

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Federal-State Joint Board on  
Universal Service

CC Docket No. 96-45

**REPLY COMMENTS OF VERIZON<sup>1</sup>**

In the Telecommunications Act of 1996, Congress required the Commission to develop mechanisms to “preserve” universal service in light of the increased competition and industry changes that would result from that legislation. The record shows that the current non-rural high cost mechanism has complemented the states’ efforts to preserve the “reasonable comparability” of rural and urban rates that existed when the Act was passed and that this has helped telephone penetration rates to increase. To support the equally important goal of “affordability,” the high cost fund for non-rural carriers should maintain the 135 percent benchmark, because it produces a reasonably sized fund and provides the amount of support necessary to maintain the ability of high cost states to maintain reasonably comparable rates. As Verizon and others have shown, the Commission should retain its current framework for the non-rural high cost fund and it should condition receipt of federal support on a state’s certification that it will use that support to maintain reasonably comparable urban and rural rates.

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<sup>1</sup> The Verizon telephone companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

## **I. The Act Does Not Require The State Commissions To Re-Price And Restructure Local Telephone Rates.**

Some commenters see this proceeding as an opportunity to require the state regulatory commissions to raise local telephone rates, reduce intrastate access charges, rebalance business and residential rates, and establish new state universal service funds. Qwest wants the Commission to condition a state's receipt of universal service funds not just on its adoption of comparable rates, but also on its adoption of a state universal service fund and its elimination of implicit subsidies from intrastate access charges. Qwest, 21-23. SBC argues (at 17) that the Telecommunications Act of 1996 gives the Commission the authority to establish general pricing standards for intrastate services. Similarly, BellSouth argues (at 9) that the Commission should condition the receipt of federal support upon a state commission making regulatory changes in intrastate service rates, including equalizing intrastate and interstate access rates.

While states should remain free to rebalance rates if it is in the public interest, proposals for a Commission requirement are inconsistent with both the intent of the Telecommunications Act of 1996 and with the statutory limits on the Commission's ratemaking authority. Section 2(b) states that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service . . . ." 47 U.S.C. § 152(b). The Supreme Court has found that this section of the Act "provides its own rule of statutory construction" and that it bars the Commission from exercising such jurisdiction unless another "unambiguous" provision of the Act overrides this general prohibition. *Louisiana Public Service Commission v. FCC*, 476 US 355, 377 (1986); *see also AT&T et. al v. Iowa Utils. Bd.*, 525 US 366, 379-380 (1999).

If Congress had intended to override this prohibition in Section 254, it would have had to do so explicitly. Instead, it did just the opposite. Section 254(a) requires the Commission and the Joint Board to complete a proceeding to implement Section 254, but it does not require the States to do anything – it only provides that a State “may” adopt regulations that are not inconsistent with the Commission’s universal service rules. *See* 47 U.S.C. § 254(f). Congress made it clear that “[s]tate authority with respect to universal service is specifically preserved under new section 254(f).” Joint Statement, S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess., 132 (1996). The 5<sup>th</sup> Circuit Court of Appeals found that section 254 does not give the Commission authority over intrastate services or over the support of universal service through intrastate revenues. *See Texas Office of Public Utility Counsel et. al. v. FCC*, 183 F.3d 393, 409 (5<sup>th</sup> Cir. 1999). Consequently, the Commission has no authority to require the States to make changes in rates for local telephone service or intrastate access service or to require them to adopt their own universal service funds.

Nor is there any need for the Commission to provide inducements for the States to do so. Section 254 was designed to “preserve and advance” universal service in the face of the fundamental changes that would occur in the industry as additional competition was introduced into the local and long distance markets. When the Telecommunications Act of 1996 was passed, local telephone rates in urban and rural areas were already “reasonably comparable” as a result of state regulatory policies designed to promote universal service in high cost rural areas. If Congress had thought that there was a problem with the existing rates, it would have said so. Its silence supports the view that it considered the existing rates “reasonably comparable” and that it did not want to make the situation worse by ordering the states to make changes that might be inconsistent with state policy. Rather, Congress gave the Commission and the states the tools

to *preserve* rate comparability despite the effects of competition. Accordingly, federal universal service support should continue to be a helping hand to high cost states rather than a means of coercing actions on the part of the states.

As Verizon demonstrated in its comments, local telephone rates are still “reasonably comparable” in urban and rural areas throughout the country 6 years after the Telecommunications Act of 1996 was passed. Indeed, according to the GAO Report, they are virtually identical. *See* Verizon, 4-6. Telephone penetration rates have actually increased since then to their highest level ever recorded. *See* AT&T, 7. This demonstrates that existing state rates meet the universal service goals of providing service at “affordable rates” “in all regions of the Nation” with rates in rural areas that are “reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. §§ 254(b)(1), (2) & (3).

For these reasons, the Commission should not attempt to dictate changes in state rates or to require adoption of universal service funds at the state level. Rather, the Commission should provide support for high-cost states so that they have the ability to maintain the existing range of urban and rural rates, and it should condition their receipt of such support on a certification that they are using support in a way that maintains reasonably comparable rates.

## **II. The Commission Should Not Make Major Changes In The Structure Of The High Cost Fund.**

Some commenters want the Commission to go back to square one and create an entirely new structure for the high cost fund using measures such as an affordability benchmark and “tiered” support to spread high cost funding over a much larger number of states and wire centers. *See, e.g.*, SBC, 13-16; Qwest, 14-18; BellSouth, 10-12. These proposals would

significantly increase the size of the non-rural fund to over \$1 billion from the current level of about \$200 million. *See, e.g.*, Qwest, 16. In fact, some of the alternatives would cost several billion dollars, depending on the level of the benchmarks. *See id.*, Declaration of Byron Watson, 3, 5. The commenters argue that this increased level of funding is necessary to provide the states with the incentive and the ability to maintain “reasonably comparable” rates. However, as Verizon demonstrated in its comments, such a large increase in the fund would harm the statutory goal of “affordability” by increasing the universal service fund assessment that would be passed along to all customers. More importantly, these proposals are based on an incorrect assumption that there is a need to spread large amounts of support among all states in order to provide an incentive for the states to rebalance and restructure local telephone rates and intrastate access charges. Not only is there no need for such restructuring, it would interfere with the state policy decisions that have maintained reasonable comparability between urban and rural rates despite the introduction of competition for local services throughout the country.

The Rural State Commissions also seek a much larger fund (approximately \$1.3 billion), but they want to preserve the states’ discretion to pursue universal service goals through rate averaging, cost pooling, and explicit universal service funding mechanisms. *See* Rural State Commissions, 14-17. They argue that the Commission should retain the existing goal of providing federal support to states that have above-average costs, but that it should enlarge the base of support by applying a cost benchmark of 125 percent to average urban costs. *See id.*, 19-20. As the Rural State Commissions note, their approach would be the equivalent of providing federal support for states that have costs that are 106 percent of the nationwide average. *See* Rural State Commissions, 20. While this would retain the basic structure and purpose of the existing fund, a benchmark tied to average urban per-line costs would create so large a fund as to

actually harm the universal service goals it is intended to serve. Increased funding translates into increased assessments on consumers. At a time when the Commission is struggling to deal with the burden of the *existing* fund size, it should reject suggestions for substantial for substantial increases in that burden to solve a problem that does not exist.

Indeed, as noted in Verizon's comments, average rural *rates* are about the same level as average urban rates. *See* Verizon, 4. Therefore, there is no need to provide additional federal support to bring rural *rates* down to urban *costs*. Rather, support is needed only for states that have above average state-wide costs and therefore do not have the same ability as low-cost states to maintain rural rates that are reasonably comparable to the nationwide average urban rate.<sup>2</sup>

As Verizon and others demonstrated, the record supports retention of the existing 135 percent benchmark for providing federal support to high cost states. *See, e.g.*, Verizon, 8-10; AT&T, 5-6; Consumer Advocates, 5. The Commission should retain its current benchmark and its overall approach.

### **III. Many Comments And Proposals Are Irrelevant To The Issues And Should Not Be Considered In This Remand Proceeding.**

This proceeding appropriately is focused on the issues remanded to the Commission by the 10<sup>th</sup> Circuit Court of Appeals. Nonetheless, some commenters have used the opportunity to raise a number of extraneous issues. For example, NRTA and OPASTCO argue (at 13) that the Commission should require the states to explain how they will generate extra funds from state

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<sup>2</sup> For instance, the current funding mechanism correctly targets universal service support to the three Verizon East states that are primarily rural – Vermont, Maine, and West Virginia. These states have the greatest need for federal funding, as they have less ability than more urbanized states to fund universal service through intrastate revenue streams.

universal service mechanisms to fund intrastate payments to competitive local exchange carriers who are designated as eligible carriers for rural areas. NTCA wants the Commission to address the ability of rural carriers to recover their costs allocated to the interstate jurisdiction in light of possible future action by the states on universal service. *See* NTCA, 9. The Consumer Advocates argue (at 12) that the Commission should use the fund as a means of addressing rates of return earned by some carriers that exceed 11.25 percent. And CUSC wants the Commission to dictate the criteria that the state commissions must use in designating carriers as “eligible telecommunications carriers” under section 214(e) of the Act. *See* CUSC, 10-17.

None of these issues should be addressed here. None of the parties have offered a sufficiently supported and developed proposal for the FCC to consider, much less adopt. None of these proposals were touched on in the Notice here. The Commission’s obligation under the Court’s decision is to address and explain three aspects of the *Ninth Report and Order* – “reasonably comparable” rates, “sufficient” support, and the 135 percent benchmark. The Commission correctly asked interested persons to comment on these issues to establish a record responsive to the Court’s mandate. Any other issues should be addressed, if at all, in other proceedings.

## Conclusion

For the foregoing reasons, the Commission should affirm the existing structure of the high cost fund, which provides “sufficient” federal support to enable the states to maintain “reasonably comparable” urban and rural rates.

Respectfully submitted,

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telephone companies

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.