

**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 NEBRASKA RURAL INDEPENDENT COMPANIES**

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SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”) are commenting in this proceeding on the non-rural high-cost universal service support mechanism because the decisions reached in this proceeding could have long-term implications for the rural high-cost support mechanism. It appears that a number of the issues that the United States Court of Appeals for the Tenth Circuit remanded to the Federal Communications Commission (“Commission”) were sent back because the court wanted further explanation and data to substantiate the Commission’s claims regarding the non-rural high-cost universal service support mechanism, not because the court found fault with the design and implementation of the support system. *Qwest Corp. v. FCC*, 398 F.3d 1222, 1234-1237 (10th Cir. 2005) Therefore, this proceeding should be approached as a means to provide sufficient justification for the current non-rural high-cost universal service support mechanism, rather than a proceeding to consider major changes to the current mechanism.

The definition of “sufficient” should remain focused on maintaining reasonably comparable rates. However, to address concerns of the court, the Commission should explain how the non-rural high-cost mechanism, along with other universal service programs, fulfill the universal service principles in Sections 254(b) of the Telecommunications Act of 1996. The Commission should not define the phrase “affordable rates.” Also, the Commission should not adopt any proposal that defines affordability in relation to income.

The Nebraska Companies recommend that the non-rural high-cost support mechanism should continue to be cost-based. A rate-based support mechanism could

lead to unnecessary growth, and could also lead to irrational state rate setting in order to maximize Federal universal service support. Maintaining a cost-based structure will best position the mechanism for a transition to universal service provided over an Internet protocol (“IP”) platform.

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I. INTRODUCTION

The Nebraska Rural Independent Companies¹ (the “Nebraska Companies”) hereby submit comments in the above captioned proceeding. With this Notice of Proposed Rulemaking² (“NPRM”) the Federal Communications Commission (the “Commission”) seeks comment on issues raised by the decision of the United States Court of Appeals for the Tenth Circuit (“Tenth Circuit”) in *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”). Specifically, the Commission seeks comment on how to reasonably define the statutory terms “sufficient” and “reasonably comparable” in light of the court’s decision in *Qwest II*.³ The Commission also seeks comment on the non-rural high-cost support mechanism, which was invalidated because

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-337 (“*Qwest II NPRM*”) (rel. Dec. 9, 2005).

³ See *Qwest II NPRM* at ¶ 1.

the mechanism rested on the application of a definition of “reasonably comparable” rates that the court also invalidated.⁴ In particular, the Commission asks if it should replace the current cost-based support mechanism with a rate-based support mechanism.⁵

Many of the issues that were remanded by the Tenth Circuit were sent back to the Commission because the court wanted further explanation and data to substantiate the Commission’s claims regarding the non-rural high-cost universal service support mechanism, but not because the court directly found fault with the design and implementation of the support mechanism. The instant proceeding, accordingly, should be approached as a means to provide sufficient justification for the current non-rural high-cost universal service support mechanism, instead of considering major changes to the current mechanism. The Nebraska Companies submit that the support mechanism should continue to be cost-based, and the focus of the mechanism should continue to be on maintaining reasonably comparable rates. Maintaining this structure will best position the mechanism for a transition to universal service provided over an Internet protocol (“IP”) platform.

II. THE INSTANT PROCEEDING IMPLICATES LONG-TERM EFFECTS TO THE RURAL HIGH-COST SUPPORT MECHANISM.

A. Definitions Of The Statutory Terms “Sufficient” And “Reasonably Comparable” May Have An Impact On The Rural High-Cost Support Mechanism.

The Nebraska Companies receive Federal universal service support through the rural company high-cost support mechanism. As such, the Nebraska Companies will not be immediately affected by the outcome of this proceeding. However, the Nebraska

⁴ Id. at ¶ 23.

⁵ Ibid.

Companies submit that the definitions of the statutory terms “sufficient” and “reasonably comparable” that are developed with regard to the non-rural universal service high-cost support mechanism in this proceeding may have some implications for the rural high-cost support mechanism in the future. Therefore, the Nebraska Companies have concluded that it is important to participate in building a record in this proceeding in order to ensure the enduring sustainability of Federal universal service programs for the long term.

B. It Is Possible That The Commission May Eliminate Distinct Rural And Non-Rural High-Cost Support Mechanisms Over The Long-Term.

This proceeding may also affect the rural high-cost universal service support mechanism because the Commission has indicated it believes that maintaining distinct non-rural and rural support mechanisms may not be a viable long-term solution.⁶ The Commission has referred to the Federal-State Joint Board on Universal Service (“Joint Board”)⁷ the issue of whether the rural high-cost universal service support mechanism should continue to be based on embedded or forward-looking costs. The Joint Board has requested comment on this and other issues,⁸ including proposals developed by individual Joint Board members and staff members to address the issues raised by the Commission

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-157 (rel. May 23, 2001) at ¶ 170.

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (“Referral Order”) (rel. June 28, 2004).

⁸ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2 (rel. Aug. 16, 2004) at ¶ 1.

in the *Referral Order*.⁹ Some of these proposals would eliminate the differences between the non-rural and the rural high-cost universal service support mechanisms.¹⁰

C. Decisions Regarding The Non-Rural High-Cost Support Mechanism May Affect The Amount Of Funding Available For Rural High-Cost Support.

Additionally, decisions that are made within this proceeding may have an impact on funding availability for rural carriers serving high-cost areas. For example, changing the non-rural high-cost support mechanism may entail the need for additional universal service support funding, thus increasing the total amount of universal service funding. However, the Commission and the Joint Board have previously indicated that growth in the high-cost universal service support programs may not be sustainable.¹¹ Therefore, an increased need for non-rural high-cost universal service support funds may cause the Commission to consider additional caps on other universal service support programs, including rural high-cost universal service support.

D. High-Cost Support Mechanisms May Be Unified When Services Are Provided Over An IP Platform.

Ultimately, all high-cost universal service support mechanisms may be unified, especially when services are provided over an IP platform. In the *IP-Enabled Services* proceeding, the Nebraska Companies noted that, as traditional circuit-switched telecommunications services are provided using an IP platform, the provider of the IP-

⁹ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 05J-1 (rel. Aug. 17, 2005).

¹⁰ See "Three Stage Plan for Universal Service Reform" Proposed by Joint Board Member Billy Jack Gregg, Id. at p. 12.

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) at ¶¶ 5 and 8, and Recommended Decision, FCC 04J-1 (rel. Feb. 27, 2004) at ¶ 64.

enabled service might not be the provider of the underlying network that is used to transmit the service.¹² Therefore, it will be necessary to target universal service support to the network provider, instead of the service provider. As such, decisions made by the Commission regarding the non-rural high-cost support mechanism could eventually affect rural carriers, as the Commission may consolidate the separate high-cost universal service support mechanisms for rural and non-rural carriers into one mechanism in an environment in which services are provided over an IP platform.

III. THE DEFINITION OF “SUFFICIENT” SHOULD REMAIN FOCUSED ON MAINTAINING REASONABLY COMPARABLE RATES, BUT SHOULD ALSO EXPLAIN HOW THE NON-RURAL HIGH-COST MECHANISM, ALONG WITH OTHER UNIVERSAL SERVICE PROGRAMS, FULFILL UNIVERSAL SERVICE PRINCIPLES IN SECTION 254(b) OF THE TELECOMMUNICATIONS ACT OF 1996.

A. The Entirety Of The Commission’s Universal Service Support Programs Should Be Considered In Determining Sufficiency Of Support.

In *Qwest II*, the court directed the Commission to demonstrate that it has appropriately considered all principles in section 254(b) of the Telecommunications Act of 1996 (the “Act”) in defining the term “sufficient.”¹³ Although the Commission chose to define “sufficient” support in terms of reasonably comparable rates, this does not mean that the Commission ignored the entirety of universal service principles in section 254(b) of the Act. Universal service support is structured into several programs, each of which is designed to support one or more universal service principles. For example, the Lifeline and Link-Up programs are designed to help make universal service affordable for low-

¹² See *IP-Enabled Services*, WC Docket No. 04-36, Comments of the Nebraska Rural Independent Companies (filed May 28, 2004) at pp. 8-11.

¹³ See *Qwest II NPRM* at ¶ 8.

income consumers.¹⁴ There are also separate programs to provide support to schools, libraries, and health care providers.¹⁵ This targeted approach has resulted in a more efficient and effective support system than if the Commission had attempted to design one support program to support all universal service principles in section 254(b). The Commission targeted the high-cost support mechanism toward maintaining reasonably comparable rates. The overall sufficiency of universal service support in general must be assessed by examining the efficacy of *all* universal service support mechanisms the Commission has instituted relative to *all* principles contained in section 254(b) of the Act. Therefore, in order to meet the directive of the court, the Commission should explain that the non-rural high-cost support program should be deemed to be sufficient if it helps maintain reasonably comparable rates, but *all* universal service programs of the Commission should also be considered in determining the sufficiency of support in meeting *all* universal service principles in section 254(b) of the Act.

B. Ensuring That Rates In Rural Areas Are Reasonably Comparable To Rates In Urban Areas Also Ensures That Such Rates Are Affordable.

The Commission seeks comment on whether ensuring that rates in rural areas are reasonably comparable to rates in urban areas also ensures that those rates are affordable.¹⁶ Competition in urban areas tends to ensure that rates are generally not priced above cost. Thus, given the relatively low cost of providing service in urban areas,¹⁷

¹⁴ These programs help fulfill the principle in Section 254(b)(3) of the Act with regard to low-income consumers.

¹⁵ These programs help fulfill the principle in Section 254(b)(6) of the Act.

¹⁶ See *Qwest II NPRM* at ¶ 9.

¹⁷ The Commission's Hybrid Cost Proxy Model ("HCPM") computes the cost of providing universal service by wire center, which is used both to determine states that receive non-rural high-cost universal service support and to determine the amount of support that is received by wire center. An examination of

ensuring that rates in rural areas are reasonably comparable to rates in urban areas also ensures that those rural rates are affordable. Therefore, the current non-rural high-cost universal service support mechanism ensures affordable rates.

C. The Commission Should Not Define The Phrase “Affordable Rates.”

The Commission seeks comment on whether it should define the phrase “affordable rates.”¹⁸ As explained above, ensuring that rates in rural areas are reasonably comparable to rates in urban areas also ensures that those rates are affordable. Therefore, no additional definition of the phrase “affordable rates” is necessary. Furthermore, as the Commission found in the *Order on Remand*, various factors that are local in nature affect rate affordability.¹⁹ Given the unique characteristics of each jurisdiction, states are better suited than the Commission to make determinations regarding affordability.²⁰ Additionally, as services included in the definition of supported services evolve from a circuit-switched platform to an IP platform, the definition of “affordable rates” would be in need of constant revision. This is because IP-enabled technology may allow more rapid development and market implementation of new services, and may necessitate more frequent changes to the definition of supported services, which in turn would require frequent review of regulatory rate-related benchmarks.

the support paid by wire center indicates that urban wire centers do not receive high-cost support due to the relatively low cost of providing universal service in those wire centers.

¹⁸ See *Qwest II NPRM* at ¶ 10.

¹⁹ 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, FCC 03-249 (“*Order on Remand*”) (rel Oct. 27, 2003) at ¶ 45.

²⁰ *Ibid.*

D. The Commission Should Not Adopt Any Proposals That Define Affordability In Relationship To Income.

The Commission seeks comment on whether it should reconsider SBC's proposal or any other proposals for defining affordability in relationship to income.²¹ The Commission has previously rejected a proposal similar to the one suggested by SBC in this proceeding.²² The Commission concluded that the proposal "would over-emphasize income levels in relation to other non-rate factors that may affect affordability and fail to reflect the effect of local circumstances on the affordability of a particular rate."²³ For example, SBC proposes that the Commission should select a proportion of median household income as an affordability benchmark, and apply this proportion on the basis of a specific unit of geography, for example, a county.²⁴ However, proportional household expenses vary widely by regions of the country and even within counties. For example, housing prices are much higher in some regions and cities, forcing households to spend a larger proportion of their income on housing, leaving less for household expenses such as telephone service. Furthermore, the proportion of household income spent on telecommunications services is currently being influenced by the presence of the high-cost support mechanism. Without high-cost support it is likely that rates for universal service would be increased in high-cost service areas. This would increase the proportion of household income spent on telecommunications services for households

²¹ See *Qwest II NPRM* at ¶ 10.

²² See *Order on Remand* at ¶ 45.

²³ *Ibid.*

²⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of SBC Communications Inc. (filed Apr. 10, 2002) at pp. 14-15.

that continue to subscribe to such services. However, it would likely cause some households to discontinue purchase of services supported by the high-cost mechanism. Therefore, the proportion of household income currently considered “affordable” may not be sufficient to maintain current penetration levels if the basis for high-cost support was shifted from supporting high-cost areas to supporting areas where service is not deemed to be “affordable.” In addition, the Commission has previously indicated that “section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates.”²⁵ This interpretation of the Act is correct. Therefore, the Commission should not create eligibility requirements based on household income for non-rural high-cost support.²⁶

E. The Commission Should Continue To Address Affordability Issues Through The Lifeline And Link-Up Support Programs.

The Commission notes that it previously determined that it was better to address affordability issues unique to low-income consumers through the Federal low-income programs specifically designed for this purpose rather than through the high-cost support programs, and asks if this conclusion is still appropriate in light of *Qwest II*.²⁷ A review of the information that originally led the Commission to this decision is necessary to determine whether its conclusion is still appropriate. The Joint Board recommended a new set of universal service support mechanisms as directed by statute.²⁸ Among its recommendations, the Joint Board concluded that because telephone penetration declines

²⁵ Ibid.

²⁶ See *Qwest II NPRM* at ¶ 10.

²⁷ Ibid.

²⁸ See 47 U.S.C. § 254(a)(1).

significantly for low-income households, the impact of household income is more appropriately addressed through programs designed to help low-income households obtain and retain telephone service, rather than as part of the high-cost support mechanism.²⁹ The Commission adopted the Joint Board's recommendation.³⁰ In adopting the recommendation, the Commission also noted that setting the rural, insular and high-cost support benchmark based on income and subscribership would fail to target universal service assistance and could needlessly increase the amount of universal service support.³¹ These conclusions are still valid; therefore, the Commission should not seek to address affordability issues through the high-cost support mechanism.

F. The Commission Should Consider Quality Of Service In Determining Whether Universal Service Support Is Sufficient, And Should Ensure That Quality Of Service Standards Are Met In Order To Receive Support.

The Commission seeks comment on whether its interpretation of the term “quality services” in section 254(b)(1) of the Act means quality of service, and whether it should consider quality of service in determining whether non-rural high-cost support is sufficient.³² The Nebraska Companies submit that the Commission's interpretation of the term “quality services” is correct. The quality of a service can only be measured by setting standards and then comparing the performance of the service to those standards. The Commission should set minimum quality of service standards in determining

²⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, Corrected Version FCC 96J-3 (rel. Nov. 8, 1996) at ¶ 314.

³⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (“*Universal Service First Report and Order*”) (rel. May 8, 1997) at ¶ 124.

³¹ *Ibid.*

³² See *Qwest II NPRM* at ¶ 11.

whether non-rural high-cost support is sufficient. States should then be charged with the responsibility to monitor eligible telecommunications carriers (“ETCs”) to ensure that ETCs meet quality of service standards as a prerequisite to receipt of support. Providing a higher quality of service usually requires greater network investment and/or operating expenses. Therefore, in order to determine a sufficient amount of support, a quality of service level should be specified, and the amount of support should allow ETCs to provide service at a specified level. This approach is consistent with the use of the Hybrid Cost Proxy Model (“HCPM”) model to determine non-rural high-cost universal service support. The model designs a hypothetical network that will deliver a given quality of service. The quality of service parameters which the model uses, for example, the blocking rate, should be explicitly specified, so that states can monitor whether universal service support is being appropriately used to provide service at a specified level of quality. While the Commission should set minimum quality of service standards for determining non-rural high-cost support amounts and for maintaining eligibility to receive such support, the states are free to set higher service quality standards than those associated with the non-rural high-cost support mechanism, provided that such standards are competitively neutral and are not inconsistent with the Commission’s universal service rules.³³

G. Support Should Be Sufficient To Provide For Networks That Are Capable Of Providing Access To Advanced Services.

The Commission asks if it should consider whether non-rural high-cost support is sufficient to enable carriers to upgrade networks in their high-cost areas so that the

³³ See *Universal Service First Report and Order* at ¶ 110.

networks are capable of providing access to advanced services.³⁴ The inclusion of section 254(b)(2) in the Act, which states that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” indicates that Congress viewed a network that is capable of providing access to advanced services as integral to the definition of supported services. In selecting a model upon which to base high-cost universal service support for non-rural carriers, the Commission indicated that loading coils may impede advanced services such as high-speed data transmission and therefore disallowed their use in a model.³⁵ The Commission found that a reasonable standard for ensuring that a proxy model’s network does not impede the provision of advanced services would be that the network would allow reasonable performance of data transmission at a speed of 28.8 Kbps.³⁶ The HCPM was designed to develop a network that allows access to advanced services and meets the data transmission speed criterion established by the Commission.³⁷ Therefore, the current amount of support generated by the model should be sufficient to support a network capable of providing access to advanced services as the standard for access to advanced services was defined at that point in time.

³⁴ See *Qwest II NPRM* at ¶ 12.

³⁵ See Public Notice, *Guidance to Proponents of Cost Model in Universal Service Proceeding: Customer Location and Outside Plant*, CC Docket Nos. 96-45 and 97-160, DA 97-2372 (rel Nov. 13, 1997) at p. 4.

³⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Fifth Report & Order, FCC 98-279 (rel. Oct. 28, 1998) at ¶ 67.

³⁷ *Ibid.*

The standard for a network capable of allowing access to advanced services was defined in 1998.³⁸ That network standard is about six years old, and rapid changes in advanced services and changing consumer expectations over the past half-decade argue for a likely need for revision of any technical parameters. The Nebraska Companies submit that it may be appropriate for the Commission to review the standard for a network capable of providing access to advanced services. It will likely be necessary to change the standard and the HCPM to appropriately compensate carriers to provide a network that is capable of providing access to advanced services given today's technical standards and consumer expectations.

IV. BOTH THE COMMISSION AND THE STATES HAVE RESPONSIBILITY FOR MAINTAINING “REASONABLY COMPARABLE” RATES.

The Commission seeks comment on whether it should compare rural and urban rates within each state instead of, or in addition to, comparing rural rates in all states to a national urban rate benchmark.³⁹ The Nebraska Companies submit that the Commission should continue to compare rural rates in all states to a national urban rate benchmark. As the Commission has previously found, the primary purpose of the Federal high-cost support mechanism is to maintain “reasonably comparable” rates among states, while states have the primary responsibility for maintaining “reasonably comparable” rates within their borders.⁴⁰ However, the Commission may wish to compare rural and urban rates within each state in addition to comparing rural rates in all states to a national urban

³⁸ See footnote 36.

³⁹ See *Qwest II NPRM* at ¶ 19.

⁴⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) at ¶ 38.

rate benchmark. A comparison of rural and urban rates within each state, along with information regarding state efforts to maintain “reasonably comparable” rates within a state, would serve as an additional tool to ensure that Federal support is sufficient to maintain “reasonably comparable rates.”

V. THE COMMISSION SHOULD CONTINUE TO USE A COST-BASED SUPPORT MECHANISM FOR NON-RURAL HIGH-COST UNIVERSAL SERVICE SUPPORT.

A. Econometric Analysis Would Be Necessary To Demonstrate An Empirical Relationship Between Rates And Support; A Rate-Based Mechanism Does Not Per Se Demonstrate Such A Relationship.

The Commission asks if it should develop a rate-based support mechanism in order to more easily show an empirical relationship between the support mechanism and rates, as instructed by the court in *Qwest II*.⁴¹ The appropriate test for demonstrating an empirical relationship between the support mechanism and the resulting rates is econometric analysis, which could be used to show that the support provided by a particular mechanism has an influence on rates. However, the support mechanism need not be based upon rates in order to have an empirical relationship with rates. In fact, while the Federal support mechanism likely has an influence on rates, it is probably not the only factor that has an influence on rates. State decisions regarding the appropriate level of rates for services such as intrastate access also have an influence on basic local service rates. Many of the costs associated with providing access and basic local exchange service are joint and common costs. Therefore, there are many ways in which rates could be set to recover the costs. Accordingly, in order to assess empirically whether a relationship exists between a particular support mechanism and rates, it would

⁴¹ See *Qwest II NPRM* at ¶ 23.

be necessary to gather data on all factors that influence the rate charged for basic local exchange service and perform an econometric analysis on the data. Simply developing a rate-based support mechanism and then examining rates that result after the instituting the mechanism will not provide any more proof of an empirical relationship between the support mechanism and the resulting rates than the examination of rates currently conducted by the Commission.

B. A Rate-Based Support Mechanism Could Result in Unnecessary Growth In The Non-Rural High-Cost Support Mechanism.

The Nebraska Companies submit that continued use of a cost-based mechanism for non-rural universal service support is the best alternative. A rate-based support mechanism could result in unnecessary growth in the non-rural high-cost universal service support mechanism. For example, the Commission requests comment on whether it should fund all areas with high rates, including those with low costs for providing service.⁴² As the Commission indicates, there are urban areas that exceed the reasonable comparability benchmark set by the Commission.⁴³ However, it is highly unlikely that these areas have high costs to provide service. Since the statute indicates that reasonably comparable rates should be available to consumers in rural, insular, and high-cost areas,⁴⁴ it appears that support should not be paid to maintain reasonably comparable rates in areas that may have high rates for reasons other than their location and cost characteristics. Therefore, the only reasonable basis to exclude areas that have high rates and low costs from receiving universal service support is to examine the costs of

⁴² Id. at ¶ 25.

⁴³ Id. at footnote 80.

⁴⁴ See 47 U.S.C. § 254(b)(3).

providing service. Thus, the Commission would still be compelled to consider costs in order to prevent payment of needless support to areas that have above-benchmark rates due to factors other than high costs.

C. A Rate-Based Support Mechanism Could Lead To Irrational State Rate-Setting In Order To Maximize Federal Universal Service Support.

The Commission asks if it would be necessary for it to adopt constraints to ensure that states do not set rates with the purpose of maximizing Federal universal support.⁴⁵ This question appears to recognize that a rate-based support mechanism may result in inappropriate and unnecessary support payments to certain areas that may not need funding due to the high cost of providing service in the area. States may seek to increase rates for supported services such as basic local exchange service and reduce rates for services such as intrastate access beyond a rational rate-rebalancing strategy in order to receive Federal support. Such a strategy would shift the burden of rate rebalancing from the ratepayers of a given state to the entire nation. It would be difficult, if not impossible, for the Commission to adopt constraints to ensure that states do not set rates with the purpose of maximizing Federal universal service support, as states maintain authority over setting rates for services offered within the state.⁴⁶ The Commission would need justification if it were to attempt to limit support for rates above a given threshold, and

⁴⁵ See *Qwest II NPRM* at ¶ 26.

⁴⁶ *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930); See also *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 478, 122 S.Ct. 1646, 1655 (2002) (“Intrastate retail rates were regulated by the States or municipalities, with those at wholesale generally the responsibility of the National Government, since the transmission or transportation involved was characteristically interstate.”) (internal citation omitted); *Bell Telephone Co. of Pennsylvania v. Pennsylvania Public Utility Commission*, 309 US 30, 60 S.Ct. 411 (1940) (upholding state commission order to conform certain intrastate toll rates to interstate rates, finding that such order was a regulation of intrastate rates and did not burden interstate commerce); *Louisiana Public Service Com. v FCC*, 476 U.S. 355 (1986).

such justification would likely involve an examination of the cost of providing the supported services. Therefore, the Nebraska Companies submit that a rate-based support mechanism will not result in rational ratemaking policies at the state level, and limiting the support paid through such a mechanism would likely still involve an examination of cost data.

D. A Cost-Based Support Mechanism Is The Only Rational Alternative As Services Are Provided Over IP Platforms And Telecommunications Services Are Not Offered On A Stand-Alone Basis.

Continued use of a cost-based mechanism for non-rural universal service support is the only rational alternative in the long-term as telecommunications services are increasingly provided over an IP platform. In the long run, support will still be needed for high-cost networks, but the services provided over the networks may be bundled telecommunications and information service offerings such as digital subscriber line (“DSL”), which the Commission has ruled is classified wholly as an information service.⁴⁷ In such a situation, the Commission will not be able to benchmark rates for the telecommunications services provided, as separate rates will not exist for the telecommunications component of the service – the rate will consist of a bundled rate for

⁴⁷ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, *Computer II Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Compute II and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, and *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (rel. Sept. 23, 2005) at ¶ 12.

the telecommunications and information components of the service. Therefore, in the long-term, a support mechanism based upon costs is the only reasonable option.

VI. CONCLUSION

The Nebraska Companies appreciate the opportunity to comment on the important universal service policy issues raised in the *Qwest II NPRM*. While the Nebraska Companies, which receive high-cost universal service support through the rural mechanism, will likely not be immediately affected by the findings reached in this proceeding, this proceeding may have long-term impacts on the rural high-cost support mechanism.

The Nebraska Companies urge the Commission to maintain the focus of the term “sufficient” on maintaining reasonably comparable rates. However, in order to satisfy the concerns of the court in *Qwest II*, the Commission should more fully explain how all of its universal service programs contribute to offering “sufficient support.” The Nebraska Companies submit that both the Commission and the states have responsibility for maintaining “reasonably comparable” rates.

Finally, the Nebraska Companies recommend the continued use of a cost-based support mechanism for non-rural high-cost universal service support. As the provision of services moves to an IP platform and telecommunications and information services are provided on a bundled basis, rates will not exist for the telecommunications portion of a service. Furthermore, the service provider may not be provider of the network used to transmit the service. Therefore, it will be necessary to target support to the network provider on a cost basis in order to maintain universal service.

Respectfully submitted,

The Nebraska Rural Independent Companies

Arlington Telephone Company
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company, Inc.,
K&M Telephone Company, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telephone Co., Inc., and
Three River Telco

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