

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

**COMMENTS OF AT&T CORP.
ON THE JOINT BOARD'S RECOMMENDED DECISION**

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TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

I. THE GAO REPORT CONFIRMS THAT RURAL AND URBAN RATES TODAY ARE “REASONABLY COMPARABLE” UNDER THE COMMISSION’S EXISTING MECHANISMS. 3

II. SECTION 254(B)(3) DOES NOT AUTHORIZE A SIGNIFICANT EXPANSION OF FEDERAL SUPPORT TO NONRURAL LECS..... 7

III. THE COMMISSION SHOULD RETAIN THE METHODOLOGY ADOPTED IN THE NINTH REPORT AND ORDER, BUT IT SHOULD NOT ADOPT THE ALTERNATIVE RATE-BASED PROCEDURE. 13

A. The Commission Should Adopt The Joint Board’s Recommendation That The Federal Mechanism Should Be Based On Cost, Rather Than Rates. 13

B. The Commission Should Adopt The Joint Board’s Recommendation That The Federal Mechanism Should Be Based On Comparison Of Statewide Cost Averages To A Benchmark Of 135% Of Nationwide Average Cost. 14

C. The Commission Should Reject The Joint Board’s Proposal For An Additional Procedure To “Induce” States To Achieve Reasonable Comparability. 17

IV. THE COMMISSION SHOULD NOW BEGIN THE PROCESS OF HARMONIZING THE RURAL AND NONRURAL CARRIER SUPPORT MECHANISMS..... 18

CONCLUSION..... 21

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Pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, and the Commission’s Public Notice, DA 02-2976, released November 5, 2002, AT&T Corp. (“AT&T”) submits these comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (FCC 02J-2, released October 16, 2002) (“*Recommended Decision*”) concerning the issues remanded to the Commission from the United States Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

INTRODUCTION AND SUMMARY

The Joint Board correctly recommends that the Commission retain the essential methodology for determining high cost universal service support to nonrural carriers that it adopted in the *Ninth Report and Order*.¹ That system has been in place for almost three years, and as the record amply demonstrates, it has proven to be fully sufficient to preserve and advance universal service and to ensure that rates in rural and urban areas are “reasonably comparable,” in conformance with the statutory principle in Section 254(b)(3). Indeed, as shown below, the *GAO Report* unequivocally shows that rural and urban rates are reasonably

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order, 14 FCC Rcd. 20432, ¶ 54 (1999) (“*Ninth Report and Order*”).

comparable today under any reasonable definition of that statutory phrase, and therefore the Commission can and should re-adopt the existing mechanisms.²

Equally important, and in all events, Congress did not intend Section 254(b)(3) to authorize any significant expansion of the federal high cost support program. To the contrary, as the Joint Board finds, Congress believed rural and urban rates were already reasonably comparable at the time of the Act, and it adopted the principle of reasonable comparability solely to ensure that the Commission would work to retain that comparability as it modified the existing programs to accommodate the development of competition. When Congress wanted to authorize a new subsidy program, it did so with explicit commands (as with the e-rate program), not through the device of statutory “principles.” Indeed, both the Fifth and the Tenth Circuit have made clear that the principles are not the equivalent of statutory commands, and that any individual principle can and should be “trumped” when (as here) it is outweighed by other principles – including the need to avoid placing undue pressure on the fund.

The Joint Board also properly recommends that the Commission retain the specific features of the *Ninth Report and Order* methodology, including basing support on costs rather than rates and on a benchmark of 135% of nationwide average cost. If the Commission is to play its proper role in the system, the federal fund must be based on a benchmark of nationwide average costs, rather than “urban” costs, as some have suggested. If the federal support program is based on a benchmark of urban costs, then the Commission would become the guarantor of reasonable comparability *within* the states – a role that virtually everyone agrees should be

² See General Accounting Office, “Federal and State Universal Service Programs and Challenges to Funding,” GAO-02-187 (February 2002) (“*GAO Report*”).

played by the states, not by the Commission. As explained below, however, the Commission should not adopt the Joint Board's further recommendation for a new and ill-defined rate-based procedure for obtaining supplemental support.

Finally, rather than continuing to fine-tune the program for nonrural support in a futile attempt to achieve a nonexistent mathematically "correct" definition of the inherently imprecise phrase "reasonable comparability," the Commission should now begin the much more important process of harmonizing the program for rural carriers with the program for nonrural carriers. The Commission has established an interim program for rural carriers that is set to expire in 2006. Rather than increasing funding to the nonrural carriers – which would jeopardize funding to the rural carriers – the Commission should begin the process of establishing appropriate mechanisms for the rural carriers, based on forward-looking cost and adhering to the essential features of the nonrural mechanisms.

I. THE GAO REPORT CONFIRMS THAT RURAL AND URBAN RATES TODAY ARE "REASONABLY COMPARABLE" UNDER THE COMMISSION'S EXISTING MECHANISMS.

As the Joint Board notes, the GAO conducted an exhaustive statistical study of urban and rural rates for residential local exchange services and concluded that there is no statistically significant difference in the rates that consumers pay in urban and rural areas today. *See Recommended Decision* ¶ 34. The GAO used well-accepted statistical techniques to construct a random sample of urban, suburban, and rural rates, and its data show that the average urban, suburban and rural rates are all virtually the same and each category exhibits essentially the same standard deviation. *See id.*; *see also* Letter from W. Scott Randolph (Verizon) to Marlene Dortch (FCC), dated June 26, 2002. The *GAO Report* thus conclusively demonstrates that, under any

reasonable interpretation of the statute, the Commission's current universal service mechanisms ensure that local service is available in rural areas at rates that are "reasonably comparable" to rates in urban areas.

Commissioner Rowe offers several criticisms of the GAO's findings, but none of his claims withstands scrutiny. *See* Rowe Dissent at 3-4; *see also* Martin Dissent at 5-6 (indicating agreement with Commissioner Rowe). For example, according to Commissioner Rowe, the most fundamental flaw in the *GAO Report* is that the GAO inappropriately relied upon national averages of urban, suburban, and rural rates. He claims that the use of national averages is inappropriate, because such averages could mask wide variations among states. *See* Rowe Dissent at 3 & n.167. The GAO, however, did not rely on such a methodology.³ Rather, the GAO found that each category of rates – urban, suburban, and rural – exhibit the same variation around an almost identical mean, a finding that encompasses the entire set of data.⁴ Rural rates do not vary more widely than urban rates, and therefore the *GAO Report's* methodology does not hide variations that might constitute a problem under Section 254.

Nor does Commissioner Rowe's counterexample demonstrate a significant variation in rates. *See* Rowe Dissent at 3. Every data set contains data values at the extreme ends of the spectrum. The Commission's task, however, is to compare the typical rural rate with the typical

³ What Commissioner Rowe is actually criticizing is the Joint Board's incomplete characterization of the GAO's results, not the full results of the *GAO Report* itself. *See Recommended Decision* ¶ 34 ("Based on data contained in the *GAO Report*, it appears that six years after the passage of the Act the national averages of rural, suburban and urban rates for residential customers diverge by less than two percent").

⁴ The mean central city rate was \$14.79, with a standard deviation of \$5.31; the mean non-MSA rate was \$14.76 (actually lower than the urban mean), with a standard deviation of \$5.40. *See* Letter from W. Scott Randolph (Verizon) to Marlene Dortch (FCC), dated June 26, 2002.

urban rate, not the highest observed rural rate with the lowest observed urban rate.⁵ The fact remains that the vast majority of rates sampled by GAO fall within a narrow band; indeed, what is striking about the GAO's data is the sameness of the rates across the country and between urban and rural areas. *See GAO Report* at 50-58. The fact that Commissioner Rowe can conjure up only a single counter-example simply confirms the GAO's finding that rates today are generally comparable.

Commissioner Rowe's further contention that that the GAO did not control for rural rates charged by nonrural carriers is also unfounded. As the *GAO Report* explains (at 30), "[w]e also only included central city and suburban places that were served by local telephone companies identified by the FCC as non-rural carriers." The GAO noted that it constructed its study this way "because FCC uses its Hybrid Cost Proxy Model only for non-rural carriers in each state." *Id.* Moreover, the GAO "generally sampled three rural places in each state; two rural places served by a non-rural carrier and one served by a rural carrier." *Id.* Thus, the GAO in fact carefully designed its study to measure the variation in the rates charged by non-rural carriers. Equally important, the inclusion of rates charged by rural carriers could not possibly "mask" differences between the rates for rural and nonrural carriers; to the contrary, the *GAO Report*

⁵ As evidence of unlawful levels of rate variation, Commissioner Rowe compares rates in rural areas in two states to the rate in Roaring Springs, Texas, which is reported as \$7.10. Rowe Dissent at 3. Roaring Springs, however, is another *rural* area, and therefore Commissioner Rowe's comparison says nothing about the comparability of rural and urban rates. *See GAO Report* at 57. Indeed, the *GAO Report* shows that some of the lowest rates in the country are in rural areas, and Commissioner Rowe's example simply reinforces that urban and rural rates exhibit the same variation within the same narrow range.

simply confirms that *all* rural rates, whether charged by rural or nonrural carriers, are reasonably comparable today with urban rates.⁶

Commissioner Rowe’s other “methodological” criticisms are also incorrect. For example, Commissioner Rowe argues that the sample size was “too small to be statistically valid for any state,” but this criticism, again, reflects a misunderstanding of the GAO’s methodology. The GAO randomly selected rates from a population consisting of every rate in the country, and it selected sets of urban, suburban, and rural rates each of which are large enough to draw valid statistical inferences. The *GAO Report* expressly explains (at 30) that its results are in fact statistically valid at a 95 percent confidence level, which is considered the most robust confidence interval. Nor is there any significance to the fact that the GAO excluded “some kinds of local exchange charges that must be paid by all end users.” *See* Rowe Dissent at 3. The additional charges – which include interstate loop charges, state and federal taxes, long distance rates, state and federal universal service fees, etc. – are properly excluded from the analysis because they are not subsidized by the federal high-cost universal service program at issue.⁷

⁶ Nor is there any truth to the contention that the GAO “did not develop consistent data from state to state,” to the extent that “[i]n some states rural data was included, but not in other states.” *See* Rowe Dissent at 3 n.166. In fact, the GAO included rural data for every state except New Jersey and Rhode Island. *See GAO Report* at 50-59.

⁷ Similarly, contrary to Commissioner Rowe’s suggestion, the GAO followed a consistent methodology in selecting the applicable local service rate, and it is doubtful that any further attempt to correct for differences in the quality of service or the scope of calling areas would have made any meaningful difference in the GAO’s overall results. *See* Rowe Dissent at 3. Nor was the GAO inconsistent in choosing between different possible rates (*see id.*); the fact that Commissioner Rowe can cite only Michigan as an anomalous example again confirms the basic consistency of the GAO’s overall data.

In short, the *GAO Report* demonstrates that what consumers typically pay in rural areas for residential local telephone service is no different from what consumers typically pay in urban areas. Thus, under any reasonable interpretation of Section 254(b)(3), rural and urban rates today are “reasonably comparable.” Accordingly, there is no demonstrated need for any additional federal universal service funding for nonrural carriers at this time, and the existing system is fully lawful and “sufficient.” *See, e.g., Qwest*, 258 F.3d at 1202 (“[i]f, however, the FCC’s 135% benchmark actually produced urban and rural rates that were reasonably comparable, however those terms are defined, we would likely uphold the mechanism”); *see also Recommended Decision* ¶ 40 (“[t]he *GAO Report* suggests that more federal support is not necessary because urban and rural rates are similar”).

II. SECTION 254(B)(3) DOES NOT AUTHORIZE A SIGNIFICANT EXPANSION OF FEDERAL SUPPORT TO NONRURAL LECS.

Although the *GAO Report* makes clear as a factual matter that urban and rural rates today are “reasonably comparable” under any reasonable definition of that statutory phrase, it is important to underscore that, as a legal matter, Congress did not intend Section 254(b)(3) to authorize – much less mandate – an expansion of the federal high cost support program for nonrural carriers. This is so for three reasons: (1) Congress believed rates to be comparable already, and therefore it did not intend Section 254(b)(3) to be read as a mandate for a new funding program; (2) Congress required the Commission to base its policies on “reasonable” comparability, which means that the Commission must pursue comparability only to the extent reasonable given the limitations of the resources available to the Commission from interstate sources; and (3) reasonable comparability is only a “principle,” which is not the equivalent of a statutory command and can be “trumped” when other statutory goals would be compromised.

1. As the Joint Board correctly concludes, the legislative history of the 1996 Act provides abundant confirmation that Congress believed that rural and urban rates were already “reasonably comparable” at the time of the enactment of the 1996 Act, and that Congress therefore deemed the range of variation that currently exists as within the range of reasonable comparability contemplated by the Act. *See Recommended Decision* ¶ 35 & n.88. For example, as Senator Pressler noted, “to smaller cities and rural communities and others who depend upon universal service nothing is changed. They continue to enjoy affordable access to phone service as before.”⁸ Indeed, Senator Pressler noted that one of the fundamental concerns addressed in the Act was “the need to preserve widely available and reasonably priced telephone service.”⁹ The Joint Board cites other examples that demonstrate that such views were widely held.¹⁰

Accordingly, there is no evidence, either in the language of the Act or in the legislative history, that Congress believed that rates were not already reasonably comparable or that any expansion of existing federal support was necessary. Indeed, as the Joint Board correctly concludes, Congress’s concern was that the development of local competition would undermine the existing system of implicit subsidies, which would tend to drive local service rates to cost-based levels and thus threaten the comparability of rates that currently exists. The Commission’s task under Section 254(b)(3) is to ensure that rates *remain* reasonably comparable as competition develops. *See Recommended Decision* ¶ 35; AT&T Comments at 12 (filed April 10, 2002).

⁸ 141 Cong. Rec. S7892-S7893 (June 7, 1995) (Pressler).

⁹ *Id.* at S7886.

¹⁰ *See Recommended Decision* ¶ 35 n.88 (*e.g.*, quoting Rep. Bonilla as stating that it is “essential that our rural residents continue to have equal and affordable phone service”); *see also* Letter from W. Scott Randolph (Verizon) to Marlene Dortch (FCC), dated August 16, 2002 (providing other examples).

Indeed, if Congress had felt that there was a need for significant new subsidies to achieve “reasonably comparable” rates, it would have explicitly authorized such a program through express statutory commands. When Congress wanted to authorize an expansion of federal universal service subsidies, it knew how to do so. For example, Congress did see a need for new funding to subsidize telecommunications services for schools, libraries, and rural health care providers, and it authorized expanded funding for those purposes through a set of explicit statutory commands in Section 254(h). Given the explicit commands requiring funding programs elsewhere in Section 254, it is implausible to conclude that Congress would mandate a significant expansion of federal support by using the device of requiring the FCC to base its policies on a “principle.”

2. By its plain terms the statutory principle is limited to “reasonable” comparability. Congress did not authorize the Commission to pursue comparable rates at any cost. Rather, Congress added the qualifier that rates should be “*reasonably*” comparable – *i.e.*, comparable only within reason. In other words, the Commission should pursue comparability of urban and rural rates, but only to the extent that is reasonable to do so consistent with all of the other goals and purposes of the universal service program, and given the limited resources at the Commission’s disposal. Certainly, Section 254 does not contain a mandate to equalize all urban and rural rates, no matter what the cost and to the exclusion of all other goals of the program. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 411 (5th Cir. 1999) (“*TOPUC*”) (“[r]ather than setting up specific conditions or requirements, § 254(b) reflects a Congressional intent to delegate these difficult policy choices to agency discretion”).

3. Congress established reasonable comparability only as a “principle,” and both the Tenth Circuit and the Fifth Circuit have recognized that the Section 254 principles are *not* the equivalent of statutory commands and can be outweighed by other considerations. As the Tenth Circuit noted, “each of the principles in § 254(b) internally is phrased in terms of ‘should.’ The term ‘should’ indicates a recommended course of action, but does not itself imply the obligation associated with ‘shall.’” *Qwest*, 258 F.3d at 1200 (citations omitted). Similarly, the Fifth Circuit has made clear that Section 254(b) does not “set[] up specific conditions or requirements,” but that the principles are “aspirational.” *TOPUC*, 183 F.3d at 411, 421. Indeed, the Fifth Circuit has expressly held that “§ 254(b) . . . hardly constitutes a series of specific statutory commands,” nor does it constitute an affirmative grant of authority to the Commission. *Id.* at 421; *see also Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (“[w]e reiterate that predictability [like reasonable comparability] is only a principle, not a statutory command”).

As these cases make clear, the principles themselves are merely guideposts, or “recommended courses of action.” Indeed, there could be no other plausible interpretation of the statute. Section 254 contains a set of explicit commands and, separately in subsection (b), a set of “principles.” Congress expressly used the term “principles” in subsection (b), and phrased those principles “in terms of ‘should,’” in order to provide the Commission with a set of “aspirational” goals to keep in mind as it designs its universal service policies. To elevate the principles to the level of commands would be contrary to the plain terms of the statute.

Thus, it is critical to understand the relationship between Section 254’s commands and its principles. The *principal* purpose of Section 254 – expressed in explicit commands – is to preserve and advance universal service, which has always been understood to mean high

subscribership. *See* 47 U.S.C. § 254(c)-(e). In that regard, the Commission’s existing universal service mechanisms have succeeded extremely well: the Commission’s latest subscribership report finds that subscribership is currently at 95.5%, which is the highest level of subscribership ever recorded (and substantially increased since the beginning of 2000, when the current mechanisms at issue took effect). FCC, *Telephone Subscribership Report* (released November 8, 2002); *see also Alenco*, 201 F.3d at 620 (“[s]o long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act”). Accordingly, there can be no serious claim that the existing mechanisms are not “sufficient” to achieve the purposes of the Act, as the statute requires. *See* 47 U.S.C. § 254(d) & (e).

The principles are not themselves commands; rather, when the Commission is establishing the mechanisms it is required to establish, the Commission must ensure, to the extent it is reasonable to do so, that the required mechanisms further the principles laid out in subsection (b). *See Qwest*, 258 F.3d at 1200 (“the [Commission] must base its policies on the principles”). With respect to “reasonable comparability,” the Commission has done that by using the cost model to identify states that cannot achieve reasonable comparability on their own and by targeting federal support to those states that need it the most. And as the *GAO Report* confirms, these mechanisms result in rates that are in fact reasonably comparable.

Moreover, as the Tenth Circuit expressly held, any of the Section 254(b) principles can be limited or “trumped” by other principles. *See id.* (“any particular principle can be trumped in the appropriate case”). In that regard, the Commission should formally recognize, pursuant to Section 254(b)(7), that the Commission’s policies must also be based on the principle that the

burden on those who must contribute to universal service should be minimized. Both the Commission and the courts have consistently acknowledged the validity of this principle. For example, the Commission has noted that “collecting more support than is necessary would increase all rates for all subscribers,” which would itself threaten universal service. *See Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, ¶ 229 (1998); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report and Order, 14 FCC Rcd. 8078, ¶ 69 (1999); *Ninth Report and Order* ¶ 54 (1999). Similarly, the Fifth Circuit has expressly recognized that “excessive funding may itself violate the sufficiency requirements of the Act,” and that “excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some customers out of the market.” *Alenco*, 201 F.3d at 620. The Tenth Circuit explicitly acknowledged that the Commission had ample authority to adopt this as an additional Section 254(b) principle, and the Commission should do so. *See Qwest*, 258 F.3d at 1200 n.7.¹¹

For all of these reasons, Section 254(b)(3) cannot plausibly be read as authorizing a significant expansion in the federal universal service fund. Congress believed that rates were already reasonably comparable under pre-existing programs, and it enacted the reasonable comparability principle in Section 254(b)(3) solely to ensure that, as the Commission modified the operation of those existing programs to accommodate the development of local competition, the modified mechanisms would continue to promote reasonably comparable rates. The funding

¹¹ The Tenth Circuit also noted that the Commission could recognize the need to minimize the burden on those who are net supporters of universal service as a countervailing principle under Section 254(b)(1). *See Qwest*, 258 F.3d at 1200.

methodology that the Commission adopted in the *Ninth Report and Order* fully achieves these objectives, and rates remain reasonably comparable.

III. THE COMMISSION SHOULD RETAIN THE METHODOLOGY ADOPTED IN THE NINTH REPORT AND ORDER, BUT IT SHOULD NOT ADOPT THE ALTERNATIVE RATE-BASED PROCEDURE.

The Joint Board recommends that the Commission retain certain elements of the original methodology, including the use of forward-looking costs, the use of statewide averaging to reflect the appropriate role of state and federal funding, and the use of a benchmark for federal funding of 135% of the national average cost. These recommendations are entirely correct, and the Commission can re-adopt these mechanisms consistent with the decision of the Tenth Circuit. The Joint Board's additional proposal, however, to adopt a supplemental program to establish procedures that will "induce" state commissions to achieve reasonably comparable rates is ill-advised and unnecessary.

A. The Commission Should Adopt The Joint Board's Recommendation That The Federal Mechanism Should Be Based On Cost, Rather Than Rates.

The Joint Board correctly recommends that the Commission's high cost support mechanism should be based on the forward-looking costs of providing service, rather than rates. *Recommended Decision* ¶¶ 18-21. The use of cost to determine universal service support levels has been upheld by the Fifth Circuit and represents the soundest basis on which to calculate such support. As the Fifth Circuit has noted, Congress was concerned that the development of local competition would undermine the pre-existing universal service system, because competition would tend to drive rates to economic cost and would thus erode away the old system of implicit subsidies embedded in rates. *Alenco*, 201 F.3d at 615-16. Calculating support levels based on

forward-looking cost would thus be a more stable and reliable, because it is the only method that reflects the economic realities underlying local service rates. *See TOPUC*, 183 F.3d at 411-13.

Moreover, as the Joint Board notes (§ 19), local service rates vary from state to state for many policy-based reasons. Unpacking these differences would require a substantial and unnecessary investment of the Commission's scarce resources, and could also lead to inequitable treatment of similar states. Using the Commission's cost model provides an apples-to-apples comparison among states and thus "enables accurate comparison of states for purposes of determining federal support levels." *See id.* § 20.

The Tenth Circuit's decision is not to the contrary. Indeed, the court expressly noted that it would likely uphold a methodology that relied on costs as long as it could be shown that the method resulted in reasonably comparable rates. *Qwest*, 258 F.3d at 1202. As explained above, the evidence in this proceeding overwhelmingly confirms that the Commission's current mechanisms in fact ensure reasonably comparable rates. For all of these reasons, the Commission should adopt the Joint Board's recommendation to calculate support levels based on costs instead of rates.

B. The Commission Should Adopt The Joint Board's Recommendation That The Federal Mechanism Should Be Based On Comparison Of Statewide Cost Averages To A Benchmark Of 135% Of Nationwide Average Cost.

The Joint Board also appropriately recommends that the Commission determine support levels by comparing statewide average costs to a benchmark equal to 135% of nationwide average costs, rather than a benchmark based on "urban" costs. *Recommended Decision* §§ 24-28. The Joint Board's recommendation on this point is fundamentally important if the Commission is to play its proper role in the universal service system.

The Commission has repeatedly held, and the Joint Board again confirms, that “[b]ecause the states, not the Commission, set intrastate rates, the states [must] have primary responsibility for ensuring reasonably comparable rural and urban rates.” *Recommended Decision* ¶ 24. As a first resort, each state should use the resources it has within the state to balance rates to the maximum degree possible. As the Commission and the Joint Board recognize, some states cannot effectively achieve reasonable comparability on their own, because even after they balance rates within their states, their average costs are still high relative to the national average. Only the Commission is in a position to shift universal service support between states, and thus the proper role for the Commission is to direct interstate funding to those states with the highest statewide average costs. As the Commission has put it, the states’ role is to ensure reasonable comparability within the states, and the Commission’s role is to ensure reasonable comparability among the states. *Ninth Report and Order* ¶ 7. No party has ever challenged this fundamental premise, nor does any party challenge it now.

If the Commission is to play this role, however, the benchmark used in the interstate support mechanism *cannot* be a benchmark of urban costs. If it were, the Commission would effectively become the guarantor of reasonable comparability within the states. As everyone agrees, the states must take the first step by using the resources available within the state to balance rates within the state. In most cases this will obviate the need for the Commission to become involved at the interstate level. In balancing rates within the state, however, the urban rate becomes equal to the statewide average cost. Thus, for purposes of the *federal* funding mechanism, the Commission must consider the urban rate to be equal to statewide average cost. Otherwise, the interstate mechanism would be funding the first dollar above urban cost and would in effect be replacing support that can and should be coming from intrastate sources.

Indeed, to replace these intrastate mechanisms, as the Joint Board correctly notes (¶ 40), the Commission would be required to expand greatly the size of the federal mechanisms. Such a system, however, would be contrary to the fundamental principle that states have the primary role in ensuring reasonable comparability.

Contrary to the suggestion of the dissenting Commissioners, the Commission's existing methodology is not inconsistent with the statute or with the Tenth Circuit decision. When each jurisdiction focuses on its proper role – the states on intrastate comparability, and the Commission on interstate comparability – the overall end result is that rates in rural and urban areas are reasonably comparable. Indeed, as explained above, rates under the existing system *are* reasonably comparable today, and that is largely because the states are playing their role in the system without the need for federal funding. Although the dissenting Commissioners suggest that a dramatic increase in the federal fund may be required,¹² these Commissioners have not demonstrated that there is in fact any substantial or meaningful deviation between rural and urban rates that would require such an increase. *See Recommended Decision* ¶ 40 (an “urban benchmark . . . would require more funding,” but the “*GAO Report* suggests that more federal support is not necessary because urban and rural rates are similar”).¹³

¹² *See* Rowe Dissent at 8; Martin Dissent at 5.

¹³ For example, Commissioner Rowe asserts that various sources demonstrate that there is a significant disparity between urban and rural costs that is not captured in a 135% benchmark. *See* Rowe Dissent at 10-13; *see also* Martin Dissent at 4; *cf. Recommended Decision* ¶ 40. The flaw in Commissioner Rowe's reasoning is his implicit assumption that this entire disparity must be accounted for in the *federal* fund.

C. The Commission Should Reject The Joint Board’s Proposal For An Additional Procedure To “Induce” States To Achieve Reasonable Comparability.

The Commission should reject the Joint Board’s further recommendation that the Commission establish a new procedure for ensuring that the states achieve reasonable comparability. *See Recommended Decision* ¶¶ 50-56. This new procedure is both ill-conceived and ill-defined, it would be extremely cumbersome to administer, and it would introduce an intolerable level of uncertainty into the process.

This new, additional procedure would depend (by a process not yet defined) on rate comparisons, and the *Recommended Decision* itself correctly recognizes that “it is extremely difficult, if not impossible, to make meaningful rate comparisons among states.” Dunleavy Statement at 1. As Commissioner Dunleavy notes, there are many difficulties in making such comparisons, the largest of which may be “normalizing rates for the varying calling capabilities they may encompass.” *Id.* This additional procedure would require the Commission to expend considerable administrative resources to achieve results that would be of dubious validity and could result in inequitable treatment of individual states. Such a cumbersome new procedure is entirely unnecessary, because, as Commissioner Dunleavy notes, “the existing mechanism . . . provides sufficient support to achieve the purpose for which it is intended” and to ensure reasonable comparability of rates. *Id.* Commissioner Dunleavy is also correct to note that the new procedure would greatly increase the uncertainty and lack of predictability in the system. *Id.* at 2. As he notes, “[u]ntil the extremely difficult decisions have been made about how to normalize rates and what criteria to apply in determining supplemental support, it is impossible to even estimate how much support it might produce or where that support might go.” *Id.* Indeed, the statute requires the Commission’s support mechanisms to be “predictable” (*see* §

254(d)), but the ad hoc, “adjudicatory” system of determining support contemplated by the *Recommended Decision* would violate this important statutory requirement.

Rates are reasonably comparable today, and the record demonstrates that the states are currently fulfilling their role under Section 254 to ensure reasonable comparability of rural and urban rates. Accordingly, there is no demonstrated need at this time for the ill-conceived and unwieldy system proposed in the *Recommended Decision*, which would only undermine the existing system by imposing undue administrative costs, eliminating predictability, and inviting gamesmanship.

IV. THE COMMISSION SHOULD NOW BEGIN THE PROCESS OF HARMONIZING THE RURAL AND NONRURAL CARRIER SUPPORT MECHANISMS.

Rather than investing yet more resources into refinement of the fund for nonrural carriers, the Commission should now move on to the much more important task of harmonizing the support mechanisms for rural and nonrural carriers.

The issues in this proceeding should be placed in proper perspective. The only thing at issue here is support to the nonrural LECs. Federal high cost support for the nonrural LECs has historically been a relatively small portion of the overall federal fund; prior to the adoption of the current system in 2000, funding to the nonrural carriers was approximately \$70 million per year, and funding to those carriers has actually almost tripled under the new system, to about \$200 million annually (even after the hold harmless amounts are phased out). To place that in perspective, however, what is at issue here is \$200 million per year of subsidies on an assessment base of \$70 billion.

In other words, the Commission has already expended an enormous amount of effort and resources, spanning multiple orders and almost seven years, to fine-tune a program that provides subsidies equal to a tiny fraction of the nonrural carriers' revenues. Virtually all of the proposals in this proceeding are within a range that would have no discernible or meaningful impact on the reasonable comparability of the nonrural carriers' rates. Support to the nonrural LECs has already been tripled, but even if it were doubled or tripled again, there would be no material impact on reasonable comparability. Accordingly, the Commission should recognize that there is little to be gained by mounting another large effort in a vain attempt to achieve a precise, mathematically "correct" definition of reasonable comparability that simply does not exist.

The various proposals to increase funding to the nonrural carriers would have a substantial effect on the USF, however. As the Commission is well aware, there is substantial instability and tremendous pressure on the size of the fund at present. The revenue assessment base continues to decline, driven by the substitution of wireless for wireline long distance, the growth of non-telecommunications long distance substitutes such as e-mail and instant messaging, and the "leakage" created as higher and higher contribution factors induce customers and their providers to structure contracts that bundle interstate telecommunications services with intrastate services, information services, and customer premises equipment to minimize the revenue attributed to interstate telecommunications services.¹⁴ Indeed, the Commission just recently adopted two orders to stabilize and "maintain the viability" of universal service in the near term while it continues to consider long-term solutions.¹⁵ Having taken action to ameliorate

¹⁴ See generally Comments of Coalition for Sustainable Universal Service, filed April 22, 2002, CC Docket Nos. 96-45, *et al.*

¹⁵ See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, First Report and Order, 17 FCC Rcd. 11521, ¶¶ 1, 3 (2002); *Federal-State Joint Board on Universal Service*,

the level of the USF contribution factor pending full USF reform, the Commission should *not* take any additional actions that would increase funding requirements.

Rather than continuing to fine-tune the program for nonrural carriers, the Commission should begin the far more important process of harmonizing the support programs for rural and nonrural carriers. The Commission has established an interim system of support for rural carriers which will expire in 2006. See *Federal-State Joint Board on Universal Service, et al.*, Fourteenth Report and Order, *et al.*, 16 FCC Rcd. 11244, ¶ 27 (2001) (“*Rural Task Force Order*”). As the Commission noted in that order (¶ 8), “we intend to develop over the next few years a long-term universal service plan for rural carriers that is better coordinated with the non-rural mechanism.” In particular, the Commission noted that in 1997 it had decided that universal service support must be based on forward-looking economic cost, but that it would permit rural carriers to “shift gradually” to such a mechanism. *Id.* ¶ 4. The interim mechanisms established in the *Rural Task Force Order* are based on embedded costs, but only as an interim measure to permit such a “gradual shift.” The Commission should now begin the task of developing the permanent support mechanisms for the rural carriers, based on the same principles and features of the program for nonrural carriers, including funding based on forward-looking economic costs.

Excessive fine-tuning of the nonrural program would only detract from that process. Increased funding for nonrural carriers, as proposed by some, would only increase the pressure on the size of the federal fund and jeopardize funding for the rural carriers. Similarly, the

et al., CC Docket Nos. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (released December 13, 2002).

Commission should not establish a precedent of creating a rate-based “backstop” procedure for supplemental support, which would be ten times as cumbersome and unpredictable if applied to the rural carriers. The existing system for nonrural carriers has been in place for almost three years, and it has been proven to be workable, predictable, and fully sufficient to preserve and advance universal service and to ensure reasonably comparable rates. The Commission should now move to the big picture, and adapt the programs for rural carriers to the model established for nonrural carriers.

CONCLUSION

For the forgoing reasons, the Commission should adopt the recommendations of the Joint Board, with the exception of the rate-based procedure for supplemental funding.

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December 20, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: December 20, 2002
Washington, D.C.

/s/ Peter M. Andros

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