

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Access Charge Reform	)	CC Docket No. 96-262

**COMMENTS OF QWEST CORPORATION**

Qwest Corporation (“Qwest”) hereby submits its Comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice* seeking comment on the remand of the \$650 million interstate access support amount established in the *CALLS Order*.<sup>1</sup> As discussed below, the \$650 million support mechanism is insufficient to replace the support that was implicit in interstate access charges prior to the implementation of the *CALLS Order* and therefore fails to comply with the requirement that the Commission replace implicit

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<sup>1</sup> See Common Carrier Bureau Seeks Comment on Remand of \$650 Million Support Amount Under Interstate Access Support Mechanism for Price Cap Carriers, Pleading Cycle Established, *Public Notice*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, DA 01-2817 (Dec. 4, 2001); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, *Sixth Report and Order, Low-Volume Long-Distance Users*, CC Docket No. 99-249, *Report and Order, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Eleventh Report and Order*, 15 FCC Rcd. 12962 (“*CALLS Order*”), *aff’d in part, rev’d in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001) (“*TOPUC II*”), *pet. for cert. filed* (Dec. 10, 2001).

subsidies with universal service support that is “specific, predictable and sufficient.”<sup>2</sup> For the reasons discussed below, the Commission should increase the support mechanism to at least \$950 million.

## I. INTRODUCTION AND SUMMARY

On September 10, 2001, the United States Court of Appeals for the Fifth Circuit remanded the *CALLS Order* to the Commission for further analysis and explanation regarding the \$650 million support amount.<sup>3</sup> The Court found that the *CALLS Order* failed to explain adequately the basis for selecting the \$650 million amount proposed in the CALLS plan, rather than the amounts supported by other cost studies and analyses submitted in the CALLS proceeding.<sup>4</sup> Among the alternative analyses submitted was one by U S WEST, a predecessor of Qwest, showing that the Commission’s own Synthesis Model justified a support mechanism of at least \$1.2 billion. In the *CALLS Order*, the Commission rejected U S WEST’s analysis solely on the basis that it failed to account for the full amount of revenue that would be recovered through the multi-line business subscriber line charge (“SLC”).<sup>5</sup>

Instead, the Commission adopted the \$650 million amount proposed in the CALLS plan, which was the “product of negotiation” among the proponents of the CALLS plan.<sup>6</sup> While the Commission noted AT&T’s claim that this amount was consistent with AT&T’s estimate of

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<sup>2</sup> 47 U.S.C. § 254(b)(5). While Qwest’s Comments focus on the insufficiency of the support mechanism, Qwest continues to believe that the mechanism also fails to provide specific and predictable support, as required by Section 254.

<sup>3</sup> See *TOPUC II*, 265 F.3d at 327-28.

<sup>4</sup> *Id.* at 328.

<sup>5</sup> *CALLS Order*, 15 FCC Rcd. at 13047-48 ¶ 204.

<sup>6</sup> *Id.* at 13044-45 ¶ 198.

implicit support based on forward-looking costs,<sup>7</sup> the Commission did not specifically rely on this analysis in adopting the \$650 million amount.<sup>8</sup> Indeed, the Commission accepted the \$650 million fund amount proposed by the CALLS proponents primarily because this amount fell within the range of the estimates that had been submitted in the proceeding and was supported by the CALLS proponents, which included both net payers and net recipients of universal service support.<sup>9</sup> The Fifth Circuit concluded, however, that, by apparently relying exclusively on these factors, the Commission “failed to exercise sufficiently independent judgment in establishing the \$650 million amount.”<sup>10</sup> On remand, the Fifth Circuit requires the Commission to provide further analysis and explanation regarding the size of the support mechanism. In particular, the Commission must explain why it finds a particular cost study or cost analysis more persuasive than others submitted in the record.<sup>11</sup>

In fact, the record shows that the current \$650 million support mechanism is not sufficient to replace the universal service support that was implicit in interstate access charges prior to the implementation of the CALLS plan. Indeed, the Commission’s own Synthesis Model, which the Commission uses to determine universal service high cost support, indicates that the support mechanism should be at least \$950 million.<sup>12</sup>

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<sup>7</sup> *Id.* at 13045 ¶ 200.

<sup>8</sup> *Id.* at 13046-50 ¶¶ 201-205.

<sup>9</sup> *Id.* at 13046-48 ¶¶ 202, 204.

<sup>10</sup> *TOPUC II*, 265 F.3d at 328.

<sup>11</sup> *Id.*

<sup>12</sup> As discussed below, this figure assumes that the residential and single-line business SLC is capped at \$7.00 and the multi-line business SLC is capped at \$9.20, and therefore addresses the Commission’s sole criticism of the cost analysis submitted by U S WEST prior to the *CALLS Order*.

II. THE COMMISSION SHOULD SIGNIFICANTLY INCREASE THE LEVEL OF INTERSTATE UNIVERSAL SERVICE SUPPORT ESTABLISHED IN THE *CALLS ORDER*

A. The \$650 Million Support Mechanism Adopted In The *CALLS Order* Significantly Understates The Amount Of Universal Service Support That Is Needed

Section 254 of the Communications Act of 1934, as amended, requires that the Commission eliminate implicit subsidies and replace those subsidies with universal service support that is “specific, predictable and sufficient.”<sup>13</sup> Therefore, one of the primary goals of access charge reform, as implemented in the *CALLS Order*, was to remove universal service support that was implicit in interstate access charges and replace that support with explicit universal service funding. The Commission acknowledged this fact in the *CALLS Order*, and concluded that \$650 million was a reasonable estimate of the universal service support in interstate access charges at the time.<sup>14</sup>

Nevertheless, setting aside the fact that the \$650 million support mechanism was supported by the *CALLS* proponents and fell within the range of estimates submitted in the proceeding – which the Fifth Circuit found are not sufficient grounds for adopting this amount – there is scant empirical support for the \$650 million figure. The *CALLS* proponents have acknowledged that the \$650 million figure resulted from negotiations between the various parties in the *CALLS* coalition, rather than from a methodology that calculated the amount of universal service needed or the amount of implicit support in interstate access charges.<sup>15</sup> The *CALLS*

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<sup>13</sup> 47 U.S.C. § 254(b)(5).

<sup>14</sup> *CALLS Order*, 15 FCC Rcd. at 13046 ¶ 202.

<sup>15</sup> Further Reply Comments of the Coalition for Affordable Local and Long Distance Services (“*CALLS*”) (filed April 17, 2000) (“*CALLS* Further Reply Comments”) at 25 (“[T]he proposed amount of rural and high cost universal service funding was arrived at through negotiation, bounded by estimates in the record of the universal service proceeding, rather than through a proxy model methodology . . .”).

*Order* arbitrarily fixed the amount of the support mechanism at \$650 million and then worked backwards to allocate the available funding among the participants – a process that did not produce sufficient universal service support. This lack of sufficient support has a particularly harmful impact in Qwest’s territory, which has a disproportionate share of the highest-cost, lowest-density areas of the country.

As noted by the Fifth Circuit, the *CALLS Order* does not explain how the \$650 million figure was calculated or how it is sufficient to meet the requirements of Section 254. This is not surprising in that the *CALLS* plan itself did not provide this information. Indeed, AT&T provided the only calculations in support of the \$650 million support mechanism,<sup>16</sup> but these calculations were not endorsed by the other *CALLS* proponents.<sup>17</sup> Given the lack of detail in AT&T’s explanation of its analysis, it is impossible for Qwest, as an interested party, completely to replicate and verify AT&T’s results, and it is difficult for Qwest even to address the AT&T study with any specificity. Given the lack of detail provided by AT&T, it is also unclear how the Commission can independently verify the validity of AT&T’s results and thereby “exercise its expert judgment”<sup>18</sup> in sizing the interstate support mechanism, as is required by the Fifth Circuit decision and the rules of administrative procedure.

In any case, while AT&T utilized the Commission’s Synthesis Model to estimate forward-looking loop and port costs, AT&T inappropriately combines high-cost, low-density areas with urban and suburban areas in a way that dramatically underestimates the amount of universal service support needed in very high-cost, low-density areas. This problem results

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<sup>16</sup> See Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan, Declaration of Joel E. Lubin, AT&T (filed Aug. 20, 1999) (“Lubin Declaration”).

<sup>17</sup> *CALLS* Further Reply Comments at 26.

<sup>18</sup> See Letter from John T. Nakahata, Counsel to *CALLS*, to Magalie Roman Salas, FCC, at 2 (Dec. 19, 2001) (“December 2001 Nakahata Letter”).

primarily from AT&T's assignment of a roughly equal number of lines to each of the "low-cost," "medium-cost," and "high-cost" zones it created for each study area.<sup>19</sup> Particularly in more rural study areas, a large majority of the subscribers in the study area may live in the few low-cost urban areas of the state. For such states, AT&T's assignment of an equal number of lines to each zone means that the majority of the lines in the "medium-cost" zone may actually be relatively low-cost lines, and the "high-cost" zone may contain mostly medium-cost lines from suburban areas of the state and possibly even some low-cost lines from urban areas.<sup>20</sup> Such averaging is not appropriate,<sup>21</sup> because it masks the cost of serving truly high-cost areas by averaging them with significantly lower-cost areas. As a result, it would be unreasonable for the Commission to rely on AT&T's analysis as a basis to reconfirm the \$650 million fund on remand.

The Commission also cannot justify its selection of the \$650 million figure simply because it prefers a relatively small federal fund. In reviewing the Commission's universal service high-cost decisions, the Court of Appeals for the Tenth Circuit held that the FCC may exercise its discretion to balance the principles in Section 254(b)(5) – including the creation of specific, predictable and sufficient federal mechanisms to preserve universal service<sup>22</sup> – against one another when they conflict, but may not depart from one of these principles altogether to achieve some other goal.<sup>23</sup> In particular, the Tenth Circuit expressed skepticism regarding the

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<sup>19</sup> Lubin Declaration ¶ 2.

<sup>20</sup> This is illustrated by Qwest's attempt to reproduce AT&T's methodology in Colorado. While the average cost of the "high-cost" zone was \$29.34, the average cost of the individual wire centers in that zone ranged from \$21.05 to \$412.69. Moreover, nearly half the wire centers had costs that were more than twice as high as the average cost in that zone.

<sup>21</sup> In other contexts, such as in establishing pricing zones for unbundled network elements, carriers have used standard deviation techniques to avoid such dramatic averaging. AT&T did not do so in its justification of the \$650 million fund size.

<sup>22</sup> 47 U.S.C. § 254(b)(5).

<sup>23</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10<sup>th</sup> Cir. 2001).

suggestion that limiting federal expenditures on universal service was itself a valid competing principle to the statutory principles in Section 254(b). The court found that while Section 254(b)(1) arguably encompasses the principle that long-distance services, as well as universal services, should be kept affordable, this at most means that the principles of universal service have to be balanced against the burden on long distance service of providing contributions toward universal service.<sup>24</sup> Thus, the Commission may not disregard its responsibility to ensure that the support mechanism is sufficient to keep rates in high-cost areas, as required by Section 254(b)(5), in an effort to minimize the size of the interstate universal service fund.

B. Qwest's Analysis Using The Synthesis Model Indicates That The Support Mechanism Should Be Greater Than \$950 Million

Qwest has estimated the amount of the implicit support in interstate access charges using the Commission's Synthesis Model. This analysis demonstrates that the support mechanism should be more than \$950 million, based on the latest publicly-available data. Qwest believes that this estimate significantly understates the actual fund size needed, given the Synthesis Model's tendency to underestimate the cost of providing service in high-cost areas.<sup>25</sup> As a result, the Commission should increase the fund size to no less than \$950 million in order to ensure the sufficiency of the support mechanism.

In undertaking its analysis, Qwest used the density zone results of the Synthesis Model that were posted on the Commission's web site on January 20, 2000 and which are based on the final input values used to determine universal service high-cost support for non-rural local

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<sup>24</sup> *Id.* at 1200.

<sup>25</sup> As Qwest has indicated in various proceedings, Qwest believes that the Synthesis Model, particularly when using the national input values adopted by the Commission, significantly understates the costs of providing service in Qwest's territory. Qwest's use of the Synthesis Model in this proceeding should not be interpreted as a belief by Qwest that the model, in its current form, accurately estimates such costs.

exchange carriers (“LECs”).<sup>26</sup> Using these runs, Qwest generated density group reports for each study area served by a price cap LEC.<sup>27</sup> Qwest used only the two least-populated density zones in the analysis: the 0 to 5 lines per square mile density group and the 6 to 100 lines per square mile density group.<sup>28</sup> The cost per line for these density groups is very high and greatly exceeds the 135% of national average cost benchmark used in the federal forward-looking high-cost mechanism for non-rural carriers. The forward-looking interstate cost per line (*i.e.*, 24 percent of the cost per line calculated by the Synthesis Model)<sup>29</sup> in these two density groups was then compared to a \$7.00 SLC rate for residential and single line business lines and a \$9.20 SLC rate for multi-line business lines. By using the \$9.20 SLC rate for multi-line businesses, Qwest has addressed the Commission’s only criticism of Qwest’s analysis in the *CALLS Order*. Assuming that costs in excess of the respective \$7.00 and \$9.20 SLC rates represent an amount that should be funded by an explicit federal universal service mechanism,<sup>30</sup> the resulting universal service fund amount is approximately \$978 million using the latest publicly-available data.<sup>31</sup>

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<sup>26</sup> *In the Matter of Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report and Order*, 14 FCC Rcd. 20156 (1999), *aff’d sub nom., Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

<sup>27</sup> Because the Commission’s web site included results only for the study areas served by non-rural carriers, Qwest separately ran the model for the rural carriers it could identify as price cap LECs.

<sup>28</sup> These two lowest-density zones only account for interstate SLC costs that average from \$9.42 to \$70.69 per line on a company-wide basis. Thus, to identify the universal service support needed to cover all of the lines above the respective \$7.00 and \$9.20 SLC rates, a portion of the third lowest-density zone (*i.e.*, 100 to 200 lines per square mile) would have to be included. Presumably, the six higher-density zones would result in no additional support because the average cost in those zones is less than the relevant SLC caps.

<sup>29</sup> Taking 24 percent of the total cost generated by the model provides an approximation of the interstate portion of the cost of the subscriber line, including the port.

<sup>30</sup> The *CALLS Order* bases its calculation of universal service support on a \$7.00 SLC rate for residential and single-line business lines, but the maximum residential and single-line business SLC cap permitted by the *Order* is \$6.50. Moreover, there is no guarantee that residential and single-line business SLC rates will ever be allowed to exceed \$5.00, given that the Commission

Qwest used the January 20, 2000 model runs because they are the most recent publicly-available runs with sufficient disaggregation for Qwest's analysis. Because the runs are publicly available, other parties can easily replicate Qwest's analysis. In addition, Qwest does not object to the Commission's adoption of Qwest's proposed methodology using the latest, non-public Synthesis Model results.<sup>32</sup> Qwest expects the use of the current results from the Synthesis Model to reduce the estimate of the fund size to a small extent, but certainly not to alter the conclusion that the current \$650 million support mechanism is insufficient.

As discussed above, Qwest believes that these numbers generated by the Synthesis Model underestimate the appropriate size of the fund, given the Synthesis Model's tendency to understate the cost of providing service in high-cost areas. This view is supported by other estimates of the appropriate fund size on the record leading up to the *CALLS Order*. For example, USTA estimated that interstate common line rates contained \$3.9 billion in implicit universal service support, and the Commission's own Chief Economist at the time estimated that interstate access contained \$1.9 billion in implicit universal service support, assuming that

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must approve any increase in the SLC cap beyond that amount. *CALLS Order*, 15 FCC Rcd. at 12994 ¶ 83. In fact, some parties have already opposed any increase in SLC rates above \$5.00. If these SLC rates remain at \$5.00, the Synthesis Model indicates that universal service support required would need to be increased significantly.

<sup>31</sup> This amount differs from the \$1.2 billion fund size computed by U S WEST in 2000, because it uses the \$9.20 SLC rates and attempts to include rural price cap LECs, which were not included in the 2000 analysis.

<sup>32</sup> As noted above, Qwest's analysis is based on runs of the Synthesis Model on a density zone, rather than on a wire center, basis. This approach is appropriate because the density zone runs properly account for the fact that many rural wire centers consist of a small more densely-populated area, surrounded by less populated areas that are significantly more costly to serve. Running the model in the wire center mode tends to understate the cost of serving those higher-cost areas, by averaging the higher-cost lines with the more numerous low-cost lines in the wire center. Nevertheless, even the wire center runs of the Synthesis Model show that the current \$650 million fund is inadequate, generating a fund size of approximately \$765 million.

residential SLCs were capped at \$6.50 per month.<sup>33</sup> Though the *CALLS Order* did not specifically address the merits of these estimates, the Fifth Circuit's decision – as well as reasoned, independent decision making – requires that the Commission do so on remand.

### III. CONCLUSION

For the reasons discussed above, the current \$650 million is insufficient and fails to comply with the requirements of Section 254 of the Act. Based on the record evidence, the Commission should increase the size of the support mechanism adopted in the *CALLS Order* to at least \$950 million.

Respectfully submitted,

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January 22, 2002

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<sup>33</sup> *CALLS Order*, 15 FCC Rcd. at 13045 ¶ 199.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be filed with the FCC via its Electronic Comment Filing System, three paper copies to be served on Ms. Sheryl Todd, Accounting Policy Division, at 445 12<sup>th</sup> Street, S.W., Room 5-A422, Washington, DC 20554,\* and a copy served, via e-mail, on the FCC's duplicating contractor, Qualex International at qualexint@aol.com.

Richard Grozier  
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January 22, 2002

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