Before The

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON RULES RELATING TO RURAL HIGH-COST UNIVERSAL SERVICE SUPPORT

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I. SUMMARY

The Telecommunications Act of 1996 says that customers in rural and high-cost areas should have rates and services that are reasonably comparable to those in urban areas. In furtherance of this purpose, the Federal Communications Commission has modified the high-cost support mechanisms it enacted prior to the Act. The Commission has determined that an appropriate high-cost mechanism would be based on the forward-looking economic costs of incumbent carriers.

The Commission has, however, adopted separate support mechanisms for "non-rural" incumbent telephone companies (mostly larger companies) and for "rural" incumbent telephone companies. The "non-rural" mechanism is based on forward-looking economic costs; the "rural" mechanism continues to be based on embedded costs.

The Commission has determined that the use of embedded costs for rural carriers will not be permanent. The National Association of State Utility Consumer Advocates ("NASUCA") urges the Commission to continue the transition to using economic costs by adopting a forward-looking economic cost test for rural carriers that have 50,000 access lines or more. Carriers serving fewer than 50,000 access lines would continue to have support based on embedded costs.

Carriers with 50,000 access lines or more would be transitioned to a forward-looking cost test over a period of five years. During that same five years, a study should be conducted to develop a forward-looking cost test that fairly judges carriers with fewer than 50,000 access lines.

NASUCA also urges the Commission to restrict the definition of rural carrier, such that carriers with more than one study area within a state and carriers within a state owned by a single holding company are combined for access line and cost study purposes. Further, the Commission should exclude carriers serving urbanized and suburban territory from the definition of "rural" for use of the embedded cost test.

Finally, NASUCA repeats its earlier position that support for competitive carriers should be based on those carriers' forward-looking costs, rather than on the costs of the incumbent. Competitive carriers' support should, however, be no higher than the incumbent's costs.

II. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits these comments in response to the Public Notice released by the Federal-State Joint Board on Universal Service ("Joint Board") on August 16, 2004.[2] The Public Notice seeks comment on issues recently referred to the Joint Board by the Federal Communications Commission ("Commission") relating to the high-cost universal support mechanism for rural carriers, specifically the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*.[3]

The Joint Board invited "public comment on whether these [Commission] rules continue to fulfill their intended purposes, whether modifications are warranted, and if so, how the rules should be modified."[4] NASUCA analyzes the statutory purposes of the high-cost fund, and bases its comments on that analysis.

The Commission also asked the Joint Board both to revisit the definition of "rural telephone company" for high-cost universal service support purposes and to consider

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[1] NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] FCC 04J-2 (rel. August 16, 2004) ("*Rural High Cost Public Notice*" or "*RHCPN*").

[3] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (rel. June 28, 2004) ("*Referral Order*"), citing *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("*Rural Task Force Order*"), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. June 1, 2001).

[4] *RHCPN*, ¶ 1.

consolidating multiple study areas within a state.[5] NASUCA submits that the Joint Board should recommend to the Commission that the current definition of rural telephone company should be changed for universal service purposes, to more closely match the statutory goal that "rural" rates and services be reasonably comparable to urban rates and services, and that all rates be affordable. A proper definition of "rural" would ensure that only companies with high costs (including small companies with fewer lines over which to spread common costs) would receive federal support.

The Commission also asked the Joint Board to consider whether a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs would most efficiently and effectively achieve the goals set forth in the Telecommunications Act of 1996.[6] NASUCA submits that the Joint Board should recommend to the Commission that, over the next five years, carriers serving 50,000 or more lines within a state should be transitioned to have their high-cost support based on economic costs.[7]

The Joint Board noted that it planned to hold an en banc hearing in November regarding issues raised by commenters, and that it might hold workshops to address the issues.[8] NASUCA looks forward to participating in both efforts.

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[5] *Referral Order*, ¶¶ 11-12.

[6] Id., ¶ 8, citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934 (Act). See 47 U.S.C. §§ 151 *et seq.*

[7] The Commission also requested that the Joint Board consider whether to retain or modify section 54.305 of the Commission's rules, which concerns the amount of universal service support for transferred exchanges. *RHCPN*, ¶ 1. NASUCA does not comment on this issue here, but reserves the right to address the issue in reply comments.

[8] Id., n.5.

III. THE PURPOSES OF RURAL HIGH-COST SUPPORT

A. The law

Given the billions of dollars expended on high-cost support, it might be expected that Congress had prepared a detailed plan for the Commission in the 1996 Act. That is not the case. The entire program depends on a few lines in Section 254 of the Act.[9]

The first item in the statute is the fact that the Joint Board was to recommend changes to the Commission's then-current universal service regulations -- changes based on Section 254 and Section 214(e)[10] -- within nine months of the effective date of the Act.[11] The Commission was supposed to complete its review within fifteen months of the effective date of the Act.[12] (The Commission did so, in the *First Report and Order*.[13])

Substantively, the Joint Board and the Commission were required to base "policies for the preservation and advancement of universal service" on a set of seven principles.[14] The first of these principles -- all of which are aspirational, being framed as "shoulds," rather than "shalls" -- is that "[q]uality services should be available at just, reasonable, and affordable rates."[15] The principle that is the key to the Joint Board's current inquiry is that

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[9] 47 U.S.C. § 254.

[10] 47 U.S.C. § 214(e).

[11] 47 U.S.C. § 254(a)(1).

[12] 47 U.S.C. § 254(a)(2).

[13] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) ("*First Report and Order*").

[14] 47 U.S.C. § 254(b).

[15] 47 U.S.C. § 254(b)(1).

> [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.[16]

Another relevant principle is that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[17]

These aspirational principles are, however, trumped by certain mandatory provisions. Section 254(e) requires that a "carrier that receives … support *shall* use that support only for provision, maintenance, and upgrading of *facilities and services for which the support is intended*."[18] Section 254(c) says that the Commission "shall … establish[] the definition of the services that are supported by Federal universal service support mechanisms."[19] The Commission has done so, most recently in the *Definitions Order*.[20]

The Act says that consumers in rural and high-cost areas should have services at rates that are reasonably comparable to those in urban areas. The Commission has determined that this means support will go to the companies that serve customers in rural and high-cost areas.[21] The Commission has established different support mechanisms for "rural" telephone companies and for "non-rural" telephone companies" serving

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[16] 47 U.S.C. § 254(b)(3)(emphasis added).

[17] 47 U.S.C. § 254(b)(5).

[18] 47 U.S.C. § 254(e) (emphasis added).

[19] 47 U.S.C. § 254(c)(1).

[20] *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15090 (2003) ("*Definitions Order*").

[21] *First Report and Order*, ¶ 15.

customers in rural and high-cost areas.[22] "The key distinguishing feature between rural and non-rural carriers is number of access lines.

The Commission has determined that "rural telephone companies" will be defined, for universal service purposes, by using the Act's definition of the term found in 47 U.S.C. 153(47). This is so despite the fact that Section 254 does not refer to rural telephone companies. Where Congress intended the distinction in Section 153(47) to be controlling, it made that intention explicit: For example, when designating additional "eligible telecommunications carriers" in Section 214 for purposes of receiving universal service support, Congress made explicit distinctions between areas served by rural telephone companies and all other areas.[23] Further, Congress established an explicit exemption from the market-opening provisions of Section 251(c) for rural telephone companies.[24]

It thus appears that, in establishing support programs designed to ensure that rural rates and services are reasonably comparable to urban services, the Commission need not cling strictly to the Section 153(47) definition. As discussed herein, NASUCA urges the Commission to alter the definition it uses, in order to more closely track the purpose of the federal universal service fund.

B. Why rural rates might not be reasonably comparable to urban rates absent support.

As part of an attempt to return to core statutory purposes, NASUCA believes that it is important to recognize why rural rates might tend to be higher than urban rates. The

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[22] Id., ¶ 203.

[23] 47 U.S.C. § 214(e)(2).

[24] 47 U.S.C. § 251(f)(1).

first reason is that many of the direct costs of service in rural areas will tend to be higher than in urban areas.[25] The second reason is that most of the service in urban areas is provided by large telephone companies, which may also serve rural areas. By contrast, much of the service in rural areas is provided by smaller companies. The smaller companies have less of an ability to spread their common and other costs without increasing rates to levels that might not be reasonably comparable to those of their larger urban counterparts.

Indeed, it is this ability to spread common costs -- and indeed, higher costs of service -- across a larger customer base, that underlies much of the current federal support program for non-rural companies. The use of statewide average costs[26] allows larger companies to maintain reasonably comparable rural rates because they are supported by the lower urban costs the company also experiences. For example, SBC Ohio serves considerable rural territory across the state of Ohio.[27] Yet SBC Ohio also serves seven of the eight major metropolitan areas in the state.[28] As a result, SBC Ohio's statewide average costs are low, and no explicit universal service support is needed to ensure comparable rates.

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[25] Although there might be exceptions: For example, some of the costs of laying lines in urban areas can be higher, because they involve digging up and repairing streets.

[26] *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, 18 FCC Rcd 22559, 22573-22574 (2003) ("*Remand Order*"), ¶ 25, appeal pending *sub nom. Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *SBC Communications Inc. v. FCC & USA*, Tenth Cir. No. 04-9518; and *Vermont Public Service Board v. FCC & USA,* Tenth Cir. No. 04-9519.

[27] See http://www.puc.state.oh.us/pucogis/statewidemaps.htm.

[28] Id.

By contrast, in Ohio a small telephone company -- like the state's smallest, Vaughnsville Telephone Company with 400-some access lines in northwestern Ohio -- serves only rural territory, and has only a few customers over which to spread its common costs.[29] Thus for Vaughnsville, rates will tend to be not reasonably comparable to urban rates, unless there is explicit universal service support.

This is true even in rural areas of northwest Ohio where conditions are hardly extreme. It is even more true in rural areas in other states, where mountainous conditions or very widely scattered customers make the costs of service significantly higher than a "lower cost" rural company.[30] These conditions are also, of course, observed for large non-rural telephone companies like Qwest in Colorado; but, as in Ohio for SBC Ohio, Qwest in Colorado has lower-cost areas to balance out its high-cost areas. Once again, because Qwest's statewide average costs in Colorado are low,[31] no additional explicit support is necessary.

IV. DEFINITION OF "RURAL" FOR UNIVERSAL SERVICE PURPOSES

As discussed above, it is not enough to simply identify rural customers and examine their rates and services. The task is also to identify the companies serving those customers and to determine whether those companies need federal universal service

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[29] See http://www.puc.state.oh.us/website/telserv3.

[30] For example, Vaughnsville's approximately 400 customers are spread over service territory of less than ten square miles. By contrast, rural carriers in Alaska and Wyoming serve, respectively, areas with 0.58 and 1.25 persons per square mile. Rural Task Force White Paper 2, "The Rural Difference" (January 2000) ("*The Rural Difference*") at 9.

[31] As shown on Appendix HC16 of USAC's universal service fund projections for the 4th quarter of 2004, the average costs of Colorado and Ohio are virtually the same, \$23.26 per line vs. \$23.27 per line. *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2004*, USAC (August 2, 2004).

support in order that their rates and services will be reasonably comparable to urban rates and services. In this examination, the Commission has adopted separate programs for rural telephone companies and for non-rural telephone companies.

The Joint Board seeks comment on whether the Commission should continue to use the statutory definition of "rural telephone company" to determine which carriers are rural carriers for high-cost universal service purposes.[32] In 1997, based on a Joint Board recommendation, the Commission adopted a definition of rural carrier for universal service purposes that mirrored the definition of "rural telephone company" found in Section 153(37) of the Act.[33] Pursuant to this definition, a telephone company is a "rural" telephone company if it is a

> local exchange carrier operating entity to the extent that such entity
>
> (A) Provides common carrier service to any local exchange carrier study area that does not include either:
>
> > (i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
> >
> > (ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
>
> (B) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
>
> (C) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
>
> (D) Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

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[32] *RHCPN*, ¶ 8.

[33] See 47 U.S.C. § 153(37); *First Report and Order*, 12 FCC Rcd at 8943-44, ¶ 310.

As the Joint Board points out, there are a number of ways in which the Section 153(47) definition -- or the Commission's implementation of the definition -- does not track the factors that would tend to cause rates to become not reasonably comparable or unaffordable, hence justifying support. The Joint Board correctly notes that there is no statutory requirement that the Commission use the Act's definition of rural telephone company for high-cost universal service purposes.[34] NASUCA submits that the Commission's universal service definition should be changed.

One respect in which the definition should be changed is that the term "local exchange operating entity" should not be construed as the Commission has previously done.[35] As discussed in Section VI, the existence of holding companies that provide efficiencies of scale and scope should not be ignored.

The Joint Board asks for comment on the extent to which each of the four subparts of the current definition accurately identifies companies that "generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit as much from economies of scale and scope" as the large non-rural carriers.[36] NASUCA submits that, as described by the Joint Board, the current definition allows carriers that serve many subscribers and do benefit from economies of scale and scope to be classified

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[34] *RHCPN*, ¶ 9.

[35] Federal-State Joint Board on Universal Service, CC Docket 96-45, Tenth Report and Order, 14 FCC Rcd 20156 (1999) ("*Tenth Report and Order*"), ¶ 444.

[36] *RHCPN*, ¶ 8, citing *Referral Order* at ¶ 3 (citing *First Report and Order*, 12 FCC Rcd at 8936, para. 294). For many rural carriers, universal service support provides a large share of the carriers' revenues, so any sudden change in the support mechanisms may disproportionately affect rural carriers' operations. *Referral Order*, ¶ 3.

as rural telephone companies. This result can be avoided only by a revision of the current definition.

The Joint Board cites the fact that approximately 40 companies serving study areas with more than 100,000 access lines, including one company serving over 2 million access lines, self-certified as rural carriers under subsection 3(37)(D) of the Act.[37] Most of these companies are owned by holding companies that have operations in many states. The Joint Board cites the example of Sprint, a national company whose ILECs serve over 7.9 million customers throughout the nation,[38] which nonetheless certified that 20 of its study areas in 17 states are rural under subsection 3(37)(D).[39] Notably, Sprint Florida serves more than 2 million lines, but qualifies as a rural telephone company under the Commission's current definition.[40] The Joint Board contrasts this with the situation of companies that serve only one study area in one state, but exceed the 100,000 access line threshold in subsection 3(37)(C), and are considered to be non-rural carriers.[41]

Clearly, the solution to this contradiction is not to qualify large companies like Roseville Telephone and Northstate Telephone as rural telephone companies. Instead, the task is to exclude companies like Sprint Florida from the definition, **because they do**

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[37] *RHCPN*, ¶ 25, citing *Common Carrier Bureau Releases List of Carriers Filing Rural Certification Letters and Notifications of Changes in Status*, Public Notice, CC Docket No. 96-45, 15 FCC Rcd 13872 (2000).

[38] Sprint 2003 Annual Report at 4; see http://www.sprint.com/sprint/annual/03/Sprint03Proxy10K.pdf.

[39] *RHCPN*, ¶ 8, n. 25.

[40] Id.

[41] Id., ¶ 8. The Joint Board gives two examples: Roseville Telephone Company in California and Northstate Telephone Company in North Carolina, which serve 134,361 lines and 125,237 lines, respectively, according to the Universal Service Administrative Company's (USAC) most recent quarterly filing. Id., ¶ 9, citing USAC Quarterly Administrative Filing 2004, Third Quarter (3Q) Appendices, HC01, HC05, at http://www.universalservice.org/overview/filings.

not display the characteristics that require federal support. These large companies should be able to maintain their rates at reasonably comparable and affordable levels through spreading costs, just like SBC Ohio.[42]

In a context involving interpreting subsection 3(37)(D), the Joint Board asks whether using a different (in that case, broader) definition would be either under-inclusive or over-inclusive in identifying companies that should be considered as rural for high-cost universal service purposes.[43] That, of course, is the major concern in this area. We should not be under-inclusive, so that customers' rates become no longer reasonably comparable; we also should not be over-inclusive, so as to give support in areas where rates are currently reasonably comparable, and are not at risk of losing that status.

The Joint Board identifies a key problem by seeking comment on whether the Commission should continue to use section 153(37)(D) to identify rural carriers for high-cost universal service purposes.[44] Part of the problem is that the section 153(37) tests are conjunctive: That is, a carrier can qualify as rural under subsection (D) even though it does not qualify under subsections (A)-(C), most specifically if it includes urbanized territory under subsection (A)(ii), or serves more than 50,000 access lines under subsection (C).

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[42] If they are non-rural, they would still be eligible for the Commission's supplementary assistance program, if their rates became unaffordable or no longer reasonably comparable. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003).

[43] *RHCPN*, ¶ 10.

[44] Id., ¶ 8.

Thus the Joint Board asks if the Commission should simply eliminate the subsection (D) test?[45] To the extent that this test allows companies that should be able to spread the need for support among numerous access lines to receive federal support, it should be discarded or at least refined.[46]

The Joint Board notes that eliminating the subsection (D) test would likely ensure that no study area serving more than 100,000 access lines would be considered "rural," and asks if there is some universal service policy objective that would be served by treating a carrier with more than 100,000 lines as rural when most of those lines are in rural areas.[47] More accurately, changing the test in this way would in fact mean that no carrier with more than 100,000 access lines would qualify for support under the rural support mechanism, because of the presumption that such support is not necessary to keep rates affordable and reasonably comparable.

The presumption should be that, unless a larger rural carrier has high costs, it does not have a need for federal support in order to keep service affordable and reasonably comparable. High costs, especially high deployment costs, would be reflected in a company-specific forward-looking cost test, as NASUCA discusses below.

The Joint Board asks whether the Commission could interpret "communities of more than 50,000" in a way that would prevent rural treatment of urbanized or suburban

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[45] Id., ¶ 9.

[46] If a company that meets this test and only this test is able to show that its internal resources are insufficient to keep rates reasonably comparable and affordable, it should be allowed to apply for support.

[47] Id.

areas.[48] By definition, urbanized or suburban areas are not rural.[49] Thus they should not be supported by funds designed to give rural customers comparable rates, unless they have high costs. The key factor in complying with the statutory principle in Section 254(b)(3) lies in identifying the rural areas and the high cost areas where support may flow. Only if a suburban area has high costs could it be eligible for funding.

V. THE COMMISSION SHOULD ADOPT A MORE GRANULAR APPROACH TO ASSESSING CARRIERS' NEEDS FOR HIGH-COST UNIVERSAL SERVICE SUPPORT.

The Joint Board seeks comment on "whether the Commission should modify its rural/non-rural definitional framework to permit finer distinctions among carriers of different sizes or characteristics."[50] NASUCA's wholehearted recommendation is that the Commission move from the current system, which essentially recognizes only two categories of carriers -- rural and non-rural -- to a system that subdivides the rural category according to the significant differences among rural carriers. In the *Rural Task Force Order*, the Commission said that the rural mechanism adopted there "strikes the appropriate balance at this time."[51] The time for the Rural Task Force plan has run out; it is time to further adjust the mechanism.

The Rural Difference shows not only the many differences between non-rural carriers and rural carriers, but the diversity among rural carriers. It should be intuitively

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[48] Id., ¶ 10.

[49] *The Rural Difference* states (at 9), that "rural" carriers in some states serve populations of over 100 persons per square mile.

[50] *RHCPN*, ¶ 11.

[51] *Rural Task Force Order*, ¶ 28.

obvious that a carrier with 400 access lines would not have much in common with a carrier that had 100,000 access lines, and, of course, have even less in common with a carrier that had a million or two access lines. But *The Rural Difference* specifically shows that, by and large, carriers that serve more than 20,000 access lines have embedded cost characteristics that are not radically different from non-rural carriers (one could say that their embedded costs are reasonably comparable to non-rural carriers).[52] Once below 20,000 access lines, cost structures increase substantially until the smallest carriers (those with less than 1,000 access lines) have embedded operational costs double and triple those of the average rural carrier, and three or four times those of non-rural carriers.

The Rural Difference discusses a range of "operational related variables."[53] The graphs included in this discussion show commonalities among carriers with 20,000-50,000 lines, with 50,000-100,000 lines and with more than 100,000 lines, in contrast to the 10,000-20,000 lines and the five smaller groups. Commonalities are seen in the following categories: average lines per local switch,[54] loops per sheath mile,[55] total plant (gross) investment per loop,[56] average gross central office equipment ("COE") investment

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[52] Indeed, because the comparison in *The Rural Difference* is between rural carriers and all non-rural carriers (including the largest RBOCs), it appears likely that a comparison between rural carriers and the smaller non-rural carriers (like Roseville and Northstate) would show less of a difference.

[53] *The Rural Difference* at 43-57.

[54] Id. at 45.

[55] Id. at 46.

[56] Id. at 47.

per loop,[57] average COE transmission investment (gross) per loop,[58] variability in COE transmission investment per loop,[59] average cable and wire facilities investment per loop,[60] and average plant expenses per loop.[61]

The Joint Board asks whether the Commission should establish different high-cost universal service support mechanisms for small, medium, and large size companies[62] -- presumably the question pertains to small, medium, and large size **rural** companies. The Joint Board provides the example of carriers with fewer than 50,000 lines being considered small; carriers with more than 50,000 lines but fewer than 100,000 lines being considered medium size; and carriers with more than 100,000 lines being considered large.[63] It appears, however, as just discussed, that the key distinctions are among the smallest carriers, those with fewer than 20,000 access lines.

A number of approaches are possible. One such approach would classify all rural companies above the mean in rural carrier access lines as large; carriers within one standard deviation below the mean could be classified as medium; and the rest would be classified as small.

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[57] Id. at 50.

[58] Id. at 51.

[59] Id. at 52.

[60] Id. at 53.

[61] Id. at 54.

[62] *RHCPN*, ¶ 11.

[63] Id.

Another possibility would be to use the size categories in subsections 3(37)(B)-(C) of the Act.[64] This would presumably make companies with fewer than 50,000 access lines small; medium rural companies would have 50,000-100,000 access lines; and large rural carriers would have in excess of 100,000 access lines. But these categories were not created for the primary purpose of locating the rural customers whose rates are at risk of not being reasonably comparable, and who need high-cost support.

Precision in these gradations is probably not possible. Hence the "rough justice" in NASUCA's proposal that carriers with fewer than 50,000 access lines be in one classification, and those with 50,000 or more be in another.[65] Indeed, as discussed above, the RTF data suggest that the dividing line between small and large could be moved to 20,000. This makes the use of 50,000 access lines (the next category up in RTF's data) conservative.

Another distinction that could be drawn in order to follow the statutory plan would be to limit support to small carriers that serve only rural areas. As the Joint Board notes, the current tests in subsections 3(37)(B) and (C) allow a small carrier to qualify as rural even if it serves urbanized or suburban territory as all or part of its territory.[66] This assumes that Congress did not intend support to go to customers not located in rural areas. Yet the aspirational goal is to support customers in rural areas **and** customers in

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[64] Id., ¶ 14.

[65] As discussed in the next section, the larger category should be transitioned to a forward-looking cost basis for determining high-cost support, while for at least the next five years, smaller companies will continue to base support on embedded costs.

[66] *RHCPN*, ¶ 15.

"high cost" areas.[67] A small carrier operating in urbanized or suburban territory could nonetheless have high costs, particularly high common costs, that could outweigh its otherwise lower deployment costs. Thus such small carriers should not automatically be excluded from support.

The Joint Board shows the kernel of a solution, however: The Joint Board asserts that the test in subsection 3(37)(A) "would exclude" carriers serving urbanized areas.[68] (It would also likely "exclude" suburban areas.) Actually, it would just not *include* those carriers as rural; as the Joint Board notes, those carriers would still qualify under subsection 3(37)(B) and (C). Thus NASUCA would propose that, unless a carrier met the subsection 3(37)(A) test, it would be included as a "larger" carrier under the large (50,000 or more access lines)/small (fewer than 50,000 access lines) dichotomy just discussed. This answers the Joint Board's question of whether a small carrier in an urbanized area and a small carrier in a sparsely populated rural area should be treated the same for high-cost support purposes.[69] This would also allow the Commission "to target support more effectively to the highest cost rural areas by considering whether the area served is rural…"[70]

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[67] 47 U.S.C. § 254(b)(3).

[68] *RHCPN*, ¶ 15.

[69] Id.

[70] Id.

VI. STUDY AREA AND HOLDING COMPANY ISSUES

The Joint Board asks to what extent should the size categories depend on whether the Commission is considering study area, statewide operations, or nationwide operations in determining company size.[71] NASUCA submits that, as another part of the transition that will eventually base all support on forward-looking costs, separate study areas of a single carrier within a state should be combined for the 50,000 access line threshold discussed above, as well as for calculating costs.[72]

The Joint Board asks to what extent does a carrier operating multiple study areas in a given state achieve some economies of scale that are not reflected in high-cost support calculations based on separate study areas.[73] It would be appropriate to respond that if there were no such economies, the existence of carriers operating multiple study areas, or of intrastate or interstate holding companies, would not be in the public interest. NASUCA agrees that "considering all of a company's study areas within a state for universal service support purposes better reflect the appropriate economies of scale achieved by the carrier."[74] Again, as the Joint Board stated, "Many rural carriers are the operating subsidiaries of larger holding companies that may provide some economies of scale not realized by other non-affiliated rural carriers."[75] Once again, the task is to identify and separate carriers that are in fact small and cannot achieve such economies of

[71] Id., ¶ 14.

[72] Indeed, if a non-rural carrier has a rural affiliate operating in the same state, the "rural" affiliate should be treated as part of the rural carrier.

[73] Id., ¶ 12.

[74] Id.

[75] Id.

scale and scope, from those that are in fact large and can achieve such economies. To this end, the fiction of single carriers maintaining separate study areas within a state for universal service purposes must be ended.[76]

The impact of combining study areas owned by a single carrier would vary by state and carrier. For example, Century Tel owns seven separate study areas within the state of Arkansas: Russellville, Siloam Springs, Central Arkansas, Arkansas, Mountain Home, Redfield and South Arkansas. In aggregate, Century Tel serves approximately 270,000 access lines in Arkansas. However, because the study areas are kept separate for universal service purposes, five of the study areas serve less than 50,000 access lines and currently qualify for local switching support, regardless of actual switching costs and regardless of the fact that Century Tel is a large carrier in Arkansas. Likewise, in New York Frontier owns seven separate rural study areas: Seneca Gorham, Sylvan Lake, Frontier Comm, Citizens of New York, Citizens of Red Hook, Citizens of Hammond, and Citizens of Westchester County. In aggregate, Frontier serves approximately 420,000 access lines in these rural study areas.[77] However, five of these Frontier study areas serve below 50,000 access lines and are thus eligible to receive local switching support, regardless of costs and regardless of the fact that Frontier is a large carrier in New York.

Based on an examination of Universal Service Administrative Company ("USAC") data, NASUCA estimates that if study areas owned by a single carrier within a single state were combined for universal service purposes, approximately 1 million access lines currently in 67 study areas serving less than 50,000 access lines would be

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[76] As discussed below, the Joint Board may want to consider exempting rural study areas in insular areas.

[77] Frontier also serves another 410,000 access lines in its non-rural study area in Rochester.

affected nationwide.[78] This figure does not include combined rural study areas in insular areas and Alaska. As pointed out by the Rural Task Force, insular areas and Alaska face unique climatological and geographical challenges not faced by other rural companies.[79] Accordingly, the Joint Board may want to consider exempting these companies from the requirement to combine study areas under single ownership within a single state. However, study areas under common ownership in all other states should be combined for purposes of determining federal universal service support.

Adopting the proposal to combine separate study areas under common ownership within a single state will go a long way towards rationalizing the federal universal service support system. As discussed below, carriers that actually serve a large number of access lines within a state should be moved to support based on forward-looking costs. Small carriers that are not part of a larger enterprise and do not enjoy economies of scale and scope should be allowed to continue to receive universal service support based on their own embedded costs for an additional five year period.

VII. DETERMINING UNIVERSAL SERVICE SUPPORT IN AREAS SERVED BY RURAL CARRIERS

As its fundamental request, the Joint Board seeks comment "on how to determine universal service support in areas served by rural carriers after the end of the RTF plan on June 30, 2006."[80] NASUCA proposes that over the five years following the end of the RTF plan, rural carriers with 50,000 or more access lines (calculated as discussed above)

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[78] There may be more with common ownership; this review looked at the names listed in the USAC reports.

[79] *The Rural Difference*, pp. 26-29.

[80] Id., ¶ 18.

should be transitioned to a forward-looking cost test for determining high-cost support. In addition, during the same period, the Commission should study the operations of smaller carriers (with fewer than 50,000 access lines) with a view to adopting a forward-looking cost test for those carriers at a later time.

A. Proposal for carriers with 50,000 or more access lines

Within one year, it should be determined which carriers have 50,000 or more access lines, and a forward looking cost test should be performed for each carrier.[81] It should be presumed that there will be a transition over the following four years to support based on the results of that test. At the option of the carrier, forward-looking cost tests could be performed in the years up to year five, with the goal of adjusting the phase-out of embedded cost support. In any event, a forward-looking test would be performed in year four, to establish support for year five.

The current non-rural mechanism compares a statewide average cost for all non-rural wire centers (combining all non-rural carriers) in the state, to a national average cost in order to determine whether support is to be provided. In recognition of the rural carriers' smaller size, NASUCA proposes that forward-looking support for rural carriers not be based on statewide average costs, but rather be provided based on each carrier's individual costs within that state. The average cost for all of wire centers in the state served by a single carrier should be compared to a benchmark.[82] The current benchmark for non-rural carriers is two standard deviations above the national average cost for non-

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[81] Details of that study are presented in section VII.C.2, below.

[82] As above, wire centers owned by the same holding company would be combined.

rural carriers. Further investigation is needed to determine the appropriate benchmark for rural carriers moved to forward-looking costs.

Based on USAC data, NASUCA estimates that moving rural carriers serving over 50,000 access lines to a support system based on forward-looking costs would put almost 96% of the total access lines in the United States under a forward-looking system. However, over one-third of the access lines and 94% of the study areas served by rural companies would remain on an embedded cost system. The table below shows the current level of support for all study areas and for rural carriers' study areas:

SUMMARY OF STUDY AREAS, SUPPORT AND LOOPS
USING 50,000 LOOP BENCHMARK
2Q 2004

ALL STUDY AREAS

Benchmark	Study Areas	% Study Areas	Monthly Support	% Monthly Support	Working Loops	% Working Loops	Per Line Support
>50,000 Loops	172	12.0%	$109,624,103	41.3%	172,403,796	95.8%	$0.64
<50,000 Loops	1263	88.0%	$155,856,120	58.7%	7,577,694	4.2%	$20.57
TOTALS	1435		$265,480,223		179,981,490		$1.48

RURAL STUDY AREAS

Benchmark	Study Areas	% Study Areas	Monthly Support	% Monthly Support	Working Loops	% Working Loops	Per Line Support
>50,000 Loops	86	6.4%	$47,210,452	23.2%	13,903,154	64.7%	$3.40
<50,000 Loops	1263	93.6%	$155,856,120	76.8%	7,577,694	35.3%	$20.57
TOTALS	1349		$203,066,572		21,480,848		$9.45

Source: Appendices HC01 and HC05, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2004, USAC (January 30, 2004)

As discussed above, combining study areas owned by a single carrier within a single state would move an additional one million access lines and 67 study areas served by rural carriers above the 50,000 access line benchmark.

B. Proposal for carriers with fewer than 50,000 access lines

The Rural Difference shows substantial variation in the cost structure of the smaller carriers. The Commission should, for the five year period during which there is a phase-down for larger rural carriers, also commission a study to develop a forward-looking cost study that recognizes the differences among the smaller carriers. This would involve establishment of input price profiles on a granular level for the carriers. At the end of the five year period, like the five year period in the Rural Task Force Order, the companies would be expected to transition to support based on the new and improved forward-looking cost study. This would give the smallest carriers adequate time to prepare for the change.

C. Cost Basis of Support

1. Forward-Looking Economic Costs versus Embedded Costs

In the *Universal Service First Report and Order*, the Commission agreed with the Joint Board's recommendation that forward-looking economic costs should be the basis for universal service support because, unlike embedded costs, they provide appropriate incentives for investment, entry, and innovation in the marketplace.[83] Forward-looking cost tests better simulate the results of a competitive market.

In the *Ninth Report and Order* and *Tenth Report and Order*, the Commission implemented a forward-looking support mechanism for non-rural carriers.[84] The Commission's methodology, based on the forward-looking high-cost synthesis model,

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[83] *RHCPN*, ¶ 20, citing *First Report and Order*, 12 FCC Rcd at 8899, ¶ 224.

[84] *RHCPN*, ¶ 20, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), *remanded*, *Qwest*, 258 F.3d 1191; *Tenth Report and Order*, 14 FCC Rcd 20156.

has been used to determine support for non-rural carriers since January 2000.[85] The Commission determined that rural carriers should gradually shift to a forward-looking economic cost methodology on a different time-table than non-rural carriers.[86]

The Joint Board asks if it is possible now to design a forward-looking model that would be appropriate to estimate costs for some or all rural carriers.[87] NASUCA responds in the affirmative. The process should begin with the larger rural carriers, those for whom *The Rural Difference* data shows less of a difference from the non-rural carriers for which the forward-looking cost test has been implemented.

Rural Task Force White Paper 4, "A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies,"[88] asserted numerous differences between the FCC Synthesis Model results and "actual company data."[89] It should first be noted that only two of the 23 companies used in the White Paper 4 study had more than 50,000 access lines; under NASUCA's proposal, the 21 smaller companies would remain under an embedded cost support mechanism, at least for the next five years.

In any event, the Commission responded to the Rural Task Force criticisms in the *Rural Task Force Order*.[90] The Commission noted that the Rural Task Force study had

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[85] In order to comply with the directives of the Tenth Circuit Court of Appeals, the non-rural support mechanism was modified by the Commission in October 2003 in the *Remand Order*.

[86] See *Referral Order*, ¶ 3.

[87] *RHCPN*, ¶ 20.

[88] Issued in September 2000.

[89] White Paper 4 at 9.

[90] *Rural Task Force Order*, ¶ 174.

contained non-rural inputs, and found that, " [i]f inputs based on rural carrier data had been used, however, many of those differences could have been eliminated."[91] And a significant source of the Rural Task Force complaints came from the inevitable differences in the results of actual (embedded) cost analyses and forward-looking tests.[92]

The Joint Board asks how shifting to a mechanism based on forward-looking economic costs would affect investment in facilities that are capable of providing advanced services.[93] The Joint Board cites the *Rural Task Force Order*, where the Commission noted that the public switched telephone network is not a single-use network.[94] Yet the 1996 Act says that only those services included in the FCC-defined list of services are to be supported. This provision requires that a "carrier that receives … support *shall* use that support only for provision, maintenance, and upgrading of *facilities and services for which the support is intended*."[95] Under Section 254(c)(2), the Commission establishes "the definition of the services that are supported by Federal universal service support mechanisms."[96] That definition does not currently include advanced services. It is true that high-cost loop support is currently available to rural carriers "to maintain existing facilities and make prudent facility upgrades[.]"[97] **But those upgrades cannot include upgrades to support non-basic services. To that**

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[91] Id.

[92] Id., n. 412.

[93] *RHCPN*, ¶ 22.

[94] Id., citing *Rural Task Force Order*, 16 FCC Rcd at 11322, ¶ 200.

[95] 47 U.S.C. 254(e) (emphasis added).

[96] 47 U.S.C. 254(c)(1).

[97] *First Report and Order*, 12 FCC Rcd at 8939, ¶ 300.

extent, the rural high-cost mechanism must be the same as the non-rural high-cost mechanism.

The Joint Board also asks whether both embedded and forward-looking economic costs can be used when developing support levels.[98] It must first be noted that the non-rural mechanism uses forward-looking costs exclusively. There would have to be some special reason to use both for rural carriers. The Joint Board asks, "[I]f support is based on the results of a forward-looking economic cost model, should a company's support be capped at the level of support determined under an embedded cost system?"[99] If there are situations where the level of forward-looking costs exceed embedded costs, they deserve investigation, but surely are not frequent enough to require all rural carriers with 50,000 or more access lines to conduct both studies.

The Joint Board also asks whether the demographics of the territory served, such as the density of customer locations, rather than the lineage of the company or the number of lines served, should be used to determine whether support should be paid under a forward-looking or an embedded cost system.[100] In response, one would ask whether support in a less-dense territory be paid based on forward-looking costs or on embedded costs? Alternatively, would support in a denser area be based on forward-looking costs or embedded costs? No such test was adopted before support for non-rural carriers were placed on a forward-looking cost basis. Total company size -- in terms of access lines -- is the simplest way to gauge whether a company should be able to spread

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[98] *RHCPN*, ¶ 24.

[99] Id.

[100] Id., ¶ 25.

its costs internally so as to keep rural rates from becoming not reasonably comparable to urban rates. These are the companies for whom the forward-looking cost tests are appropriate.

2. Estimating Forward-Looking Economic Costs

NASUCA proposes that the FCC's Synthesis Model be used to assess costs for larger rural carriers, as it is used for non-rural carriers, with some modifications. However, the inputs should be adjusted to reflect rural carriers' costs, not those of non-rural carriers. Further, like the non-rural carrier support mechanism, forward-looking cost modeling for larger rural carriers should be based on costs at the wire center level.

NASUCA suggests that it would be appropriate to continue to review potential improvements to the FCC's Synthesis Model. It has been many years since the Synthesis Model was last substantially revised. It may be that there are now improvements that have been developed in cost modeling that should be considered and be applied to the Synthesis Model. At this point, however, it does not appear that there are any available alternatives that are superior to the FCC's Synthesis Model.[101] The Synthesis Model, as applied to the non-rural carriers, works from a wire center level. Thus its results have already been applied to non-rural carrier wire centers that have some of the same characteristics seen in wire centers of rural carriers -- i.e., few lines, low line density, and difficult terrain.

It will be especially important, however, to fine tune the model to make it more appropriate for use with rural carriers. Specifically, the customer location files should be

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[101] It remains to be seen whether parties will propose alternatives in this proceeding and whether those alternatives will be preferable.

updated to accurately locate customers and design the network; this would also allow identification of scale economies that have emerged for rural carriers since 1996. There should be more accurate means of mapping customer locations today so as to better approximate customer locations and the cost of constructing networks to reach such customers.

Further, a more granular approach to the inputs is needed. For example, purchasing power and volume discounts (or, more precisely, *lack* of both for smaller carriers) should be factored into the inputs used in the model. Overhead costs will also need to be approached granularly.

If these fundamental changes are made, it will then be possible to perform an "outlier" analysis. For example, if results for companies of similar size and geographic description result in outliers that have costs that are very high compared to group averages, further analysis could be undertaken to determine what drives the differences and whether the model needs additional fine-tuning.[102] The existence of outliers was a major concern of the Rural Task Force.

Some of the improvements to the model to make it more appropriate for use for rural carriers, e.g. more accurately modeling customer locations, may require modifications to the model program itself. It is important to make certain that the model applied to rural carriers is accurate and up to date. To the extent that it is necessary to expand funds in order to improve the model -- or even to update the data bases used by the model -- these changes should be considered as universal service costs and be funded by the Universal Service Fund.

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[102] The analysis could also examine companies whose costs are very low compared to the group averages.

As previously discussed, the Commission has used a forward-looking cost model as part of the support mechanism for non-rural carriers since 2000. The Joint Board asks that commenters address whether their proposals implicate the non-rural model, and if so, how.[103] NASUCA submits that at this point only the question of applying the model to rural carriers is properly before the Commission. It is useful to consider whether changes made in the model to accommodate rural carriers should also be applied to non-rural carriers as well. It may be that model changes that are essential to the rural carriers may also be helpful when the model is also applied to non-rural carriers as well. However, the Commission should recognize that only the essential issues related to the rural carriers need be considered at this time.

3. Measuring Embedded Costs

As discussed above, NASUCA proposes that companies with fewer than 50,000 access lines remain under a support mechanism that considers embedded costs. NASUCA also proposes that the Commission should coordinate a detailed study of how to transition small carriers to a forward-looking regime.

Of particular concern are the numerous smaller carriers that receive more than $20 per month per line in support. Clearly, whether an embedded test or a forward-looking test is used, there should be a differentiation between smaller, rural companies serving areas where deployment costs are not particularly high -- like the flatlands of northwestern Ohio -- and those serving areas like the Rockies or even the Appalachians. And there should also be distinctions between carriers with 5,000 lines in 100 square miles and one with 5,000 lines in 1,000 square miles.

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[103] *RHCPN*, ¶ 30.

One key part of this study will be the determination of a "best practices" benchmark for small companies' overhead cost. As noted by the Joint Board, there are serious questions about whether the use of embedded costs provides appropriate incentives for the carriers to achieve efficiencies.[104] Obviously, the smaller the carrier, the more impact overhead costs will have on each of the carrier's customers. The federal universal service fund should not be required to support inflated overhead costs.

It should be noted that under NASUCA's proposal to transition larger rural carriers to forward-looking costs, the number of carriers relying on embedded costs will decrease, as will their impact on the fund. Thus the issues of "correcting" the calculation of embedded costs become less important. One area that will remain of concern is, as discussed elsewhere, establishing a benchmark for a reasonable level of overhead that can reasonably be supported by the federal fund.

4. Basis of Support for Competitive ETCs

On November 8, 2002, the Commission asked the Joint Board to review, among other things, the Commission's rules relating to high-cost support in study areas in which a competitive ETC ("CETC") is providing service.[105] In particular, the Commission sought the Joint Board's review of the methodology for calculating support for ETCs in competitive areas and asked the Joint Board to address the concerns raised in the *Rural Task Force Order* regarding excessive fund growth if incumbent LECs lose a significant number of lines to competitive ETCs.[106]

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[104] *RHCPN*, ¶ 21.

[105] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, ¶ 1 (2002).

[106] Id. at 22645-46, ¶¶ 6-8.

In its *Recommended Decision* in response to the prior referral order, the Joint Board indicated that it would be desirable to "consider possible modifications to the basis of support for all ETCs during the 'comprehensive review of the high-cost support mechanisms for rural and non-rural carriers.'"[107] The Joint Board explained that its approach to harmonizing the two mechanisms for rural and non-rural carriers would necessarily influence its recommendations on the basis of support in competitive areas.[108]

In the *Recommended Decision*, the Joint Board asserted that it did not have "an adequate record to analyze and understand the consequences of recommending a change in the basis of support for areas served by rural carriers that face competition."[109] NASUCA believes that the Joint Board was incorrect. The record was sufficient to make the decision to require CETCs' support to be based on their own costs.

The purpose of high-cost universal service support is to produce rural rates that are reasonably comparable to urban rates for each carrier, given different service structures. For example, rural wireline rates should be reasonably comparable to urban wireline rates, and rural wireless rates should be reasonably comparable to urban wireless rates. The test is not whether rural wireless rates are comparable to urban wireline rates.[110]

This makes clear that there is no reason to pay support to CETCs based on ILECs' costs -- there is no logical connection between the two. Under current rules,

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[107]See *Joint Board Recommended Decision on Portability*, 19 FCC Rcd at 4294, ¶ 88.

[108] Id. at 4297, ¶ 95.

[109] Id., ¶ 96.

[110] As long as the Commission allows substantially different service structures, as it does between wireless and wireline service.

CETCs may be receiving a windfall by collecting support based on costs that have nothing to do with their own costs of service.

Specifically, there is no necessary connection between the embedded costs of a rural ILEC and the amount of support required to stimulate new investment by a CETC, especially where the CETC employs a non-wireline technology to provide service.[111] Equally important, there is no necessary connection between the forward-looking costs of a wireline ETC (whether ILEC or CETC) and those of a wireless ETC.

Under the current system, where CETCs receive support based on the ILEC's costs, it is theoretically possible for a CETC to collect public support even if it earns super-normal profits or already has abundant incentives to expand its network in any given designated service territory.[112]

This lack of connection between CETC costs and support represents a fundamental flaw in the current framework. Providing support to competitors who have not demonstrated any need for support does not enhance the public interest and fails to ensure that public funds are being used for any purpose consistent with 47 U.S.C. 254.

ILECs continue to serve as the only reliable carrier of last resort, however. Thus it would not be workable, for example, to limit ILEC support to the level of a lower-cost wireless carrier's support. Support for CETCs must be capped at the level of ILEC support in order to ensure a sustainable high-cost program and mitigate the risk of uneconomic support for very high-cost competitive carriers. If below the ILEC cost

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[111] Under NASUCA's proposal, only rural ILECs with fewer than 50,000 access lines would continue to receive support based on embedded costs, for at least five years. Rural ILECs with 50,000 or more access lines would receive transitional support phasing out embedded cost-based support for five years.

[112] It should be acknowledged that it is also possible for an ILEC to receive support when it is earning supracompetitive profits.

ceiling, support should be based on the CETCs forward-looking costs because those are the costs upon which a rational firm will base incremental investment decisions.

Support of multiple unregulated competitors, regardless of the technology employed, and based solely upon the costs of the incumbent regulated wireline provider, may also be counter-productive. Under the current mechanism, rural ILECs do not lose support as they lose lines to competitors.[113] The Commission has recognized that "excessive growth in the fund might be possible during the life of the five-year plan under certain circumstances," citing the *Rural Task Force Order*:

> As an incumbent "loses" lines to a competitive eligible telecommunications carrier, the incumbent must recover its fixed costs from fewer lines, thus increasing its per-line costs. With higher per-line costs, the incumbent would receive greater per-line support, which would also be available to the competitive eligible telecommunications carrier for each of the lines that it services. Thus a substantial loss of an incumbent's lines to a competitive eligible telecommunications carrier could result in excessive fund growth.[114]

This circularity causes more harm than just excessive growth of the fund. By creating a link between the incumbent's costs (which will grow on a per-line basis as competition succeeds), and the support to which the competitor is entitled, each cause and effect may be infinitely repeated. As competition increases, more support is required by the incumbent -- as a result, more support is provided to the competitor -- as a result, the competitor builds more facilities and wins more of the incumbent's revenue share -- as a result, the incumbent's per-line costs are again higher, making it easier for the competitor

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[113] Also the subject of Commission investigation in 96-45.

[114] *Rural Task Force Order*, 16 FCC Rcd at 11325-11327.

to price below the incumbent's higher cost, with the aid of still higher per-line USF support.

Some have argued that equal support is required by law. Yet the *First Report and Order*, six years old now, found equal support merely to be the "least burdensome" method,[115] hardly an endorsement for the ages. The *Ninth Report and Order*, four years old now, posited that there would be "competitive harm from providing unequal support."[116] It should be clear, however, that providing equal support is anti-competitive, because it subsidizes competition, as shown in the following table:

Scenario	**Competitor given advantage by using equal per-line support**	**Competitor given advantage by using per-line support based on each carrier's costs**
CETC costs less than ILEC costs	CETC	None
ILEC costs less than CETC costs	ILEC	None
ILEC costs equal to CETC costs	None	None

Clearly, the current rule that provides equal per-line support payments based on ILEC costs is a competitive advantage for the CETCs. By definition, however, competition that requires incentives is not economically efficient.

The *high cost* support fund should support carriers with *high costs*. Incumbent rural carriers have to show their costs; so should CETCs. Yet addition of CETCs should

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[115] *First Report and Order*, 12 FCC Rcd at 8933, ¶ 289.

[116] *Ninth Report and Order*, 14 FCC Rcd at 20479, ¶ 90.

not add to the burden on the fund; thus per-line support should be capped at the ILEC's per-line cost.[117]

The Joint Board also noted that, in considering issues related to support for competitive ETCs, it may find that it is necessary or appropriate to address these issues separately from other issues considered in this proceeding.[118] NASUCA asserts that, wherever it is addressed, the issue of equal support for ILECs and CETCs needs to be addressed expeditiously. Failure of the Commission and the Joint Board to conclusively deal with the issue perpetuates the current unreasonable situation.

VIII. CONCLUSION

The Commission should continue the deliberate transition to basing all high-cost support on forward-looking costs by requiring rural carriers serving 50,000 or more access lines to move to forward-looking costs over a five year period. Part of that transition involves refining the universal service definition of "rural carrier" and refining the areas for which access lines are to be totaled. During that five years, the Commission should also study how to apply a forward-looking cost test to the smallest carriers. The Commission should also base competitive carriers' support on those carriers' costs.

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[117] The Joint Board asks how should costs be determined if support is provided to competitive ETCs based on their own costs. *RHCPN*, ¶ 37. NASUCA reserves comment on this issue for reply.

[118] Id.

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