

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

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

**REPLY COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

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SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”) are commenting in this proceeding to address proposals for both the non-rural and the rural high-cost support mechanisms. The Nebraska Companies note that any proposals for the rural high-cost support mechanism should be considered within the open proceeding on that subject matter, and should not be considered within the instant proceeding.

The United States Court of Appeals for the Tenth Circuit remanded to the Federal Communications Commission (“Commission”) a number of issues regarding the non-rural high-cost support mechanism for further explanation and data to substantiate the Commission’s conclusions regarding the mechanism. The court did not find fault with the essential design and the implementation of the support system. Therefore, this proceeding should focus on providing adequate explanation of the current non-rural high-cost support mechanism to satisfy the court, rather than consider major changes to the current mechanism.

The definition of “sufficient” should remain aimed at maintaining reasonably comparable rates. Section 254(b)(3) of the Telecommunications Act of 1996 (the “Act”) provides that reasonably comparable rates should be provided in *high-cost areas*. Therefore, it is appropriate to retain the focus of the high-cost support mechanism on achieving this objective. Efforts to ensure that non-rural high-cost universal service support is sufficient but not excessive may help maintain affordability. In any event, sufficient support for universal service must be maintained. The Nebraska Companies urge the Commission not to adopt any proposals that define affordability in relationship to income. Proposals such as the Mechanism for Affordable Rural Communications

(“MARC”) recommended by AT&T are unnecessarily complicated, and would not target support to areas where it is most needed.

The Nebraska Companies recommend that the non-rural high-cost support mechanism should continue to be cost-based. A rate-based support mechanism such as the MARC could lead to irrational state rate setting in order to maximize Federal universal service support. This could in turn lead to unnecessary growth in the Federal universal service fund.

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I. INTRODUCTION

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

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

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-205 (“*Qwest II NPRM*”) (rel. Dec. 9, 2005).

³ Id. at ¶ 1.

comment on the non-rural high-cost support mechanism. The non-rural high-cost support mechanism was invalidated when the *Qwest II* court struck down application of the definition of “reasonably comparable” upon which the mechanism was based.⁴ In particular, the Commission asks if it should replace the current cost-based support mechanism with a rate-based support mechanism.⁵

Many of the issues were remanded by the Tenth Circuit because the court wanted further explanation and data to substantiate the Commission’s claims regarding the non-rural high-cost universal service support mechanism, but not because the court directly found fault with the design and implementation of the support mechanism. The instant proceeding, accordingly, should be approached as a means to provide sufficient justification for the current non-rural high-cost universal service support mechanism, rather than a consideration of major changes to the current mechanism. As suggested by BellSouth, “[i]n addressing the *Qwest II* remand, the Commission should recognize the relative success and stability of the high-cost fund to date, and should avoid undoing praiseworthy results in a quest for doctrinaire perfection that the courts have not demanded.”⁶ BellSouth goes on to state “[u]nder the circumstances, BellSouth recommends that the Commission ‘mend, but not end’ the high-cost funding mechanism it has established.”⁷ The Nebraska Companies agree with this recommendation.

⁴ Id. at ¶ 23.

⁵ Ibid.

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of BellSouth Corporation (“*BellSouth Comments*”) (filed March 27, 2006) at p. 4.

⁷ Id. at p. 5.

The instant proceeding is concerned with the *non-rural* high-cost universal service support mechanism.⁸ Several parties have made suggestions in this proceeding regarding the application of definitions for statutory terms such as “sufficient” and “reasonably comparable,” which the Tenth Circuit instructed the FCC to address in *Qwest II*, to the *rural* high-cost universal service support mechanism.⁹ The Nebraska Companies submit that such suggestions are more appropriately made in the open proceeding on the rural high-cost universal service support mechanism, as those suggestions do not directly address issues raised in the instant proceeding.¹⁰ Likewise, suggestions for changes to the rural high-cost universal service support mechanism, or for unification of the non-rural and rural high-cost universal service support mechanisms, are also outside the scope of this proceeding.¹¹

Consistent with the foregoing position, on May 16, 2006, the Commission released its Order extending the high-cost universal service support rules adopted in the *Rural Task Force Order*.¹² In so doing, the Commission stated that such extension would remain in place “until the Commission concludes its rural review proceeding and adopts

⁸ See generally, the *Qwest II NPRM*.

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of Qwest Communications International Inc. (“*Qwest Comments*”) (filed March 27, 2006) at p. iv, and Comments of Verizon (“*Verizon Comments*”) (filed March 27, 2006) at p. 5.

¹⁰ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2 (rel. Aug. 16, 2004), and Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 05J-1 (rel. Aug. 17, 2005).

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of AT&T Inc. (“*AT&T Comments*”) (filed March 27, 2006) at pp. 4, 7-8, and 32 and *Qwest Comments* at pp. 8-9, 21, and 29-30.

¹² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 06-69 (rel. May 16, 2006).

changes, if any, to those rules as a result of that proceeding.”¹³ The Commission acknowledged that on June 28, 2004, it requested the Federal-State Joint Board on Universal Service to review the Commission’s rules relating to high-cost support for rural carriers and to determine the appropriate mechanism to succeed the existing five-year plan. Due to insufficient time availability for the Commission to receive and to complete its evaluation of any Joint Board recommendations, the Commission concluded: “In light of the ongoing Joint Board review, the interim nature of these rules, and the need to ensure continuity pending further Commission action, we find good cause exists to extend the rural high-cost support rules adopted in the *Rural Task Force Order*, as amended.”¹⁴

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

A. The Entirety Of The Commission’s Universal Service Support Programs Should Be Considered In Determining Sufficiency Of Support, However, It Is Appropriate To Focus The Non-Rural High-Cost Support Mechanism On Maintaining Reasonably Comparable Rates.

In *Qwest II*, the court directed the Commission to articulate a definition of "sufficient" that appropriately considers the range of principles identified in the text of section 254(b) of the Telecommunications Act of 1996 (the "Act").¹⁵ Although the Commission has defined “sufficient” *non-rural high-cost* support in terms of reasonably

¹³ Id. at ¶ 1.

¹⁴ Id. at ¶ 2.

¹⁵ See *Qwest II NPRM* at ¶ 8.

comparable rates, it does not follow that the Commission ignored the remaining section 254(b) universal service principles in constructing the full range of universal service programs that exist today. The Commission has established other universal service support programs to address statutory principles beyond rate comparability. The Lifeline and Link-Up programs address affordability for low-income consumers.¹⁶ The programs supporting schools, libraries, and health care providers address the principle set forth in section 254(b)(6).¹⁷ This targeted approach has resulted in a more efficient and effective support system than if the Commission had attempted to design a single non-rural high-cost support program that addresses *every* principle listed in section 254(b). In the broadest sense, the overall sufficiency of universal service support can only be assessed by examining the degree to which the *full range* of universal service support programs the Commission has established adhere to the full range of principles contained in section 254(b) of the Act.

Although the Tenth Circuit directed the Commission to demonstrate that it has appropriately considered all principles in section 254(b) of the Act in defining the term “sufficient,” the court also found that “any particular principles can be trumped in the appropriate case.”¹⁸ Therefore, the Commission has latitude within the consideration of any particular program to accord more weight to a particular universal service principle when defining the term “sufficient.” Section 254(b)(3) of the Act provides that

¹⁶ These programs help fulfill the principle in Section 254(b)(3) of the Act with regard to low-income consumers. See also *BellSouth Comments* at p. 22, and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of Vermont Public Service Board, Vermont Department of Public Service, and Maine Public Utilities Commission (“*Vermont PSB et al. Comments*”) (filed March 27, 2006) at pp. 10-12.

¹⁷ See also *BellSouth Comments* at p. 21.

¹⁸ *Id.* at p. 20, quoting *Qwest I* at 1200.

reasonably comparable rates should be provided in *high-cost areas*. No other universal service principle specifically mentions the provision of service in high-cost areas. Therefore, it is reasonable, and fully within the Commission's discretion, for the Commission to target the non-rural high-cost support program toward maintaining reasonably comparable rates and to accordingly define the sufficiency of that program in terms of rate comparability.

The Commission can readily satisfy the court's directive by distinguishing the overall sufficiency of its full range of universal service programs and their compliance with all section 254(b) principles from the sufficiency of the non-rural high-cost program in complying with, above all, the section 254(b)(3) principle of rate comparability.

B. Efforts To Ensure That Non-Rural High-Cost Universal Service Support Is Sufficient But Not Excessive May Help Maintain Affordability; However, Sufficient Support Must Be Maintained.

When the Commission addressed the definition of sufficiency following the first remand of its non-rural high-cost universal service support mechanism, it concluded that the “principle of sufficiency encompasses the idea that the amount of support should be only as large as necessary to achieve the relevant statutory goal.”¹⁹ The Tenth Circuit did not find fault with this interpretation, as it stated that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1).”²⁰ As BellSouth indicates, “[i]f support exceeds what is necessary to preserve and advance universal service through rate comparability, access to affordable

¹⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 03-249 (rel. Oct. 27, 2003) at ¶ 37.

²⁰ See *BellSouth Comments* at p. 22, quoting *Qwest II* at 1234 (citing *Qwest I* at 1200).

telecommunications service may diminish because the price of services increases as universal service charges are passed through to end-users.”²¹ Thus, BellSouth argues that the Commission’s existing definition of “sufficient” already takes into account certain aspects of affordability.²²

Several parties to this proceeding suggested methods that may be used to limit high-cost universal service support in order to ensure that the amount of high-cost universal service support is not excessive. For example, Verizon suggests that universal service support should be limited to one carrier in any given area.²³ Qwest suggests that universal service support should be limited to one connection per household or business, per carrier.²⁴ The Nebraska Companies are concerned about the sustainability of the Commission’s high-cost support mechanisms given the current rules that allow the porting of universal service support to multiple carriers within a given service area.²⁵ The Nebraska Companies generally support efforts to promote affordability by ensuring that universal service support is not excessive. However, as with proposals to modify the rural high-cost support mechanism made in this proceeding, the Nebraska Companies submit that recommendations to limit any universal service funding being distributed to

²¹ Ibid.

²² Ibid.

²³ See *Verizon Comments* at pp. 3 and 17-18.

²⁴ See *Qwest Comments* at pp. 7 and 19-20.

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-1, Comments of the Nebraska Rural Independent Companies (filed May 5, 2003) at pp. 2-11 and Reply Comments of the Nebraska Rural Independent Companies (filed June 3, 2003) at pp. 2-8.

rural carriers should be made in proceedings regarding universal service support to *rural carriers*,²⁶ and should not be entertained within the instant proceeding.

Concerns about excessive support levels should not be used to justify support levels that may be insufficient. As the Vermont PSB et al. indicate, the Tenth Circuit did not suggest that the requirement to provide sufficient support is overridden by notions of affordability.²⁷ In addition, the Commission currently addresses affordability concerns through its Lifeline and Link-Up programs, and the Tenth Circuit did not suggest that these programs were inadequate.²⁸ Also, the benefits of universal service funding should be considered in addition to the costs.²⁹ For example, without high-cost universal service funding, rates for universal service may be as great as, or greater than, the current total of the rate plus the universal service surcharge. Therefore, while it is appropriate for the Commission to promote affordability by monitoring universal service support so that it does not become *excessive*, the Commission should take care to ensure that universal service support remains *sufficient*.

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

AT&T continues to advocate the position of one of its incumbent local exchange carrier subsidiaries, SBC, that the non-rural high-cost universal service support mechanism should be based on an affordability benchmark. AT&T proposes a mechanism based on affordability referred to as the Mechanism for Affordable Rural

²⁶ See footnote 10.

²⁷ See *Vermont PSB et al. Comments* at p. 9.

²⁸ *Ibid.*

²⁹ *Ibid.*

Communications (“MARC”).³⁰ The Nebraska Companies submit that the MARC is unnecessarily complicated, and would not target support to areas where it is most needed.

AT&T proposes that the Commission establish a proportion of household income that consumers should be expected to spend on basic local exchange service.³¹ This proportion would be multiplied by median household income in a given area, for example, a wire center area, to establish a MARC affordability benchmark. Carriers would then receive support for costs in excess of such benchmark.³² This process is unnecessarily complicated, particularly because AT&T suggests that weighted averages of median income in various census blocks served by a wire center would be necessary in order to develop the MARC affordability benchmark.³³ Developing such data would require the matching of census block groups with wire center boundaries, as well as the development of a methodology to apportion the income of census block groups that are located within more than one wire center among wire centers. Furthermore, in addition to the complex process of attempting to match universal service costs with a MARC affordability benchmark by wire center, this exercise will not ensure that high-cost support funds are targeted where support is most needed.

Proportional household expenses vary widely between regions of the country and even within wire centers. For example, housing prices are much higher in some regions and cities, forcing households to spend a larger proportion of their income on housing, leaving less for household expenses such as telephone service. Therefore, selecting a

³⁰ See *AT&T Comments* at pp. 3 and 23-24.

³¹ *Id.* at pp. 25-27.

³² *Id.* at pp. 28-29.

³³ *Id.* at p. 27.

proportion of median household income that is deemed to be “affordable” is an arbitrary exercise. Furthermore, because the MARC affordability index would be based on median household income, it would unfairly penalize households located in areas with greater median household incomes, regardless of the cost to provide universal service in that given area.³⁴ For example, if the median household income in wire center A is \$10,000 more than in wire center B, households in wire center A would be expected to pay more for universal service than households in wire center B. However, several individual households in wire center A may have identical individual household incomes to the households in wire center B, and would be forced to pay more for universal service simply by virtue of the location of their place of residence.

In addition to the shortcomings of a high-cost support mechanism based upon an affordability benchmark discussed above, the Nebraska Companies also submit that the MARC plan attempts to proscribe state ratemaking options that are either already available to states today, or which overreach the bounds of the Commission’s authority. The MARC plan proposes three options by which states could ensure that eligible telecommunications carriers (“ETCs”) within a state receive adequate universal service support, despite the fact that a state may require a carrier to charge a rate that is below the MARC affordability benchmark.³⁵ Two of those options include allowing adequate pricing flexibility to permit carriers to set rates that generate adequate revenues, and the establishment of an explicit state support mechanism. These options are currently available to states if states determine that their current ratemaking policies and Federal

³⁴ See *Vermont PSB et al. Comments* at pp. 7-8.

³⁵ See *AT&T Comments* at pp. 30-31.

universal service support fail to provide adequate support. However, the MARC plan also suggests that a state may choose not to establish an explicit fund, and instead defer to the Commission to establish an additional, state-specific Federal fund for carriers in that state.³⁶ AT&T states “[t]he MARC would provide the Commission with authority to assess carriers *in the particular state* the additional amounts necessary to support the state-set rate.”³⁷ AT&T further explains, “[t]he Commission would exercise this authority only in the event that a state failed to act, and could be triggered at the request of the state, carriers within the state, or by the Commission itself.”³⁸ This proposal, however, is flawed.

Section 254(d) of the Act provides that “*every* telecommunications carrier that provides interstate telecommunications services shall contribute to . . . mechanisms established by the Commission to preserve and advance universal service.”³⁹ The requirement that all carriers participate is consistent with the underlying premise of universal service that contemplates national participation toward the benefit of a national network. The MARC proposal suggestion that the Commission may assess only certain carriers within a particular state for a state-specific fund runs counter to the statutory language that requires the participation of “*every*” telecommunications carrier. Moreover, the Commission may assess only interstate revenues for universal service fund purposes. In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (“*TOPUC*”), the court “reject[ed] the agency’s assertions of jurisdiction to assess

³⁶ Id. at p. 30.

³⁷ Ibid. (emphasis added).

³⁸ See *AT&T Comments* at pp. 30-31.

³⁹ 47 U.S.C. § 254(d) (emphasis added).

intrastate revenues for contributions.”⁴⁰ The court found that the Commission’s attempt to assess intrastate revenues for the Federal universal service fund conflicted with section 152(b)’s limitations on the Commission’s jurisdiction over intrastate services.⁴¹ The Commission’s authority is focused toward national plans.

By contrast, Section 254(f) of the Act provides that “[e]very telecommunications carrier that provides *intrastate* telecommunications services shall contribute, on an equitable and non-discriminatory basis, in a manner *determined by the State* to the preservation and advancement of universal service *in that State*.”⁴² This section grants authority to states to levy assessments for individual *state* universal service funds. The Commission lacks specific authority to decide unilaterally that a particular state should have an explicit universal service program or to assess carriers within that state to fund such a program. Section 254(f) is clear with regard to state-specific funds: “in a manner determined by the State.” Therefore, for the reasons discussed above, the Nebraska Companies recommend that the Commission should not define affordability within the non-rural high-cost support mechanism, and should not adopt the MARC.

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

The complexities and pitfalls of attempting to integrate an affordability benchmark into a high-cost universal service support mechanism are discussed above. While it would be difficult to address affordability issues through the high-cost universal service support mechanism, the current method of addressing affordability issues unique

⁴⁰ *TOPUC* at 449.

⁴¹ *See TOPUC* at 446-449.

⁴² 47 U.S.C. 254(f) (emphasis added).

to low-income consumers through Federal low-income programs specifically designed for this purpose is working effectively, and should be maintained. The Vermont PSB et al. noted that historical data indicates that the Lifeline program is demonstrably improving affordability.⁴³ For example, states that adopted Lifeline programs before 1998 generally had lower penetration rates in 1984 than other states, but that difference had largely been erased by 1997.⁴⁴ Furthermore, the Lifeline program became even more successful after it was expanded in 1998.⁴⁵ Since then, increases in telephone penetration rates have been greater, on average, in states with Lifeline programs than in states without Lifeline programs, particularly for low-income households.⁴⁶ Due to the general success of the Federal low-income programs, the Nebraska Companies submit that any concerns regarding affordability issues would be more successfully addressed by modifying such programs than by attempting to address affordability through the high-cost universal service support mechanisms.

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

A. Rural Rates Should Be Compared To Urban Rates Within Each State, In Addition To Comparing Rural Rates In Each State To A National Urban Rate Benchmark.

The Commission seeks comment on whether it should compare rural rates to urban rates within each state instead of, or in addition to, comparing rural rates in each

⁴³ See *Vermont PSB et al.* Comments at p. 10.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

state to a national urban rate benchmark.⁴⁷ The Nebraska Companies submit that the Commission should continue to compare rural rates in each state to a national urban rate benchmark. As the Commission has previously found, the primary purpose of the Federal high-cost support mechanism is to maintain “reasonably comparable” rates among states, while the states themselves have the primary responsibility for maintaining “reasonably comparable” rates within their borders.⁴⁸ However, the Commission may wish to compare rural rates to urban rates within each state in addition to comparing rural rates in each state to a national urban rate benchmark. As BellSouth indicates in its proposal to compare a carrier’s average rural residential rates to the carrier’s average urban residential rates within that state, consumers will tend to judge reasonable comparability of rates in relation to rates offered within close geographic proximity.⁴⁹ A comparison of this type would emphasize a state’s responsibility for maintaining “reasonably comparable” rates within its borders.

B. Rate Comparisons Should Not Attempt To Account For Perceived Differences In Basic Local Exchange Service.

The Nebraska Companies support the continued examination of urban and rural rates for customers of non-rural carriers in order to generally assess whether the non-rural high-cost universal service support mechanism results in “reasonably comparable” rates. However, in performing this examination, the Commission should not expend an inordinate amount of resources in an attempt to account for perceived differences in basic

⁴⁷ See *Qwest II NPRM* at ¶ 19.

⁴⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) at ¶ 38.

⁴⁹ See *BellSouth Comments* at p. 12. While the Nebraska Companies support the concept of comparing rural rates to urban states within a state, the Nebraska Companies do not support BellSouth’s proposal for a Rate-Based Benchmark (“RBB”) support mechanism.

local exchange service offerings. For example, NASUCA suggests that in order to adequately determine whether rates are “reasonably comparable,” the size of the local calling area, measured in terms of number of access lines, should be considered.⁵⁰ Such an effort, however, would require considerable time and effort and would require an arbitrary decision regarding the value or rate that should be assigned to the ability to call a given number of access lines within a local calling area. The statute requires that rates should be “reasonably comparable.”⁵¹ An examination of basic local exchange service rates, without attempting to factor in perceived differences in the value of such a service, would adequately fulfill the statutory requirement.

C. Rate Comparisons Should Be Developed Separately For Business And Residential Service If Business Rates Are Considered In The Rate Comparison Process.

Although the Nebraska Companies recommend that the Commission should not attempt to account for perceived differences in basic local exchange service offerings as discussed above, the Nebraska Companies submit that if the Commission decides that it should monitor whether both residential and business basic local exchange service rates are reasonably comparable, it should develop rate comparisons separately for each class of service. Qwest recommends that the average urban rate should be based on a weighted average of the basic local exchange service rates for both residential and business service.⁵² Qwest contends that “to the extent residential rates are still subsidized by business rates in some areas, inclusion of business rates will account for this

⁵⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of National Association of State Utility Consumer Advocates (filed March 27, 2006) at pp. 52-54.

⁵¹ See 47 U.S.C. § 254(b)(3).

⁵² See *Qwest Comments* at p. 24.

subsidization.”⁵³ However, businesses tend to generate more traffic during peak periods of network usage; thus, business rates may be greater than residential rates due to the greater cost of serving businesses. Additionally, business rates usually include a listing in the yellow pages without an additional charge, while residential rates do not.

Therefore, business rates include features that are not associated with the residential rate. Thus, a weighted average of the basic local exchange service rates for both residential and business service would not result in a meaningful comparison of whether rates are “reasonably comparable.” Furthermore, the Tenth Circuit’s decision in *Qwest II* allows states to maintain implicit subsidies if they so choose.⁵⁴ Therefore, the Commission’s examination of whether rates are “reasonably comparable” should not attempt to account for subsidies that may be implicit in state rate-making policies. The Commission does not have authority over state rates, and the use of a weighted average rate could be construed as an attempt to exert influence over state rate-making policy.

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

Several parties to this proceeding advocate a rate-based support mechanism.⁵⁵ In many instances the parties recommend that the Commission should fund the difference between an affordability benchmark, which serves as a proxy for an affordable rate, and the cost of providing service in a given area.⁵⁶ These proposals may cause states to

⁵³ Ibid.

⁵⁴ *Qwest II* at 1233.

⁵⁵ See *BellSouth Comments* at pp. 10-17, *AT&T Comments* at pp. 23-29, and *Qwest Comments* at pp. 25-33.

⁵⁶ See *BellSouth Comments* at pp. 10-17 and *Qwest Comments* at pp. 25-33.

engage in irrational state rate setting in order to maximize Federal universal service support.

The MARC plan proposed by AT&T best illustrates the incentives for irrational state rate setting that rate-based mechanisms present. AT&T proposes that in areas where the modeled costs of providing service exceed the higher of the MARC affordability benchmark or the applicable revenues actually available to the carrier in connection with the supported service in that area, the Commission should provide enough Federal funds to support the entire difference between the two.⁵⁷ AT&T offers the following example to illustrate the manner in which this proposal would operate:

To illustrate the working of the basic federal fund under the MARC, consider an area where the modeled cost of providing service is \$50 per line. Where the MARC affordability benchmark for the area is \$30 per line, support would be \$20 per line. However, if the carrier charged rates that generated revenue of \$40 per line, federal support would be limited to \$10 per line. If the carrier charged rates that generated revenue of \$50 per line or above, support would not be available to that carrier for that area.⁵⁸

This example illustrates the incentives that may be available for a state to decrease rates in order to increase Federal universal service support. In this particular example, a state may wish to reduce the basic local service rates for a carrier that generates revenue of greater than \$30 per line in order to collect the revenue from Federal universal service support instead of directly from ratepayers. Such actions could serve to increase the total amount of non-rural high-cost universal service support required.

The current mechanism funds the difference between a cost benchmark and the cost of providing universal service in a given area. Because the same amount of support

⁵⁷ See *AT&T Comments* at p. 28.

⁵⁸ *Id.* at p. 29.

is received regardless of the rate charged for basic local exchange service, the current mechanism is not subject to the same potential manipulation of rates in order to increase the amount of universal service support flowing to a particular area.

The Vermont PSB et al. notes that a broader issue than the incentives that a rate-based support mechanism presents for state policies to maximize Federal universal service support is whether the incentives should exist.⁵⁹ States have jurisdiction over intrastate rate setting. Therefore, a Federal universal service mechanism that may affect intrastate rate setting should be approached with caution.

V. CONCLUSION

The Nebraska Companies appreciate the opportunity to reply to comments addressing the important universal policy issues raised in the *Qwest II NPRM*. While there may be overlap between issues being addressed in the non-rural and rural universal service support mechanism proceedings, consistent with the Commission's recent Order in the *High-Cost Universal Service Support Docket*, the Commission should not address issues regarding the rural universal service support mechanism in the instant proceeding, as it is being urged to by some parties.

The Nebraska Companies urge the Commission to maintain the focus of the term "sufficient" on maintaining reasonably comparable rates. The Act provides that reasonably comparable rates should be provided in *high-cost areas*. Therefore, it is reasonable for the Commission to target the non-rural high-cost support program toward maintaining reasonably comparable rates and to define the sufficiency of that program in terms of rate comparability.

⁵⁹ See *Vermont PSB et al.* at p. 34.

The Nebraska Companies recommend that the Commission should not adopt any proposals that define affordability in relationship to income. Proposals such as the MARC are overly complex, and would not target support to areas where it is most needed. Furthermore, rate-based support mechanisms such as the MARC could lead to irrational state rate setting in order to maximize Federal universal service support. Therefore, the Nebraska Companies recommend that the non-rural high-cost support mechanism should continue to be cost-based.

Respectfully submitted,

The Nebraska Rural Independent Companies

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