

Attachment A

SETTLEMENT AGREEMENT

This Agreement is made and entered into as of November 19, 1997 by and between Fort Randall Telephone Company ("Fort Randall") and Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. and Dakota Telecommunications Group, Inc. (formerly Dakota Cooperative Telecommunications, Inc.) (collectively "Dakota").

RÉCITALS

Whereas, Dakota desires to provide local telecommunications services in the Centerville and Viborg exchanges operated by Fort Randall;

Whereas, Dakota and Fort Randall ("the Parties") desire to enter into an interim interconnection agreement that will be in effect until such time that a permanent interconnection agreement is approved by the South Dakota Public Utilities Commission ("Commission") pursuant to 47 U.S.C. § 252 ("Permanent Interconnection Agreement");

Whereas, the Parties wish to resolve all issues and disputes that have arisen, or which could arise in the following proceedings:

IN THE MATTER OF THE FILING BY DAKOTA TELECOM, INC., DAKOTA TELECOMMUNICATIONS SYSTEMS, INC., AND DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC. FOR INTERCONNECTION WITH FORT RANDALL TELEPHONE COMPANY, Docket TC97-062, currently pending before the Commission;

DAKOTA TELECOM, INC.; DAKOTA TELECOMMUNICATIONS SYSTEMS, INC.; and DAKOTA TELECOMMUNICATIONS GROUP, INC. vs. PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, Civ. 97-292; and

DAKOTA TELECOM, INC. vs. JAMES A. BURG, PAM NELSON, LASKA SCHOENFELDER, Commissioners of the Public Utilities Commission of the State of South Dakota, Civ. 97-425.

WHEREFORE, IT IS AGREED AS FOLLOWS:

1. DTI agrees to the following conditions on its authority to offer local telecommunications service in Fort Randall's service area/study area.
 - A. DTI will offer, on a nondiscriminatory basis, basic local services to all customers residing within the Centerville and Viborg exchanges.
 - B. DTI will provide notice of the availability of its basic local services to all customers in the Centerville and Viborg exchanges and shall comply with any future

Commission rules concerning the advertising/notice obligations of eligible telecommunications carriers.

C. DTI will offer a local calling scope which is at least as large as the existing local calling area offered by Fort Randall.

D. DTI's out-of-town rates will be no greater than DTI's in-town rates.

E. DTI will satisfy the requirements of paragraph 1, Clauses A through D inclusive, for both the Centerville and Viborg exchanges by the end of the 1999 construction season, and shall satisfy the requirements of paragraph 1, Clauses A through D inclusive, within 12 months of initially offering local exchange service in any other Fort Randall exchange.

2. The Parties agree to resolve all current issues related to the rural exemption of Fort Randall from 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(1) in the following manner:

A. The Parties agree that, based on the above service obligations, the Commission is not required to and should not determine whether any or all of Fort Randall's Rural Exemption from the requirements of 47 U.S.C. § 251(c) should be terminated with respect to DTI's service offerings in the Centerville and Viborg exchanges.

B. If DTI elects to provide local service in any Fort Randall exchange, Fort Randall agrees to waive the Rural Exemption as it applies to 47 U.S.C. 251(c)(4) and offer resale of its retail services at wholesale rates, subject to such reasonable restrictions on resale as are allowed under state and federal law. Fort Randall agrees to waive the Rural Exemption from 47 U.S.C. § 251(c)(1) with respect to negotiating the particular terms and conditions to be contained in the Permanent Agreement to fulfill the duties described in Section 251(b) and (c)(4)

3. The provisions of Paragraph 1 and 2 of this Agreement shall apply to DTI's parent corporation, affiliates, and subsidiary corporations should any of those entities offer local services in any Fort Randall exchange. Dakota shall not employ, authorize or direct its officers, agents, employees, directors, successors and assigns in any way to defeat or undermine the purpose of this Agreement

4. The Parties agreed that DTI has not requested universal service funding at this time, and the Commission should not, in Docket TC97-062, determine whether DTI should qualify for universal service funding. It is further agreed that this issue should be determined at the time DTI seeks universal service funding for its facilities used to provide local service in the Centerville and Viborg exchanges.

5. The Parties agree to the following terms with respect to an interim interconnection agreement.

A. The facilities used for the interconnection and transport of local traffic under this Agreement shall be dedicated facilities between Fort Randall's Centerville and Viborg exchanges and the switch used by DTI facilities at a single point in Viborg (the "Interconnection Facilities"). The Parties shall separately agree on the specific technical requirements of those Interconnection Facilities.

B. Each party shall be responsible for the installation and maintenance of the Interconnection Facilities on their respective side of the meet point (which meet point shall be separately negotiated by the Parties).

C. The Parties agree to complete the physical connection of their respective portions of the Interconnection Facilities as soon as reasonably possible, and by no later than December 1, 1997. Completion of the Interconnection Facilities includes installation of the transport facilities and all necessary switch changes, including programming Fort Randall's switches to recognize NXXs being used by DTI for service to customers.

D. The Parties agree to use a "bill and keep" arrangement for termination of local traffic transferred from one Party to the other Party (the "Local Traffic") using the Interconnection Facilities. Effective with Fort Randall's switch change out in Wagner and the rehomeing of the Centerville and Viborg remote switches to the Wagner switch, which is scheduled to occur at the end of the first quarter of 1998, both Parties agree to measure the Local Traffic and agree that such Local Traffic shall become subject to the reciprocal, symmetrical compensation arrangements contained in the Permanent Interconnection Agreement. If the Permanent Interconnection Agreement is entered into after the date measurement of the Local Traffic commences, the Parties agree to make a true-up payment within 30 days of the Permanent Interconnection Agreement becoming effective.

E. Fort Randall is currently unable to offer local referral announcements following customer number changes because of equipment limitations. Each Party shall as soon as reasonably possible, but not later than the end of the first quarter of 1998, make a good faith effort to make referral announcements available in accordance with the Act, and shall, if referral announcements can be made available, establish a rate or other recovery mechanism to recover the cost of the service. The Permanent Interconnection Agreement shall address local service announcements. As an alternative, Fort Randall is willing to provide remote call forwarding at the following rates: \$5 nonrecurring charge per customer for implementing the service, and a recurring charge of \$3.50 per month for each increment of 20 numbers receiving this service.

F. The Parties agree to resolve service issues, maintenance issues and on-going operational issues using the same business standards that are prevalent in the telecommunications industry.

6. The Parties agree that the above-described legal proceedings currently pending before the Commission and the Circuit Court shall be resolved as follows:

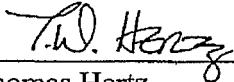
A. The Parties agree to present this Agreement to the Commission by no later than November 21, 1997, along with a request that the Commission issue an Order accepting Paragraphs 1 through 4, inclusive, of this Agreement and closing Docket No. TC97-062. The Parties agree not to appeal an Order accepting the Agreement. It is further agreed that if the Commission does not issue such an Order, the Settlement shall be withdrawn with respect to Paragraphs 1 through 4, and the Parties shall be free to argue their respective positions on all outstanding issues without regard to this Agreement.


B. Dakota agrees to dismiss with prejudice both Docket Civ. 97-292 and Docket Civ. 97-425 by no later than November 21, 1997.

7. This agreement shall be binding upon and benefit each of the Parties and their respective affiliates, subsidiary corporations, their officers, agents, employees, directors, successors and assigns.

DAKOTA TELECOM, INC.

FORT RANDALL TELEPHONE COMPANY

By: 
Thomas Hertz

By: 
Bruce Hanson

Attachment B

**refiled Testimony of Thomas W. Hertz
Dakota Telecom, Inc.
Docket No. TC98-111
August 21, 1998**

1 **Q. Please state your name, title, occupation, and work address.**

2 **A.** I am Thomas W. Hertz, Chief Executive Officer of Dakota Telecommunications
3 Group (DTG) and its subsidiary Dakota Telecom, Inc. (DTI) the competitive local
4 exchange carrier (CLEC). My business address is P.O. Box 66, Irene, South Dakota
5 57037.

6 **Q. What is the purpose of your testimony in this docket?**

7 **A.** I am testifying in support of DTI's application for eligible telecommunications
8 carrier (ETC) status in the Centerville and Viborg service area.

9 **Q. What is the significance of ETC status?**

10 **A.** Under federal law, the designation of ETC status for a common carrier makes that
11 carrier eligible for federal universal service support to provide service to consumers in
12 rural, insular and high cost areas, to low income consumers, and to schools and libraries,
13 which are located in that company's service area.

14 **Q. Is DTI a common carrier?**

15 **A.** Yes, DTI is a common carrier in the Centerville and Viborg service area. That
16 means that DTI provides telecommunications services throughout the Centerville and
17 Viborg service area for hire to any customer willing to pay for that service. A definition
18 of common carrier is found at 47 U.S.C. § 153(10).

19 **Q. What criteria must a common carrier meet in order to be designated as an**
20 **ETC?**

21 **A.** The criteria are stated in 47 U.S.C. § 214(e)(1). DTI must offer services
22 supported by the federal universal service fund support mechanisms under 47 U.S.C. §

Prefiled Testimony of Thomas W. Hertz
Dakota Telecom, Inc.
Docket No. TC98-111
August 21, 1998

1 254(c) using its own facilities or a combination of its own facilities and the resale of
2 another carrier's services, and must advertise the availability of such services and its
3 charges using media of general distribution.

4 **Q. Does DTI provide supported services using its own facilities?**

5 **A.** Yes it does. DTI provides the supported services in the Centerville and Viborg
6 service area using only its own facilities. DTI does not use any unbundled network
7 elements from the incumbent carrier, Ft. Randall Telephone Company, nor does it
8 provide any service through the resale of Ft. Randall's services.

9 **Q. What services are supported by federal universal service support**
10 **mechanisms?**

11 **A.** Those services are listed by the Federal Communications Commission (FCC) in
12 its rules in 47 C.F.R. §§ 54.101, 54.405 and 54.411. The services are: (a) voice grade
13 access to the public switched network; (b) local usage; (c) dual tone multi-frequency
14 signaling; (d) single-party service; (e) access to emergency services; (f) access to operator
15 services; (g) access to interexchange service; (h) access to directory assistance; (i) toll
16 limitation for qualifying low-income consumers; and (j) Lifeline and Link Up services to
17 low-income consumers.

18 **Q. Does DTI provide those services designated for support in the Centerville**
19 **and Viborg service area?**

20 **A.** Yes it does. The telecommunications service DTI deploys uses fiber optic cable
21 to the neighborhood node and then coaxial cable to the premises. The service is better
22 than the traditional twisted pair, copper facility and provides not only very good voice

**Prefiled Testimony of Thomas W. Hertz
Dakota Telecom, Inc.
Docket No. TC98-111
August 21, 1998**

1 service, but also Internet access up to 50 kbps. Outside the city limits of Centerville and
2 Viborg, DTI employs a fixed wireless system for telephone service. This service
3 provides significantly better voice service than the traditional twisted pair, copper
4 facilities, and we have measured Internet access speeds in excess of 24 kbps, even for
5 customers on the far end of the system. DTI does provide local usage as that term is
6 defined in 47 C.F.R. § 54-101(a)(2). Dual tone multi-frequency signaling is the same as
7 touch tone signaling (i.e., touch tone dialing). It is the industry standard and is provided
8 in the 5E Lucent switch in Viborg and over the fixed wireless system. DTI only has
9 single-party service to its customers. DTI's switch does provide access via 911 dialing to
10 all emergency services provided through the affected local government public service
11 access point (PSAP). DTI provides operator services through AT&T until September 1,
12 1998, when DTG becomes the operator services provider. Interstate (interLATA)
13 directory assistance is provided by Worldcom. Intrastate (or intraLATA) directory
14 service is from U S WEST. Long distance service is provided in the interstate (or
15 interLATA) jurisdiction by the presubscribed interexchange carrier (PIC). DTG
16 Communications, Inc. provides the intrastate (or intraLATA) service. Like all other
17 companies, DTI cannot provide toll control, but does provide toll blocking, which meets
18 the current FCC requirement for toll limitation. Finally, DTI will provide Lifeline
19 service and the Link Up program to eligible low-income consumers in the service area.

**Prefiled Testimony of Thomas W. Hertz
Dakota Telecom, Inc.
Docket No. TC98-111
August 21, 1998**

1 **Q. Does DTI advertise the availability and price of its services in the service**
2 **area using media of general distribution?**

3 **A.** Yes, it does. Attached as Exhibit A to my testimony are examples of that
4 advertising.

5 **Q. What is DTI's service area for purposes of an ETC designation?**

6 **A.** The service area should be limited to the area encompassed by the Viborg and
7 Centerville exchanges. I have attached as Exhibit B to my testimony an excerpt of the
8 FCC's Report and Order in CC Docket No. 96-45, as amended, dated June 4, 1997 (FCC
9 97-157). I have included pages 71 to 110, or paragraphs 127 to 198. The FCC has stated
10 in ¶¶ 186-191 of Exhibit B that universal service policy objectives may be best served if a
11 state defines a rural service area to consist only of the contiguous portion of a rural study
12 area, rather than the entire rural study area. The Viborg and Centerville service area is
13 not contiguous with the rest of Ft. Randall's study area in South Dakota. Also the
14 encouragement of the FCC in ¶¶ 189 and 190, regarding wireless service perhaps being
15 the most effective and efficient competitive provider in rural areas, is directly applicable
16 to DTI's wireless service to the more rural customers in the service area. Failure to grant
17 a service area limited to the contiguous area represented by the exchanges of Viborg and
18 Centerville would be a serious barrier to entry as stated in ¶ 190.

19 **Q. Can this Commission make this service area determination on its own?**

20 **A.** Yes, I believe so. In 47 U.S.C. § 214(e)(1), ETC status is for a "service area."
21 The language of 47 U.S.C. § 214(e)(5) defines a service area as a geographic area
22 established by this Commission for the purpose of determining universal service

1 support may go down.

2 As you're well aware here in South Dakota,
3 Western Wireless has filed a petition for it to become
4 an ETC for the entire state of South Dakota. There the
5 underlying theory of -- they're filing, I think,
6 without knowing the actual facts. But the underlying
7 theory seems to be is that wireless carriers can
8 provide service more cost-effectively in rural areas,
9 therefore, the amount of U.S.F. should go down,
10 therefore, they ought to be allowed to get some of it.
11 That certainly isn't a message the incumbents are going
12 to be happy with. But the point of the discussion is
13 here that these things are not locked in stone. They
14 do change with time. And we believe that we need to do
15 this at this time. The only way to get the ball
16 rolling is to give it a push.

17 MR. HOSECK: Thank you. No further
18 questions.

19 MS. WIEST: Commissioners?

20 COMMISSIONER SCHOENFELDER: Mr. Hertz, I have
21 some about the technology you deploy. Is it true that
22 you only have two customers that are wireless?

23 A. No. We have 17 customers that are wireless.

24 COMMISSIONER SCHOENFELDER: I needed to know
25 that. I also need -- but in these two exchanges?

Attachment C

RECEIVED

DEC 14 1998

MICHAEL J. BRADLEY

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY DAKOTA) ORDER DENYING REQUEST
TELECOM, INC. FOR DESIGNATION AS AN) FOR ETC DESIGNATION;
ELIGIBLE TELECOMMUNICATIONS CARRIER) NOTICE OF ENTRY OF
) ORDER
) TC98-111

On June 4, 1998, the South Dakota Public Utilities Commission (Commission) received a filing from Dakota Telecom, Inc. (DTI) requesting designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges in South Dakota.

The Commission electronically transmitted notice of the filing and the intervention deadline to interested individuals and entities on June 4, 1998, with an intervention deadline of June 19, 1998. Petitions to Intervene were received from Fort Randall Telephone Company (Fort Randall) and South Dakota Independent Telephone Coalition, Inc. (SDITC). Fort Randall and SDITC were granted intervention by Order dated August 5, 1998.

On August 7, 1998, the Commission issued an Order for and Notice of Hearing setting the hearing for September 14, 1998, commencing at 1:30 p.m., in Room 412 of the State Capitol, Pierre, South Dakota. The hearing was held as scheduled. The parties filed post-hearing briefs.

At its November 25, 1998, meeting, the Commission considered this matter. The Commission voted to deny DTI's request for designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges (Commissioner Schoenfelder, dissenting).

Based on the evidence of record, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 4, 1998, the Commission received a request from DTI requesting designation as an eligible telecommunications carrier (ETC) for the Centerville and Viborg exchanges in South Dakota.
2. Fort Randall serves the exchanges of Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. Exhibit 3 at 3. As designated by the Federal Communications Commission (FCC), Fort Randall's study area consists of those seven exchanges and the one exchange served by Fort Randall's affiliate Mount Rushmore. Id. at 2.

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with 47 U.S.C. § 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. Thomas Hertz, Chief Executive Officer of Dakota Telecommunications Group and its subsidiary DTI, stated that DTI offers the services supported by the federal universal service fund support mechanisms in the Centerville and Viborg exchanges using its own facilities. Exhibit 2 at 2. DTI provides telecommunications service through the use of fiber optic cable to the neighborhood node and coaxial cable to the premises. *Id.* DTI uses a fixed wireless system for telephone service outside the city limits of Centerville and Viborg. *Id.* at 3.

5. Mr. Hertz stated that the Commission could designate the Viborg and Centerville exchanges as DTI's service area. *Id.* at 4. DTI was not asking the Commission to change Fort Randall's service area. *Tr.* at 53.

6. DTI provides service in the Centerville and Viborg exchanges but offers no service in Fort Randall's Tabor, Tyndall, Wagner, Lake Andes, or Hermosa exchanges or in Mt. Rushmore's exchange. Exhibit 3 at 3.

7. The Commission finds that when designating a second ETC in a rural telephone company's service area, the second ETC must serve the entire service area of the rural telephone company. The Commission finds that this position is consistent with the Federal-State Joint Board on Universal Service's (Joint Board) and the FCC's interpretations of section 214(e).

8. The Joint Board recommended that current study areas of rural telephone companies be retained as the service areas in order to minimize "cream-skimming." FCC 96J-3, CC Docket No. 96-45, *Recommended Decision (In the Matter of Federal-State Joint Board on Universal Service)*, released November 8, 1996, ¶ 172. If service areas were the same as study areas, the Joint Board recognized that competitors must then provide services throughout a rural telephone company's study area. *Id.* The FCC accepted the Joint Board's recommendation on this issue. FCC 97-157, *Report and Order, (In the Matter of Federal-State Joint Board on Universal Service)* released May 8, 1997, ¶ 189. The FCC noted that if required to provide services throughout a rural telephone company's study area, "the competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the ILEC's [incumbent local exchange carrier] ability to provide service throughout the area." *Id.* The FCC found that this would be consistent with its decision "to use a rural ILEC's embedded costs to determine, at least initially, that company's costs of providing universal service because rural telephone companies currently average such costs at the study-area level." *Id.*

9. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that

served by the rural telephone company. Designating a lesser service area for a competitive local exchange company may serve to undercut the incumbent rural telephone company's ability to provide services throughout its service area.

10. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, and 49-31-78 and the federal Telecommunications Act of 1996, specifically 47 U.S.C. § 214(e).

2. Pursuant to SDCL 49-31-78, the Commission "shall designate a common carrier as an eligible telecommunications carrier for a service area designated by the Commission consistent with 47 U.S.C. § 214(e). . . ."

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with section 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. For an area served by a rural telephone company, the Commission may not designate more than one ETC without finding that the additional designation is in the public interest. SDCL 49-31-78.

5. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that served by the rural telephone company. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

It is therefore

ORDERED, that DTI's request for designation as an ETC for the Centerville and Viborg exchanges is denied.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 11th day of December, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 11th day of December, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Melanie Kelso

Date: 12/11/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

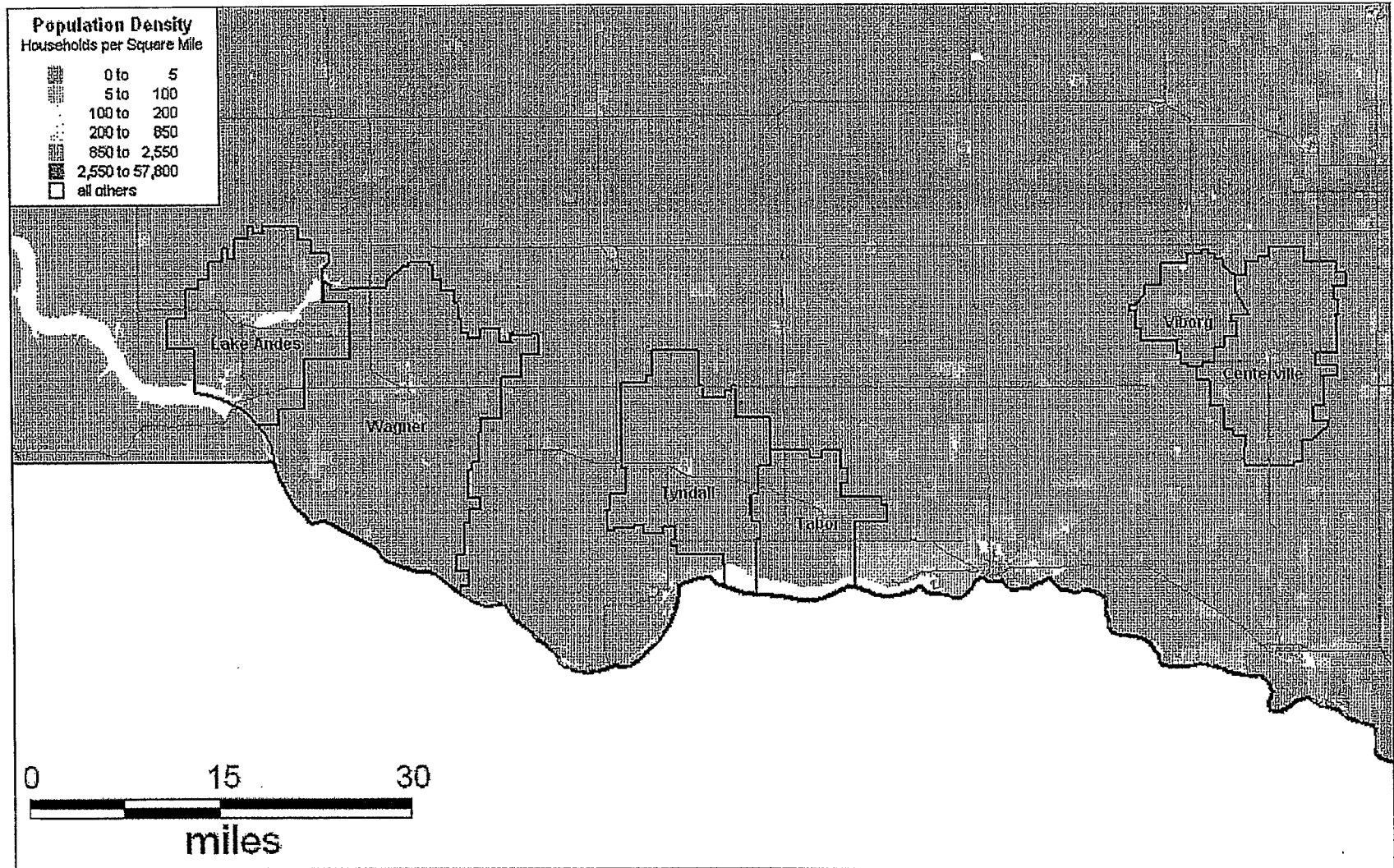
Pam Nelson
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner
dissenting

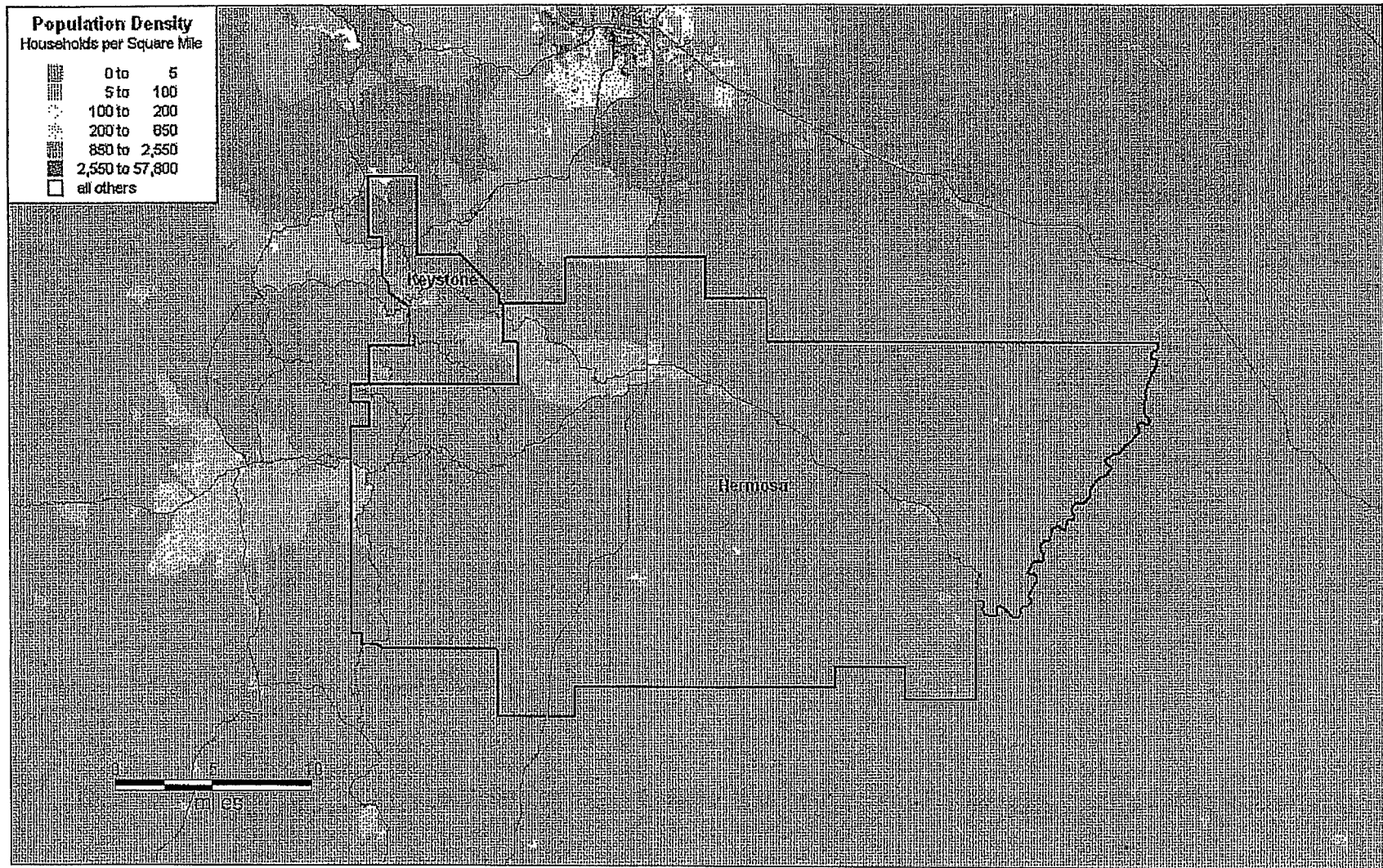
Attachment D

Attachment E

Ft. Randall Wire Centers - 1



Ft. Randall Wire Centers - 2



Attachment F

Federal Communications Commission

§ 54.202

(4) This paragraph does not apply to support distributed pursuant to subpart F of this part.

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term *facilities* means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that

such facilities meet the definition of the term "facilities" under this subpart.

(g) A state commission shall not require a common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support pursuant to subpart B of this part within the service area.

(h) A state commission shall designate a common carrier that meets the requirements of this section as an eligible telecommunications carrier irrespective of the technology used by such carrier.

(i) A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2125, Jan. 13, 1998; 64 FR 62123, Nov. 16, 1999]

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

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

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(h) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

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

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

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long

distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under § 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

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

Federal Communications Commission

§ 54.207

as applicable, by overnight express mail.

[70 FR 29978, May 25, 2005]

EFFECTIVE DATE NOTE: At 70 FR 29978, May 25, 2005, § 54.202 was added. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.203 Designation of eligible telecommunications carriers for unserved areas.

(a) If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(b) Any carrier or carriers ordered to provide such service under this section shall meet the requirements of section 54.201(d) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

§ 54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the re-

maining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

§ 54.207 Service areas.

(a) The term *service area* means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

(b) In the case of a service area served by a rural telephone company, *service area* means such company's "study area" unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.

(c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State

§ 54.209

Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission shall issue a Public Notice of any such petition within fourteen (14) days of its receipt.

(3) The Commission may initiate a proceeding to consider the petition within ninety (90) days of the release date of the Public Notice.

(i) If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(ii) If the Commission does not act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.

(d) The Commission may, on its own motion, initiate a proceeding to consider a definition of a service area served by a rural telephone company that is different from that company's study area. If it proposes such different definition, the Commission shall seek the agreement of the state commission according to this paragraph.

(1) The Commission shall submit a petition to the state commission according to that state commission's procedures. The petition submitted to the relevant state commission shall contain:

(i) The definition proposed by the Commission; and

(ii) The Commission's decision presenting its reasons for adopting the proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission's proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with para-

47 CFR Ch. I (10-1-05 Edition)

graph (b) of this section and section 214(e)(5) of the Act.

(e) The Commission delegates its authority under paragraphs (c) and (d) of this section to the Chief, Wireline Competition Bureau.

[62 FR 32946, June 17, 1997, as amended at 67 FR 13226, Mar. 21, 2002]

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

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

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

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

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

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

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

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

(C) The particular services affected;

(D) The geographic areas affected by the outage;

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

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's

service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in § 54.202(a)(1)(i);

(4) The number of complaints per 1,000 handsets or lines;

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

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2);

(7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

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

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

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

[70 FR 25978, May 25, 2005]

EFFECTIVE DATE NOTE: At 70 FR 25978, May 25, 2005, § 54.209 was added. This text contains information collection and recordkeeping requirements and will not become effective

until approval has been given by the Office of Management and Budget.

Subpart D—Universal Service Support for High Cost Areas

§ 54.301 Local switching support.

(a) *Calculation of local switching support.* (1) Beginning January 1, 1998, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter.

(2) *Local switching support factor.* (i) The local switching support factor shall be defined as the difference between the 1996 weighted interstate DEM factor, calculated pursuant to § 36.125(f) of this chapter, and the 1996 unweighted interstate DEM factor.

(ii) If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

(3) Beginning January 1, 1998, the sum of the unweighted interstate DEM factor, as defined in § 36.125(a)(5) of this chapter, and the local switching support factor shall not exceed 0.85. If the sum of those two factors would exceed 0.85, the local switching support factor shall be reduced to a level that would reduce the sum of the factors to 0.85.

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