately would severely impair the ability of the commission, the administrator and contributing companies to (a) correctly determine business benchmark rates (b) correctly determine revenue requirements from the fund due to ETCs; (c) correctly determine the size of the fund; (d) correctly determine contributions to the fund due from contributing companies; and (e) comply with the requirement of NMSA 1978, Section 63-9H-6.C that intrastate access charge reductions be revenue neutral by the deadlines set Subsection E and Subsection H of 17.11.10.8 NMAC and NMSA 1978, Section 63-9H-6.I.
[17.11.10.31 NMAC - N/E, 12/28/05]

HISTORY OF 17.11.10 NMAC: [RESERVED]
Pre-NMAC History: None.

History of Repealed Material:
17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) repealed 11/30/05.

Other History:
17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 11/30/05.