Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	WC Docket No. 05-337
High-Cost Universal Service Support	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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March 27, 2006

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SUMMARY

The Commission needs to not only consider, but also achieve, substantial reform of the universal service system. Addressing the concerns of the Tenth Circuit in *Qwest II*, must be done with careful consideration of the larger reform that is needed to harmonize universal service support with the core goal of section 254, namely affordable, universally-available telephone service for all Americans.

Reform of the high-cost support mechanism for non-rural carriers, the subject of the Tenth Circuit's *Qwest II* decision, must be addressed in the context of reform of high-cost support generally. The Tenth Circuit has again instructed the Commission to re-evaluate its definitions of "sufficient" and "reasonably comparable" with respect to high-cost support for non-rural carriers. Yet, in performing this re-evaluation, the Commission should do so not just with respect to high-cost support for non-rural carriers, but with respect to high-cost support for all carriers. The definitions of "sufficient" and "reasonably comparable" must apply uniformly to all carriers receiving high-cost support.

The key principles that should be incorporated into the definition of "sufficient" in addressing high-cost support are affordability, reasonable comparability of urban and rural services and rates, competitive neutrality and efficiency. Sufficient high-cost support should enable basic local service -- both residential and business -- to be available to customers in rural and high-cost areas at rates that are affordable and reasonably comparable to urban rates. Further, sufficient high-cost support should be available to all carriers serving high-cost areas in a competitively neutral manner and in an efficient manner such that the support is just enough to enable affordability and reasonably comparable rates without negating that affordability through overly burdensome contributions from consumers of telephone service. Clearer goals and

measures for use of high-cost support, limiting support to at most one connection per ETC per household or business location, and using a single mechanism for distribution of high-cost support should enable more efficient use of that support.

The Commission should modify the definition of "reasonably comparable" in comparing urban services and rates with rural and high-cost services and rates in two ways. First, the Commission should use a benchmark that is derived from a national average urban rate that is an average of both residential and business urban rates. Second, the Commission's benchmark should incorporate the principle of affordability. Qwest proposes that rural rates should be considered "reasonably comparable" to urban rates when rural rates are within 125% of the redefined national average urban rate of basic wireline service.

Finally, in accord with the Tenth Circuit's decision in *Qwest II*, the Commission must take these new definitions of "sufficient" and "reasonably comparable" and incorporate them into the mechanism for distributing high-cost support for non-rural carriers. Qwest submits that consistent with the need for more holistic reform of high-cost support, the Commission must go a step further and incorporate these new definitions into a single mechanism for distributing high-cost support to all carriers. Qwest proposes a four-step process to accomplish this. First, the Commission should use the Qwest-proposed 125% affordability benchmark to identify wire centers currently served by non-rural carriers in need of universal high-cost support. Second, the Commission should use those wire centers to reallocate high-cost support for non-rural carriers across the country. Third, the Commission should combine the reallocated high-cost support for non-rural carriers with the 2004 high-cost support amount for rural carriers within each state into a single federal high-cost support fund for each state. Fourth, each state should determine the distribution of the new combined high-cost support fund to the carriers serving high-cost areas within its borders in accord with Commission guidelines for that distribution and subject to Commission review. The Commission guidelines should include (1) targeting support to high-cost wire centers, (2) using a proxy to determine wire center costs such as households per square mile (*i.e.*, density), (3) applying the density or other metric uniformly across all classes of ETCs operating in the state and all geographic areas within the state, (4) requiring high-cost support levels to be based on the assumption that an ETC's local rates are at the national benchmark, and (5) requiring states to certify that local rural rates are affordable and reasonably comparable to urban rates.

This approach satisfies the Tenth Circuit's concerns in *Qwest II* regarding the Commission's flawed mechanism for distributing high-cost support to non-rural carriers. Yet, even more importantly, it addresses those concerns in the broader context of the need for holistic reform of high-cost support and provides a solution to that greater need.

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Qwest Communications International Inc. ("Qwest") hereby files these comments in response to the Federal Communications Commission's ("Commission" or "FCC") *Notice of Proposed Rulemaking* in the above-captioned dockets.[1] Changes in high-cost support to non-rural carriers must be viewed as part of a larger project -- reform of the universal service system as a whole. To place our specific proposals in context, the introduction provides an overview of Qwest's vision for comprehensive and meaningful reform and the urgent need for prompt action. Thereafter, we offer more specific comments related to the Tenth Circuit's decision in *Qwest II*.[2] In particular, the Commission should take steps to limit the size of the high-cost programs and provide federal guidelines to ensure that high-cost support is distributed by the states in accord with the requirements of section 254.

I. INTRODUCTION

The universal service system is broken. For example, despite the fact that this huge fund continues to grow and places increasing economic strains on contributors, the national

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[1] *In the Matter of Federal-State Joint Board on Universal Service*, *High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, FCC 05-205, Notice of Proposed Rulemaking, rel. Dec. 9, 2005 ("*Notice*"), *Order* granting motion for extension of time, DA 06-174 (rel. Jan. 26, 2006).

[2] *Qwest v. FCC*, 398 F.3d 1222 (10^{th} Cir. 2005) ("*Qwest II*").

penetration rate (including wireless and wireline connectivity) -- the fundamental measure of universal service success -- has been significantly below its peak for the last two years of reported data.[3] Based on these and other factors, there is a broadening consensus that fundamental reform is urgent, necessary and achievable. Yet, although the Joint Board and the Commission are addressing reform in a number of proceedings,[4] these proceedings seem to lack a cohesive framework that shapes the proposals and drives the process towards the long-term, sustainable, and effective universal service program that America needs.

Government must act in each of these venues based on a clear set of consistent principles guided by a long-term vision for the fund. The Commission should begin by narrowly tailoring the universal service system to its statutory goals. Such reform also should transfer responsibilities for key aspects of the programs to agencies with relevant expertise, and tighten management and oversight without imposing unnecessary costs on contributors or recipients. Such comprehensive changes will allow the fund to fulfill more effectively its core consumer-focused purposes, while securing its benefits for future generations.

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[3] *Telephone Subscribership in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (rel. Nov. 2005) ("*Telephone Subscribership Report*") at Table 1.

[4] In addition to this proceeding addressing the Tenth Circuit's remand decision in *Qwest II* regarding non-rural carriers' high-cost support, the Commission has before it the Joint Board Referral related to high-cost support for rural carriers. 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, Public Notice, FCC 05J-1 (rel. Aug. 17, 2005). The Commission also is looking at broader reforms to the governance and administration of all universal service programs. *In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*USF Governance NPRM*").

A. The Universal Service System Is Broken

The current universal service system is sorely ill-conceived and poorly implemented to accomplish its mission. Perhaps most fundamentally, the current structure of the program lacks a clear vision for the purposes or goals for which funding is being provided. The high-cost programs, for example, fund varying portions of incumbents' costs through seven separate support programs, though the Commission has never explained what overall goal this patchwork of programs seeks to achieve. Indeed, both of the Tenth Circuit's remands of the Commission's non-rural high-cost methodology have faulted the Commission on its failure to define with precision the basic statutory terms "sufficient" and "reasonably comparable."[5] Similarly, support for schools and libraries is provided based on an elaborate matrix of eligibility criteria for a laundry list of components and services[6] without any overarching goals connecting these to actual capabilities for students, teachers, or schools, or educational achievement.[7]

Not surprisingly, in the absence of a cohesive set of goals and objectives, including measurement criteria, the size of the fund is growing steadily without any clear evidence of the program's progress. For example, residential subscribership, after reaching a relative high in

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[5] *See Qwest II* and *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) ("*Qwest I*"). For purposes of convenience, Qwest follows the convention of referring to incumbent local exchange carriers ("ILECs") governed by the Commission's rural high-cost mechanism as "rural carriers," and ILECs subject to the non-rural high-cost mechanism as "non-rural carriers." Obviously, such terminology is misleading in that the service territories of non-rural carriers such as Qwest include vast rural areas.

[6] 47 C.F.R. §§ 54.500 *et seq*.

[7] *See, e.g.,* Office of Management and Budget, Program Assessment Rating Tool, Other Agencies, Federal Communications Commission, at 569 (2005) (available at http://www.whitehouse.gov/omb/budget/fy2006/pdf/ap_cd_rom/part.pdf) (recommending development of a long-term outcome measure to address the purposes of funding and encouraging involvement of the Department of Education).

2002-2003, has receded below its peak.[8] At the same time, the fund has ballooned to over $7 billion annually,[9] with claims before the Commission that additional support is needed.[10]

Without any objective measurements, it appears that some advocates define "success" as simply spending more money. Absent a meaningful set of objectives and measurable goals for each aspect of the program, there is a significant possibility that this trend will only continue.

Moreover, universal service funding has failed to make a complete transition to the competitive industry structure envisioned in the Telecommunications Act of 1996. Debates continue to rage about funding for competing carriers.[11] Until policymakers decide which networks to support and how, universal service programs will continue to be an anachronistic monopoly-driven square peg trying to fit into the round hole of today's competitive marketplace.

Adding to the problems are the shortcomings in administrative efficiency and oversight on the part of the Commission and the Universal Service Administrative Company ("USAC"). The Commission is not an expert agency in administering grant or subsidy programs and is subject to significant resource constraints. The Commission and USAC have only just begun to

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[8] After reaching an annual average household telephone subscribership of 95.3% in 2002, the percentage of households with telephone service steadily declined through March of last year to 92.4%. In July 2005 the household penetration level increased to 94.0%. *Telephone Subscribership Report* at Table 1.

[9] *See Proposed Second Quarter 2006 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 06-571 (rel. Mar. 13, 2006) (indicating a quarterly fund amount of $1.774 billion).

[10] *See, e.g.*, Comments of Intercarrier Compensation Forum, CC Docket No. 01-92 (filed May 23, 2005) at 32 (calling for the creation of two new support mechanisms to replace access revenue).

[11] *See, e.g.*, *Virginia Cellular v. FCC* (4th Cir. No. 05-1807, *pet. for review* filed July 25, 2005) (challenging the Commission's competitive eligible telecommunications carrier ("ETC") qualification rules).

tackle tremendous problems of waste, fraud and abuse within the programs.[12] Administrative snafus also have plagued the program. For example, despite USAC's concerted good faith efforts, its billing and disbursement statements contain insufficient explanation to allow for straightforward carrier verification and sometimes contain errors, which can be particularly troublesome when discrepancies trigger the Commission's "red light" rules, thereby delaying processing of routine applications and requests.[13] USAC sometimes has difficulty promptly resolving seemingly routine problems out of understandable deference to the Commission's sole jurisdiction over policy issues, while nevertheless sometimes establishing policy in other areas.[14]

At the same time, as part of their good faith efforts to strengthen the integrity of the program, the Commission and USAC continue to place greater administrative burdens on carriers. Contributors are required to police their wholesale customers to ensure *their customers'* compliance with the contribution requirements.[15] Recipients of high-cost funding are required to promote and administer (Tribal and non-Tribal) Lifeline programs, including the determination of customers' eligibility based on income and other criteria, even though telecommunications carriers have no expertise in promoting and administering government aid programs.

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[12] *See, e.g., In the Matter of Schools and Libraries Universal Service Support Mechanism,* Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (addressing selected reforms). *See also, e.g., Ronald R. Morett, Jr.,* File No. EB-03-IH-0615, Notice of Disbarment, 20 FCC Rcd 14321 (2005) (one of many recent notices of disbarment for individuals and entities guilty of defrauding the fund).

[13] 47 C.F.R. § 1.1910.

[14] Qwest has discussed these problems in greater detail in its comments in response to the *USF Governance NPRM. See* Comments of Qwest Communications International Inc., WC Docket No. 05-195 (filed Oct. 18, 2005) at Section II.

[15] *See* FCC Form 499 A (2005), Instructions at 18.

B. Principles For Reform

As an initial matter, Qwest emphasizes that it supports the consumer-focused statutory vision for universal service -- the fundamental principles that all Americans, including consumers in rural, high-cost, and insular areas, and low-income consumers, should have access to high-quality, affordable, and reasonably comparable services, and that schools, libraries, and rural health care providers should have access to advanced services.[16] Such support should be predictable and sufficient and funded by equitable and non-discriminatory contributions by all providers of interstate telecommunications.[17]

Indeed, Qwest believes that this clear congressionally-mandated vision for the programs can be achieved *only* through broad-scale reform of the universal service system. The myriad of high-cost funding mechanisms must be integrated as part of the process of rationalizing support for rural and non-rural carriers. Management and administration of the support systems must be improved and streamlined. Significant progress also can be made by transferring responsibility to agencies with appropriate core competencies. For example, given its expertise and experience running grant programs, the Department of Education should assume responsibility for the schools and libraries support program and state commissions should take on more responsibility in determining the distribution of federal high-cost support within their borders. These steps can all be taken while the fund continues to be governed by federal law and federal principles. Appropriate auditing, oversight and enforcement are crucial, but should be designed in a way that best roots out fraud while minimizing burdens on law-abiding carriers and recipients.

Low-income support should be increased as necessary to protect against impacts on at-risk consumers through more targeted support. Other necessary reforms may require

[16] *See* 47 U.S.C. § 254.

[17] *Id.*

legislative changes. The schools and libraries support mechanism, for example, would be better funded out of general revenues than solely telecommunications carrier contributions.

The end result of this holistic reform process should be a leaner, more focused universal service system with a clear set of goals and an efficient structure for achieving and measuring the consumer benefits at the foundation of the program. The Commission should take an important step in this process by implementing high-cost reforms consistent with this vision, as discussed in the remainder of these comments.

In particular, these high-cost reforms should include the following: (1) specific steps to limit the size of the high-cost programs, such as a cap of these programs at 2004 levels and limitation of support to at most one connection per ETC for each household or business;[18] (2) assignment of responsibility to state commissions for determining the distribution of federal high-cost support to ETCs in the state, subject to Commission-established guidelines; (3) redistribution of non-rural high-cost support to states based on high-cost wire centers above a national benchmark set at 125% of the weighted average of residential and business local rates (plus state and federal subscriber line charges ("SLC")) in urban areas; (4) adoption of federal guidelines requiring federal high-cost support to be distributed to ETCs serving high-cost wire centers, using uniform metrics associated with the cost of providing service in those wire centers; and (5) elimination of unduly burdensome or unnecessary reporting requirements on ETCs.

Of course, the Tenth Circuit's holdings in *Qwest II* must be carefully considered and implemented in any reform of high-cost support to non-rural carriers. In addressing the high-

[18] Qwest believes that support for a single connection per household or business is more in-line with the core objectives of universal service, but recognizes that support for one connection per ETC per household or business is a reasonable middle ground, as it may be easier to administer than a single connection and is preferable to the current support for all connections. *See* discussion in Section II.G.2., *infra*.

cost support for non-rural carriers, the Tenth Circuit has held, *inter alia*, (1) that the Commission must consider more than the principle of "reasonable comparability" in determining what is "sufficient" support to high-cost, rural and insular areas, (2) that the Commission must recognize the obligation to advance universal service in addressing the reasonable comparability of urban and rural services and rates for those services, and (3) that the high-cost support mechanism for non-rural carriers must be modified to reflect these considerations and that modification must be well-supported by the record before the Commission. Qwest submits that its proposals for reform of high-cost support to both non-rural and rural carriers will satisfy the Tenth Circuit's concerns in *Qwest II*.

First, the Commission should adopt a definition of "sufficient" that incorporates the principle of affordability. This should be done by using an affordability benchmark for distribution of high-cost support, and considering limits on the size of the fund for high-cost support, so that the services that are taxed with contributions to the fund remain affordable. The Commission does not need to impose additional service quality requirements to define sufficient high-cost support. Nor is it necessary to stretch universal service support to encompass broadband services in defining what support is sufficient. High-cost support that addresses the existing supported services is sufficient. Reasonable comparability of urban and rural services and rates for those services is of course a key component of sufficient high-cost support. Determination of sufficient high-cost support should not turn on how the money is collected in the first instance, nor is it necessary to address access by schools, health care providers and libraries to advanced telecommunications services in determining sufficient high-cost support. The Commission-added principle of competitive neutrality should be incorporated into the definition of sufficient high-cost support such that high-cost support should be distributed through one mechanism to carriers serving high-cost areas without favoring one technology over another and without distinguishing between large and small service providers. Additionally, Qwest recommends emphasizing the principle of efficiency in defining sufficient high-cost support. Sufficient universal service support to high-cost areas should be just enough support to enable affordable service in rural and high-cost areas that is reasonably comparable to the service and rates in urban areas. To effect this definition the Commission needs to identify clear goals and clear measures to help target support and limit growth of high-cost support, to narrow high-cost support to at most a single connection per ETC per household or business, and to create a single mechanism for distributing support to carriers serving high-cost areas.

Second, the Commission should address its obligation to advance universal service in rural and high-cost areas by (1) making distribution of universal service support to those areas more efficient and equitable by combining the existing mechanisms for providing support to those areas, and (2) redefining "reasonably comparable" such that urban and rural services and rates are reasonably comparable if rural rates are not more that 125% of the national average urban rate for wireline local services. Critical to the re-definition of reasonably comparable rates is the recognition that (1) not only residential local rates, but also business local rates should be included in the comparison and (2) affordability must be a component of the comparison.

Finally, the Commission should create a mechanism for distributing high-cost support that incorporates these principles. That mechanism should enable (1) reallocation of high-cost support for non-rural carriers using Qwest's proposed 125% affordability benchmark, (2) combining of the frozen high-cost support for rural carriers and the reallocated high-cost support for non-rural carriers into a single fund for high-cost support in each state and (3) state distribution of the high-cost support within each state subject to Commission guidelines and review. Those guidelines should include (1) targeting support to high-cost wire centers, (2) using a proxy to determine wire center costs such as households per square mile (*i.e.*, density), (3) applying the density or other metric uniformly across all classes of ETCs operating in the state and all geographic areas within the state, (4) requiring high-cost support levels to be based on the assumption that an ETC's local rates are at the national benchmark, and (5) requiring states to certify that local rural rates are affordable and reasonably comparable to urban rates.

II. WITH RESPECT TO HIGH-COST SUPPORT, THE DEFINITION OF "SUFFICIENT" SHOULD INCORPORATE THE RELEVANT PRINCIPLES OF SECTION 254(b)

Section 254(e) requires that federal universal service support "should be explicit and *sufficient* to achieve the purposes of [section 254]" (emphasis added). Currently the Commission views that universal service support for high-cost areas is sufficient if there is "enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers."[19] In *Qwest II*, the Court held that this definition inappropriately focuses only on the issue of reasonable comparability in section 254(b)(3), and fails to consider any of the other principles of section 254(b).[20] On remand, the Court ordered the Commission to articulate a definition of "sufficient" that appropriately considers the range of principles identified in the text of the statute. In section 254(b), Congress directed the Commission (and the Joint Board) to base its universal service policies on six specified principles. Congress also gave the Commission authority to identify additional principles that are necessary and appropriate for the protection of the public interest, convenience, and

[19] *In the Matter of Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22578 ¶ 30 (2003) ("*Order on Remand*").

[20] *Qwest II*, 398 F.3d at 1234.

necessity, and are consistent with the Act.[21] Pursuant to that authority, the Commission added competitive neutrality as a seventh guiding principle.

While the Commission must consider each of the principles of section 254(b) in fashioning a new definition of "sufficient," the Commission is free to give greater weight to certain principles and resolve conflicts between the objectives or particular principles.[22] As noted below, while certain principles in section 254(b) deserve considerable weight, other principles are not directly relevant to the determination of 'sufficient' universal service support for high-cost and rural areas.

A. Section 254(b)(1) – The Principle Of Affordability Must Be Incorporated

Section 254(b)(1) specifies that "[q]uality services should be available at just, reasonable, and affordable rates." In addressing the Commission's definition of "sufficient," the Court specifically noted the Commission's failure to consider the principle of affordability in determining federal support to non-rural carriers.[23] In light of the Court decision, arguably, affordability is the most important "missing" principle in the definition of sufficiency. And, since affordability is such a key concern of universal service policy, the Commission should give this principle a substantial amount of weight when balancing the section 254(b) principles.[24] Clearly, the Commission should consider affordability in determining the amount and distribution of high-cost and rural support.

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[21] 47 U.S.C. § 254(b)(7).

[22] *Qwest I*, 258 F.3d at 1200.

[23] *Qwest II*, 398 F.3d at 1234.

[24] A key manner in which the Commission addresses the affordability principle of section 254(b)(1) is through its telephone assistance programs for low-income consumers including Lifeline, Link-Up and Toll Limitation services. Nevertheless, affordability is a principle that should be considered for all consumers, not just low-income consumers, in providing universal service support.

This does not mean, however, that the Commission should create eligibility requirements for high-cost support that are based on individual household income. Such a system would be unworkable. Similar eligibility requirements in the Commission's Lifeline and Link-Up programs have created tremendous administrative burdens on customers and carriers, while requiring customers to turn over income and other highly personal information to their carriers. Extending this framework to the much larger high-cost programs would exacerbate these problems. Furthermore, such an administratively difficult and invasive approach is not necessary. As discussed in Section III.B. below, the Commission should instead incorporate affordability into its national benchmark that is currently based solely on reasonable comparability.

Qwest agrees with the Commission's suggestion in the *Notice* that the consideration of affordability also requires the Commission to consider the burden on universal service contributors.[25] In particular, the affordability principle supports the Commission's earlier conclusion that high-cost support should be "only as large as necessary" to meet the statutory principle.[26] The Tenth Circuit has recognized that excessive subsidization by contributing services could impact the affordability of those services and thus violate the section 254(b)(1) principle.[27] Consequently, the overall size of the fund and its impact on the affordability of services which require contribution to the fund must be considered in determining sufficient universal service support for high-cost and rural areas.

Qwest also believes that the reference in section 254(b)(1) to "quality services" requires the Commission to implement policies that allow services of a certain quality to be available at

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[25] *Notice* ¶ 11.

[26] *Order on Remand*, 18 FCC Rcd at 22578 ¶ 30.

[27] *Qwest II*, 398 F.3d at 1234.

just, reasonable, and affordable rates. Service quality is already defined informally through the market and more formally through state regulations. Additionally, for interstate services the Commission's outage reporting requirements also ensure service quality.[28] Thus, Qwest does not believe that the Commission needs to impose any additional requirements regarding quality of service to appropriately define "sufficient" when addressing universal service support to high-cost and rural areas.

B. Section 254(b)(2) – High-Cost Support For Deployment Of Broadband Services Is Not Warranted

Under this section, Congress enunciated the principle that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." At this time, it is not necessary to have universal service support to rural and high-cost areas be available for deployment of broadband or other advanced services. The Joint Board and the Commission have determined that advanced services do not meet the definition of supported services in the statute.[29] Thus, as a legal matter, it is not appropriate to use universal service support to fund broadband deployments in rural areas. In fact, the Commission should clarify that universal service high-cost and rural support should not be used to build functionality in a network that is not necessary for supported services.[30]

Furthermore, as a policy matter, telecommunications companies, cable companies, and many other entities are deploying broadband rapidly, and there is no indication that this will slow

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[28] *See* 47 C.F.R. Part 4 – Disruptions to Communications.

[29] *In the Matter of Federal-State Joint Board on Universal Service,* Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095 ¶ 11 (2003).

[30] There are allegations that certain rural carriers are using high-cost support to fund deployment that is only intended to improve broadband or video performance. *See* Reply Comments of Qwest Communications International Inc., CC Docket No. 96-45 (filed Oct. 31, 2005) at 7-9 ("Qwest Rural Reply Comments"). The costs of such deployments should not be paid through universal service support.

anytime soon.[31] As mentioned in our Rural Reply Comments in the Commission's open proceeding on high-cost support for rural carriers, over the past seven years Qwest has steadily increased the availability of high-speed Internet access services in its local service territory, without the use of federal or state high-cost universal service support.[32] And, despite the rural character of its service territory, high-speed Internet access is now available to over 70 percent of Qwest's access lines. Consequently, while Qwest does not dispute that deployment of broadband to rural areas is in the national interest, it is simply not evident that this effort needs to be funded by universal service high-cost support.

Additionally, any consideration that supported services should be redefined to include broadband must be balanced against its likely impact on the overall size of the fund and the affordability of services that contribute to the fund. End users of interstate telecommunications services will, within days of this filing, face a federal universal service support surcharge, widely viewed as a tax, of just under 11%.[33] The core purpose of universal service support is to enable affordable universally available telephone services. It would be contrary to this core purpose to mandate contributions to the fund that render unaffordable the services through which those contributions are collected.

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[31] Ninety-five percent of the nation's zip codes have at least one high-speed Internet access service provider. These zip codes cover 99% of the U.S. population. *High Speed Services for Internet Access: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. July 2005). Since the development of this report, at least two providers of satellite high-speed Internet access have begun offering service coverage across the mainland United States.

[32] Qwest Rural Reply Comments at 8, n.15.

[33] *See Proposed Second Quarter 2006 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 06-571 (rel. Mar. 13, 2006) (announcing the proposed universal service contribution factor for the second quarter of 2006 of 10.9%).

C. Section 254(b)(3) – The Principle Of Reasonably Comparable Urban And Rural Services And Rates Must Be Included

This section espouses the principle of reasonably comparable rates and services between urban and rural areas. Sufficient universal service support for high-cost and rural areas must encompass this principle. Universal service support should be sufficient to enable provision of the supported services identified in 47 C.F.R. § 54.101(a) in rural areas in a manner and at rates that are reasonably comparable to the manner and at the rates those services are provided in urban areas.

D. Sections 254(b)(4) And (6) – The Principles Of Equitable And Nondiscriminatory Contributions And Access To Advanced Telecommunications Services By Schools, Health Care Providers, And Libraries Are Not Relevant Principles

Section 254(b)(4) states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." Section 254(b)(6) provides that schools, health care providers, and libraries should have access to advanced telecommunications services. While these principles should be considered when addressing the sufficiency of universal service support as a whole, these principles are not directly relevant to a determination of how to calculate and distribute support for basic telephone service in high-cost and rural areas.[34]

E. Section 254(b)(5) – A Sufficient Mechanism Is A Relevant Consideration

This section provides that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." This principle must be

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[34] Of course, the Commission is currently reexamining its application of both of these principles in other dockets. And, the approach that the Commission adopts with respect to universal service support for high-cost areas must be considered in the broader context of these other reform efforts. Ultimately, a determination of whether universal service support is sufficient to achieve the purposes of section 254 requires an integrated review and balancing of the various components of the universal service program.

considered when addressing the structure of the support mechanisms for providing support to high-cost and rural areas. As discussed below, under the Qwest-proposed principle of efficiency, critical to having sufficient mechanisms and sufficient support for preserving and advancing universal service, are clear goals and clear measures to determine whether the support provided is advancing those goals.

F. Section 254(b)(7) - The Commission-Added Principle Of Competitive Neutrality Must Be Included

As noted, the Commission has identified competitive neutrality as a principle of its universal service policy, beyond those specifically enumerated in section 254(b). This principle should be incorporated into the definition of sufficient such that the support provided to high-cost and rural areas is provided on a competitively-neutral basis. The support provided should not have the effect of favoring one technology or competitor over another and should not influence a customer's choice of service provider.

Additionally, the competitive neutrality principle is another reason the Commission cannot continue to maintain different high-cost mechanisms for large and small carriers. The two mechanisms result in vastly different amounts of support to "rural" and "non-rural" carriers that serve comparable rural areas.[35] Though this disparity was never justifiable, it is even less so today given that "rural" and "non-rural" carriers increasingly are competing head-to-head.

[35] For example, there is the cost of serving Mancos and Silverton, two Qwest wire centers adjacent to territory serviced by Farmers Telephone in Colorado. According to the current Synthesis model cost output, Qwest's cost of providing service in Mancos is $77.53 per-line per-month, and $66.09 in Silverton. Neither of these locations receives federal support, because Qwest receives no federal high-cost support in Colorado. Yet, Farmers Telephone, which provides service in areas adjacent to these Qwest wire centers receives an average of $61.45 per-line per-month in federal support. Universal Service Monitoring Report (rel. Nov. 2005) at 3-234 & Table 3.31. These territories are in the far southwest corner of Colorado and it is highly unlikely that they represent geographies that are significantly different from one another. Qwest believes that the only significant difference is that one serving company is designated as non-rural while the other is designated as rural.

While a rural over-builder generally receives the same amount of high-cost support when competing for customers in a "non-rural" ILEC's service territory as the "non-rural" ILEC, the rural carrier may be receiving much higher support within its adjacent serving territory. It is this additional high-cost support that arguably is funding the rural ILEC's over-build, thus giving the carrier a competitive advantage based purely on disparate regulation. In this way, the twin high-cost systems currently maintained in the Commission's rules clearly violate the competitive neutrality principle.

G. Qwest Recommends Emphasizing The Principle Of Efficiency

In defining "sufficiency" with respect to universal service, it is imperative that "efficiency" be included. The Commission has already implicitly acknowledged this principle in its previous definition of sufficiency.[36] Efficiency is a critical component of the definition of "sufficient," and must be maintained and emphasized in any new definition. If the fund is not efficient in providing support, than the fund may ultimately harm the contributors more then it aids the benefactors. An appropriate balancing of the impact of the fund on contributors with the benefits of the support provided is critical to an appropriate interpretation of sufficient universal service support. The language of section 254(e), which states that universal service support should be sufficient "to achieve the purposes of [section 254]," should be interpreted to mean that the amount of universal support be enough to reasonably pursue the goals of universal service, without unreasonably burdening consumers of telephone service. To make universal service support to high-cost areas more efficient the Commission should (1) establish clear goals and clear measures to help target support and limit growth of the fund, (2) re-target support to at

[36] *See Order on Remand*, 18 FCC Rcd at 22578 ¶ 30 (stating the Commission's agreement with the Joint Board that "the principle of sufficiency means that non-rural high-cost support should be only as large as necessary to meet the statutory goal.").

most a single connection per ETC per household or business, and (3) create a single process for distributing support to high-cost areas.

1. The Efficiency Principle Demands A Leaner, More Targeted Fund Through Clear Goals And Clear Measures

The federal universal service fund has become massive. Between 2000 and 2005, total federal high-cost support payments (including Interstate Common Line Support ("ICLS"), Interstate Access Support ("IAS"), and Long Term Support ("LTS")) grew from approximately $2.2 billion to $3.7 billion.[37] And, this does not even consider the additional $2.25 billion in universal service support earmarked for schools and libraries each year. The result is a contribution factor -- a quasi tax that shows up on nearly every end user's bill -- that will shortly be almost 11%.

Yet, it is not clear that this massive fund is necessary to achieve the statute's goals. The size of the fund continues to grow without any clear evidence that the increased support is advancing universal service. In fact, the measure used to gauge the universal availability of telecommunications service, reflects that nationwide penetration rates are substantially unchanged since the 1996 Act, hovering around approximately 94%.[38] By this measure, universal service support appears to be at best only preserving universal availability, and not advancing universal availability. Clear goals and clear measures should be developed to better

[37] *Universal Service Monitoring Report* at 3-13 & Chart 3.1.

[38] For the years 1996 through 2004 the average annual penetration rate was 94.4%, with the maximum average annual penetration rate of 95.3% for 2002, and the lowest average annual penetration rate of 93.8% in 2004. *See Telephone Subscribership Report* at Table 1. In spite of nine years elapsing and significant increases in the fund size, the average annual penetration rate for 2004, 93.8%, is not much different than (and certainly not better than) the 94.0% average annual penetration rate in 1996. To the extent that there has been some change in penetrations rates over the years the most rapid and consistent decline has only recently occurred from July 2003 through March 2005, in spite of continued increases in the fund size during this same period.

target universal service support and curb unnecessary growth of the fund. For example, with respect to the high-cost funds, there is no data that examines penetration of telephone service in urban areas as compared to rural areas. If a key measure of the success of universal service is penetration, then knowing penetration rates in urban versus rural areas could help more efficiently target high-cost and rural support.

2. The Efficiency Principle Encourages Re-targeted Support To At Most A Single Connection Per ETC Per Household Or Business

In addition to clear goals and clear measures for the high-cost programs, it is also necessary to impose some limits on the scope of high-cost funding. Currently, all of an ETC's lines are eligible for high-cost support. Thus, if an ILEC provides 100 lines to a business customer or four lines to a residential customer, each of those lines can potentially be subsidized through federal high-cost support. Moreover, if a competitive ETC ("CETC") provides an additional telephone connection to that customer, the additional connection is subsidized by universal service as well, even if the CETC has not "captured" the customer from the ILEC. Predictably this framework has led to significant growth in the fund, as customers in rural areas obtain subsidized wireless service *and* subsidized wireline service.

Qwest continues to believe that the Joint Board's recommendation to limit high-cost support to one connection per household was the most sensible solution to move the high-cost support mechanism toward its core objectives, while controlling the size of the fund. By supporting a single connection for each subscriber, the Commission would help ensure that subscribers in high-cost areas continue to have affordable access to supported services, consistent with the principles of section 254(b). Qwest also believes that the Commission is not precluded by the *2005 Consolidated Appropriations Act* from limiting support to a single connection, since that Act only addressed the Joint Board's February 27, 2004 Recommended

Decision.[39] Nevertheless, Qwest acknowledges the difficulty inherent in limiting support to a single connection, because determination of the ETC entitled to the single connection support is difficult if not impossible to administer. Thus, Qwest takes the position that a reasonable and workable compromise between supporting a single connection and supporting all connections is to support a single connection for each ETC serving a particular customer.

In any case, the Commission should limit support to at most one connection per ETC for each household or business. For example, if a wireline and wireless ETC serve a household, each carrier should at most get high-cost support for one connection to that household. The advantage of this approach is that it would avoid the policy and administrative difficulties of determining which connection is the "primary" connection to the household.

3. The Efficiency Principle Compels A Single, Efficient Mechanism For Distributing High-Cost Support

Also, in order to appropriately balance the size of the fund pursuant to the affordability principle of section 254(b)(1) with the other principles of section 254(b), the mechanism or mechanisms for distributing high-cost support must be efficient. Qwest submits, as reflected in its Rural Reply Comments, that the dual mechanisms for providing universal service support to non-rural versus rural carriers serving high-cost and rural areas are not efficient.[40] First, the vast majority of federal high-cost support goes to areas served by rural carriers, even though only about one in four rural customers in the nation live in areas served by rural carriers.[41] Second, because rural carriers receive universal service support based on their embedded costs they are largely insulated from the effects of competition. If a rural carrier's cost per-line increases --

[39] *See 2005 Consolidated Appropriations Act § 634*.

[40] Qwest Rural Reply Comments at 15-17.

[41] *See* Comments of Qwest Communications International Inc., CC Docket No. 96-45 (filed Sept. 30, 2005) at 8 ("Qwest Rural Comments").

such as when it loses lines to CETCs -- its high-cost support per-line increases as well. And, pursuant to the Commission's competitive neutrality rules, this higher per-line support is available to CETCs, providing them further, potentially inefficient incentive to enter rural areas. These are not efficient uses of universal service support.

To more efficiently distribute universal service support to rural and high-cost areas, there should be no distinction as to how this support is distributed among carriers. Currently, there are different mechanisms for distributing high-cost support to rural carriers and non-rural carriers even though these carriers serve similarly-situated high-cost areas. Historically, the larger non-rural carriers have subsidized the rates in high-cost areas through implicit subsidies in phone rates paid by urban and business customers. Smaller carriers that only served rural areas were not able to implement such implicit subsidies, and thus received more explicit support to serve the same types of high-cost, rural areas that the larger carriers also served. With increased competition in the telecommunications marketplace, any remaining implicit subsidies between rural and urban wire centers are being quickly eroded, as large ILECs such as Qwest lose substantial portions of their business and residential market share in more urban markets. Omaha is a prime example. Qwest has lost sufficient market share in Omaha to be deemed a non-dominant provider for mass market telephone services in that metropolitan statistical area.[42] And Qwest has experienced similar losses in other major markets it serves. Due to the high fixed costs of telephony, such loss of market share does not significantly reduce Qwest's costs in those markets. In turn, Qwest's remaining customers in those markets generally do not subsidize phone services in other, higher-cost areas, since competition prevents it. Thus, this rationale for

[42] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170, ¶ 15, rel. Dec. 2, 2005, *pets. for review pending sub nom., Qwest Corp. v. FCC*, Nos. 05-1450, *et al.* (D.C. Cir. Filed Dec. 12, 2005).

this differential support for carriers serving the same types of rural and high-cost areas has been eviscerated by competition.

The requirements of section 254, including reasonable comparability, affordability, and sufficiency, apply to all areas of the country, regardless of whether they are served by large or small telephone companies. For universal service support to be distributed in a more efficient manner to high-cost and rural areas, it should be provided to benefit consumers in those areas without regards to the type of carrier providing the telecommunications service.

III. THE COMMISSION MUST REDEFINE "REASONABLY COMPARABLE" TO RECOGNIZE ITS OBLIGATION TO ADVANCE UNIVERSAL SERVICE

In *Qwest II*, the Court recognized that the Commission is charged under the Act with the concurrent duties of both preserving and *advancing* universal service.[43] The Commission's obligation to advance universal service is an overarching obligation of the statute. To advance universal service in high-cost and rural areas the Commission should make distribution of universal service support to those areas more efficient and equitable. This can be accomplished through consolidation of the existing mechanisms for providing support to high-cost and rural areas, as just discussed in the previous Section.

Additionally, in *Qwest II*, the Court held that the Commission's definition of "reasonably comparable" is faulty. On remand the Court instructed the Commission to define the term "reasonably comparable" in a manner that comports with its concurrent duties to "preserve *and* advance universal service."[44]

The Commission's current definition is that rural rates are reasonably comparable if they fall within two standard deviations of the national average urban rate for residential service. In

[43] *Qwest II*, 398 F.3d at 1235-36.

[44] *Id.* at 1237 (emphasis in original).

light of the Court's ruling, the Commission needs to redefine "reasonably comparable" to include the obligation of advancing universal service.

Qwest believes that the Commission should redefine "reasonably comparable" such that rural rates are reasonably comparable if they are not more than 125% of the national average urban rate for wireline local service. As proposed by Qwest, the definition of "reasonably comparable" is changed from the current Commission definition in two critical respects. First, the average urban rate from which the benchmark is derived is a weighted average of both residential and business rates for local service, as both forms of local service are supported by the universal service high-cost funds. Changing the national average urban rate from being solely a measure of urban residential rates to a measure of local rates that includes business rates appropriately changes the definition of reasonable comparability to recognize that the rates for all service supported in high-cost areas should be included in the comparison. Second, the benchmark of 125% of the national average urban rate incorporates an affordability consideration, by being tied to an affordable rate for basic telephone service.

In turn, use of this benchmark satisfies the concerns of the Tenth Circuit because it provides an improved measurement of reasonably comparable rates in a manner consistent with the key purposes of universal service support. The benchmark reflects a narrower range for rate variance compared to the 137% benchmark rejected by the Tenth Circuit. Additionally, an analysis of certain Bureau of Labor Statistics ("BLS") data demonstrates that the rate corresponding to the 125% benchmark is affordable for rural consumers. Qwest calculates that using the affordable rate of $33 that corresponds to the 125% benchmark, the percentage of household income (on average) that rural customers spend on telephone service would not be substantially altered. What the BLS data demonstrates is that where costs of service are below the benchmark, the rates that rural consumers hypothetically pay if priced at that benchmark should keep rural spending on telephone services affordable when measured as a percentage of household spending. Thus, a 125% benchmark enables both reasonable comparability of urban rates to rural rates and affordability to rural consumers in high-cost areas.

A. The Commission Should Redefine The National Average Urban Rate

Currently, the Commission uses only urban rates for residential service to create a comparative benchmark. Yet, the services currently supported through universal service high-cost support are the services in a basic single local residential or business line as identified in 47 C.F.R. § 54.101(a).[45] Section 254(b)(3)'s principle of reasonable comparability does not limit that comparability to "residential" consumers. Additionally, to the extent residential rates are still subsidized by business rates in some areas, inclusion of business rates will account for this subsidization. Consequently, it is appropriate to consider the local rates of both residential and business customers in establishing the national affordability benchmark. Thus, Qwest proposes that the average urban rate should be based on a weighted average of the basic local rates, plus federal and state SLCs, paid by both residential and business customers in urban areas.[46]

Using the Commission's Urban Rate Survey, the average urban residential rate is approximately $14.25 with a SLC of $5.80 for a total of $20.05 without fees. The average urban business rate is approximately $33.04 with a SLC of $6.06 for a total of $39.10. Weighing these

[45] Those services are (1) voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance.

[46] Specifically, the benchmark would be based on the weighted average of residential and business local rates in urban areas, including local usage, state and federal SLCs, and any additional SLC adopted in the intercarrier compensation proceeding.

rates together using composite Regional Bell Operating Company residence lines and business lines produces a weighted rate of $26.74.

B. The Commission Should Use A Benchmark That Incorporates The Principle Of Affordability

Qwest calculates that 125% of the redefined national average urban rate is approximately $33. The affordability benchmark is designed as a maximum weighted residential and business rate at which the general population of customers can afford to purchase telephone service. The affordability benchmark is linked to the process of determining which wire centers may require high-cost support by targeting the federal universal service support based on the weighted forward-looking cost in excess of the affordability benchmark. If the affordable benchmark were moved to a point equal to the weighted average urban rate, high-cost universal service support would no longer be directed to high-cost wire centers, but rather it would include many urban wire centers, which are generally not considered high cost. In contrast, if one determined that $33 falls below a high-cost threshold and the benchmark were moved upward, for example to $50, the general affordability of the benchmark rate level could be called into question.

Qwest examined the affordability of the proposed benchmark as well as the comparability to urban rates using data from the BLS Consumer Expenditure Survey from 2004. The BLS examines average consumer spending by urban and rural areas. The BLS data for telephone services includes: residential/payphone service, which includes local service, features, payphone expenditures, and long distance, cellular service, pager service and phone cards. Section 254(b)(3) addresses comparability for urban and rural services in terms of telecommunications services and is not specific to basic local service. Thus, the BLS data provides a comparison that is consistent with that principle.

The BLS data includes only the expenditures of households and does not include data for small business. Since consumer expenditures on telephony service are generally lower than businesses, using the weighted business and residence benchmark in the test of affordability and comparability adequately tests the affordability hypothesis.

The survey data demonstrate the current level of comparability: Urban expenditures for Telephone Services equal 2.3 percent of the average annual urban consumer expenditures, whereas rural expenditures for Telephone Services equal 2.4 percent of the average annual rural consumer expenditures. The total monthly urban telephone service expenditure is $83.34 and the total monthly rural telephone service expenditure is $76.92. *See* Table 1 below.

Table 1

Bureau of Labor Statistics - Table 1702

	2004					
	All Consumer Units		Total Urban		Rural	
	Total Expenditure	% of Total	Total Expenditure	% of Total	Total Expenditure	% of Total
Average **Annual** Expenditures	$43,395		$44,172		$38,088	
Telephone Services	$990.22	2.3%	$1,000.13	2.3%	$923.04	2.4%
Residential Telephone/Payphone	$592.31	1.4%	$591.31	1.3%	$599.07	1.6%
Cellular Phone Service	$378.39	0.9%	$388.99	0.9%	$306.54	0.8%
Pager Service	$1.01	0.0%	$0.90	0.0%	$1.73	0.0%
Phone Cards	$18.51	0.0%	$18.93	0.0%	$15.70	0.0%
Average **Monthly** Expenditures	$3,616		$3,681		$3,174	
Telephone Services	$82.52	2.3%	$83.34	2.3%	$76.92	2.4%
Residential Telephone/Payphone	$49.36	1.4%	$49.28	1.3%	$49.92	1.6%
Cellular Phone Service	$31.53	0.9%	$32.42	0.9%	$25.55	0.8%
Pager Service	$0.08	0.0%	$0.08	0.0%	$0.14	0.0%
Phone Cards	$1.54	0.0%	$1.58	0.0%	$1.31	0.0%

While rural consumers pay 0.1 percent more of their average annual expenditures on telephone services than urban consumers, urban consumers pay on average over $7 more per month for telephone services.

The values in the table above can be modified to reflect the estimated urban and rural rates after the implementation of Qwest's proposed affordability benchmark. This analysis shows that if the affordability benchmark were actually charged for rural local service,[47] rural telephone services for rural households would remain affordable.

Table 2

	A	B	C	D	E=B	F=E+C-D	BLS
	BLS	FCC					$ 44,172
Residential Urban Services	**Total Urban (Central City & Other)**	**FCC Urban Res Rate Survey w tax & surch**	**Other: LD, features, etc**	**Reduction in LD prices due to access Reductions**	**FCC Urban Res Rate Survey w tax + Add Access Rev**	**Total Urban**	**Urban Annual Expenditures**
Telephone Services	**$ 83.34**					**$ 83.34**	2.3%
Residential/Pay Phones	$ 49.28	$ 24.31	$ 24.97	$ -	$ 24.31	$ 49.28	1.3%
Cellular	$ 32.42					$ 32.42	0.9%
Pager Service	$ 0.08					$ 0.08	0.0%
Phone Cards	$ 1.58					$ 1.58	0.0%

							BLS
	BLS	Qwest Estimate					$ 38,088
Residential Rural Services	**Rural**	**Estimated Rural ICO Res rate including SLC, Tax, & Surch**	**Other: LD, features, etc**	**Reduction in LD prices due to access Reductions**	**Rural at Benchmark**	**Total Rural after substitution**	**Rural Annual Expenditures**
Telephone Services	**$ 76.92**					**$ 89.42**	2.8%
Residential/Pay Phones	$ 49.92	$ 24.47	$ 25.45	$ -	$ 33.00	$ 62.42	2.0%
Cellular	$ 25.55					$ 25.55	0.8%
Pager Service	$ 0.14					$ 0.14	0.0%
Phone Cards	$ 1.31					$ 1.31	0.0%

Inputs

		Source
Rural Res Rate	$ 14.00	Qwest sample of 12 Independent companies within Qwest's 14 state local service region
NECA Res SLC	$ 6.50	Universal Service Monitoring Report, CC Docket No. 98-202, Oct. 2005 Table 7.13
Taxes, Surcharges, etc.	$ 3.97	Universal Service Monitoring Report, CC Docket No. 98-202, Oct. 2005 Table 7.6
Total	$ 24.47	
Urban Res Rate	$ 24.31	Universal Service Monitoring Report, CC Docket No. 98-202, Oct. 2005 Table 7.6

47 Qwest does not advocate that rates in rural areas be increased to the benchmark, but is merely demonstrating that if the rural rates were increased to the benchmark, those rates would remain affordable.

The analysis process substitutes the affordability benchmark for the basic local service portion of the "Residential/Pay Phone" item of the BLS data. The current rural residential rate of $20.50 is replaced with the affordability benchmark of $33.00. The average taxes, surcharges and fees of $3.97 continue to be included in the analysis. This substitution moves the rural residential/pay phone charges from $49.92 to $62.42. The result is a total rural residential telephone service expense of $89.42 compared to an urban residential expenditure of $83.34. Using the affordability benchmark as an actual expenditure, rural residential consumers would expend $6.08 more per month than urban consumers and expend 2.8 percent of all rural residential expenditures on telephone services compared to urban residential customers' expenditure of 2.3 percent.

Rural services remain affordable at a hypothetical rate of $33 for the basic local service and SLC. The $33 affordability benchmark is designed to recognize the underlying cost of service in high-cost areas. While under this scenario rural residential telephone service expenditures increase to 2.8 percent of the rural residential budget, the 0.4 percent increase can be absorbed without displacing other critical expenditures. The absolute increase is $12.50 per month. While in isolated terms this hypothetical increase may appear large, one can consider the $33 affordability benchmark in comparison to generally offered cellular phone rates of $39.95. The cellular rate of $39.95 appears to be affordable to the general public.

The restated urban and rural expenditures continue to be within a reasonably comparable range. The difference between urban and rural expenditures under this analysis is 0.5 percent. Other critical items within urban and rural expenditures have a wider range of difference than the urban and rural expenditure difference for telephone services. For example, differences between the urban and rural expenditures for food, health care, and transportation all exceed 0.5 percent. While Congress has not legislated comparability for these items, there is no question of their importance to both urban and rural consumers' budgets.

Thus, Qwest believes that rural rates that are within 125% of the redefined national average urban rate are reasonably comparable for purposes of section 254(b)(3). Applying this new definition of reasonable comparability is the first step in achieving an improved mechanism for distributing universal support to rural and high-cost areas.

IV. THE CURRENT HIGH-COST FUNDING MECHANISMS MUST BE MODIFIED TO REFLECT THESE NEW DEFINITIONS OF "SUFFICIENT" AND "REASONABLY COMPARABLE"

The Court held that the Commission's non-rural high-cost support mechanism is invalid and instructed that "[o]n remand, the FCC must utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory obligation to preserve *and* advance universal service. No less important, the FCC must fully support its final decision on the basis of the record before it."[48] As a result of that directive, Qwest proposes that the Commission modify the existing mechanism in the manner set out below in order to comply with the Court's decision. The Commission should adopt a mechanism that considers affordability, as well as reasonable comparability to determine which areas are high-cost areas warranting universal service support. Specifically, the mechanism should use a 125% affordability benchmark based on weighted local residential and business urban rates, and then compare wire center costs, not statewide average costs, to the benchmark to identify areas in need of high-cost support. The Commission should then use the identified wire centers to reallocate and recalculate high-cost support for non-rural carriers, combine the 2004 level of

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[48] *Qwest II*, 398 F.3d at 1237 (emphasis in original).

high-cost support for rural carriers with the recalculated high-cost support for non-rural carriers in each state into a single fund for high-cost support in each state, and provide guidelines for distribution of the combined high-cost funds within each state.

A. Step 1: The Commission Identifies Wire Centers Currently Served By Non-Rural Carriers In Need Of Universal Service High-Cost Support

1. Incorporate affordability into the test. First, in lieu of focusing the mechanism solely on reasonable comparability, the mechanism should be grounded in affordability. This is in accord with the Court's decision in *Qwest II*. In lieu of only comparing statewide average costs to a national average cost benchmark to determine which statewide average costs are not reasonably comparable, the mechanism should start by determining an affordability benchmark based on urban rates.

2. Use a 125% affordability benchmark. Qwest proposes the affordability benchmark based on 125% of the weighted average of urban residential and business rates (including SLCs). As already discussed, the proposed affordability benchmark satisfies the issues surrounding comparability and affordability remanded to the Commission by the Tenth Circuit, and allows an adequate comparison of urban and rural rates as well as a basis for identifying where rural costs are higher than an affordable rate.

3. Use wire center costs, not state-wide average costs or local rates. Additionally, the mechanism should not focus on state-wide average costs, but on individual wire center costs. The Commission has previously recognized the advantages of targeting support to high-cost wire centers.[49] Use of state-wide costs inappropriately implies that low cost urban areas support high-cost areas. As discussed earlier in Section II.G.3., competition in urban areas does not allow

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[49] *In the Matter of Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20471 ¶¶ 70-71 (1999) ("*Ninth Order on Remand*").

support to flow to high-cost areas. Any remaining implicit subsidies between rural and urban wire centers are being quickly eroded, as large ILECs, such as Qwest, lose substantial portions of their business and residential market share in more urban markets. Therefore, support needs to be calculated by wire center, where high-cost areas can be explicitly identified. For purposes of implementing the benchmark, individual wire center costs in rural areas are an appropriate proxy for rural rates because costs identify areas where rates would need to be higher to recover those costs directly in an economically rational manner. It is those areas, where costs of providing service are significantly higher, that universal service support is needed to enable providers to establish and maintain quality telecommunications service while keeping rates affordable for consumers in those areas.

Additionally, it is appropriate to use costs, and not actual local rates because few carriers, rural or non-rural, actually charge higher rates in high-cost areas.[50] Many states still use either state-wide average pricing or pricing in reverse relationship to cost, based on a perceived "value of service" in a small geographic area compared to the perceived value in a larger one. With only a few exceptions, retail prices are not yet established on the basis of the actual underlying cost to serve the customer, but rather on some other basis.[51]

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[50] In fact, it seems that rural rates may often be lower than urban rates. Currently, the Commission does not produce a survey of rural rates. Qwest sampled the rates of a dozen rural independent companies that serve in the 14-state area of Qwest's ILEC operations. This sample found an average residential rate of $14.00 with a SLC of $6.50 and an average business rate of $21.80, with a SLC of $9.20. Weighting these rates by their respective residence and business lines produced a weighted rate of $23.21, a weighted average rate lower than the comparable urban rate of $26.74.

[51] In Qwest's territory, Wyoming is the notable exception to this practice.

B. Step 2: The Commission Uses The Wire Centers Identified As Having Costs Above The Affordability Benchmark To Reallocate High-Cost Support For Non-Rural Carriers Across The Nation

Wire center costs above the benchmark would be considered to be not reasonably comparable, and thus preclude reasonably comparable rates. Once those wire centers are identified, they are used to reallocate non-rural high-cost support across states. For those wire centers with costs above the affordability benchmark, fund support would be calculated based on the difference between the cost and the benchmark times the number of supported lines for that wire center. Using the latest available official Synthesis Model wire center cost output, this would result in a total non-rural support fund of approximately $1.9 billion, a significantly higher amount than the current non-rural fund size of $290.9 million.[52] Consequently, so that the fund does not result in excessive contribution fees that could result in compromising the affordability of rates, Qwest proposes that total amounts for each state be compared against the total national amount to determine the percentage of support that each state would be entitled to with respect to a predetermined fund amount, such as from a cap on the existing fund for non-rural carriers.

In fact, Qwest recommends that the non-rural and rural high-cost programs (including Local Switching Support and Safety Net Additive Support) be capped at 2004 levels. By doing so, the Commission would roll back the growth of approximately $200 million that occurred in these programs over the past year, as well as any subsequent growth prior to the implementation of new high-cost rules. A substantial portion of this growth is due to the entry of CETCs in areas served by rural carriers, which in many cases results in rural customers receiving subsidized wireline and wireless services.

[52] *Universal Service Monitoring Report*, CC Docket No. 98-202 (rel. Nov. 2005) at Table 3.9.

Qwest believes that redistribution of non-rural support in this manner will result in a more equitable allocation of this support across the states. Currently, federal support for non-rural carriers is limited to only ten states, with two states receiving more than 66% of the entire fund.[53] A number of states with sizable high-cost areas in non-rural service territories receive little, if any, federal high-cost support. Qwest's proposed redistribution would result in nearly all states receiving support (using a $33 benchmark), with no state receiving more than 8% of the total federal support for non-rural carriers.

C. Step 3: The Commission Combines The 2004 High-Cost Support Amount For Rural Carriers With The Recalculated High-Cost Support For Non-Rural Carriers In Each State Into A Single Fund For High-Cost Support In Each State

The re-allocated non-rural support for a state and the 2004 rural fund support amount for a state should be combined into a single block grant of support for high-cost areas to a state. Qwest agrees with the concept proposed by the NARUC Task Force in the intercarrier compensation proceeding that the Commission combine the support from all of the federal high-cost support mechanisms and give the states the discretion, with guidelines set by the Commission, to determine how the support should be distributed among carriers in the state.[54] Qwest, however, does not agree with all of the details of the NARUC proposal.

State regulatory commissions are more attuned than the Commission to the local conditions of their states -- the carriers operating in that state, the rate structures of particular carriers, and the unique challenges within the state to maintaining affordable and reasonably comparable rates. The "block grant" for each state should be comprised of two components: (1) the total federal high-cost support received in rural study areas (*i.e.*, high-cost loop support,

[53] *Id.* at Table 3.93.

[54] *See* The National Association of Regulatory Utility Commissioners Study Committee on Intercarrier Compensation -- Goals for a New Intercarrier Compensation System (May 5, 2004).

local switching support, and Safety Net Additive support) in that state in 2004; and (2) the total federal high-cost support that would be received in non-rural study areas in that state if the total non-rural support awarded in 2004 were redistributed among the states using the 125% affordability benchmark.[55]

D. Step 4: The States Distribute The Combined High-Cost Funds Subject To Commission Guidelines And Review

As Qwest has previously discussed in its Rural Comments,[56] section 254 contemplates a partnership between the Commission and the states to support universal service, with the Commission holding final responsibility for ensuring that the requirements of section 254 are fulfilled. In particular, the Commission ultimately must ensure that federal high-cost support is sufficient to satisfy the requirements of reasonable comparability, affordability and the other obligations of section 254. Given this statutory responsibility, the Commission should adopt guidelines that govern the distribution of federal high-cost support within the states. Those guidelines should include (1) targeting support to high-cost wire centers, (2) using a proxy to determine wire center costs such as households per square mile (*i.e.*, density), (3) applying the density or other metric uniformly across all classes of ETCs operating in the state and all geographic areas within the state, (4) requiring high-cost support levels to be based on the assumption that an ETC's local rates are at the national benchmark, and (5) requiring states to certify that local rural rates are affordable and reasonably comparable to urban rates.

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[55] Qwest believes that this "block grant" support should not include IAS or ICLS. Both IAS and ICLS resulted from the Commission's efforts to replace implicit subsidies in interstate access rates with explicit universal service support. As a result, these programs should continue to be managed by the Commission. With that being said, these programs are also in need of reform. Unlike IAS, ICLS is not capped. From 2004 to 2005, ICLS increased from approximately $700 million to more than $1.1 billion. USAC Report Appendix HC0 for 4Q2004 and Appendix HC02 for 4Q2005 at http://universalservice.org/overview/filings/. Such growth cannot be sustained.

[56] *See* Qwest Rural Comments at 16-17.

Wire Center Targeted Support. Qwest believes that high-cost support should be targeted to high-cost wire centers using uniform metrics closely tied to the cost of providing the supported services, such as households per square mile. This is similar to the Commission's current methodology for non-rural high-cost support. State commissions should examine the cost of providing service on a disaggregated basis, such as at the wire center level.

Density Proxy for Wire Center Costs. Use of a surrogate such as density for cost would avoid the expense and burden of modifying the Commission's current cost model to reflect costs in areas served by rural carriers, as well as the expense of updating the model to reflect changes in technology. Such modifications would be a major undertaking. Following the passage of the 1996 Act, the Commission and interested parties such as Qwest spent countless hours developing, analyzing and refining computer models that were designed to estimate the cost of serving high-cost areas within non-rural carriers' service territories. Ultimately, this process led to the Commission's adoption of the Synthesis Model, which is currently used to determine support for non-rural carriers. The Commission and interested parties also expended substantial resources in establishing hundreds of input values for the cost model. In the end, these efforts were of questionable value. The current results of the model-based support mechanism for non-rural carriers bear little relationship to reality, particularly given that it is based on statewide average results, such that substantial high-cost areas are lost in the averaging process. More than 66% of non-rural support goes to just two states. Other, less densely populated states receive relatively little support. The accuracy of the cost estimates generated by the model is also suspect given that those cost estimates are highly dependent on even slight changes in key input values and geographic data used by the model. In adopting the input values, the Commission repeatedly acknowledged that it lacked a precise means of determining appropriate values, and thus relied on the best information available, which often was far less than ideal.[57] This lack of precision in the inputs directly resulted in a loss of precision in the outputs as well.

Given these considerations, there is little downside risk in moving away from the use of a cost model for distributing high-cost support. Metrics such as households per square mile arguably are just as reliable in estimating cost as the use of a complex cost model. Furthermore, the use of such a methodology would avoid the substantial expenditure of resources necessary to revise the Synthesis Model to address criticisms that the model does not accurately measure cost in areas served by rural carriers.[58] The use of a simple methodology for estimating cost also would dramatically improve transparency of the process which is lacking in the current non-rural high-cost mechanism. The mind-numbing complexity of the Synthesis Model makes it difficult even for experienced modelers to understand the Model's results.

The growing use of different technologies (wireline, wireless, Voice over Internet Protocol) makes it even more problematic today to "model" the cost of providing service in a particular area. The use of divergent technologies also leads to difficult policy questions, such as what technology should be assumed in the model and how the model will be updated to reflect

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[57] *See In the Matter of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs,* Tenth Report and Order, 14 FCC Rcd 20156, 20186-87 ¶ 62 (1999) (adopting "best available" data for wire center boundaries), 20204-05 ¶¶ 106-07 (best available data for copper and fiber cable cost estimates), 20272 ¶ 271 (digital loop carrier cost estimates), 20290-91 ¶ 319 (switch cost estimates), 20305 ¶ 348 (expense cost estimates).

[58] The Commission previously concluded that the Synthesis Model could not be used for areas served by rural carriers without revisiting the inputs used in the model. *See In the Matter of 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, 11313 ¶ 177 (2001).

changes in technology.[59] Neither the Synthesis Model, nor most of its inputs, has been modified since 1999, despite dramatic changes in technology in the telecommunications industry. There is no reason to believe that the future will be different.

Reliance on methodologies used for rural carriers are even more problematic. Currently, ETCs in areas served by rural carriers receive high-cost support based on the embedded costs of the rural carrier in that area. As noted above, this approach can lead to a spiraling increase in the per-line support in these areas as rural carriers lose lines to CETCs. It also promotes inefficiency, as carriers have little incentive to control their costs.

Taken together, these considerations strongly suggest that the best option overall is for state commissions to target high-cost support to wire centers based on households per square mile or another metric that sufficiently represents the cost of providing service in the wire center.[60]

Uniform Metrics. Regardless of the specific metric that is employed by a state commission, that metric should be applied uniformly to all classes of ETCs operating in the state, and all geographic areas within the state. Thus, if a rural carrier and non-rural carrier serve wire centers with identical cost characteristics (*e.g.*, roughly the same number of households per square mile) in a state, they should be eligible for the same amount of high-cost support per line in those wire centers. Likewise, wireline and wireless carriers should continue to receive the same per-line support when serving customers with similar cost characteristics (based on the

[59] The Three Stage Package would base a CETC's high-cost support on that carrier's cost, as long as that support would not exceed the incumbent ETC's support. While this may be logical in theory, history suggests it will not work in practice.

[60] As is the case today, the Commission's rules should allow states to seek a waiver to target support to smaller geographic areas, such as density zones within each wire center.

uniform metric). States should not be permitted to give particular ETCs more support than other ETCs in the state based on non-objective factors.

As discussed above, the use of uniform metrics also avoids the pitfalls of using cost models or embedded cost to determine high-cost support. In practice, this approach would be simple. For example, a state commission might determine that any ETC serving a household in a wire center with zero to five households per square mile would be eligible for $20 per month in federal high-cost support; an ETC serving a household in a wire center with five to ten households per square mile would be eligible for $10 per month; and an ETC serving a household in a wire center with 10 to 20 households per square mile would be eligible for $5 per month.[61]

By using a uniform metric across all technologies, Qwest's proposal treats all technologies in a competitively neutral manner. Additionally, while actual costs for serving areas of the same density may vary somewhat across different telecommunications technologies, all of the costs are similarly correlated to density such that the effect of using a uniform density metric across technologies should be competitively neutral as well.

High-Cost Support Levels to Supplement End-User Recovery. A carrier's costs should in the first instance be recovered from its end-user customers. High-cost support should be provided only to the extent those costs exceed the amount that can be recovered from those customers -- *i.e.*, to the extent their local rates would exceed the national benchmark. Today, some customers living in high-cost rural areas pay significantly less for telephone service than most customers in low-cost urban areas. There is no justification for this situation. Any mechanism that subsidizes telephone service in high-cost areas should assume that the customer

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[61] Obviously this example is merely for illustrative purposes and does not necessarily correspond to the appropriate level of support in any particular state.

receiving subsidized telephone service is paying a fair share of the cost of his or her telephone service. In practice, this means that high-cost support levels established by a state commission should be based on the assumption that an ETC's local rates are at the national benchmark.

Certification and Requests for Additional Federal High-cost Support. In the *Ninth Order on Remand*, the Commission adopted procedures requiring states to certify whether rates in rural areas served by non-rural carriers are reasonably comparable to urban rates, as a condition of receiving federal high-cost support in the state, and allowing states to request additional federal action if the state is unable through its own actions to ensure reasonable comparability.[62] In *Qwest II*, the Tenth Circuit found that these new processes were adequate to induce states to ensure that rural rates are reasonably comparable to urban rates.[63] But, the Court rejected the Commission's definition of sufficiency, because its exclusive focus on reasonable comparability ignored the other principles in section 254(b), such as affordability.[64]

In light of these holdings by the Tenth Circuit, the Commission should retain the procedures for certification and requests for additional federal action, but expand those procedures in two respects. First, the procedures should be expanded to cover areas served by both rural *and* non-rural carriers. Although *Qwest II* directly concerned the non-rural mechanism, the same underlying statutory requirements apply in all service areas. Second, the Commission should require states to certify that rates within the state are both reasonably comparable and affordable, in order to comply with the Tenth Circuit's concerns about the Commission's definition of sufficiency.

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[62] *Ninth Order on Remand*, 14 FCC Rcd at 20483-84 ¶ 97.

[63] *Qwest II*, 398 F.3d at 1238.

[64] *Id.* at 1234.

As discussed above, as long as local phone rates (including federal and state SLCs) are at or below the 125% national benchmark described above, those rates should meet the reasonable comparability and affordability requirements of section 254(b). Thus if federal high-cost support prevents rates within a state from exceeding the benchmark, the state commission will be able to certify that such rates are reasonably comparable and affordable. In some exceptional circumstances, federal support may not be sufficient to keep all rates within the state below the benchmark. Where the state is not able to remedy this problem through its own efforts, such as through a state high-cost fund, the state should be permitted to request additional federal action, including additional high-cost support.

Qwest believes that these Commission guidelines will ensure that federal support is distributed in a way that satisfies the requirements of section 254 and results in a vast improvement in the effectiveness and equity of the Commission's universal service high-cost programs.

V. CONCLUSION

To fully comply with the letter and spirit of the Tenth Circuit's *Qwest II decision* the Commission must consider modifications to the mechanism for distributing high-cost support to non-rural carriers in the larger contexts of reform of high-cost support to all carriers and reform of the entire universal service system. Qwest's proposal satisfies the Tenth Circuit's concerns in *Qwest II* regarding the Commission's flawed mechanism for distributing high-cost support to non-rural carriers. Yet, even more importantly, it addresses those concerns in the broader context of the need for holistic reform of high-cost support and provides a solution to that greater need. Additionally, Qwest's proposal recognizes that high-cost support must be addressed in the larger context of the universal service system. Modifying the manner in which high-cost support is determined and distributed must be done with consideration of the impact on contributions that enable that support. The Commission should consider carefully Qwest's proposal as it is a solution that not only answers the Tenth Circuit's specific concerns regarding the mechanism for distributing high-cost support to non-rural carriers, but also provides that solution as an integral component of the holistic reform of high-cost support and the entire universal service system.

Respectfully submitted,

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March 27, 2006

Its Attorneys

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 96-45 and WC Docket No. 05-337, 2) served via e-mail on Ms. Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission at sheryl.todd@fcc.gov, and 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier
Richard Grozier

March 27, 2006