Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA)[1] submits its reply comments in the above captioned proceeding. In its Notice of Proposed Rulemaking (NPRM) the Federal Communications Commission (the Commission) seeks comment on issues raised by the decision of the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest Corp. v. FCC*, 398 F.3d 1222(10th Cir. 2005).[2] Specifically, the Commission seeks comment on how to define the statutory terms "sufficient" and "reasonably comparable" in light of the court's decision.[3] The Commission also seeks comment on whether it should define the phrase "affordable rates" and whether it should replace the current non-rural cost-based support mechanism with a rate-based support mechanism.

NTCA member companies receive Federal universal service support through the rural high-cost support mechanism. As such, NTCA's members will not be immediately affected by the outcome of this proceeding. However, NTCA's members are concerned that certain

[1] NTCA is a not-for-profit corporation established in 1954 and represents more than 560 rate-of-return regulated rural telecommunications companies. NTCA members are full service carriers providing local, wireless, video, Internet, and long distance service to their communities. All NTCA members are "rural telephone companies" as that term is defined in the Communications Act of 1934 (as amended)
[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, FCC 05-205 (rel. Dec. 9, 2005). (NPRM).
[3] NPRM at para. 1.

decisions in this proceeding may have implications for the calculation of universal service support for rural telephone companies or hinder the ability of rate-of-return carriers to recover costs properly allocated to the interstate jurisdiction. As such, it is important that the rural carrier voice is heard in this proceeding.

I. THE DEFINITIONS OF "SUFFICIENT" AND "REASONABLY COMPARABLE" ADOPTED IN THIS PROCEEDING SHOULD APPLY ONLY TO NON-RURAL CARRIERS AND SUPPORT MECHANISMS

At the outset, NTCA agrees with parties who in their initial comments pointed out that the definitions adopted in this proceeding are limited exclusively to the non-rural carriers and mechanisms.[4] This NPRM is about the court's remand of the Commission's rules regarding revision of the non-rural support mechanism and the Puerto Rico Telephone Company, Inc.'s proposal for a new high-cost support mechanism for non-rural insular areas. As commented by the Western Telecommunications Alliance, "the definitions and mechanisms adopted in this proceeding should not have any direct or indirect application to, or impact upon, the rural high-cost support mechanisms."[5]

As the Commission moves forward and defines "sufficient" and "reasonably comparable," it should do so only for the non-rural carriers and non-rural high-cost support mechanisms. What is sufficient and reasonably comparable for non-rural carriers and their subscribers may not be similarly sufficient and reasonably comparable for rural carriers and their subscribers. NTCA's members are small carriers that serve, in almost all cases, territory that is exclusively rural and high-cost. They do not serve the large, low-cost urban centers that permit large, non-rural carriers to average their costs, counterbalancing the expense of serving high-cost customers. There are significant structural, operational and financial differences between rural

[4] *See, e.g.,* Comments of the Western Telecommunications Alliance (WTA) and Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies.
[5] Comments of WTA, pp. 1-2.

and non-rural carriers and the support they receive. NTCA joins WTA and advocates that the Commission should clarify that the terms "sufficient" and "reasonably comparable" as defined in this proceeding will apply solely and exclusively with respect to the non-rural high-cost support mechanism and that the definitions will not have bearing on rural carriers or rural high-cost mechanisms.[6]

When the Commission considers the issues in the context of a rural carrier proceeding, the definitions of "sufficient" and "reasonably comparable" as they apply to high-cost support mechanisms for rural carriers should focus on cost recovery and the ability of rural carriers to continue to deploy the requisite infrastructure.[7]

II. THE DEFINITION OF "SUFFICIENT" SHOULD FOCUS ON THE ABILITY OF RURAL CARRIERS TO RECOVER THEIR COSTS FOR MAINTAINING AND IMPROVING THE TELECOMMUNICATIONS INFRASTRUCTURE

Section 254(b)(5) of the Act requires that there be "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[8] This support is to be "explicit and sufficient to achieve the purposes of this section."[9] The purpose of Section 254 is to preserve and advance universal service.[10]

"Sufficient" as the term applies to rural carriers and their customers means that rural carriers have the funding necessary to maintain and improve their telecommunications infrastructure.[11] Rural areas are more expensive to serve than urban areas and lack enough rural customers to support the necessary infrastructure. Many rural companies must construct in

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[6] WTA comments, pp 2-3.
[7] Before adopting definitions for the rural high-cost recovery mechanisms, the Commission is required to consider additional comments in a rulemaking proceeding. 5 U.S.C. § 552. NTCA would supplement these comments at that time.
[8] 47 U.S.C. § 254(b)(5).
[9] 47 U.S.C. § 254(e).
[10] 47 U.S.C. § 254(b).
[11] *See*, also comments of GVNW Consulting, Inc. and WTA.

difficult terrain and the distances between customers result in limited economies of scale and increased per-subscriber costs. Unlike large Regional Bell Operating Companies (RBOCs), small rural telephone companies have few options for access to capital. They lack the large carriers' access to national and international capital markets. Most rural carriers are limited to the Rural Utilities Service, the Rural Telecommunications Finance Cooperative, and the Cooperative Bank for access to capital. These limited capital sources will dry up without sufficient and predictable assurances that rural carriers will be able to recover their investment and operating costs.

The landline public switched telephone network is essential for communications and also provides the backbone for wireless and IP traffic. The definition of "sufficient" mechanisms to preserve and advance universal service in areas served by rural carriers should concentrate on the cost recovery necessary to maintain existing rural infrastructure and encourage investment in rural network upgrades.

III. IT IS ESSENTIAL THAT THE COMMISSION DEFINE "REASONABLY COMPARABLE" SERVICES IN TERMS THAT ENSURE RURAL CARRIERS ARE ABLE TO MAINTAIN AND UPGRADE ESSENTIAL INFRASTRUCTURE AND "REASONABLY COMPARABLE" RATES IN A MANNER THAT CONSIDERS BOTH THE COST OF LOCAL SERVICE AND THE SCOPE OF THE CALLING AREA.

The definition of "reasonably comparable" is intertwined with the definition of "sufficient."[12] The Commission must first determine what is reasonably comparable and then determine if support is sufficient to maintain that comparability. Without sufficient support to maintain and upgrade rural telecommunications infrastructure, comparability cannot be achieved.

[12] *See*, National Telecommunications Cooperative Association Initial Comments in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed April 10, 2002).

Section 254(b)(3) of the Communications Act states, "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high-cost areas, should have access to telecommunications and information services, 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."[13] The Communications Act therefore defines comparability in two ways: first in terms of services available and second, in terms of rates.

It is absolutely essential that rural communities have access to the same telecommunications services available to urban communities. Without adequate telecommunications services, rural communities will not be able to retain or attract residents and businesses. Rural residents need access to the same telecommunications as their urban counterparts. And every business, no matter where situated requires access to national and oftentimes, global, markets. Congress recognized that many rural communities could not survive absent sufficient support to ensure that rural telecommunications carriers are able to maintain and upgrade facilities to maintain comparability.

As the Commission looks at rates, comparability may be achieved only if the Commission considers bills for both local and long distance toll services. Today, this country does not have an equitable way to reconcile differences in rates for basic local calling services. In some instances, rural companies have low local basic service rates, but they also have small local calling areas. It is a myth that telephone service costs less in rural areas. Customers of rural carriers make proportionately more toll calls than their urban counterpart and subscribers often must pay for a long distance call to reach key local community facilities, such as hospitals,

[13] 47 U.S.C. § 254(b)(3).

schools and shopping establishments. Direct one-to-one comparisons of rural and urban rates are difficult and care must be taken to ensure that Section 254 comparability goals are met.

The Commission seeks comment on whether it should define the phrase "affordable rates."[14] The Commission's focus on affordability is misguided. Proposals defining affordability in relationship to income are unworkable. There are too many cost factors, including housing, insurance, transportation, and insurance that vary widely by region. NTCA agrees with commenters who argue that the Commission should continue to address affordability issues for low income subscribers through the lifeline and link-up support programs.[15] Affordability for other subscribers is achieved through rate comparability.

There is a high degree of variability of costs among rural carriers and comparability requires that there be enough support for each study area to maintain and upgrade essential facilities. Each company must be afforded the opportunity to recover its full revenue requirement.

IV. CONCLUSION

NTCA members receive high-cost universal service support through the rural mechanism and NTCA emphasizes that this proceeding relates only to the revision of the high-cost support mechanism for non-rural carriers and a proposal for a new high-cost support mechanism for non-rural insular areas. Therefore, the definitions adopted in this proceeding should be limited to the non-rural carriers and should have no impact on the high-cost support mechanisms for rural carriers.

When or if the Commission examines the definitions of "sufficient" and "reasonably comparable" as they apply to rural carriers, the Commission must recognize that rural carriers

[14] NPRM at ¶ 10.
[15] *See, e.g., Comments of the Nebraska Rural Independent Companies*, pp. 9-10.

are fundamentally different from non-rural carriers. The definition of "sufficient" as it applies to rural carriers and the customers they serve must focus on the ability of rural carriers to recover their costs for maintaining and improving the telecommunications infrastructure**.** "Reasonably comparable" is bifurcated by law in terms of services and in terms of rates. "Reasonably comparable" services must be defined in terms that ensure that rural carriers are able to make the investments necessary to maintain and upgrade essential infrastructure. "Reasonably comparable" rates must defined in a manner that recognizes that comparability cannot be achieved without considering both the cost of local service, the cost of toll/long distances service, and the scope of the calling area.

Respectfully submitted,

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May 26, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45 and WC-05-337, FCC 05-205 was served on this 26th day of May 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

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