

**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)	
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High-Cost Universal Service Support)	WC Docket No. 05-337
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REPLY COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

Rural carriers have fewer options for access to capital, with relatively higher infrastructure costs on a per customer basis, creating the need for a “sufficient” source of universal service funding.

With its MARC proposal apparently intended for both non-rural as well as rural carriers, AT&T serves to obliquely ignore the body of evidence in the Commission’s record with regard to the lack of applicability of forward-looking models to rural carrier circumstances.

To recap the facts that are in this Commission’s record in previous dockets, the findings of the Rural Task Force (RTF) are still relevant. The RTF concluded that the Synthesis Model is not a sufficient tool for accurately developing forward-looking costs for rural carriers.

In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle. The arbitrary nature of even a well-intended block grant program could severely retard investment in rural areas as lenders will not provide capital, and carriers will be unwilling to assume the degree of uncertainty that would result from block grant funding decisions.

What the Commission may ultimately determine is sufficient and reasonably comparable for non-rural carriers will not be sufficient for many rural carriers. This should not be a problem so long as this Commission recognizes the FCC’s long-standing history of differentiating between sizes of carriers in order to provide equitable solutions to regulatory challenges.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, access charge reform, and strategic planning for communications carriers in rural America. The purpose of these reply comments is to respond to the Notice of Proposed Rulemaking (NPRM) released by the Commission on December 9, 2005 in the above-captioned dockets.

In this NPRM, the Commission seeks reply comments on issues raised by section 254(b) of the Communications Act of 1934, as amended (the Act) and the United States Court of Appeals for the Tenth Circuit's (Tenth Circuit) decision in *Qwest Corp. v. FCC* (*Qwest II*).¹ We are pleased to respond to the Commission's request for reply comments, and focus our reply comments to the issues which are relevant to rural carriers. While we recognize that the *Qwest II* decision addressed only the non-rural high-cost support mechanism and that concomitantly this proceeding is focused to non-rural issues, we do not believe that this Commission will develop a non-rural standard and then ignore such a body of work if and when the issue is raised for rural carriers. Rural costs are different than those of non-rural companies, so there must be a way for rural carriers to recover rural costs. Without the reasonable prospect of an opportunity to recover infrastructure costs, investment will not continue to be deployed in many sparsely populated and high-cost to serve areas.

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

SUFFICIENCY

The current statutory provisions refer to “sufficiency” in both section 254(b)(5) and section 254(e)². We submit that the Congressional intent of such directives was to ensure that adequate capital and concomitant infrastructure are available for rural carriers to serve rural customers.

Sufficiency Involves The Ability Of Rural Carriers To Attract Capital

Rural carriers have fewer options for access to capital than do non-rural carriers. This fact, coupled with the relatively higher infrastructure costs on a per customer basis, create the need for a “sufficient” source of universal service funding.

One of the sources for rural carrier capital is the Rural Telephone Finance Cooperative (RTFC). The RTFC perspective on rural carrier universal service issues was illustrated in comments offered by Hank Buchanan, Vice-President – Industry Affairs, to a Capital Hill crowd at a March 24, 2006 gathering. Mr. Buchanan of RTFC stated in part: “From a lender’s perspective, the picture is a lot less certain. Without adequate revenues, the providers of rural service would have trouble getting access to capital.” Mr. Buchanan offered an opinion at this March, 2006 gathering that a reduction in USF dollars would make it difficult for rural carriers to obtain loans from RTFC and others. Mr. Buchanan concluded with an observation that the decisions in these current Commission dockets have potentially serious impacts on small telephone companies. We encourage the Commission to carefully consider the full impact of any decisions or precedents it may set in this docket.

² Section 254(b)(5) requires that there be “specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service” while section 254(e) states that any such support “should be explicit and sufficient to achieve the purposes of this section.”

AT&T'S PROPOSED MARC RAISES SEVERAL INTERESTING POLICY QUESTIONS

In its comments, AT&T proposes a Mechanism for Affordable Rural Communications (MARC) that is a federal funding mechanism “*that would compensate carriers serving consumers in rural and high-cost areas for the amount by which the cost of providing service to consumers in a given area exceeds a MARC affordability benchmark for local telephone service for that area.*” (AT&T comments, page 23)

The MARC proposal ignores existing problems with forward-looking models for rural carriers

In this MARC proposal, AT&T “*would determine the cost of providing service in a specific geographic area using the forward-looking cost model it employs in the current mechanism for ‘non-rural’ carriers.*” (AT&T, page 23)

With this proposal apparently intended for both non-rural as well as rural carriers, AT&T serves to obliquely ignore the body of evidence in the Commission’s record with regard to the applicability of forward-looking models to rural carrier circumstances.

To recap the facts that are in this Commission’s record in previous dockets, the findings of the Rural Task Force (RTF) are still relevant. The RTF clearly stated in its report³ that the Synthesis Model is not a sufficient tool for accurately developing forward-looking costs for rural carriers. The RTF devoted extensive resources to reviewing the Synthesis Model in relationship to the results it produces for rural companies and documented that analysis in White Paper 4. Based on its substantial

³ A Review of the FCC’s Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies, Rural Task Force White Paper 4, September 2000.

evaluation, which AT&T is familiar with, the RTF concluded at page 10 of White Paper 4 that:

The aggregate results of this study suggest that, when viewed on an individual rural wire center or individual Rural Carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. In fact, much of the data analysis suggests that the model results tend to be in the high and low extremes, rather than near the expected results for the area being analyzed. While it may be technically possible to construct a model with added precision and variables to account for the differences among Rural Carriers and between non-Rural Carriers and Rural Carriers, it is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking cost of Rural Carriers.

Has anything changed that would significantly alter this finding? The answer, quite simply, is nothing has changed. Despite some very minor modifications, the underlying problems remain and in fact have exacerbated over the last five years by various external factors, including but not limited to:

- * Important portions of the underlying data is becoming dated as it is ten years old (census block and household data that form the basis for estimating customers and household counts, as well as the underlying road network information used to estimate customer locations)
- * Networking changes reflecting changing host/remote and end office/tandem relationships would require updating
- * Cost inputs are based on data and technology that is several years old and may not reflect current labor and material costs and technology
- * The model would require updating for changes in traffic usage on wireline networks as well as the network implications of traffic originating to or terminating from wireless services, particularly traffic terminating on an intraMTA basis

* The model does not reflect regulatory changes such as the implementation of intraLATA presubscription, acceptance of virtual NXX in some jurisdictions, and local number portability impacts, in the trunking, tandem switching, and other interoffice network cost determinations.

To summarize, in order to implement a reasonable forward-looking cost model that is applicable to rural companies, a massive effort would be required to update the model. We are unable to find in the AT&T filing where this issue is addressed. Absent such a process, the differences between non-rural and rural operating circumstances create a situation in which a universal service mechanism that is based on forward-looking costs remains an inappropriate public policy approach for rural carriers.⁴

State authority issues with regard to local rates varies on a state by state basis

At page 29 of its comment filing, AT&T asserts that “states would retain their current authority over local telephone service.” As AT&T should be aware, and we know that this Commission is aware of, states have differing levels of authority over the local rates of rural carriers, especially telephone cooperatives.

It would appear that AT&T is seeking some form of preemption with its MARC proposal. We submit that a more collegial and cooperative situation with the states may be better suited to the needs across the country.

⁴ “The evidentiary record ... clearly supports a conclusion that a ‘one-size-fits-all’ national universal service policy is unlikely to be successful in fulfilling the national universal service principles...” 16 FCC Rcd 6165, 6177 (2000)

The MARC proposal raises some obvious administrative issues

In its offering of the MARC proposal in this docket, AT&T appears to have left several key questions unanswered.

AT&T does not appear to define what is intended to be included in “basic telephone service.” What is the intent for EAS type charges?

In footnote 62 at page 27 of its comment filing, AT&T observes that there are many more census tracts and block groups than there are wire centers, and concludes that “the available data is therefore granular enough to allow a high degree of accuracy in determining the average household income per wire center.” AT&T fails to address how to handle situations in which census blocks that are served by multiple wire centers would be handled.

SEVERAL PARTIES RAISE ISSUES REGARDING NARUC’S PROPOSAL

Several parties raised legitimate concern in the comment round with regard to the NARUC proposal that would combine support under all existing mechanisms and would in turn grant to the states broad discretion in allocating such support.

In its comments, Century (page 10) asserted that such an approach “would sacrifice any semblance of predictability and would not guarantee that support would be sufficient to ensure affordable and reasonably comparable rates. (footnote omitted)”

We concur with such an assessment, as Section 254 mandates that universal service support be “specific, predictable, and sufficient.” Implementing a block grant approach to distributing federal universal service funding allows state commissions with such a

large degree of discretion so as to render the achievement of the “predictable” tenet impossible.

Century continued its comments on page 10 with the statement “an idiosyncratic allocation by state commissions would chill investment severely because carriers would be unable to predict how much support they can expect in any year.” We concur with this assertion, since for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle. The arbitrary nature of even a well-intended block grant program could severely retard investment in rural areas as lenders will not provide capital, and carriers will be unwilling to assume the degree of uncertainty that would result from block grant funding decisions.

HAWAIIAN TELECOM APPEARS TO BE REVISITING ISSUES FROM A DIFFERENT DOCKET

In the filed comments of Hawaiian Telecom, Inc. (HT), it appears that HT has mixed its comments in this non-rural proceeding with its disagreement with this Commission’s decision in matters related to Sandwich Isles Communications, Inc. (SIC) that was released on May 16, 2005. In what appears to be more of an ex parte filing, HT presents only its side of the story with regard to the dispute with SIC as to Hawaiian home lands (HHL) service issues. While the facts of that situation pose complex regulatory as well as legal issues, we will address the HT policy regarding unaffordable aid to construction capital contributions from prospective subscribers to illustrate the disingenuous nature of the HT comments.

To date, HT has been unable to refute the fact that both it and its predecessor company GTE required prospective customers to pay exorbitant construction charges. As SIC's counsel noted in its June 30, 2005 Opposition to Application for Review:

HTC makes much of the supposed obligation of GTE to serve the entire HHL, but whatever the obligation of GTE to serve may have been, it successfully avoided having to actually invest capital to provide service by the simple expedient of refusing to provide single party service, at least initially, and demanding aid to construction payments which made service economically impossible for either DHHL or its trust beneficiaries.(footnote omitted)

The result of this GTE policy, adopted by HT, is to provide in reality a contingent commitment to serve. The contingency, in this case, is to require a prospective customer to serve as HT's banker, which is impossible for most prospective HHL customers. The bottom-line impact of these actions was to cripple the efforts of DHHL to pursue the deployment of modern, affordable telecommunications infrastructure. SIC was created to fulfill this unmet need, as has been recognized by the Commission.

It appears that the intent of the HT comments in this instant proceeding is to create a "political football" out of the HHL issue. This being the case, a football analogy is in order. HT has already thrown its red challenge flag once, and the Commission has reviewed the play, carefully analyzed the facts and announced: "Upon further review, the play stands and SIC retains its study area waiver." The question now is how many more times will HT be allowed to throw a red flag and hold up the contest? If the Commission allows any more HT "red flags", the losers in this contest will be the prospective HHL customers if the Commission puts any credence in the bald assertions that continue to be offered by HT and its counsel.

CONCLUSION

What the Commission may ultimately determine is sufficient and reasonably comparable for non-rural carriers will not be sufficient for many rural carriers.

The “reasonably comparable” standard is found in the language of Section 254(b)(3) that states: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

This should not be a problem so long as this Commission recognizes the FCC’s long-standing history of differentiating between sizes of carriers in order to provide equitable solutions to regulatory challenges. Over the last three decades, this Commission has wisely provided different accounting standards based on carrier size in Part 32, has required different levels of reporting based on carrier size pursuant to Part 64, and has provided for different rules for large and small carriers in the separations and jurisdictional allocation rules that are provided in Part 36.

Without the reasonable prospect of an opportunity to recover infrastructure costs, investment will not continue to be deployed in many sparsely populated and high-cost to serve areas. A sufficient and predictable universal service support program is vital to providing the incentives needed to encourage investment in rural, high-cost areas.

This has been the case for the last forty years of the modern telecom era. The overarching principle that the Commission should adhere to is that rate-of-return carriers

GVNW Consulting, Inc.
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are entitled, as a matter of law, to a full recovery of their costs in providing interstate services.

Respectfully submitted

Via ECFS on 5/27/06

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