

FCC FACT SHEET*

Connect America Fund

Notice of Proposed Rulemaking and Order – WC Docket No. 10-90

Background: Since July 1, 2016, rural telephone companies have been required to charge their customers at least \$18 for basic voice service to avoid losing universal service support, and the Commission previously mandated increases to \$20 on July 1, 2017 and \$22 on July 1, 2018. By contrast, the rate for basic phone service in Washington, DC, in 2016 was \$13.78. The regulation mandating higher prices for basic voice service in rural areas is called the “rate floor.”

After several years of experience with the “rate floor” rule, we now recognize that it imposes high costs on rural consumers without any corresponding federal benefit. A wide array of stakeholders have raised significant and legitimate concerns that the rate floor harms rural consumers and is inconsistent with the direction of section 254(b) of the Communications Act to advance universal service in rural, insular, and high cost areas of the country while ensuring that rates are just, reasonable, and affordable.

What the NPRM Would Do:

- Proposes to eliminate the “rate floor” rule, 47 CFR § 54.318, and the reporting requirements associated with it, 47 CFR § 54.313(h), and seeks comments on those proposals.

What the Order Would Do:

- The Order would freeze the rate floor at \$18 until we take further actions in this proceeding.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 10-90, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

NOTICE OF PROPOSED RULEMAKING AND ORDER*

Adopted:

Released:

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission:

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I. INTRODUCTION

1. The rate for basic phone service in Washington, DC, in 2016 was \$13.78.¹ Since July 1, 2016, rural telephone companies have been required to charge their customers at least \$18 for the same service to avoid losing universal service support, and the Commission previously mandated increases to

* This document has been circulated for tentative consideration by the Commission at its May 2017 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s *ex parte* rules apply and presentations are subject to “permit-but-disclose” *ex parte* rules. *See, e.g.*, 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

¹ *See* Wireline Competition Bureau, 2016 Urban Rate Voice Survey Results, <https://www.fcc.gov/file/3704/download> (Apr. 17, 2017).

\$20 on July 1, 2017 and \$22 on July 1, 2018.² The regulation mandating these higher prices for rural consumers is called the “rate floor,”³ and after several years of experience with it, we now recognize that it imposes higher costs on rural consumers without any corresponding federal benefit in contravention of our statutory obligation to ensure “[q]uality services . . . available at just, reasonable, and affordable rates.”⁴ We accordingly propose to eliminate the rate floor and its accompanying reporting obligation.⁵ Moreover, until we take further actions in this proceeding, we freeze the rate floor at \$18 to prevent any further unjustified rate increases in rural America.⁶

II. BACKGROUND

2. Universal service is a foundational principle of the Communications Act of 1934 (Communications Act) and core to the mission of the Federal Communications Commission.⁷ Section 254(b) of the Communications Act, as amended by the Telecommunications Act of 1996, directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that “[q]uality services shall be available at just, reasonable, and affordable rates”; that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation”; and that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁸ As part of fulfilling the universal service mandate, the Universal Service Fund (USF) high cost program provides support to carriers that offer voice and broadband services in unserved and underserved areas of the country.⁹

3. In 2011, the Commission adopted the *USF/ICC Transformation Order* with the goal of

² See *Connect America Fund, et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7079, para. 80 (2014) (*April 2014 Order*); *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, Public Notice, DA 17-167, 1 (WCB Feb. 14, 2017) (WCB 2017 Public Notice).

³ The rate floor is the national average of local rates plus state regulated fees. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17751, para. 238 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). As noted below, the Commission adopted a phased-in approach to implement the increase in the rate at which carriers lose universal service support. For convenience, we refer to both the rate floor and the phased-in increases as the “rate floor,” herein.

⁴ See 47 U.S.C. § 254(b)(1).

⁵ 47 CFR § 54.318(b) (reducing High Cost Loop Support (HCLS) or frozen support for carriers whose voice rates for residential local service plus state regulated fees are below the specified local urban rate floor on a dollar-for-dollar basis); 47 CFR § 54.313(h) (requiring filing of voice rate data for ILECs receiving HCLS or frozen support).

⁶ Specifically, we are freezing the rate at which carriers lose universal service support at \$18. The Wireline Competition Bureau (WCB) will continue to calculate the national average of local rates plus state regulated fees as required by the *USF/ICC Transformation Order* until the Commission takes further action.

⁷ 47 U.S.C. § 151 (“For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination . . . a rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges . . . there is created a commission to be known as the ‘Federal Communications Commission . . .’”).

⁸ 47 U.S.C. § 254(b).

⁹ 47 CFR Part 54, subpart M.

comprehensively reforming and modernizing the high cost support program to maintain voice service and to extend high cost support to the provision of broadband-capable infrastructure.¹⁰ The Commission determined that its focus should be on “costly-to-serve communities where even with our actions to lower barriers to investment nationwide, private sector economics still do not add up.”¹¹ Pointing to section 254(b), the Commission considered whether consumers in rural areas paid reasonably comparable rates to those in urban areas and found that some incumbent local exchange carriers (ILECs) receiving high cost support were providing lower cost voice services to their customers—but did not attempt to reconcile how differing state laws and policies affected these local rates.¹² In response to this observation, the Commission adopted a national rate floor for carriers receiving high cost support.¹³

4. The rate floor requires that any ILEC recipient of high-cost loop support whose rate for local service plus state regulated fees is below the rate floor shall have its “high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.”¹⁴ The Commission concluded that the rate floor would be phased in over several years: \$10 beginning July 1, 2012, \$14 beginning July 1, 2013, and then the average urban rate, as determined from data in the urban rates survey, beginning July 1, 2014.¹⁵

5. To implement this requirement, the Commission delegated authority to WCB and the Wireless Telecommunications Bureau to determine the rate floor by conducting an annual survey for voice services in urban areas.¹⁶ On March 20, 2014, WCB announced the results of the first voice rate survey, which showed that the average local end-user rate plus state regulated fees of the surveyed ILECs in urban areas was \$20.46.¹⁷ Soon thereafter, the Commission waived section 54.318(b) in order to adopt a phased-in approach to raising the rate floor by \$2/month increments every year until the phase-in rate reached the figure calculated by the urban rate survey.¹⁸ Thus, although using data from the most recent survey would result in setting a rate floor at \$22.49, the minimum rate ILECs are currently required to charge for local telephone services to avoid losing universal service support is \$18.¹⁹

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1

¹¹ *Id.* at 17668, para. 5.

¹² *Id.* at 17750, para. 235.

¹³ *Id.* at 17751, paras. 237-38.

¹⁴ 47 CFR § 54.318(b). Support reductions based on the rate floor also offset Connect America Phase I frozen support to the extent that the recipient’s Phase I frozen support replaced high-cost loop support and high-cost model support. See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, 27 FCC Rcd 605, 606, para. 3 (WCB & WTB 2012) (*USF/ICC Clarification Order*).

¹⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 239.

¹⁶ *Id.* at 17694, 17755, paras. 85, 246.

¹⁷ *Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time To Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 2967 (WCB 2014).

¹⁸ See *April 2014 Order*, 29 FCC Rcd at 7078-79, paras. 79-80. WCB dismissed petitions for reconsideration related to the rate floor discussion in the *April 2014 Order* filed by National Exchange Carrier Association, NTCA — The Rural Broadband Association, the Eastern Rural Telecom Association, and WTA — Advocates for Rural Broadband, and the United States Telecom Association. See *Connect America Fund, et al.*, Order, 29 FCC Rcd 16152 (WCB 2014).

¹⁹ WCB 2017 Public Notice at 1.

III. DISCUSSION

6. We propose to eliminate the rate floor and its accompanying reporting obligations.²⁰ We do so for several reasons.

7. *First*, a wide array of stakeholders, from the AARP to the National Tribal Telecommunications Association, from the National Consumer Law Center to small, medium, and large rural telephone companies, among others, have raised significant and legitimate concerns that the rate floor is inconsistent with the direction of section 254(b) of the Communications Act to advance universal service in rural, insular, and high cost areas of the country while ensuring that rates are just, reasonable, and affordable.²¹ These parties have argued that the rule makes basic voice service in rural areas less affordable, does not make voice service available at reasonably comparable rates to urban areas, and does not further the Commission's objective to "minimize the universal service contribution burden on consumers and businesses."²²

8. In that vein, no one disputes that the rate floor has increased rates for voice service in rural areas, despite the Commission's goal to "preserve and advance universal availability of voice service."²³ Some parties have asserted that price increases negatively affect rural consumers and "could lead to some customers losing affordable access to basic service entirely."²⁴ Others have noted that the increases caused by the rate floor rule could have a particularly deleterious effect on older Americans on fixed incomes²⁵ and customers in Tribal areas.²⁶ We seek comment on these arguments and on our belief that eliminating the rate floor would address them.

9. *Second*, the statutory goals of affordability and reasonable comparability say nothing about a single, national rate floor.²⁷ Some parties have argued that incomes are often lower in rural areas and the rate floor incorrectly "assumes that what's affordable in our country's largest cities must be

²⁰ See 47 CFR §§ 54.313(h), 54.318.

²¹ See, e.g., Comments of the Concerned Rural ILECs, WC Docket No. 10-90, et al., at 14 (Aug. 8, 2014) (Concerned Rural ILECs Comments); Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O'Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Apr. 15, 2014) (Public Knowledge, et al. Letter); Letter from David Certner, Legislative Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 15, 2014) (AARP Letter); Comments of the National Tribal Telecommunications Association, GN Docket No. 14-25, at 6 (Mar. 31, 2014) (NTTA Comments); Reply Comments by NTCA – The Rural Broadband Association, et al., WC Docket No. 10-90, at 7 (Mar. 31, 2014) (NTCA Reply Comments); Letter From David Dengel, CEO, Copper Valley Telephone Cooperative, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1 (filed Apr. 16, 2016) (Copper Valley Letter); Reply Comments of Frontier Communications, WC Docket No. 10-90, at 3 (Mar. 31, 2014) (Frontier Reply Comments); Reply Comments of ITTA and USTelecom, WC Docket No. 10-90, at 5-6 (Mar. 31, 2014) (ITTA and USTelecom Reply Comments).

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57.

²³ *Id.* at 17680, para. 49. See also 47 U.S.C. § 254(b).

²⁴ Public Knowledge, et al. Letter at 1. See also Concerned Rural ILECs Comments at 14 ("regular annual increases will continue to have negative impacts on rural consumers, many of which already struggle with the cost of basic local phone service").

²⁵ AARP Letter at 2.

²⁶ NTTA Comments at 6.

²⁷ See 47 U.S.C. § 254(b)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 55 (adopting reasonable comparability as a performance goal).

affordable in our small towns.”²⁸ Others have suggested that the Commission should consider “whether more localized survey data would better serve the goal of ensuring reasonably comparable service at reasonably comparable rates, and what flexibility the states need to serve users under the particular circumstances of each state.”²⁹ We seek comment on these views.

10. Notably, the rate floor does not account for the fact that states—and not the FCC—have historically regulated rates for local telephone service.³⁰ Indeed, the Communications Act makes clear that “nothing in this [Act] shall be construed to apply, or to give the Commission jurisdiction,” over rates for “telephone exchange service,” i.e., local service.³¹ States have historically relied on a variety of regulating methods (including the use of state universal service funds) to ensure just and reasonable rates for that service—and those methods already by law must not “rely on or burden Federal universal service support mechanisms.”³² We seek comment on these arguments and on our belief that eliminating the rate floor would properly return to States the ability to ensure that local rates address local circumstances.

11. *Third*, the rate floor appears to be a particularly ineffective means to “minimize the universal service contribution burden on consumers and businesses.”³³ After all, the intended result of the rate floor is higher rates in rural America without *any* corresponding decrease in universal service contributions. Accordingly, one party has argued that “an increase in the local rate floor does not impact payment into the universal service fund or the budget of the fund, but it does affect consumer choice, penalizes incumbent wireline providers and ultimately broadband deployment.”³⁴ Furthermore, we note that the Commission last year adopted a budget control mechanism for carriers within the legacy rate-of-return system, including those receiving high-cost loop support.³⁵ As such, any funding reductions from the rate floor are generally redistributed to other carriers, not returned to taxpayers as contributions relief. We seek comment on these arguments and on our belief that the rate floor does little to minimize the contribution burden on consumers and businesses.

12. *Fourth*, the rate floor imposes ongoing administrative and compliance costs on rural telephone companies, state commissions, the Commission, the National Exchange Carrier Association, and the Universal Service Administrative Company that appear to serve little purpose. Each year, federal staff must calculate a new rate floor, which rural telephone companies must then seek permission from their state commissions to implement, with oversight by several entities to ensure that rural rates are sufficiently high and universal service payments are appropriately withheld. ILECs subject to the rate floor must complete yet another form specifying each of the carrier’s rates that fall below the rate floor and the number of lines for each rate specified.³⁶ Stakeholders have previously detailed impediments to

²⁸ Copper Valley Letter at 2.

²⁹ Public Knowledge, et al. Letter at 2.

³⁰ See Reply Comments of Hot Springs Telephone Company and Ronan Telephone Company, WC Docket No. 10-90, 1-2 (Mar. 31, 2014); see also 47 U.S.C. § 152(b).

³¹ 47 U.S.C. § 221(b).

³² 47 U.S.C. § 254(f).

³³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57.

³⁴ Frontier Reply Comments at 2-3 (Mar. 31, 2014).

³⁵ *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3144–45, paras. 150–53 (2016).

³⁶ See 47 CFR § 54.313(h); Instructions for Completing 54.313 / 54.422 Data Collection Form at 7, and Rate Floor Data Collection Report and Certification, available at <http://usac.org/hc/tools/forms.aspx>.

implementation in a number of states³⁷ and have explained that carriers require time after a rate floor increase to pursue and implement rate increases.³⁸ We seek comment on these arguments and on our belief that eliminating the rate floor and the accompanying reporting obligations would reduce the complexity of the high-cost program and minimize the associated administrative and compliance costs that have stemmed from implementation of the rate floor.

13. More generally, we seek comment on the costs and benefits of the rate floor, and specifically for proponents of the rate floor a cost-benefit analysis justifying its continued imposition. We also seek comment on the Tenth Circuit's suggestion that "the FCC 'remains obligated to create some inducement . . . for the states to assist in implementing the goals of universal service,' i.e., in this case to ensure that rural rates are not artificially low."³⁹ Does any part of the Communications Act suggest that an affirmative aspect of federal communications policy is to increase rates for telephone service in rural America?

IV. ORDER

14. To allow a fulsome discussion of our proposal to eliminate the rate floor without risking further harm to rural consumers, we modify on our own motion the waiver of the rate floor that we previously issued to freeze the monthly rate floor at \$18. Pursuant to the modified waiver, carriers will not be subject to any support reductions for any rate that is at least \$18.⁴⁰

15. The Commission's rules may be waived for good cause shown.⁴¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.⁴³ Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁴⁴

16. Without our action today, the rate floor would increase to \$20 on July 1, 2017.⁴⁵ If the rate floor increases, carriers would likely increase some rates to consumers as well, and such rates once increased are unlikely to be reduced in the future, even if we eliminate the rule. As illustrated throughout the NPRM above, we believe that the rate floor rule does not serve the purposes for which it was intended and indeed does not serve any legitimate statutory purpose, and given the wide array of stakeholders who have expressed opposition to the rule in its current form,⁴⁶ we expect the record in response to the NPRM to strongly support eliminating the rule entirely. Although ultimately our decision will be based upon the record built in response to the NPRM, we believe it is likely that we will have a strong basis to eliminate

³⁷ ERTA, ITTA, NECA, NTCA, USTelecom and WTA Petition for Extension of Time at 3 n. 12, WC Docket No. 10-90 (Mar. 11, 2014).

³⁸ ITTA and USTelecom Reply Comments at 4-5.

³⁹ See *In re FCC 11-161*, 753 F.3d at 1068 (quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001)).

⁴⁰ See *April 2014 Order*, 29 FCC Rcd at 7079, para. 80.

⁴¹ 47 CFR § 1.3.

⁴² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴⁴ *Northeast Cellular*, 897 F.2d at 1166.

⁴⁵ *April 2014 Order*, 29 FCC Rcd at 7079, para. 80.

⁴⁶ See *supra* para. **Error! Reference source not found.**

the rate floor rule later this year.⁴⁷ In these circumstances, allowing the rate floor to rise to \$20 would be unduly harmful. Our substantial concerns about the hardship on rural consumers of allowing the rate floor to continue to rise during the pendency of our consideration of whether to eliminate the rate floor constitute special circumstances justifying the modified waiver, and support a finding that this modified waiver is in the public interest. Accordingly, we find that good cause exists to waive application of section 54.318(b) to the extent reported rates are at least \$18.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

17. This document proposes modified information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Initial Regulatory Flexibility Analysis (IRFA) in Appendix B.

B. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the Notice of Proposed Rulemaking, and must have a separate and distinct heading designating them as responses to the IRFA. The Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking and Order including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Ex Parte Presentations

19. *Permit-But-Disclose*. The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.⁴⁸ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule

⁴⁷ Cf. *Misuse of Internet Protocol (IP) Relay Service*, Order, 29 FCC Rcd 4807, 4810-11, paras. 6-7 (CGB 2014) (waiving, *sua sponte*, for one year the requirement that IP Relay service providers handle 911 calls initiated by callers who have been registered but not verified, pending Commission consideration of repeal of the rule); *Misuse of Internet Protocol (IP) Relay Service*, Order, 30 FCC Rcd 6202, 6204-05, paras. 5-6 (CGB 2015) (extending the waiver “until such time as the Commission resolves whether to adopt a permanent prohibition”).

⁴⁸ 47 CFR §§ 1.1200 *et seq.*

1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

D. Filing Requirements

20. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁴⁹ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵⁰

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

21. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

22. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

23. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division,

⁴⁹ 47 CFR §§ 1.415, 1.419.

⁵⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Alexander.Minard@fcc.gov, (202) 418-7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400.

VI. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 201, 219, 220 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 219, 220, 254, this Notice of Proposed Rulemaking and Order IS ADOPTED.

25. IT IS FURTHER ORDERED, that the waiver of section 54.318(b) of the Commission's rules issued in the *April 2014 Order* is MODIFIED to the extent described herein.

26. IT IS FURTHER ORDERED, that this Order IS EFFECTIVE upon release pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order and Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

The Federal Communications Commission proposes to amend Part 54 of Title 47 of the U.S. Code of Federal Regulations as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

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

2. Amend § 54.313 by removing and reserving paragraph (h).

3. Section § 54.318 is removed and reserved.

APPENDIX B**Initial Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ we have prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. We will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the NPRM, we propose to eliminate two rules. Specifically, we propose to eliminate section 54.313(h) and 54.318 of the Commission's rules. We are seeking comment on whether we should eliminate section 54.318, the rate floor rule, because it may not advance Section 254 of the Commission's Act nor the goals of the Commission's universal service reforms. Section 54.313(h) requires carriers to report on the number lines it serves with rates that fall below the rate floor. If we eliminate the rate floor rule, as proposed, there may be no need to for carriers report on rates that fall below the rate floor.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this NPRM and Order is contained in sections 201, 219, 220 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 219, 220 and 254

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. (SBA)⁶ A small-

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 5 U.S.C. § 603(b)(3).

⁵ See 5 U.S.C. § 601(6).

⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

5. *Small Businesses.* A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.⁸ Affected small entities as defined by industry are as follows.

6. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁹ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹⁰ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹¹ Consequently, we estimate that most providers of incumbent local exchange service are small businesses that may be affected by rules proposed pursuant to the NPRM.

7. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹² The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹³ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. This NPRM proposes changes to the Commission’s rules, which, if adopted, will result in reduced information collection and reporting requirements for incumbent LECs.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

9. In this NPRM, we seek public comment on eliminating sections 54.313(h) and 54.318 of the Commission’s rules. Because our actions here result in reduced regulatory burdens, we conclude that the proposed rule changes will not result in any additional recordkeeping requirements for small entities. Nevertheless, to the extent our proposed rules impact the operations of small businesses, we reiterate that such changes will reduce, not increase, burdens of existing recordkeeping requirements.

⁷ See 15 U.S.C. § 632.

⁸ See SBA, Office of Advocacy, “Frequently Asked Questions,” available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (last visited Mar. 1, 2017).

⁹ See 13 CFR § 121.201, NAICS code 517110.

¹⁰ See *Trends in Telephone Service* at Table 5.3.

¹¹ See *id.*

¹² 5 U.S.C. § 601(3).

¹³ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

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

10. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁴

11. The proposed changes to the Commission’s rules in this NPRM would result in reduced regulatory burdens for incumbent LECs by eliminating compliance and reporting requirements. Small providers would no longer be subject to a reduction in their universal service support if they charge low rates for local voice services to their customers, and the burden of reporting those rates would be eliminated.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

12. None.

¹⁴ 5 U.S.C. § 603(c)(1)–(c)(4).