

**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)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin (PSCW) respectfully submits these comments in response to the Federal Communications Commission (Commission) *Notice of Proposed Rulemaking* (NPRM) in CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, and WC Docket No. 05-337, *High-Cost Universal Service Support*. The NPRM was released on December 9, 2005, and was published in the Federal Register on January 11, 2006. The NPRM traces the legislative and legal history of the high-cost support issue and requests comments on a number of matters to enable the Commission to craft a non-rural high-cost support mechanism consistent with the decision of the United States Court of Appeals for the 10th Circuit (Court) in *Qwest Corp. v. FCC (Qwest II)*¹ and the statute.

The Commission is seeking input on how to implement universal service support in a manner that complies with federal law and preserves and advances universal service. These comments explain how the cost-based, federal high-cost support program is critical to maintaining universal service in the State of Wisconsin and that without such support, rate differentials between Wisconsin's urban and rural customers will widen and threaten (rather than preserve and advance) universal service.

¹ *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

The NPRM indicated that the Commission is aware of the concept of a rate-based approach of universal service support, but poses questions about the mechanics of such an approach. These comments explain how the elements of the affordability test inherent in the PSCW's High Rate Assistance Credit (HRAC) program,² that distributes funds from the Wisconsin Universal Service Fund (USF) to areas with high rates, provides direction for defining “affordable,” “sufficient,” and “reasonably comparable,” which are all integral to administration of the federal USF. The PSCW HRAC program is consistent with both a supply-side, cost-based approach and a demand-side, rate-based approach to universal service support. It is also adaptable to competitors using different technologies. The affordability, sufficiency, and comparability objectives of the federal universal service law could be achieved by incorporating elements of an HRAC-type program in the Commission’s existing high cost mechanisms.³

Importance of Universal Service Support to Wisconsin

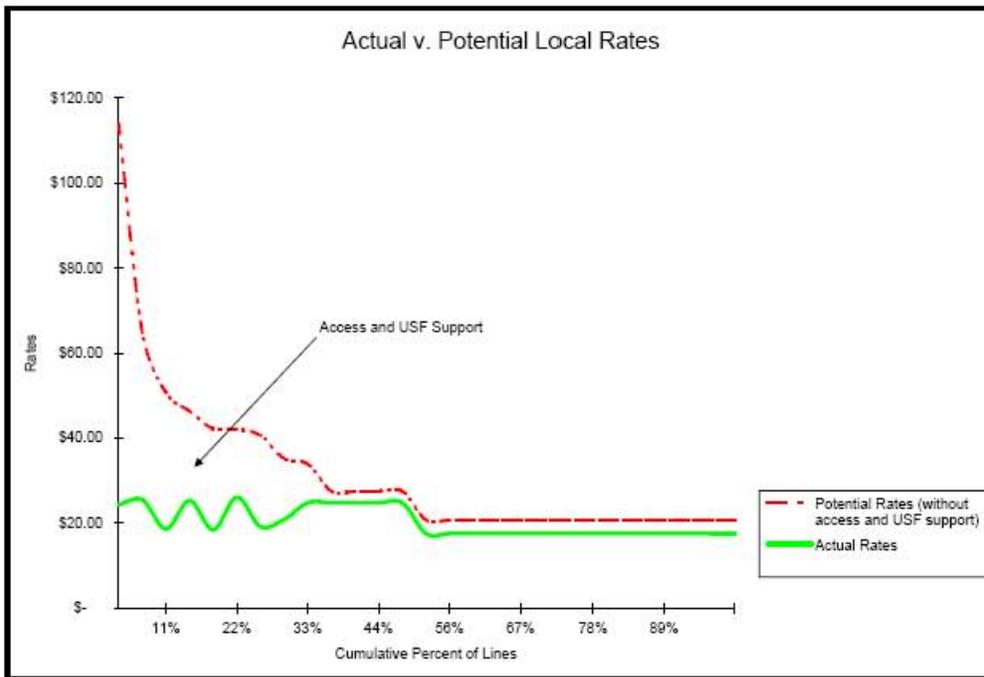
Very large differentials in prices for telephone service in rural areas could occur if there was no universal service support system. The following graph depicts the potential differential in telephone rates for all companies in Wisconsin if there was no federal universal service support system or contribution from access charges. The graph shows two lines. The lower line depicts the existing flat rates for local service including the federal subscriber line charge, for the lines of each Wisconsin utility. The upper line shows that same amount with the addition of the

² Wis. Admin. Code § PSC 160.09

³ Of the four main issues on which the NPRM specifically requests comment (listed at ¶ 7), the PSCW is addressing only some aspects of the first three:

1. How the Commission should define the statutory term “sufficient” to take into account all the principles enumerated in section 254(b). (NPRM ¶¶8-17),
2. How the Commission should define “reasonably comparable” under section 254(b)(3), consistent with its concurrent duties to preserve and advance universal service. (NPRM ¶¶ 18-22), and
3. How, in light of the interpretation of the key statutory terms, the Commission should modify the high-cost funding mechanism for non-rural companies. (NPRM ¶¶ 23-29).

utility's average revenue per line from existing access rates and average revenue per line from federal universal service support. The graph shows the results for all 1.9 million residential lines in Wisconsin ranked by those sums from highest to lowest.⁴



This graph shows that at least 15 percent of Wisconsin phone lines would have local rates in excess of \$40.00 per month without the current universal service support, and some of them would have rates well in excess of that amount. These results are evidence that the existing support programs are serving to keep rates more affordable in Wisconsin, thus helping to preserve universal service.

Universal service support should narrow the range of telephone rates that will be experienced by rural consumers, while still making consumers in rural areas aware that some elements of household expenditures, including the cost of telephone service, are higher than their

⁴ The long sections of level rates in the graph reflect current averaged rates for Verizon and AT&T (formerly SBC). The graph does not depict the potential level of rates in these territories if rates were deaveraged.

urban counterparts. A universal service support system should temper the magnitude of those rate differentials, but does not need to eliminate them completely.

Comparability Of Urban And Rural Rates

Critical elements to achieving comparability of urban and rural rates and services include adjustments for disparities in local calling scope, compensation for income disparities, minimum qualifications for quality of service, and a standard for additions to the list of supported services.

The PSCW suggests that the Commission should expand beyond a simple price comparison when defining comparable urban and rural services and rates.⁵ The Commission defined reasonably comparable rates in terms of a differential above a national average urban benchmark rate.⁶ The Commission used an annual survey of rates in 95 cities to develop its national average urban benchmark rate and its acceptable rate differential. As quoted in the NPRM, the Court in *Qwest II* rejected this approach, finding that “the Commission erred in premising its consideration of the term ‘preserve’ on the disparity of rates existing in 1996 while ignoring its concurrent obligation to advance universal service, a concept that certainly could include narrowing the existing gap between urban and rural rates.”⁷ The Court criticized this method because it narrowly focused on reasonable comparability in § 254(b)(3) -- ignoring the vast majority of other principles enumerated in § 254(b). Those other § 254(b) principles include quality services at just, reasonable, and affordable rates, and access to advanced services in all

⁵ Developing thresholds for universal service support has been particularly problematic for the FCC. In *Qwest I* (*Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003)) the Court was critical of the FCC’s selection of a threshold of two standard deviations or roughly 135 percent of the average urban rate. In *Qwest II* the Court reiterated its concern that “the degree of discrepancy might impermissibly stretch the boundaries of rate comparability,” noting a 2002 comparability benchmark of \$32.28 based on a range of urban rates of \$15.65 to \$35.19, which allowed over a 100 percent difference between the lowest urban rate and the comparability benchmark. This benchmark is applied to the cost-based program for non-rural carriers. Different thresholds on cost-based programs are applicable to rural carriers.

⁶ As of October 15, 2004, that average urban rate was \$24.31 including federal and state subscriber line charges, taxes, 911 and other charges. *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, by Paul R. Zimmerman, Industry Analysis and Technology Division, Wireline Competition Bureau, 2005, “Reference Book”

⁷ NPRM ¶18.

regions of the Nation. Clearly the Court has indicated that in response a definition of comparability of urban and rural services and rates must be written to take into account many more factors.

To address the Court's concerns, these PSCW comments focus on how to address the issues of comparable calling scope, affordability, quality of service, and types of available services in its definition of "comparable urban and rural services and rates." The PSCW's HRAC program addresses the first two of these issues, and they are addressed together below. A definition of "sufficient" universal service support is offered based on this fuller definition of comparability. The issues of quality of service and types of available services are addressed briefly following discussion of the HRAC program because an HRAC program can be adapted to support whatever answer is reached on these issues.

Wisconsin High Rate Assistance Credit (HRAC) Program

The Wisconsin High Rate Credit Program is a working, rate-based⁸ program that can provide additional support to the Commission's current cost-based programs, when necessary, to address affordability.

The Commission should consider using a mechanism like Wisconsin's HRAC program to supplement its cost-based support to address variations in relative affordability. The Commission's existing programs of cost-based support for rural carriers have generally been effective in helping to maintain affordable rates in most circumstances as demonstrated in the earlier graph. However, in Wisconsin, the amount of federal cost-based support provided has not always been sufficient to assure rates that are affordable without the HRAC program.⁹

⁸ The term "rate-based" approach is used in the NPRM. It does not connote a net investment rate base, rate of return regulation scenario, but rather a USF support mechanism that is based on rates charged to customers.

⁹ Currently, there are about 13,000 customers that are receiving high rate assistance credits in the Wisconsin program.

The HRAC program ties universal service support to the price that customers are actually paying for a set of telephone services. Based on a defined set of services to be supported, the HRAC program evaluates whether the total price exceeds affordability thresholds. The price of the standardized package of service is often considerably higher than the R1 rate alone.¹⁰ Affordability is determined by comparing the price of a standardized package of services, including local and, when appropriate, toll service as well as federal, state, and local surcharges (e.g. federal subscriber line charge, county 911 fee, etc.) to county median household income.

Wisconsin’s HRAC Program harmonizes calling areas to enable valid rate comparisons with some rather large calling areas within our state.¹¹ In the NPRM, the Commission recognized the need to address the fact that rural customers may have smaller local calling areas than urban customers, and that these customers generally purchase more long distance services than urban customers in order to reach all parts of their “local community.” As a basis for adjusting for this difference in calling scope, the PSCW has defined a local community as 50,000 lines and has identified five distinct local calling patterns to reach that many lines. The

¹⁰ The following is an example of the calculation of the price for a set of supported services:

R-1 monthly rate	\$23.40
EAS flat rate	.50
Subscriber line charge	6.50
ECC adjustment for 120 minutes of use	6.00
IntraLATA toll adjustment for 120 minutes	12.24
911 Surcharge	<u>.61</u>
Total price of supported service	\$49.25

¹¹ It is very difficult to make valid comparisons of rates without standardizing the scope of services provided by those rates. The Milwaukee Metroplan and Wisconsin’s Extended Community Calling (ECC) exemplify the pitfalls of not standardizing the scope of local calling included in local rates when comparing local rates in different localities or to a benchmark. For instance, the Commission does not make any adjustment for calling scope in its annual urban rate survey. The Commission shows a rate of \$33.84 from SBC (now AT&T Wisconsin) for Milwaukee and \$33.58 from SBC for Racine. These rates are close to the highest rates for the 95 cities in the survey and considerably higher than the average urban benchmark rate of \$24.31. These rates are high because they include unlimited ECC, and, in the case of Milwaukee, Metro-wide local calling. Accordingly, the rates quoted for these Wisconsin cities in the Commission’s survey include charges for local calling and comparable calling considered to be toll usage in many other states and, thus, excluded from the Commission’s local rate survey. While the Commission’s collection of the local rate data is primarily collected to track trends and patterns in local service pricing. To be valid for purposes of comparison to national benchmarks or assessment of affordability, these rates should be adjusted for differences in local calling scope.

Commission could define a similar calling scope to establish a baseline for valid comparisons to national benchmarks or measures of affordability.

The set of local services priced for the HRAC includes 480 minutes of calling – an amount of calling that was found to be the median for all customers, and fairly consistent for all geographic areas of the state. The minutes are divided between local calling, Extended Community Calling,¹² and intrastate toll. The relative amount of minutes in each category varies according to the size of the local calling area. The following table shows how the 480 minutes are divided among the categories of calling for different sizes of exchanges as a basis for determining a composite retail cost of calling within a local community of interest:

	LOCAL CALLING AREA				
Supported Service	Exchange of < 5000 lines & ECC area <50,000 lines	Exchange of < 5000 lines & ECC area ≥50,000 lines	Exchange of >5000 & <50,000 lines & ECC area <50,000 lines	Exchange of >5000 & <50,000 lines & ECC area ≥50,000 lines	Exchange of > 50,000 lines
Local Calling	Included in flat rate or 240 LMS ¹³ minutes	Included in flat rate or 240 LMS minutes	Included in flat rate or 360 LMS minutes	Included in flat rate or 360 LMS minutes	Included in flat rate or 480 LMS minutes
ECC	120 minutes	240 minutes	90 minutes	120 minutes	
Intrastate Toll	120 minutes		30 minutes		

The HRAC program supplements the federal universal service support program when rates, even with such federal support, are determined to be unaffordable. Under the HRAC program, the threshold for calculating credits begins when the price for the set of supported

¹² Extended Community Calling is a price-per-minute local service that expands local calling (within a LATA) beyond the local exchange and the traditional coverage of extended area service arrangements. The PSCW recognizes that the Commission would need to address a variety of local calling arrangements in developing a federal plan.

¹³ LMS is local measured service. There is no such service in Wisconsin at this time.

services reaches 1.5 percent of the median household income (MHI) in the area.¹⁴ Credits from the state universal service fund apply to amounts exceeding 1.5 percent of MHI. The amount of credit increases as the amount of the overage increases. The HRAC program provides credits to cover an increasing portion of the amount over the initial threshold as the prices reach higher thresholds above the county median household income. The HRAC thresholds and percents applied to the amounts within them are summarized in the following table:

<u>Range of Price (Relative to MHI)</u>	<u>Percent of Amount in Range Added to Credit</u>
<1.5%	None
≥ 1.5% & < 2.0%	50 %
≥ 2.0 % & < 2.5%	75 %
≥ 2.5% & < 3.0%	85 %
≥ 3.0%	95 %

The progressive credit structure, which is tied to the price charged, allows market forces to operate. Unlike a rate cap, the HRAC program credits do not discourage customers from seeking out the most cost effective service providers, since, even after credits are applied, customers will pay less to a provider charging lower prices. The percentages shown work for

¹⁴ Wis. Adm. Code § PSC 160.09(4) reads as follows:

Local exchange service providers shall issue high rate assistance credits according to the following criteria:

- (a) For the portion of the price of service below 1.5% of median household income, per month, for the area in which the rate applies, no credits apply.
- (b) For the portion of the price of service equal to or above 1.5% but below 2.0% of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 50% of that amount.
- (c) For the portion of the price of service equal to or above 2.0% but below 2.5% of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 75% of that amount.
- (d) For the portion of the price of service equal to or above 2.5% but below 3.0% of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 85% of that amount.
- (e) For the portion of the price of service equal to or above 3% of median household income, per month, for the area in which the rate applies, the local exchange service provider shall issue a credit equal to 95% of that amount.
- (f) When a rate applies in only one county, the median household income, as published by the Wisconsin Department of Workforce Development, used to calculate the credit shall be that of that county in which the rate applies. When a rate applies in more than one county, the median household income used to compute the credit shall be the average of the median household incomes in each county in which the rate applies, weighted by the number of customers paying that rate in each county.

Wisconsin, but the Commission could choose different percentages to reach its affordability and comparability objectives. An important aspect to retain, however, is a schedule of increasing credits that are less than 100 percent. Thresholds that invoke a full credit insulate consumers and providers from the actual cost of service and thus interfere with competitive market incentives.¹⁵ With the Wisconsin HRAC approach, the point of consumer comparison for supported services remains the relative affordability of the services as opposed to a single, absolute benchmark price.

The HRAC program begins to provide credits at 1.5 percent of county median household income, which is close to the national average expenditures for local and long distance of 1.6 percent of annual household expenditures.¹⁶ The HRAC does not place an upper limit on expenditures, although market forces will do that, since high levels of credits would apply only if the providers offering service were charging extremely high rates. For example, in an area with a median household income of \$30,000, the credits, and the amount customers would pay based on various prices for the supported service, would be:

¹⁵ Such increasing thresholds are also an important feature of the Commission's current cost-based programs for rural companies. Support is provided for higher percentages of loop costs to the extent loop costs exceed national average loop costs.

¹⁶ *Trends in Telephone Service*, April 2005, Tables 3.1 and 3.2. The following expenditures of households on telecommunications are computed from that data expressed and as a percent of all 2003 annual household expenditures of \$40,817 (for only those households billed for service) were: 1.1 percent for local exchange service, 0.5 percent for long distance, for a total expenditure of 1.6 percent.

<u>Initial Price</u>	<u>HRAC Credit</u> ¹⁷	<u>Customer's Resulting Bill</u>	<u>Amount Consumer Pays as a Percent of \$30,000 MHI</u>
\$35.00	\$0.00	\$35.00	1.4 %
\$50.00	\$6.25	\$43.75	1.75 %
\$75.00	\$26.25	\$48.75	1.95 %
\$100.00	\$50.00	\$50.00	2.0 %
\$150.00	\$97.50	\$52.50	2.1%
\$200.00	\$145.00	\$55.00	2.2 %

In an area with a median household income of \$60,000, the credits, and the amount customers would pay, would be:

<u>Initial Price</u>	<u>HRAC Credit</u> ¹⁸	<u>Customer's Resulting Bill</u>	<u>Amount Consumer Pays as a Percent of \$60,000 MHI</u>
\$35.00	\$0.00	\$35.00	0.7 %
\$50.00	\$0.00	\$50.00	1.0 %
\$75.00	\$0.00	\$75.00	1.5 %
\$100.00	\$12.50	\$87.50	1.75 %
\$150.00	\$52.50	\$97.50	1.95%
\$200.00	\$100.00	\$100.00	2.00 %

It seems unlikely that any area would see competitive retail prices in the hundreds of dollars per month. In that unlikely event, however, the HRAC credits program would automatically ensure that the customers in that area would pay more affordable resulting rates -- which is its function.

Ideally, affordability should be measured on an individual basis; however, that is not practical. In Wisconsin, use of income levels for each county provides a sufficient degree of granularity and is administratively feasible. The United States Department of Agriculture

¹⁷ This amount is paid from the state USF to the local exchange company.

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compiles and makes available county-based median household income. However, development of a schedule of increasing credits for a national rate-based program may need further analysis to compare a customer's ability to pay and the amounts consumers nationally can generally allot to telephone service. The Commission could adopt such an approach in concept and seek input from the Joint Board on Universal Service as to appropriate granularity and thresholds.

Sufficient Universal Service Support

The PSCW believes that a carefully crafted HRAC program will address the Court's concern for evidence that the statutory pricing objectives for universal service are met under the federal high-cost support program. Adding a program that assures rates will be affordable provides a connection between cost-based support and rates customers will pay. To the extent customers can afford service, demand for services would attract investment. The PSCW suggests the term "sufficient" should be defined as providing enough support to attract telecommunications investments in rural areas to provide services comparable to those prevalent in urban areas at prices that rural customers can afford.

Other Advantages of the HRAC Approach

Beyond the direct advantages of the HRAC to address issues raised in the NPRM, there are some more subtle or indirect advantages which are worthy of noting in these comments.

HRACs Are Adaptable to Other Technologies. The current federal definition of universal service does not include any quality of service standards. The set of services that is supported can have specific quality of service standards added to more fully address the range of factors identified by the Court. All providers that are eligible to collect from a particular universal service program should provide service that meets the quality of service standards for that program. One HRAC program can apply to different technologies, however, if different

standards or service packages are adopted for an alternative technology than for traditional wireline services, a separate HRAC program with separate affordability thresholds would be appropriate. Therefore, the Wisconsin HRAC program offers the flexibility to address wireless service whether or not the same standards and local service packages as applied to wireline service are used.

HRACs Can Address New Services and Advanced Services. A rate-based support mechanism, such as Wisconsin's HRAC program, permits the addition of programs for new services and advanced services. As a rule of thumb, when a new or advanced service has been subscribed to by at least a majority of urban customers, it should be added to the list of supported services. An HRAC can then be established to make the service as affordable to rural customers as it is for urban customers by using the percentage of median household income that urban areas pay as a guideline for developing support thresholds and levels for rural customers. Making such services eligible for high-cost support provides financial incentive for providers to deploy those services, and the technologies upon which they depend, to high-cost, rural areas.

HRACs Offer Flexibility to Control Impact on the Size of the USF. A rate-based support mechanism, such as Wisconsin's HRAC program, lends itself to predicting and controlling the size of the fund and defining and avoiding unacceptably high rates. Once the necessary data is collected for pricing rate packages, the total amount of high-cost support funds can be modeled for any given set of income thresholds prior to setting those thresholds for some future period. Once implemented, the impact of rising prices or disaggregation of costs (rate rebalancing) will be experienced more slowly by consumers.

The HRAC has been in existence in Wisconsin for almost a decade and has not shown potential for abuse nor required high levels of support. Where competition exists, competitive

market forces tend to temper excessive rate increases. Further, because customers still pay a portion of any increased rates above a HRAC threshold, customer demand and minimal levels of state regulation are sufficient to limit provider options for rate increases in the absence of sufficient competitive market forces. Therefore, the HRAC approach is appropriate for high-cost areas, whether they are served by urban or rural providers.

Items Necessary for Development and Implementation

Obviously, Wisconsin's HRAC program cannot be implemented as a national plan without further investigation and modification. However, the HRAC does provide a template that shows how a support program can better address the concepts of sufficiency, affordability and comparability. Areas that the Commission and Universal Service Joint Board should address in conjunction with the development and implementation of any changes to a rate-based support model, such as the Wisconsin HRAC program include:

- a. A well-defined calling scope that covers an adequate amount of local, long-distance and EAS-type calling within a local community of interest.
- b. Appropriate payment schedules (from the USF to the providers) that relate payments to household income based on a suitable geographic area.
- c. Appropriate HRAC schedules to achieve affordability on a national basis that incorporate progressive percentages of credit that do not reach 100 percent.
- d. Quality of service standards for eligible wireless providers.
- e. Mechanisms to assure support for evolving advanced services in non-urban, high cost areas when they are prevalent in urban areas.
- f. Criteria for evaluation of the impact on the USF as a whole and on other USF programs.
- g. Defining the supported services in a manner that allows valid comparison and addresses package pricing of local service with vertical and non-utility services.

Conclusion

The cost-based, federal high-cost support program is critical to maintaining universal service in the State of Wisconsin. Without such support, rate differentials between Wisconsin's urban and rural customers will widen and threaten (rather than preserve and advance) universal service. Additionally, cost-based support has not always been sufficient to provide affordable rates. The PSCW suggests the addition of a rate-based approach and commends as a model the PSCW's HRAC program. Rate-based support should be extended to areas served by rural providers and to the rural areas of non-rural providers. The HRAC program is consistent with both a supply-side, cost-based approach and a demand-side, rate-based approach to universal service support. It is also adaptable to competitors using different technologies. The affordability, sufficiency, and comparability objectives of the federal universal service law could be achieved by incorporating elements of or an HRAC-type program in the Commission's existing high-cost support mechanisms.

Dated at Madison, Wisconsin, March 23, 2006

By the Commission:

Christy L. Zehner

Christy L. Zehner
Secretary to the Commission

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