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 ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS CONTD.

PAGE

TABLE OF CONTENTS CONTD.

Before the
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In the Matter of	)	
	)	
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	)	
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INTRODUCTION AND SUMMARY

Perhaps the most interesting thing about the initial comments here is the lack of unanimity among the non-rural carriers for which the Federal Communications Commission's ("Commission" or "FCC") non-rural high cost ("NRHC") universal service support mechanism is designed.[1] Taking into account affiliated companies, the 85 non-rural carriers actually

[1] Comments were filed by AT&T Inc. ("AT&T"); BellSouth Corporation ("BellSouth"); CenturyTel, Inc. ("CenturyTel"); CTIA -- The Wireless Association® ("CTIA"); Dobson Cellular System, Inc. ("Dobson"); General Communications, Inc. ("GCI"); GVNW Consulting, Inc. ("GVNW"); Hawaiian Telecom, Inc. ("HTI"); Iowa Telecommunications Services, Inc. ("ITSI"); Iowa Utilities Board ("IUB"); Massachusetts Department of Telecommunications and Energy ("MaDTE"); Middle Atlantic Regulatory Commission and State Commissioners of the MACRUC States ("MACRUC"); Minority Media and Telecommunications Council, *et al*. ("MMTC *et al*."); Nebraska Public Service Commission (NebPSC"); Nebraska Rural Independent Companies ("NRIC"); New Jersey Division of the Ratepayer Advocate ("NJRPA"); Oregon Telecommunications Association and the Washington Independent Telephone Association ("OTA/WITA"); Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"); Public Service Commission of Wisconsin ("WisPSC"); Puerto Rico Telephone Company, Inc. ("PRTC"); Qwest Communications International Inc. ("Qwest"); Rural Independent Competitive Alliance ("RICA"); Sandwich Islands Communications, Inc. et al. ("SIC"); Sprint Nextel Corporation ("Sprint"); Verizon; Vermont Public Service Commission, Vermont Department of Public Service, and Maine Public Utilities Commission ("Vermont/Maine"); Washington Utilities and Transportation Commission ("WaUTC"); Western Telecommunications Alliance ("WCA"); Wyoming Office of Consumer Advocate ("WyOCA"); and Wyoming Public Service Commission ("WyPSC").

represent only 14 entities.[2] Of those, six did not even file comments.[3] Those who did file have widely diverging views on how to make the NRHC mechanism comply with the law, defined by *Qwest II*.[4] Unfortunately, most of their views seemed principally designed to ensure or increase the carrier's flow of federal dollars. *Qwest II* requires far more than that, as demonstrated in the initial comments filed by the National Association of State Utility Consumer Advocates ("NASUCA").[5]

The chart below shows the holding companies with non-rural affiliates, ranked by total federal non-rural high-cost funds received. As explained in NASUCA's initial comments, such support includes all three types of federal NRHC support -- high-cost model ("HCM"), interstate access support ("IAS"), and interstate common line support ("ICL") -- that are received by non-rural carriers.[6]

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[2] See Attachment 1, which groups ILECs receiving non-rural high-cost support by holding company.

[3] No comments were filed by ACS, ALLTEL, Central in Nevada (a division of Sprint n/k/a Embarq), Cincinnati Bell, NorthState or SureWest. Only ALLTEL and Cincinnati Bell receive high-cost model funding; the others receive only interstate access or interstate common line support, and might have mistakenly thought that their funding source was not implicated by this docket.

[4] *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*"); see also *Qwest Corporation v. FCC*, 258 F.3d 1191 (10th Cir. 2001) ("*Qwest I*").

[5] NASUCA is a voluntary association of 45 advocate offices in 42 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.,* Ohio. Rev. Code Ch. 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers, but are not created by state law or do not have statewide authority.

[6] Rural carriers also receive IAS and ICL. As explained in NASUCA's initial comments and also here, the universal service support mechanisms for non-rural and rural carriers should not be unified at this point.

NRHC SUPPORT BY HOLDING COMPANY

Company	2005 HCM	2005 IAS/ICL	Total 2005 High-cost USF
Verizon	$32.7 M	IAS $249.3 M	$282.0 M
BellSouth	$135.3 M	IAS $88.8 M	$224.1 M
Qwest	$29.7 M	IAS $51.1 M	$80.8 M
PRTC		ICL $67.2 M	$67.2 M
CenturyTel	$14.0 M	IAS $9.8 M	$23.8 M
ALLTEL	$9.5 M	IAS $9.0 M	$18.6 M
AT&T		IAS $17.7 M	$17.7 M
NorthState		ICL $4.9 M	$4.9 M
ACS		ICL $4.6 M	$4.6 M
SureWest		ICL $3.7 M	$3.7 M
Embarq		IAS $1.5 M	$1.5 M
Cincinnati Bell	$0.7 M	IAS $0.2 M	$0.9 M
TOTAL	$221.9 M	$507.8 M	$729.7 M

Another interesting thing is the lack of discussion of IAS and ICL, given that these mechanisms represent 70% of the total of non-rural high-cost support. For some of the companies, in fact, IAS and ICL represent all or most of their high-cost support.[7] Most of the commenters simply ignore IAS and ICL.

It is particularly ironic that Verizon, among others, complains about the growth in the high-cost fund,[8] when its IAS funding represents more than a third of the total non-rural high-cost funding and resulted from the CALLS decision which was supported by Verizon. Verizon's key argument is that the current mechanism provides too much support for some carriers;[9] this appears true for Verizon. Notably, Verizon's review addresses only HCM funding and does not

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[7] CTIA supports melding IAS and ICL into the high-cost payments when the rural carriers are transitioned to a forward-looking mechanism. CTIA Comments at 15. No such caution need be exercised for the larger non-rural carriers; the Commission can begin phasing out their IAS and ICL immediately, unless it is shown that such support is necessary to have reasonably comparable rates in rural areas.

[8] Verizon Comments at 1, 23.

[9] Id., Garzillo Declaration at 18-21.

include IAS funding. Indeed, in context, Verizon's complaint that BellSouth receives a significant portion of high-cost model support[10] is dwarfed by the amounts received by Verizon.

Which is not to say that BellSouth is in any more sustainable a position.[11] It appears that BellSouth's proposal would add some $425 million to current support levels. Yet BellSouth would **deny** support to carriers whose rates are **above** the proposed benchmarks.[12] Putting it mildly, this seems to be moving in exactly the wrong direction. BellSouth's proposal does share with NASUCA's second alternative proposal the correct approach of having a rate review be the condition for eligibility for support, with actual support levels being based on the Commission's Synthesis Cost Model.[13]

Qwest's comments, on the other hand, would, if carried to their extreme, increase the non-rural fund by well over a billion dollars a year. Qwest would, however, settle for a massive redistribution of the current fund, along with some other radical and unnecessary changes.

AT&T would focus the entire fund on affordability, to the entire exclusion of reasonable comparability. That exclusive focus was deemed by the Tenth Circuit to be a fatal flaw in the Commission's earlier orders. AT&T's proposal would also substantially increase the fund.

Equally diverse (and possibly for the same reason as the carriers' diversity) are the comments of state regulators. The separate interests of the states, including current levels of funding, apparently have precluded any consensus.

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[10] Id. at 21.

[11] One cannot help but wonder about what the impact of BellSouth's proposed merger with AT&T might have on the views of both parties.

[12] See, e.g., BellSouth Comments at 12.

[13] Id. at 1-2. BellSouth is also correct in concept (although again not in execution) by reviewing rates within states as well as rates compared to a national urban average. Id. at 2.

A number of the stakeholders have presented data to the Commission in their comments. It does not appear, however, that any commenter has presented data as comprehensive as that presented by NASUCA.

NASUCA's reply comments follow, to the extent possible, the organization and format of the initial comments.[14] Three of the non-rural carriers' proposals stand out, however, and require a focused response: BellSouth's so-called "Rate-Based Benchmark" ("RBB"); Qwest's comprehensive but unnamed proposal; and AT&T's "Mechanism for Affordable Rural Communications" ("MARC"). The responses are provided in Sections VII., VIII. and IX., respectively. None of these proposals should be adopted.

I. LEGAL BACKGROUND

Many of the commenters simply ignore portions of the law that they dislike. For example, Verizon baldly states that it is important that the Commission "discontinue the policy of providing support to more than one carrier per study area…."[15] Verizon does not mention 47 U.S.C. § 214(e)(2), which directs that the Commission **shall** designate competitive ETCs ("CETCs") in areas served by non-rural companies.[16] Likewise, NebPSC's notion of supporting

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[14] As with NASUCA's initial comments, assistance with these reply comments was provided by Dr. David Gabel, Dr. Robert Loube and Scott Kennedy. In particular, they provided the updated data in Attachment 1. For these reply comments, assistance has been provided on the issue of affordability by Roger Colton of the firm of Fisher, Sheehan and Colton; specifically Mr. Colton provided much of the criticism of AT&T's and Qwest's views on affordability. Mr. Colton's curriculum vita is Attachment 5.

[15] Verizon Comments at 17.

[16] By contrast, NASUCA's earlier proposal for supporting only a single line per household is consistent with the designation of multiple ETCs in a non-rural carrier's study area, as the ETCs can compete for the support for that single line. Qwest advocates limiting support to "at most one connection per ETC per household" (Qwest Comments at iv, 19-20), which again does not prevent the designation of multiple ETCs. NASUCA's proposal to limit designation of ETCs in high-cost **rural** carriers' territories is consistent with § 214(e)(2)'s provision that the Commission "may" designate CETCs in those territories.

only "a single type of network in each study area"[17] overlooks the requirement to designate multiple ETCs in non-rural carriers' areas, given that ETCs are not required to use only a single network. It seems clear that NebPSC would only support the wireline network, which means that only the owner of that network -- the incumbent carrier -- would receive support.[18] And NebPSC's proposal to target support to the network, not services,[19] goes against the requirement of 47 U.S.C. § 254(e) that only the supported services and the facilities to provide the services are to be supported.

Another curiosity is BellSouth's citation to 47 U.S.C. § 254(g), which explicitly requires *interexchange* rates in rural and high-cost areas to "be no higher" than urban rates, as providing "some guidance as to reasonable comparability of rural and urban" local rates.[20] If anything, §254(g) gives an indication of what "reasonable comparability" is **not**: It is **not** equality; rural local rates can be reasonably comparable to urban rates even if they are somewhat higher than the urban rates.

AT&T states, "[T]he Commission cannot simply burnish its legal reasoning and re-proffer the same broken mechanisms as before."[21] There are parts of the prior mechanism that worked; those should be improved and added to. There is no need for the radical restructuring and abandonment of mechanisms proposed by AT&T and others. There were also factual problems with the Commission's prior orders, on which grounds the Tenth Circuit reversed. As

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[17] NebPSC Comments at 2.

[18] Indeed, NebPSC's proposal to support wireless networks through a separate program (id. at 16) goes against the Commission's fundamental competitive neutrality principle.

[19] Id. NebPSC says that "all services offered on the network should be taken into consideration." Id.

[20] BellSouth Comments at 12, fn. 37.

[21] AT&T Comments at 5.

CenturyTel explains, the Commission can address the *Qwest II* central "problem by better explaining how the forward-looking cost mechanism promotes all of the interests underlying section 254(b), not just reasonable comparability of rural and urban rates in high-cost areas."[22]

II. THE ISSUES FOR COMMENT

A. The Commission should not address here issues not pertinent to the non-rural high-cost fund.

As is typical in this docket, few of the commenters confined their comments to the precise issue presented by the NPRM, that is, the structure of the non-rural high-cost fund. For example, Verizon opens its comments by identifying the "two key challenges facing the universal service program today," being its "unsustainable growth" and "the lack of a competitively neutral assessment mechanism."[23] Although NASUCA agrees that the Commission must "take meaningful steps to limit the size of the fund,"[24] the focus here should be on how to do so in the context of the non-rural high cost fund. The form of the contribution mechanism is not really germane to the structure of the non-rural high-cost fund.[25]

Likewise, Qwest gratuitously suggests that the schools and libraries support program should be funded out of general revenues, but acknowledges that this would require legislative

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[22] CenturyTel Comments at 13. CenturyTel proceeds to do so. Id. at 13-15; see also NASUCA Comments at 29-37.

[23] Verizon Comments at 1.

[24] Id. at 2.

[25] Verizon states that "the current mechanism is fundamentally inequitable because it requires some consumers of voice telephone services to fund universal service, while others avoid their fair share of funding universal service simply because they obtain voice telephone services from a non-traditional provider." Id. at 3. NASUCA does not disagree, but would note that a numbers-based mechanism such as that supported by Verizon (id. at 21) allows some carriers (interexchange carriers) to avoid their fair share of funding universal service simply because they do not provide telephone numbers to their customers.

changes.[26] Qwest also suggests that the U.S. Department of Education should assume responsibility for the program.[27] Not only is this also irrelevant to the management of the non-rural high-cost fund, but would also require statutory changes to accomplish.

AT&T also complains about the continuation of state implicit support mechanisms.[28] This time, AT&T overlooks the directive of *Qwest II* that the Commission was not required to interfere in state's decisions to use such mechanisms.[29]

Sprint's claim that "there is a strong link between low basic residential local service rates and high intrastate access charges"[30] is largely irrelevant for our purposes here. It is unlikely that the non-rural carriers maintain high intrastate access charges; those seem to be largely the province of rural carriers.[31]

Likewise largely irrelevant are RICA's discussions of portability.[32] RICA complains that "a rural CLEC receives USF support only to the extent that the ILEC with which it competes receives support"[33] and that the support is based on the ILEC's costs "despite the fact that the CLEC's legitimate cost of providing the quality service is substantially above the ILEC's study

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[26] Qwest Comments at 6-7.

[27] Id. at 6.

[28] AT&T Comments at 8.

[29] See *Qwest II*, 398 F.3d at 1232-1233.

[30] Sprint Comments at 7.

[31] It is interesting to note that Sprint, now principally a wireless carrier, has a limited responsibility to pay access charges. Sprint also says that high intrastate access charges violate "the Section 251(e) prescription against implicit subsidies…." Id. Sprint also appears to have missed the *Qwest II* finding that § 251(e) applies only to interstate charges.

[32] RICA Comments at 2-3.

[33] Id.

area average cost."[34] Yet if the CLEC's higher costs were supported, the USF would be subsidizing competition for competition's sake, which is not consistent with the purposes of § 254.

Verizon includes an extensive discussion of intermodal alternatives in its comments.[35] Unfortunately, it is not clear how this relates to the high-cost fund as it goes to non-rural carriers.

B. The Commission should not combine the non-rural and rural high-cost support programs.

As argued by NASUCA,[36] and supported by other commenters[37] what is to be addressed here is high-cost support for **non-rural** carriers. Attempts to confuse the issues here with those pertaining to smaller rural carriers must be rejected, as must the proposals to combine the programs, at least for now.[38] Along these lines, Qwest states that "[t]he definitions of 'sufficient' and 'reasonably comparable' must apply uniformly to all carriers receiving high-cost support,"[39] but provides little or no support for this supposed requirement.[40]

Qwest acknowledges that the difference between the rural and non-rural funds has largely been driven by the larger non-rural carriers' ability to provide implicit support due to their larger scale and scope of operations.[41] Qwest complains, however, that this ability has been eroded due

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[34] Id. at 3.

[35] Verizon Comments at 8-17.

[36] NASUCA Comments at 2, n. 4.

[37] E.g., GVNW Comments at 3; OPASTCO Comments at 1-2; NRIC Comments at 3; WTA Comments at 2.

[38] See AT&T Comments at 6; Qwest Comments at 22; Verizon Comments at 5.

[39] Qwest Comments at iii.

[40] See id. at 16-17, 20-22; see also WyPSC Comments at [3-4].

[41] Qwest Comments at 21.

to competition.[42] But that is no justification for combining the two funds.[43] If competition has eliminated the implicit support used by non-rural carriers, and that causes a need for increases in the non-rural carriers' rural rates, then that is an issue for the respective state commissions. If such rate increases result in rural rates that are not reasonably comparable to urban rates, then that will be an issue for the federal universal service fund.[44]

Qwest claims that combining the rural and non-rural funds will make distribution of high-cost funds "more efficient and equitable," thus "advancing" universal service as required by the Act and *Qwest II*.[45] Combining the funds at this point -- either by including rural carriers in the non-rural fund or including non-rural carriers in the rural fund -- would be neither efficient nor equitable, and would certainly not advance universal service. This is especially true because Qwest does not explain how the Synthesis Model, on which its proposal is based,[46] can be used to produce accurate cost estimates for the smallest rural carriers.[47]

AT&T complains that the rural fund is six times the non-rural fund, even though non-rural carriers serve twice as many rural customers as the rural carriers.[48] AT&T has, of course,

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[42] Id.

[43] See id. at 20.

[44] Qwest uses the example of competition in Omaha, Nebraska. Id. at 21. It should be noted that -- despite this competition and its supposed impacts -- Qwest's rural and urban rates in Nebraska are not that much different. See NASUCA Comments, Attachment C.

[45] Qwest Comments at 22; see also Dobson Comments at 8.

[46] Qwest Comments at 32.

[47] NASUCA has supported moving the larger rural carriers to a forward-looking mechanism, while examining whether and how such a mechanism could be adapted for the smallest rural carriers. See CTIA Comments at 14.

[48] AT&T Comments at 7.

ignored IAS and ICL, especially in its claim that it receives no federal high-cost support.[49] As shown in the Introduction here, AT&T receives a total of almost $18 million per year in high-cost support in six of its thirteen states. Further, the rural fund is larger than the entire non-rural fund, but only by a factor of three.[50] AT&T also overlooks the fact that the non-rural carriers also serve most of the low-cost, high-density customer locations in the country. **On balance**, as shown by the results of the Synthesis Model, most of the non-rural carriers' costs are fairly close to the urban average.[51]

C. The need for an insular mechanism.

The commenters are in significant disagreement about the need for PRTC's proposed insular mechanism.[52] NASUCA continues to be agnostic about the need for and details of such a mechanism. PRTC's current $67.2 million in ICL funding represents 9.2% of the total non-rural high-cost fund; substantial increases in that amount deserve close scrutiny.

III. THE CURRENT NON-RURAL CARRIER HIGH-COST FUNDING SITUATION

None of the commenters presented comprehensive data on current levels of high-cost support received by non-rural carriers. Indeed, as discussed above, most of the commenters overlooked the existence of IAS and ICL, which together represent 70% of total non-rural high-

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[49] Id.

[50] http://www.universalservice.org/about/governance/fcc-filings/2005/Q4/HC02%20-%20High%20Cost%20Support%20Projected%20by%20State%20-%204Q2005.xls. AT&T's calculation includes only HCM in the non-rural fund.

[51] See BellSouth Comments, Appendix A.

[52] *Compare* Verizon Comments at 30-31, Minority Comments *passim*, SIC *et al*. Comments (pro) *to* AT&T Comments at 37, Dobson Comments at 11-12, GCI Comments at 34 and Sprint Comments at 8-10 (contra). Clearly, the insular areas have atypical high-cost issues. See HTC Comments.

cost funding. NASUCA's proposal combines all three into a single fund, so that the entire fund is focused on the statutory purposes. This should lead to a more efficient fund.[53]

V. THE DATA ON URBAN AND RURAL RATES OF NON-RURAL CARRIERS

A. Rate data

Verizon's principal examination of rates unfortunately addresses rural rates of **rural** carriers, rather than rural rates of non-rural carriers.[54] On the other hand, BellSouth correctly focuses only on non-rural carriers.[55] As NASUCA's data shows, the conclusions from the data are similar to those reached by BellSouth and Verizon.

First, rural rates are currently reasonably comparable to urban rates.[56] Second, *Qwest II*'s concern about the non-rural high-cost mechanism allowing rural rates that are 70-80% above the urban average is minimized when you recognize that some **urban** rates are 70-80% above the urban average.[57] As NJRPA states,

> [T]he Commission's data reports 2002 urban rates ranging from $15.65 to $35.19, with an average of $23.28. This average, plus two standard deviations, yields a benchmark amount of $32.28. The Court was concerned that this benchmark potentially allows a rural carrier to have rates twice those of the lowest urban rates. The Court seemed to implicitly approve of the highest urban rate being twice that of the lowest urban rate (i.e., to tolerate significant variability among urban rates) and yet

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[53] Qwest supports combining the non-rural and the rural funds in the name of efficiency. See Qwest Comments at 20-22. As explained here and in NASUCA's initial comments, such "efficiency" is not in the public interest.

[54] Verizon Comments at 27.

[55] BellSouth Comments at 2 and Appendix A.

[56] Id. at 13; Verizon Comments at 27.

[57] Verizon Comments at 28-29.

> surprisingly found the variability between a theoretical rural rate and the lowest urban rate (i.e., a variance of similar magnitude) unacceptable.[58]

It is, in fact, not clear whether the Tenth Circuit ever actually considered the range of urban rates. The Commission, however, now has the data to fully consider the range of rates across the country. Along these lines, Verizon's brief discussion of the state comparability certifications for non-rural carriers is also consistent with NASUCA's findings.[59]

Unfortunately, BellSouth provides only aggregated data for each carrier for each state.[60] The only breakdown is a single rural and a single urban figure for each carrier. NASUCA's data is presented on a wire center basis; this disaggregation allows the Commission to take a granular approach to these issues.

Verizon provided the Commission with a data request that would allow a compilation of the data.[61] NASUCA has provided the Commission with just such a compilation.[62]

Other parties provided the Commission with even more limited samplings. For example, Sprint includes a sample of eight non-rural carrier rural rates in seven states as an illustration that "there are many instances in which non-urban rates for basic local residential service are significantly lower than the national urban rate."[63] That is true; yet none of the carriers listed by Sprint receive HCM support. Some of those carriers do receive IAS payments, and it does

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[58] NJRPA Comments at 31.

[59] Verizon Comments, Garzillo Declaration at 11-12.

[60] See BellSouth Comments, Appendix A.

[61] Verizon Comments at 29.

[62] Attachment 2 hereto contains updated versions of Attachments C and D to NASUCA's initial comments. It includes a few corrections identified subsequent to the filing. These corrections do not materially effect the national results, but may effect the results for individual states.

[63] Sprint Comments at 6, referring to Sprint Attachment 1.

remain an open question whether those carriers need this support to produce rural rates that are reasonably comparable to urban rates.

Vermont/Maine propose the use of "net subscriber cost" as a proxy for rates.[64] This is because of various difficulties in determining rate levels, including the presence of message and measured service rates;[65] the differences between business and residential rates;[66] the existence of options and bundles;[67] and variations in state ratemaking policies.[68] NASUCA submits that the continued prevalence of flat-rate local calling across the country makes that the key comparison in determining whether rural **rates** are reasonably comparable to urban rates. Only where a flat-rate local calling option is not available do difficulties arise, and these can be dealt with on a case-by-case basis.[69]

Unfortunately, Vermont/Maine's alternative of "net subscriber cost," defined as "the residual price that a subscriber needs to pay for basic telecommunications service, given the company's cost of service"[70] does not advance the cause much. According to Vermont/Maine, this approach "measures and manages what Congress actually intended to manage, the local

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[64] Vermont/Maine at 20-28. Interestingly, Vermont/Maine do not seem to follow their own advice that "[i]f something serves as a 'proxy' for something else … the Commission should make findings that the assumed correlation reliably exists…." Id. at 17.

[65] Id. at 20-21.

[66] Id. at 21-23.

[67] Id. at 23-24.

[68] Id. at 24-26. Vermont/Maine also complain that a rates-based standard will needlessly inflate the fund. Id. at 26. The impact on the fund depends on the level of the standard that is chosen more than the type of standard. This is also true for Vermont/Maine's "net subscriber cost" standard. See id. at 28.

[69] Or by means such as the local calling area adder in NASUCA's second proposed alternative mechanism.

[70] Id. at 27.

customer's actual cost of acquiring service."[71] But what it does not measure is the cost to the customer of acquiring the services *that are supported by the federal fund*.

Vermont/Maine's formula includes a component that addresses "customer revenue for non-USF services."[72] But there will be the same problems with segregating those revenues that Vermont/Maine list for identifying the rates that are supposed to be reasonably comparable. The proposal does not really simplify or clarify anything.

On the other hand, AT&T, BellSouth and Qwest all fail to even attempt to assess the intersection of local rates and the levels of support actually awarded under the current mechanism. NASUCA's Attachment F attempted to do so by adding per-line support to the current rates, on the very loose assumption that, if the support were eliminated, rates would be at the combined level. Verizon does make a similar but limited comparison.[73]

B. Definitions of "rural" and "urban"

Verizon and BellSouth both define "urban" as all territory within a Metropolitan Statistical Area ("MSA"), and "rural" as all territory outside an MSA.[74] This approach assumes that all locations in the country are either urban or rural, with nothing in between. NASUCA's approach, which defined rural areas as those that are 0% urban using Census Bureau definitions and urban areas as those that are 100% urban, and allowed some flexibility for both,[75] is clearly more appropriate given the purposes of the universal service fund. Further, as shown by the

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[71] Id. at 28.

[72] Id.

[73] Verizon Comments, Garzillo Declaration, Attachment E, Chart 2.A.

[74] Id., Garzillo Declaration at 8; BellSouth Comments at 3, fn. 6.

[75] NASUCA Comments at 21-28.

maps included in NASUCA's comments, MSAs include large amounts of territory that cannot reasonably be characterized as "urban."

VI. "REASONABLE COMPARABILITY" OF RATES IS THE KEY STATUTORY PRINCIPLE FOR JUDGING THE SUFFICIENCY OF HIGH-COST UNIVERSAL SERVICE SUPPORT FOR NON-RURAL CARRIERS.

A. Introduction

AT&T characterizes the key debate here as follows:

> There is no empirical evidence whatsoever that any of the Commission's existing universal service mechanisms produce *affordable* rates. … It is hard to see how a universal service program that failed to yield affordable rates could be defended as sufficient, nor what value consumers (or Congress) could see in reasonably comparable, *unaffordable* rates.[76]

Apparently, AT&T believes that there is currently a multitude of unaffordable rates. Yet AT&T also alleges that most current rates are below cost.[77] But if those rates were increased to be above cost, they would be even more unaffordable. AT&T's agenda, like those of other carriers, is to get the Commission to require local rates to be raised, if possible to the threshold of unaffordability.

AT&T also states that the "current high-cost support regime … provides insufficient support to most rural areas."[78] Yet AT&T makes no pretense of showing how or to what extent the current support is insufficient, either in terms of reasonable comparability, or affordability (AT&T's preferred principle[79]), or any of the other statutory principles.

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[76] AT&T Comments at 12 (emphasis in original).

[77] Id. at 9.

[78] Id. at 6.

[79] See id. at 3.

Vermont/Maine correctly point out that the *Qwest II* court noted the possibility of conflicts among the principles in the same breath as it complained about the Commission's limited record.[80] The record here should be more than sufficient to allow a reviewing court to see that, as Vermont/Maine note, only "[i]f the FCC cannot satisfy one principle without causing conflict with another … should it balance the principles."[81]

B. Reasonable comparability

Verizon's discussion of reasonable comparability is quite limited, and does not attempt to place it into the context of the other statutory principles.[82] That being said, Verizon's comments support NASUCA's assertion that "reasonably comparable" rates does not mean "equal" rates:

> [T]he Commission should not attempt to craft a mechanism that eliminates all but the most minor deviations in rates. Otherwise, the Act's goal of comparability would turn into a requirement of national rate uniformity -- something that goes far beyond a reasonable reading of Section 254.[83]

BellSouth correctly asserts that § 254(b)(3), which contains reasonable comparability, "is the only principle specifically aimed at the preservation and advancement of universal service *in high-cost areas*."[84] As noted by CTIA, the high-cost mechanism "can be measured as 'sufficient' if it is able to ensure that customers in rural, high-cost areas receive services at prices comparable to those available in urban areas."[85]

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[80] Vermont/Maine Comments at 3, citing *Qwest II*, 398 F.3d at 1234.

[81] Vermont/Maine Comments at 4.

[82] Verizon Comments at 25-30.

[83] Id. at 25.

[84] BellSouth Comments at 19 (emphasis in original).

[85] CTIA Comments at 4.

On the other hand, as discussed elsewhere, AT&T would write the entire concept of reasonable comparability out of the stature. Verizon's position is similar: The Commission should "narrowly target[] its high-cost support to only those areas where no provider otherwise would provide quality services at just, reasonable, and affordable rates…."[86] The key thing is for the Commission to recognize, as argued by NASUCA and others,[87] that reasonably comparable rates will satisfy the affordability principle, so there is less need to focus on affordability.

The MassDTE believes that the only test for reasonable comparability should be a comparison of rural rates and urban rates within a specific state.[88] This ignores the fact that the Commission found early on that the primary purpose of the federal high-cost support mechanism is to maintain reasonably comparable rates among states, while states have the primary responsibility for maintaining reasonable comparability within their borders.[89] As included in NASUCA's second alternative proposal, an in-state comparison is a **part** of determining whether rural rates are reasonably comparable to urban rates.

C. Affordability

Some of the commenters focus exclusively on affordability, either implicitly or explicitly overlooking all the other statutory principles. It is impossible to square this focus with the directives of *Qwest II*. For example, Verizon's introduction says that "the Commission must take meaningful steps … to narrowly target universal service support to only those areas where it

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[86] Verizon Comments at 17.

[87] CTIA Comments at 2; NRIC Comments at 6-7; see NASUCA Comments at 33.

[88] MassDTE Comments at 15.

[89] CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), ¶ 38.

is truly necessary to achieve the goal of providing customers access to quality services at affordable rates."[90] And AT&T states, "the Commission should adapt an affordability-based federal support mechanism that will provide support **only** where the cost of service exceeds the rate that consumers can reasonably be expected to pay themselves."[91] This approach "myopically"[92] ignores the principle of rate comparability.

Qwest says that the principle of affordability must be incorporated into the high-cost support program.[93] But Qwest does not explain precisely how, other than mentioning that the Commission must consider the affordability of required contributions to the fund,[94] which is already part of the Commission's consideration.

The MassDTE indicates that it has "long advocated that the universal service high-cost funding should be means-tested and customers in high-cost areas who have the means to pay the true cost of telephone service should not be subsidized by the high-cost fund."[95] The MassDTE proposes that "telephone customers in high-cost areas could be eligible for some appropriate level of subsidization if their household income was above the ceiling for eligibility for low-income Lifeline and Linkup support and below an annual household income level that the FCC

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[90] Verizon Comments at 2; see also id. at 8; see also MassDTE Comments at 6 ("the principle goal of universal service is to subsidize telephone service in high-cost areas to make such service affordable").

[91] AT&T Comments at 3 (emphasis added). The details of AT&T's proposals are discussed in Section IX., below.

[92] Id. at 2.

[93] Qwest Comments at 11.

[94] Id. at 12.

[95] MassDTE Comments at 7. Of course, Massachusetts is one of the lowest cost jurisdictions in the nation. See BellSouth Comments, Appendix A.

determined was sufficient to afford basic telephone service without subsidization."[96] This view overlooks the administrative nightmare that would result from targeting high-cost support to individual households: Each household would have to present specified information on its income, and that information would have to be verified somehow. It also does not appear that the MassDTE has taken into account geographic variations in costs of living or, most specifically, of the levels of rates for basic telephone service.[97]

Sprint states, "It makes little economic or policy sense to subsidize basic telephone service to wealthy communities or households that can afford to pay the full cost of such service, even in a high-cost area."[98] As detailed below, "wealthy communities" will include members who are not wealthy, and determining which "wealthy households" can afford to pay the full cost of service in a high-cost area would have to be an individualized effort that would itself be prohibitively expensive. As Qwest states, "eligibility requirements for high-cost support that are based on individual household income … would be unworkable."[99]

The parties who focus on affordability ignore the simultaneous statutory directive that rates in rural and high-cost areas be reasonably comparable to those in urban areas.[100] AT&T has

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[96] MassDTE Comments at 9. Later in its comments, however, the MassDTE proposes something different: "[I]f on average, the ability to pay for the consumers in that area exceeds a national or state-specific index (i.e., average household income), then that wire center would not receive support." Id. at 14. This average household income approach suffers from all the problems of the AT&T approach.

[97] See NRIC Comments at 8-9.

[98] Sprint Comments at 3.

[99] Qwest Comments at 12.

[100] See CC Docket No. 96-45, Seventh Report and Order and Thirteenth Order on Reconsideration, 14 FCC Rcd 8078 (1999), ¶ 39; *see also id.,* Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003) ("*Order on Remand*"), ¶ 45.

the principal -- and most erroneous -- position on affordability. Qwest also misuses much of the data in this area. Both companies' positions are discussed in Section IX., below.[101]

D. The other statutory principles.

Qwest supports including a new principle into the definition of "sufficient," that being "efficiency."[102] Qwest acknowledges that the concept is already "implicitly acknowledged" in the Commission's previous definition of sufficiency.[103] It is not clear, however, from Qwest's extensive discussion of the subject,[104] what the adoption of the new principle actually adds to the administration of the high-cost fund.

Dobson says that "[c]ompetitive neutrality must be the cornerstone of any universal service mechanism."[105] It is hard to see how a principle that was not explicit in the law and that the Commission engrafted onto the statutory list could be seen to override (or underlie, for that matter) the specific principles identified by Congress.

VII. BELLSOUTH'S "RATE-BASED BENCHMARK"

BellSouth proposes two "rate comparability" tests as the centerpiece of its proposal for a "rate-based benchmark" ("RBB"):

> (1) a comparison of a non-rural carrier's average rural residential (flat) rate and average urban residential (flat) rate *within a state*; and (2) a comparison of that carrier's average rural residential (flat) rate within a state to a benchmark based on the national residential urban (flat) rate

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101 Dobson also expresses opinions on affordability. Dobson Comments at 3. Section IX. rebuts Dobson's position.

102 Qwest Comments at iii.

103 Id. at 17.

104 Id. at 17-22.

105 Dobson Comments at 8.

> average plus one standard deviation (i.e., the RBB). …[N]on-rural carriers must pass both tests in order to be eligible for full funding, otherwise funding may be reduced or eliminated.[106]

To begin, it should be made clear what BellSouth means by "passing" the tests: A carrier "passes" the first test only if its rural rates are "*no more than 15% above*" urban rates within the state.[107] And a carrier passes the second test only if its rural rates are *no more* than one standard deviation above the national urban average.[108] That is, a carrier passes the tests, and apparently is eligible for consideration for support, **only if its rural rates are already reasonably comparable to urban rates**. NASUCA respectfully suggests that BellSouth's proposal has things backwards.[109]

BellSouth says that its first test "provides a strong inducement to states (and the non-rural carriers within those states) to correct instances in which rural rates are not reasonably comparable."[110] Although there is a clear need for substantial state responsibility to maintain reasonable comparability, it seems that the cases in which carriers would fail BellSouth's tests would be those where the state was **least** likely to be able to maintain comparability of rates. Notably, however, according to BellSouth, only three states "fail" the first test using BellSouth's rate benchmark -- Michigan (AT&T), North Carolina (Verizon) and North Dakota (Qwest).[111]

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[106] BellSouth Comments at 10-11 (emphasis added).

[107] Id. at 12 (emphasis in original; footnote omitted).

[108] Id. at 15.

[109] NASUCA's second proposed alternative said that carriers whose rural rates were not much in excess of their urban rates should be ineligible for support, and that support in those instances should fall to the state to supply. NASUCA Comments at 82.

[110] BellSouth Comments at 12.

[111] Id. at 13.

Yet none of these states have costs above BellSouth's cost benchmark,[112] making the "failure" not really relevant.

BellSouth then states that only five jurisdictions do not pass the second rate test: Maine (Verizon), Nebraska (ALLTEL); North Dakota (Qwest); West Virginia (Verizon) and Wyoming (Qwest).[113] Under the current mechanisms, Verizon in Maine, ALLTEL in Nebraska, Verizon in West Virginia and Qwest in Wyoming all receive HCM support; Qwest in North Dakota receives only IAS funding. It appears that under BellSouth's proposal **none** of these carriers would be eligible for full high-cost funding.

The example of Qwest in Wyoming shows the fundamental flaw in BellSouth's reasoning. As discussed in the comments of the Wyoming Office of the Consumer Advocate, current Wyoming rural rates are not reasonably comparable to national urban rates, despite the efforts of the state[114]; as the Commission knows, Wyoming has sought additional federal funding to supplement the current combined state and federal efforts.[115] BellSouth's proposal would in effect ignore the effort required from the state, and defeat the very purpose of a federal program.

Under its proposal, BellSouth would then determine support for eligible states:

> in an amount equal to the state average forward-looking costs (averaged for all non-rural carriers in that state), less the RBB, multiplied by the non-rural carrier line counts in the state, multiplied by the Commission's .76 adjustment factor.[116]

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[112] Id. at 15 and Appendix A.

[113] Id. at 15, fn. 43.

[114] WyOCA Comments at 5.

[115] Qwest acknowledges that in Wyoming, retail prices are established on the basis of the underlying cost to serve the customer. Qwest Comments at 31 and fn. 51.

[116] BellSouth Comments at 16. BellSouth characterizes this as "full universal service high-cost funding." Id.

Under BellSouth's proposal, the current RBB is $25.05.[117] Appendix A to BellSouth's comments shows that the following states have statewide costs that exceed the $25.05 RBB: Alabama ($31.64); Arkansas ($27.97); Idaho ($26.92); Kentucky ($29.78); Louisiana ($26.42); Maine ($30.42); Missouri ($25.07); Mississippi ($37.78); Montana ($32.73); Nebraska ($28.20); New Hampshire ($25.09); New Mexico ($25.70); Oklahoma ($26.38); South Carolina ($26.06); South Dakota ($27.77); Tennessee ($26.38); Vermont ($32.38); West Virginia ($33.44); and Wyoming ($33.72).[118]

Attachment 3 hereto shows projected impacts of BellSouth's proposal. Under this proposal, HCM funding for non-rural carriers would almost triple, to $646 million per year.[119] IAS and ICL funding would apparently remain at current levels.

VIII. QWEST'S PROPOSAL

Qwest proposes a major restructuring of the high-cost fund (perhaps the most radical of all those presented here). Qwest's unnamed and "un-acronymed" proposal contains a number of elements, all of which will be controversial:

- Incorporating affordability into the national benchmark;
- Using a combination of residential and business rates for all benchmarks;
- Defining "reasonably comparable" as within 125% of the national average urban rate;[120]

[117] Id. at 15.

[118] As previously noted, Maine, Nebraska, West Virginia and Wyoming would not pass BellSouth's second test, and would not be eligible for "full" funding. Interestingly, none of those are BellSouth states.

[119] This calculation assumes "full" funding for Maine, Nebraska, West Virginia and Wyoming. These states represent $83.0 million of the total increase of $424.5 million.

[120] This is discussed in Section X., below.

- Using wire center costs, not statewide averages;
- Capping the program at 2004 levels;
- Combining the non-rural and rural funds;[121] and
- Establishing "block grants" to be distributed by state commissions subject to federal guidelines.

Each of these is discussed here. First, however, it must be stated that Qwest's proposal that "in lieu of focusing the mechanism solely on reasonable comparability, the mechanism should be grounded in affordability"[122] actually ignores the principle of reasonable comparability. Qwest's approach to affordability is discussed in Sections V.C. above and IX.D. below, but it should be clear that Qwest's proposal contains no pretense of movement toward comparability. This would have been rejected by the *Qwest II* court, just as the Commission's exclusive focus on comparability.

A. Incorporating affordability

Qwest determined that its new benchmark of 125% of the urban average rate is approximately $33.[123] Qwest then determined that its new benchmark was "affordable,"[124] based on some very questionable analysis of the same data reviewed by AT&T. Thus these errors are discussed together, in Section IX., below. This represents Qwest's incorporation of affordability into the Commission's USF tests.[125]

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[121] This was discussed in Section II., above.

[122] Qwest Comments at 30.

[123] Id. at 25.

[124] Id.

[125] See id. at 30.

B. Combining residential and business rates

Qwest would use the "average urban rate" as the basis for the national affordability benchmark, but the definition would change substantially. "[T]he 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."[126]

It may be that the best thing to say about this part of Qwest's proposal is that it makes no sense, and is inadequately supported. Qwest is correct that the supported services are common to residential and business lines. Qwest is also correct that 47 U.S.C. § 254(b)(3) does not limit reasonable comparability to residential customers. But then to say that affordability and/or reasonable comparability for residential customers are somehow controlled or impacted by the rates paid by business customers is a leap of logic that must fall short.[127]

There are other methodological problems with Qwest's calculations. Based on Qwest's calculation, we can back in to a "composite Regional Bell Operating Company residence lines and business lines" proportion of 65% residential and 35% business.[128] Yet the rates used are those for residence and business single lines; the composite RBOC residential and business lines include multi-line business, which actually make up the majority of business lines; the proportion of single line residence to single line business is significantly higher than the overall residential to business split.[129]

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[126] Id. at 24 (emphasis added).

[127] Qwest also says that "to the extent residential rates are still subsidized by business rates in some areas, inclusion of business rates will account for this subsidization." Id. Qwest does not explain this statement.

[128] (65%)($20.05 residential rate) + (35%) ($39.10 business rate) = $26.74 combined rate. See id. at 24-25.

[129] One would also question whether the RBOC numbers are in fact characteristic of all non-rural carriers.

In addition, using an urban average combining residential and business rates to test rural rates ignores the fact that the proportion of business customers in urban areas is substantially higher than in rural areas. This also strains the concepts of affordability and reasonable comparability for rural residential customers.

C. Using wire center costs.

The Commission's current mechanism determines support by comparing statewide average forward-looking costs to the national average.[130] The decision to use statewide average costs dates to the *Ninth Report and Order* from 1999.[131] Neither *Qwest I* nor *Qwest II* disapproved of the use of statewide average costs to determine support. Thus Qwest has a heavy burden to overturn this longstanding practice; its attempts here are feeble at best.[132]

For example, the fact that the Commission targeted support to high-cost wire centers in the *Ninth Report and Order*, as cited by Qwest,[133] does not destroy the logic used for calculating that support determined in the same order. Qwest's claim of eroding implicit support[134] really shows the importance of statewide averaging: **If** support has eroded, then the task is first for the state to address that erosion, either through ratemaking or through the adoption of explicit state

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[130] As noted elsewhere, this should be the national **urban** average.

[131] *Ninth Report and Order*, ¶ 2.

[132] See also IUB Comments at [2]; WUTC Comments at 4. Likewise, CenturyTel's statement that "[t]he Commission has conceded that 'statewide averaging may not be appropriate for … rural carriers,' implicitly recognizing that forced reliance on implicit subsidies can be severely detrimental to rural areas" (CenturyTel Comments at 17, citing *Order on Remand*, ¶ 25) stretches the Commission's finding beyond all recognition.

[133] Qwest Comments at 30 and fn. 49.

[134] Id. at 31.

support mechanisms. Additional federal support should not precede such state efforts.[135]

Fundamental to Qwest's preference for the individual wire center cost standard is the assumption that supporting wire centers is the only way to ensure that support will be sufficient.[136] By those terms, it is important to note that, according to Qwest, "Using the latest available 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."[137] An increase to **6.5 times** the current amount is indeed "significantly higher."

Yet Qwest's entire argument is immediately undercut when, in recognizing the magnitude of the increase implied by doing things the "right" way, it then says that the wire center determination should instead be used merely as a means of allocating the current funding amount. "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."[138] Thus Qwest must be assuming that the current funding level is sufficient, and is merely arguing about its allocation, seeking a "more equitable allocation."[139]

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[135] Likewise, CenturyTel's concern that "[i]f universal service support were to decrease, consumers in high-cost areas would be faced with higher service rates without any assurance of prompt relief from state regulators" (CenturyTel Comments at 6) mistakes the priority for such "relief": It must come first from the state regulators who are responsible for setting those "higher service rates" and then from the federal support system.

[136] Qwest Comments at 31.

[137] Id. at 32 (emphasis added). It is not clear (because Qwest does not include the calculation in its comments) whether the increase to $1.9 billion includes payments to CETCs. Non-rural carrier ILECs received $221.9 million from the HCM in 2005.

[138] Id. at 32.

[139] Id. at 33.

Qwest does not supply any numbers showing the effect of its reallocation of federal non-rural high-cost support. Attachment 4 is NASUCA's attempt to bring Qwest's proposal into context, reflecting reallocation of HCM support. As can be seen, the $293 million in HCM support received by ten states would be reduced by $188 million.[140] And the forty states that currently receive no HCM support would split that $188 million.[141] The micro effects of Qwest's proposal are noticeable: Six states would receive less than $500,000 each.[142] Four other states would receive less than $1 million each. It appears, almost ironically, that Qwest's proposal would gain it only $8 million a year in total additional support. It is unclear what impact such amounts can have on keeping rural rates reasonably comparable and affordable in those states.[143]

As noted, Qwest proposes combining and capping all of the high-cost programs. This makes its statement that "federal support for non-rural carriers is limited to only ten states, with two states receiving more than 66% of the entire fund"[144] a serious misstatement. If one considers **all** the federal high-cost support given to non-rural carriers, that is, including IAS and ICL, there are only five of the 52 jurisdictions (states plus District of Columbia and Puerto Rico) that do not currently receive high-cost funding.[145] (Qwest currently receives $81 million of the total non-rural high-cost fund.)

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[140] These calculations, unlike the rest of NASUCA's calculations, include CETC lines and support. Notably, under Qwest's proposal, Maine would add $1.7 million to its current support, and South Dakota would gain $480,000.

[141] The District of Columbia would still receive no support.

[142] Rhode Island would receive $4,400 in annual support.

[143] Just as it is unclear how the $686,000 in HCM support (or $4.68 per line per year) that Cincinnati Bell currently receives for its Kentucky territory yields reasonably comparable rates. Likewise, for example, the 25¢ per year per line that AT&T receives in IAS. See Attachment 1.

[144] Qwest Comments at 33.

[145] See NASUCA Comments at 16-19.

Qwest wants to exclude IAS and ICL from this "efficient" combination, however, apparently because they "resulted from the Commission's efforts to replace implicit subsidies in interstate access rates with explicit universal service support."[146] Yet the purpose of explicit universal service support is to render affordable and reasonably comparable rates, not to replace lost revenues. Qwest's view also overlooks the sheer magnitude of the IAS and ICL, which amount to three times the amount of HCM support received by non-rural carriers.

D. Capping the fund at 2004 levels.

Qwest proposes to cap the fund (both rural and non-rural) at 2004 levels.[147] Yet Qwest makes no attempt to assert that the 2004 amount of the fund is sufficient for the statutory principles, or to argue that picking 2004 is anything but arbitrary.[148] No more response to Qwest's proposal in this regard is necessary.

E. Granting authority to state commissions to distribute the funds.

The central flaw in the "block grant" or "state allocation" mechanism is easily explained through a hypothetical. Assume a state with only two carriers. It has been determined that Carrier A is entitled to $95 in support, based on whatever federally-dictated standard is adopted. It has also been determined that Carrier B is entitled to only $5 in support. A block grant of $100 is then given to the state. If there is to be a change that will justify giving this authority to the states, the state commission can either increase the support for Carrier A or increase the

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[146] Qwest Comments at 34, fn. 55.

[147] Id. at 32.

[148] Qwest's rationale appears to be to roll back the growth in the fund, which according to Qwest is due to entry of CETCs. Id. But why stop there? It would make just as much sense to roll the fund back to 1999 levels.

support for Carrier B.[149] If the state gives the entire $100 to Carrier A, then Carrier B will have been deprived of support. Similarly, if the state gives carrier B $10 of support, then Carrier A will have been deprived of support that the federal standard determined was needed. This makes little sense. CenturyTel correctly notes that a mechanism "based on 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."[150]

In addition, there are federal legal issues to be considered,[151] as well as state law issues. No one has attempted to identify the states that would actually be authorized to make these allocations of federal funds under their respective state laws. Nor, apparently, has Qwest attempted to identify the increased costs that would be imposed upon state commissions for this new responsibility.

IX. AT&T'S "MECHANISM FOR AFFORDABLE RURAL COMMUNICATIONS"; QWEST'S AFFORDABILITY TEST

AT&T admits that its plan would increase the non-rural high-cost fund.[152] Somehow, however, according to AT&T, extending the exclusive focus on affordability to the rural fund would **reduce** that part of the fund.[153] On top of that initial contradiction, there are numerous other fundamental errors in AT&T's proposal.

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[149] If the state leaves the allocation alone, then there is no need for a state process.

[150] CenturyTel Comments at 10; see also OTA/WITA Comments at 5.

[151] CenturyTel Comments at 12 and fn. 31 ("subdelegation" issue).

[152] AT&T Comments at 4.

[153] Id.

Although the basic argument that AT&T advances in its affordability discussion seems to be sound -- that the affordability requirements of Section 254 should focus on a determination of "how much consumers can reasonably be expected to spend on telephone service"[154] -- the proposal to tie affordability to the percentage of income spent on telephone service at median income levels presents some insurmountable problems.

Citing a definition from *Merriam-Webster Online Dictionary*, AT&T submits that "any consideration of whether services are 'affordable' to consumers necessarily involves analysis of whether, and to what degree, consumers can bear the costs of service in the face of their financial means, or income."[155] AT&T's definition of "affordability," however, quickly morphs from whether "consumers can bear the costs of service in the face of their financial means" to a test based on "what consumers can reasonably be expected to spend on telephone service."[156] Rather than looking at whether consumers "can bear the costs of service," AT&T instead purports to establish "an objective measure of a reasonable level of consumer expenditure on local telephone service,"[157] which has little relation to "affordability" as the Commission has defined it.

AT&T's analysis presents two fundamental problems. First, AT&T fails to establish an objective measure of a reasonable level of consumer expenditures on local telephone service. Second, even if AT&T had succeeded in establishing such an objective measure, the concepts of (1) what costs "consumers can bear," and (2) what costs consumers "can reasonably be expected to spend" are not the same.

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[154] Id. at 14, 17.

[155] Id. at 14.

[156] Id. at 24.

[157] Id. at 23.

A. AT&T Fails to Establish an Objective Measure of Telephone Expenditures.

AT&T fails in its efforts to establish an objective measure of a reasonable level of consumer expenditures on local telephone service. AT&T urges the FCC to rely on data from the Bureau of Labor Statistics ("BLS") Consumer Expenditures Survey ("CEX")[158] to establish its "affordability benchmark." AT&T argues that basing the "affordability benchmark" on CEX data involves "an objectively reasonable level of expenditure for local telephone service."[159] Moreover, AT&T argues that using household expenditure data is a "straightforward, practicable means" of determining telephone expenditures.[160]

AT&T's comments assume that the "telephone services" expenditures reported in the CEX are only for local telephone service. That assumption is demonstrably in error. The CEX data is not limited to local telephone service. The *Information Book* published by the U.S. Department of Commerce for the Quarterly Interview Survey component of the Consumer Expenditures Survey (April 1, 2004, at 15) reports that "telephone expenses" includes all of the following:

- Residential service;
- Mobile/cellular service;
- Pager/beeper services;
- Basic (local) service charge;
- Domestic long distance charge;
- International long-distance charge;

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[158] According to the Bureau of Labor Statistics ("BLS"), "The Consumer Expenditure Survey (CE) program consists of two surveys collected for the Bureau of Labor Statistics by the Census Bureau — the Quarterly Interview Survey and the Diary Survey — that provide information on the buying habits of American consumers, including data on their expenditures, income, and consumer unit (families and single consumers) characteristics." U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditures Survey Home Page, http://stats.bls.gov/cex (accessed May 15, 2006).

[159] Id. at 26.

[160] Id. at 26.

- Telephone related services such as caller ID, call waiting, call forwarding, or voice mailboxes (but not including data services);
- Installation or repair of telephone line(s);
- Telephone or pager purchases or rentals;
- Internet access or data services;
- Cable or satellite television services;
- DSL or ISDN charges; and
- Non-telephone related rentals or purchases.[161]

The BLS does indicate that the data is available at a finer level (e.g., disaggregated among the components listed above).[162] The BLS reports, however, that this disaggregated data is not reliable. According to BLS:

> Average expenditures on items at finer levels of detail might not be as reliable as those published for more aggregate levels because there are sometimes few reports of expenditures on more detailed items. A small number of unusually large purchases of infrequently reported items or an increase in the number of consumers reporting such expenditures might cause a large change in the average expenditure from one period to the next. **The tables published in the two-year reports, and on the Consumer Expenditure Survey Web site, show the expenditure component level at which the estimates are considered to be reliable**.[163]

That reliable "expenditure component level" is the total "telephone expenses" level reported in the CEX.

Confusing the consumer expenditures components reported by the CEX is not unprecedented. In seeking to establish an affordability benchmark for water bills, the Environmental Protection Agency ("EPA") proposed to use CEX data. EPA posited that the

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[161] Bureau of Labor Statistics, Consumer Expenditures Surveys Quarterly Interview CAPI Survey, at Section 4, Part A (last modified March 21, 2006).

[162] See also Bureau of Labor Statistics, *2004 Consumer Expenditure Interview Survey Public Use Microdata Documentation* (January 31, 2006) at 155-158.

[163] Bureau of Labor Statistics (March 17, 2005). *Consumer Expenditures Survey: Frequently Asked Questions*, Question 21 (emphasis added). (Question 21 asks: "Why doesn't the Bureau of Labor Statistics publish more detailed expenditures?") These FAQs are available at: http://www.bls.gov/cex/csxfaqs.htm (accessed on May 10, 2006).

CEX documented consumer expenditures on water service. A study published by the National Rural Water Association quickly pointed out the error of EPA's analysis:

> EPA has established 2.5% of median household income (MHI) as being an affordable expenditure for water service. Its justification for using this figure is seriously flawed in several respects.
>
> At the most basic level, EPA commits a serious error in interpreting information from the Consumer Expenditure Survey. This survey, conducted by the Census Bureau for the Department of Labor's Bureau of Labor Statistics, tracks household expenditures over time. The survey does not have a separate category for water service. Rather it combines water service in with wastewater service, trash removal, and "other public services" (this could include fire protection assessments and other services provided by local governments).
>
> In conducting its analysis, however, EPA apparently assumed that 100% of household expenditures on this group of public services could be available for water service. For example, EPA states: "In establishing this threshold [2.5% of Median Household Income], the Agency considered baseline household expenditures (as documented in the 1995 Consumer Expenditure Survey) for piped water relative to expenditure benchmarks for other household goods….[164]

EPA misconstrued the scope of the CEX-reported expenditures on "water and other public services." Likewise, AT&T has misconstrued here the CEX-reported expenditures on "telephone services." The "telephone services" expenditures data reported in the CEX includes far more than local telephone service. To the extent that "telephone services" represent 1.5% of median household income, local telephone service as a percentage of median income would be a substantially lower percentage. As a result, the percentage of income level AT&T recommends as a benchmark of "affordability" for local telephone service is substantially too high.

Just as the scope of what constitutes a "telephone service" as reported by the Consumer Expenditures Survey is not as clearly defined as AT&T would have it, the fundamental

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[164] Scott Rubin, *Affordability of Water Service*, National Rural Water Association (Duncan, OK) (2001) at 11-12.

underlying concept of what constitutes "median income" is not as clearly defined as presented by AT&T. The table below presents "median income" as reported by the U.S. Census Bureau based on the 2000 Census. The table considers, for eight states from all regions of the country, median *household* income as compared to median *family* income. As can be seen, the difference in what figure is deemed to represent "median income" ranges between 16% and 23% for these eight states, depending on whether one uses "households" or "families" as the unit of analysis.

Statewide Median Household Income vs. Statewide Median Family Income
Eight Illustrative States (2000 Census)

	Alabama	Colorado	Maine	New Mexico	North Carolina	Ohio	Oregon	Pennsylvania
Median household income	$34,135	$47,203	$37,240	$34,133	$39,184	$40,956	$40,916	$40,106
Median family income	$41,657	$55,883	$45,179	$39,425	$46,335	$50,037	$48,680	$49,184
Percentage difference	22%	18%	21%	16%	18%	22%	19%	23%

American FactFinder, U.S. Census Bureau (2000 Census). Median household income: Table P53. Median family income: Table P77.

The Consumer Expenditures Survey, of course, uses *neither* the "household" nor the "family" as its unit of analysis. Instead, the CEX uses the "consumer unit" as its unit of analysis.[165] The conclusion must be that the data that AT&T is using from its various information sources is not necessarily comparable data. Census data on "median income" does not correspond to "median income" as reported by the CEX.

The table on the next page documents the differences in income reported by the CEX and

[165] According to the CEX *Glossary*, a "consumer unit" is defined as follows: "A consumer unit comprises either: (1) all members of a particular household who are related by blood, marriage, adoption, or other legal arrangements; (2) a person living alone or sharing a household with others or living as a roomer in a private home or lodging house or in permanent living quarters in a hotel or motel, but who is financially independent; or (3) two or more persons living together who use their income to make joint expenditure decisions. Financial independence is determined by the three major expense categories: Housing, food, and other living expenses. To be considered financially independent, at least two of the three major expense categories have to be provided entirely, or in part, by the respondent." Bureau of Labor Statistics, *BLS Glossary*, http://stats.bls.gov/bls/glossary.htm (accessed May 15, 2006).

the Census Bureau. The table presents the average income for households as reported by the 2000 Census. The table further presents the average income for “consumer units” as reported for the 1999/2000 Consumer Expenditures Survey. The data presented is for each Metropolitan Statistical Area (“MSA”) for which the CEX reports data. As can be seen, the CEX data is universally lower than the Census data for the equivalent geographic areas.[166] CEX income data is routinely 20% or more less than the Census income data, and up to 40% less. The AT&T assertion that CEX data on consumer units can be routinely compared to Census data on families and households is wrong.[167]

Average Household Income Reported by 2000 Census Compared to Average “Consumer Unit” Income Reported by 1999/2000 Consumer Expenditures Survey By Metropolitan Statistical Area (MSA)

	Census Data /a/	CEX Data	Difference
Anchorage, AK MSA	$67,906	$54,506	-25%
Atlanta, GA MSA	$67,535	$53,936	-25%
Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	$69,340	$49,557	-40%
Chicago--Gary--Kenosha, IL--IN--WI CMSA	$67,321	$51,332	-31%
Cincinnati--Hamilton, OH--KY--IN CMSA	$58,407	$45,737	-28%
Cleveland--Akron, OH CMSA	$55,553	$48,578	-14%
Dallas--Fort Worth, TX CMSA	$63,874	$56,046	-14%
Denver--Boulder--Greeley, CO CMSA	$66,209	$55,168	-20%
Detroit--Ann Arbor--Flint, MI CMSA	$62,975	$49,041	-28%
Honolulu, HI MSA	$65,375	$51,906	-26%
Houston--Galveston--Brazoria, TX CMSA	$61,115	$54,733	-12%
Kansas City, MO--KS MSA	$58,878	$51,298	-15%
Los Angeles--Riverside--Orange County, CA CMSA	$63,755	$52,776	-21%
Miami--Fort Lauderdale, FL CMSA	$54,606	$46,034	-19%
Milwaukee--Racine, WI CMSA	$58,282	$43,161	-35%
Minneapolis--St. Paul, MN--WI MSA	$67,670	$60,574	-12%
New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	$71,993	$57,063	-26%

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[166] One would have expected that, were there to be a difference, the Census data would be somewhat lower, since the 2000 Census data is collected in 1999.

[167] It is further possible that while the Census data is for Consolidated MSAs, the CEX data is only for MSAs.

Average Household Income Reported by 2000 Census Compared to Average "Consumer Unit" Income Reported by 1999/2000 Consumer Expenditures Survey By Metropolitan Statistical Area (MSA) (cont'd)

	Census Data /a/	CEX Data	Difference
Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	$62,107	$49,932	-24%
Phoenix--Mesa, AZ MSA	$58,886	$47,492	-24%
Pittsburgh, PA MSA	$50,259	$41,371	-21%
Portland--Salem, OR--WA CMSA	$58,139	$49,035	-19%
St. Louis, MO--IL MSA	$57,543	$45,251	-27%
San Diego, CA MSA	$63,204	$52,898	-19%
San Francisco--Oakland--San Jose, CA CMSA	$83,525	$64,818	-29%
Seattle--Tacoma--Bremerton, WA CMSA	$64,658	$51,292	-26%
Tampa--St. Petersburg--Clearwater, FL MSA	$50,956	$45,116	-13%
Washington--Baltimore, DC--MD--VA--WV CMSA	$73,618	$69,331	-6%

/a/ Average Census income derived by dividing aggregate household income by aggregate number of households.

Finally, the AT&T proposal does not take into account that "median income" is universally recognized to vary based on family size (using the "family" as the unit of analysis). The table below presents median family income by family size for the same illustrative states used above:

Statewide Median Family Income by Family Size
Eight Illustrative States (2004 inflation-adjusted dollars)

Family Size	Alabama	Colorado	Maine	New Mexico	North Carolina	Ohio	Oregon	Pennsylvania
1-person	$45,768	$58,849	$51,372	$42,240	$47,112	$51,966	$51,011	$53,680
2-person	$39,755	$54,187	$46,340	$39,876	$42,105	$44,734	$47,080	$44,361
3-person	$48,957	$58,565	$52,432	$41,420	$49,206	$55,390	$52,842	$58,986
4-person	$54,338	$66,664	$64,083	$47,256	$55,117	$62,991	$59,202	$66,569
5-person	$50,905	$67,550	$61,736	$48,057	$50,957	$60,180	$51,770	$64,607
6-person	$45,435	$59,808	$56,569	$39,199	$49,092	$58,743	$56,304	$66,196
7-persons or more	$42,471	$68,006	$57,612	$44,300	$53,097	$71,109	$47,302	$57,009

SOURCE: 2004 American Community Survey.

One phenomenon immediately evident from this data is that median income does not increase proportionately as family size increases. In only Colorado, North Carolina and Ohio, for example, is the median family income for a seven-person household greater than the median family income for a five-person household. In five of the eight states, the highest median income is among four-person families. Even setting aside the problems of what unit of analysis is appropriate (household, family, consumer unit), if median family income is going to be used as a benchmark, the FCC would need to carefully delineate what size of family unit would serve as the basis of benchmarking "median income."

AT&T's proposal lacks even fundamentally correct definitions of how to determine levels of telecommunications expenditures or median income. As discussed in the next section, however, AT&T's "objective measure" of affordability is also seriously flawed.

B. AT&T Fails to Establish an Objective Measure of "Affordable" Service.

AT&T begins the analysis in favor of its proposed MARC by asserting that a determination of "affordability" should be based on whether "consumers can bear the costs of service in the face of their financial means."[168] AT&T never establishes an objective measure of what local phone expenditures "consumers can bear ... in the face of their financial means," however. Several failures are evident in AT&T's analysis -- and in Qwest's similar analysis as well.

First, while AT&T posits that the very definition of "affordability" must consider the telephone expenditures by consumers "in the face of their financial means," AT&T immediately turns around to reject a consideration of the "financial means" of individual consumers. If

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[168] AT&T Comments at 14.

affordability is set using a benchmark of median income (whether household income, family income, or the income of "consumer units"), by definition, substantial numbers of telephone customers -- those **below** the median -- will be faced with "unaffordable" telephone service. The range in income around "median income" in the various geographic areas is substantial. The U.S. Department of Housing and Urban Development ("HUD"), for example, annually publishes docile distributions of family income for every MSA and nonmetropolitan county in the nation. Selected MSAs for the eight states previously examined are presented in the table on the following page.

ESTIMATED 2006 DECILE DISTRIBUTIONS OF FAMILY INCOME BY SELECTED METROPOLITAN STATISTICAL AREAS

	1st	2nd	3rd	4th	Median	6th	7th	8th	9th	9.5th
Birmingham-Hoover, AL MSA	$15,800	$27,000	$37,000	$46,600	$57,400	$69,200	$82,900	$102,300	$138,000	$185,300
Huntsville, AL MSA	$18,900	$31,400	$42,700	$53,300	$64,800	$77,900	$93,200	$113,700	$146,200	$183,600
Denver-Aurora, CO MSA	$24,600	$37,400	$48,800	$59,900	$71,300	$83,700	$98,600	$119,800	$158,900	$212,300
Fort Collins-Loveland, CO MSA	$25,300	$37,700	$48,700	$58,700	$68,600	$80,100	$93,800	$112,200	$144,800	$187,100
Bangor, ME MSA	$15,300	$25,400	$34,400	$43,300	$51,700	$61,200	$72,700	$87,100	$111,400	$142,300
Portland-South Portland-Biddeford, ME MSA	$23,400	$35,300	$45,500	$55,400	$64,800	$75,400	$88,200	$105,800	$138,300	$183,200
Albuquerque, NM MSA	$15,800	$25,600	$34,900	$43,600	$53,200	$63,700	$76,800	$94,800	$125,200	$162,800
Santa Fe, NM MSA	$16,400	$27,300	$36,800	$46,700	$58,200	$71,300	$86,900	$106,200	$143,600	$191,000
Charlotte-Gastonia-Concord, NC-SC MSA	$20,900	$32,800	$43,300	$53,700	$64,400	$75,900	$89,700	$109,800	$147,200	$200,000
Durham, NC MSA	$18,000	$29,800	$40,100	$50,800	$61,700	$73,300	$88,200	$110,100	$150,000	$200,500
Akron, OH MSA	$19,900	$31,700	$41,700	$51,600	$61,300	$72,300	$85,300	$103,300	$135,300	$177,400
Dayton, OH MSA	$19,600	$30,800	$40,400	$49,500	$59,800	$70,600	$83,200	$100,400	$129,500	$163,700
Portland-Vancouver-Beaverton, OR-WA MSA	$22,900	$35,500	$46,100	$56,300	$66,900	$78,400	$92,400	$111,800	$146,700	$190,800
Salem, OR MSA	$18,700	$30,100	$38,700	$47,900	$56,800	$66,800	$78,700	$93,600	$120,200	$148,700
Erie, PA MSA	$18,800	$28,300	$36,900	$45,500	$54,300	$63,600	$74,900	$89,500	$114,600	$144,800
Pittsburgh, PA MSA	$18,900	$29,200	$38,200	$47,600	$57,400	$68,200	$81,000	$98,400	$130,600	$171,500

As can be seen, households in the second decile of income have incomes that are typically roughly half of median income.[169] Households in the third decile of income (well above 200% of the Federal Poverty Level) have incomes roughly equal to two-thirds of median income. If a determination of "affordability" is made based on median income, significant numbers of households with income below median income, but well above Lifeline eligibility, will, by definition, be excluded from having access to "affordable" local telephone service.

AT&T's failure to take into account the affordability impacts of telephone expenditures at lower-than-median income has significant impacts on telephone affordability. Whether these affordability considerations are adequately taken into account through an examination of the telephone expenditures at median income (rather than some lower income) is not adequately addressed by AT&T.[170]

Figure 1 below shows the percentage of income burden imposed by expenditures on telephone services as reported by the CEX disaggregated by quintile of income.[171] As shown in Figure 1, expenditures for telephone services (as a percentage of income) remain high even though the second quintile of income. While the households in the

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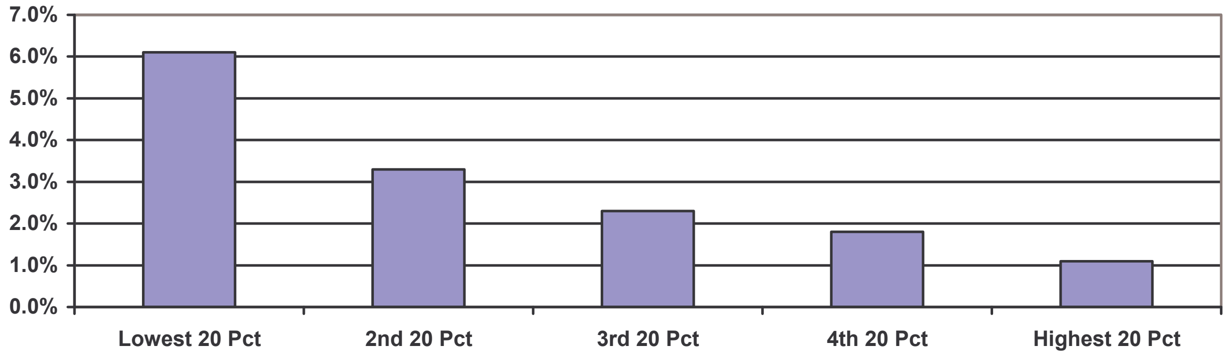
[169] As a rule of thumb, 50% of median income is considered to be roughly equal to 200% of the Federal Poverty Level.

[170] The issue of the affordability of telephone service to "low-income" households was dismissed by AT&T in its footnote 65, where it stated, "support for low-income individuals should be addressed by the Lifeline mechanism and increased if necessary." Lifeline support now extends only to households with income at or below 135% of the Federal Poverty Level (FPL), unless the household receives governmental assistance from specific programs. A proposal to expand eligibility to 150% of FPL has been pending before the FCC for more than a year. Moreover, even within the currently eligible population, there is continuing concern about the crucial issue of the under-enrollment of income-eligible households in the telephone Lifeline program.

[171] The CEX disaggregates expenditures only by income quintiles, not by deciles.

lowest 20% of income have telephone expenditures of 6.1% of income, those in the second quintile (the second lowest 20%) have expenditures of 3.3% of income. Issues of affordability for telephone services range far above the income eligibility level now established for Lifeline service. Indeed, households in all but the highest quintile have expenditures of more than 1.5% of income.[172]

Figure 1: Expenditures on Telephone Services as Percent of Income by Quintile of Income



Clearly, AT&T'S failure to take into account the burdens of telephone expenditures on telephone customers with income less than the median income fails to consider "affordability" within the context of the FCC's definition of the term. In its May 7, 1997 First Report and Order on universal service, the FCC defined the concept of "affordability" to include both an "absolute" component ("to have enough or the means for") and a "relative" component ("to bear the cost of without serious detriment").[173] According to the FCC, "both the absolute and relative components must be considered in

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[172] According to AT&T, CEX data "indicate that consumers currently spend something on the order of 1.5% of their household income on local telephone service." AT&T Comments at 24. Since AT&T never reports the data it uses to determine its "affordable burden," it is not possible to associate the AT&T figures with the figures published by the BLS in the CEX.

[173] CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) ("*First Report and Order*"), ¶¶ 109, et seq.

making the affordability determination required under the statute."[174] For telephone service to be *not* affordable, in other words, a household need not lack telephone service altogether (a failure of the absolute aspect) if to retain service would impose "serious detriment" on the household (the relative aspect). To create an affordability benchmark based exclusively on median income is to ignore, at a minimum, the second half of the FCC's definition of "affordability."[175]

As with the consideration of whether and how to use CEX data, the FCC could learn from the consideration of issues involving water affordability. The National Drinking Water Advisory Council's ("NDWAC's") Small Systems Working Group directly addressed the issue of whether to base a measurement of "affordability" on median income. NDWAC's Working Group reported:

> Ability-to-pay focuses not on whether consumers *will* pay for water service, but on whether consumers *can* pay for water service. As a general proposition, households with higher incomes can consume proportionately more quantities of goods and services; this relationship generally holds for water consumption.
>
> At lower income levels, choices are far more constrained and at times very painful. The ability-to-pay issue is especially acute for services essential to health and well-being, including food, medicine, and water and wastewater service. Moreover, utility bills have a regressive effect with respect to the distribution of household incomes; households at lower income levels must devote a greater percentage of their income to utilities than households at higher income levels. It can be argued that at higher income levels, consumers can afford to pay not only a higher total

[174] Id., ¶ 110.

[175] For this reason, the WisPSC's use of the county median income for its intrastate USF (WisPSC Comments at 9) should not be adopted on the federal level.

> water bill but also a higher percentage of their income toward water utility payments.[176]

In helping the EPA to define what constitutes an affordable water burden, the Small Systems Working Group accepted the notion that affordability can be determined by reference to a bill burden (placing the household expenditure in the numerator and the household income in the denominator).

The Working Group went on to consider two variations to this burden-based approach to account for the fact that households with lower income have a more constrained ability to pay. First, the Working Group considered including using the mean (average) income in the denominator (rather than the median income). Since the median income in a geographic area tends to be lower than the mean, this approach makes the affordable burden more responsive to lower income. Second, the Working Group considered using a weighting of measures to capture poverty effects.[177] A weighted factor might, for example, accord a weight of 3x to the affordability factor at the median income and a weight of 1x to the affordability factor at the median income below 150% of the Federal Poverty Level. This approach explicitly takes into account both the number of lower-income households and the extent to which their incomes fall below the point of central tendency (either the mean or median). If the FCC adopts an affordability standard (which it need not do), the standard must take the impact on lower-income telephone customers into account.

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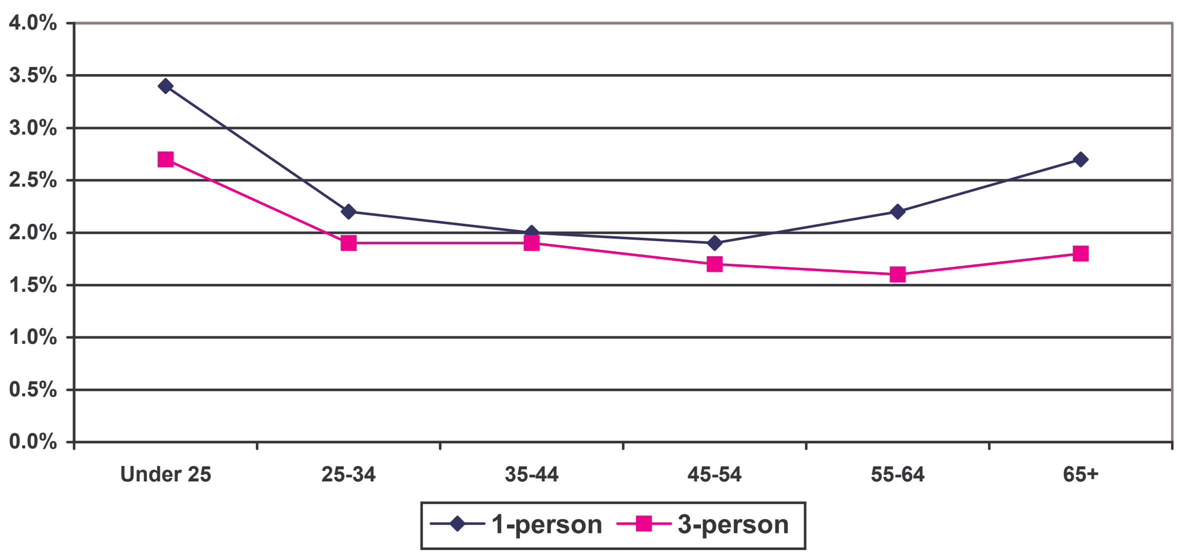
[176] National Drinking Water Advisory Council, Small Systems Working Group, *Information to States on Affordability Criteria*, US. Environmental Protection Agency (Washington D.C. 2003) at 13 (emphasis in original).

[177] Id.

A second failure of the AT&T affordability proposal is its failure to acknowledge the extent to which telephone expenditures (and thus telephone burdens) may vary based on a wide variety of factors other than income. Setting aside the components of the "telephone services" expenditures reported by the CEX, establishing a reasonable percentage of income devoted to telephone services is not as straightforward as AT&T would have it seem. Figure 2 presents CEX-reported expenditures on total telephone services by age and household size. This figure presents data for 1-person households and 3-person households.

Figure 2: Percentage of Income Expenditures on "Telephone Services" by Age and Household Size[178]



In contrast, Figure 3 below presents data on expenditures for "telephone services" by the number of earners in a household. "Consumer units" (which, as discussed above, is the CEX equivalent of "households" or "families" in demographic analysis) are divided into "consumer

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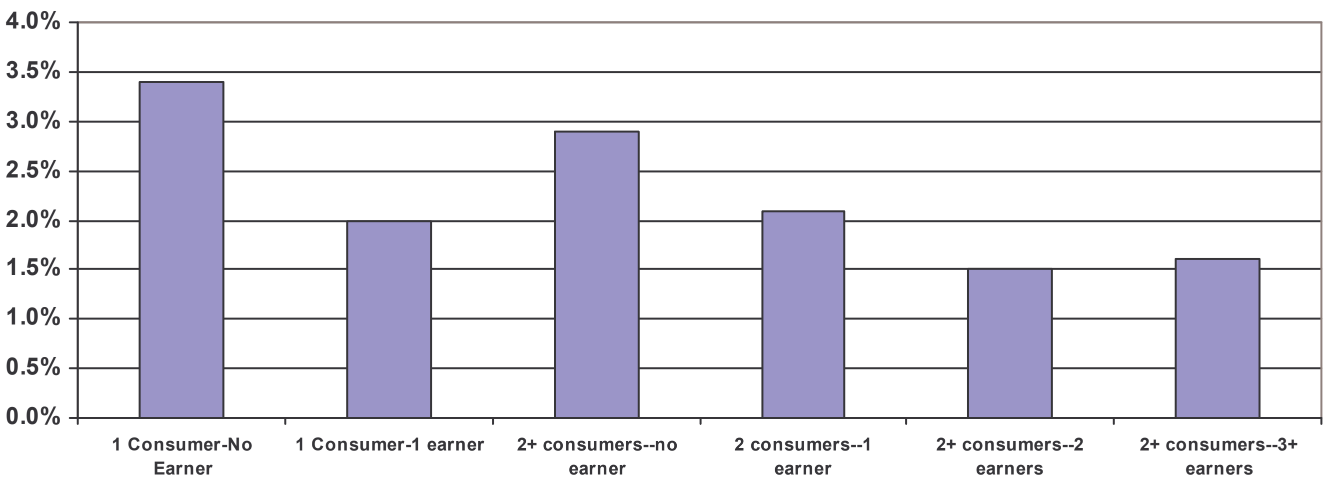
[178] Data from CEX.

units," with single consumers and "consumer units" with two or more consumers. Each of these is then distinguished by the number of "earners" in the "consumer unit." A consumer unit with one consumer and no earner could be an unemployed single person, a college student living independently of his or her parents, or a retired person. Similarly, a consumer unit with two consumers and one earner could be a single mother with one child.

Figure 3: Percentage of Income Expenditures on "Telephone Services" by Work Status



Figures 2 and 3 document that a number of factors influence the relationship between income and telephone expenditures. In these two figures alone, factors that affect the percentage of income spent on telephone service include the size of the household, the age of the household members, and their work status. The notion that a single figure such as median income can capture sufficient information to allow the FCC to determine at what point telephone expenditures are affordable in an "absolute" and in a "relative" sense, as "affordability" was previously defined by the FCC, is simply wrong.

C. Qwest's affordability analysis is also in error.

As discussed earlier, Qwest proposes a test of reasonable comparability where rates are set equal to a multiplier of national average urban rates for wireline local service. According to Qwest, "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 service."[179] Using information from the CEX, Qwest argues that "what the BLS data demonstrates is that where costs of service are below the benchmark, the rates that rural customers hypothetically pay if priced at that benchmark should keep rural spending on telephone services affordable when measured as a percentage of household spending."[180] Qwest states that, based on its analysis of CEX data, 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."[181] Qwest's analysis contains serious errors.

First, the Qwest analysis uses the CEX data in a way in which it is not designed to be used. According to Qwest, the dollar expenditures reported in the CEX represent the dollars consumers can be expected to spend on telephone service.[182] That percentage of total expenditures, Qwest argues, must therefore be an affordable percentage for the

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[179] Qwest Comments at 23.

[180] Id. at 24.

[181] Id. at 25.

[182] Id. at 28.

general population.[183] Several problems exist with the Qwest analysis, any one of which is fatal to Qwest's conclusions.

First, Qwest argues that "affordability" can be determined based on the percentage of total expenditures devoted to telephone service as reported by the CEX. Qwest states:

> 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 rural residential expenditures on telephone services compared to urban residential customers' expenditure of 2.3 percent. . .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 increased can be absorbed without displacing other critical expenditures.[184]

The logic of Qwest's analysis is seen to be faulty when applied to different income levels. The table below shows the percentage of total expenditures devoted to telephone service by income level as reported by the Consumer Expenditures Survey. As can be seen, the percentage of total expenditures represented by expenditures on telephone services **decreases** as income increases. While consumer units with income between $5,000 and $10,000 spend 3.4% of their income on telephone services, consumer units with income of $70,000 or more spend only 1.8% of their income on telephone services. In fact, as shown by this table, average expenditures by the highest income consumer units are nearly three times higher than the average expenditures by lower income consumer units.

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[183] Id.

[184] Id.

The percentage of total expenditures devoted to any particular expenditure provides no insight into the "affordability" of that service.

Dollars of Expenditures and Proportion of Total Expenditures Devoted to Telephone Services By Income (2004)		
	Dollar Expenditures	**Share of Total Expenditures**
Less than $5,000	2.9%	$499
$5,000 - $9,999	3.4%	$501
$10,000 - $14,999	3.2%	$617
$15,000 - $19,999	3.0%	$683
$20,000 - $29,999	2.9%	$804
$30,000 - $39,999	2.6%	$881
$40,000 - $49,999	2.6%	$984
$50,000 -$69,999	2.4%	$1,148
$70,000 and more	1.8%	$1,411
Total population	2.3%	$990

Using Qwest's analysis, one would conclude that households with higher incomes could afford to spend *less* on telephone services.

Care must be taken in interpreting the expenditure data from the CEX. The CEX data presents data on the sample mean. The data is the average of all responding consumer units. As the Bureau of Labor Statistics reports:

> Expenditures are for consumers units with specified characteristics, *regardless of whether a particular unit incurred an expense for a specific item during the recordkeeping period*. The average expenditure for an item may be considerably lower than the expenditure by the [consumer units] that purchased the item. The less frequently an item is purchased, the greater the difference between the average for all consumer units and the average for those purchasing the item.[185]

[185] Bureau of Labor Statistics, *Consumer Expenditures in 2003*, Report 986 (June 2005), Report 986 at 5 (emphasis added).

The CEX, in other words, does not report expenditures for any particular item for those households incurring expenditures for such an item. If a household does not purchase a particular item, **the household expenditure on that item goes into the average as $0**. One reason that lower income households likely have a lower average expenditures on telephone services reported by the CEX, in other words, is because far more lower income households than upper income **lack telephone service altogether**. It is not possible to tell from the CEX data tables what average expenditures on any given item are for households buying that item.[186] The CEX data presented by Qwest do not allow a determination of the penetration of purchases within any population with particular characteristics. Nor does the CEX data presented by Qwest allow for a determination of the expenditures on telephone service by those households spending on telephone service.

Qwest uses CEX data to argue that rural telephone rates would be affordable on two different levels. First, Qwest argues that while under its proposal "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."[187] Second, Qwest argues that "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 only 0.5%."[188]

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[186] When one considers this, the necessity of this conclusion -- confirmed by a conversation with BLS staff on May 12, 2006 -- becomes evident. If the average expenditures (and the average percentage of total expenditures) were limited to only those consumer units having such an expenditure, none of the data would be additive. Only by presenting the data as the sample means can additive data be presented.

[187] Qwest Comments at 28.

[188] Id.

What Qwest does not address is the uncertainty inherent in the CEX data. Qwest fails to report (let alone analyze) some of the most substantial limitations on the CEX data.

First, because CEX data is based on a population sample, there are errors in the data. As BLS reports:

> Estimates of the average (mean) annual expenditure per CU in the CE tables for the year 2000 were based on a sample of about 30,000 CUs out of a total of about 109 million in the Nation. These mean estimates differ from the true population values because a subset, rather than the whole population, is observed. Sampling error is the difference between the survey estimate and the true population value.[189]

The "margin of error" in the CEX is generally considered to be two standard errors (standard errors are a generally-used statistical measure of variability associated with estimates based on samples). Standard errors for each expenditure figure presented by the CEX are published by BLS.

Qwest uses the average income published for urban consumers ($44,172) and the average telephone expenditures[190] for urban consumers ($83.34) to calculate that the percentage of total urban expenditures devoted to telephone service is 2.3%.[191] This urban figure for total expenditures is relatively robust. According to the CEX, its standard error is $439. Given that the CEX margin for error is two standard errors, the total expenditures for urban consumers can, in other words, be in the range of $43,294 to

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[189] Jeffrey Blaha, *Standard Errors in the Consumer Expenditure Survey*, in *Consumer Expenditure Survey Anthology, 2003*, Bureau of Labor Statistics (2003) at 31.

[190] As discussed above, this expenditure figure includes much more than just local telephone service.

[191] Qwest Comments at 27 ($83.34/month x 12 months = $1,008 / $44,172 = 2.3%).

$44,050 ($44,172 +/- (2*$439)). At either end of the range, holding telephone expenditures constant, the proportion of total urban expenditures remain roughly around 2.2% to 2.3%.[192]

In contrast, however, Qwest uses the average total expenditures for rural consumers ($38,088) and a restated average telephone expenditures for rural consumers ($89.42) to calculate that the percentage of total rural expenditures devoted to telephone service is 2.8%.[193] The rural total expenditure figure has a greater variability. Given the standard error of $1,319, the rural total expenditure figure could range from $35,450 to $40,726. Simply as a result of this variability in total expenditures, the proportion of total expenditures devoted to telephone services would fall in the range of 2.6% to 3.0%.

The same analysis has to be applied to the telephone expenditures as well. Urban telephone expenditures have a standard error of $9.78. Application of this standard error to urban telephone expenditures would thus yield a proportion of total expenditures devoted to telephone service in the range of 1.7% to 2.8%. The rural telephone expenditures have a standard error of $13.65. Application of this standard error to rural telephone expenditures would yield a proportion of total expenditures devoted to telephone service of 2.0% to 3.7%.

As can be seen, within the range of expected telephone expenditures, and holding total expenditures constant (just for the ease of analysis), it is to be expected that the Qwest restated urban and rural rates could yield urban expenditures of 1.7% of total

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[192] For an explanation of the application of the two standard error analysis to CEX data, see, Blaha, *supra*, at 31.

[193] Qwest Comments at 27.

expenditures, compared to rural expenditures of 3.7%, more than twice as high. Qwest is wrong to conclude that it is necessarily true that "while under [Qwest's] scenario, rural residential telephone service expenditures increase to 2.8 percent of the rural residential budget, the 0.4% increase can be absorbed without displacing other critical expenditures."

The variability in results both for total expenditures generally and for telephone expenditures in particular should be of concern when considering the impact on rural communities. The table below presents the CEX estimates of the coefficient of variation ("CV"). (The CV is simply the standard error as a percent of the standard mean.) As can be seen, the variation in rural estimates tends to run from three to four times higher than the variation in urban estimates.

Coefficient of Variation for Urban and Rural Consumer Units Total Expenditures and Proportion of Total Expenditures Devoted to Telephone Service					
	2004	2003	2002	2001	2000
Total (urban)	0.99	0.93	1.02	1.05	0.90
Total (rural)	3.46	3.02	4.82	3.62	3.44
Telephone (urban)	0.98	0.84	0.95	1.20	1.09
Telephone (rural)	1.48	2.70	3.35	2.07	3.15

In sum, the Qwest analysis based on Consumer Expenditures Survey data has substantive problems inherent within it. The CEX data on which Qwest relies cannot be viewed as establishing what represents an "affordable" expenditure on telephone services. Qwest does not take into account the fact that CEX data presents the sample mean. If a consumer unit surveyed for the CEX incurred no telephone expense because telephone service was too expensive, that consumer unit is included in the sample mean as a $0 expenditure. Consumer expenditures can be at the level that they are at not because they *are* affordable, but because they are *not*. The consumer expenditures reported in the CEX are not expenditures by consumer units having expenditures.

Moreover, the Qwest analysis purporting to show that rural telephone rates could be "restated" at higher levels with no impact on affordability do not take into account the inherent uncertainty (or variance) in the CEX. When measured by reference to this uncertainty, Qwest's restated rural rates could result in rural expenditures (as a percent of total expenditures) more than *twice as high* as urban telephone expenditures are as a percentage of total urban expenditures (1.7% vs. 3.7%).

D. Conclusion: AT&T's proposal misses the MARC; Qwest's formula is flawed.

AT&T's proposal writes the principle of reasonable comparability out of the statute. It must be rejected for that reason alone. Qwest's affordability formula also does not result in a program that would meet the statutory test.

Equally importantly, while AT&T's proposal purports to establish an objective standard of what consumers can reasonably be expected to spend on telephone service, the "standard" is based on misuse of the data. AT&T's proposal ignores the fundamental problem with using a median for a standard: half of the people in the area being considered will have incomes **below** the median, making what is affordable for those at the median by definition unaffordable for those below the median.

Qwest sets up a specious test in its search for rural rates that are affordable. Its distortions of the data are different and no more reliable than those by AT&T.

At base, AT&T's proposal runs counter to the spirit of universal service. AT&T would have rates be raised until they are just below the affordability threshold. Congress certainly did not intend the Act's universal service policies to be used as an excuse for widespread increases in rates.

X. WHAT ARE "REASONABLY COMPARABLE" RURAL RATES?

The major non-rural carriers present a variety of standards or benchmark for determining whether rural rates are reasonably comparable to urban rates:

- Verizon says that the Commission should continue to use the two standard deviation benchmark that was presented to the Tenth Circuit in *Qwest II*.[194]
- BellSouth has its two-part test: Within states, rural rates that are no more than 15% above the urban average are "reasonably comparable";[195] among states, rural rates that are no more than one standard deviation above the urban average are "reasonably comparable."[196]
- Qwest says that rural rates that are no more than 125% of urban rates are "reasonably comparable."[197]

Unfortunately, it seems that these benchmarks are no less arbitrary than those rejected by the Tenth Circuit. And these benchmarks also seem to overlook the actual current range of rates, as demonstrated by the data presented by NASUCA.

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[194] Verizon Comments at 26.

[195] BellSouth Comments at 12. It should be recalled that BellSouth would provide support only to states where rates are **below** the benchmark.

[196] Id. at 15.

[197] Qwest Comments at 23. It should be recalled that Qwest establishes the urban average as a blended average of residential and business rates.

Likewise, Vermont/Maine propose that the Commission use a 125% benchmark in order to narrow existing differences.[198] Yet the data show that many urban rates are currently more than 25% greater than the urban average. It does not seem to make sense to support rural rates when urban rates that are higher are not supported.

Based on examination of the record so far, NASUCA does not have at this point a recommendation for a specific benchmark to be used in the mechanics of its second alternative proposal. (NASUCA's first alternative proposal uses total per-line urban revenues as a benchmark; its simplicity is a main virtue of the proposal.) It should be recalled, however, that in NASUCA's proposal the rate comparability benchmark is only a criterion for eligibility for high-cost support; there is a separate and not necessarily identical benchmark for calculating support based on costs.

It may be that the selection of the benchmark will have to be an iterative process. The key, of course, is for the amount of support awarded to produce rural rates that are reasonably comparable to urban rates. This also requires consideration of the *current* level of support; one cannot simply analyze current rates without considering the impact of current levels of support on those rates. Hopefully, the Commission has the resources to model the combination for the rural wire centers of the non-rural carriers.[199] Finally, the backstop supplemental support mechanism under NASUCA's second alternative proposal will be able to correct any shortfall experienced under whatever benchmark is selected.

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198 Vermont/Maine Comments at 19-20.

199 As discussed above, the definitions of "rural" and "urban" are also crucial to determining comparability.

It should also be noted that GCI's suggestion that only rural rates that are above the highest urban rate should be supported[200] is also seriously flawed. It also does not consider the impacts of current support, and will in the end result in rural rates (after support is awarded) that are **equal** to urban rates.

XI. CONSIDERATION OF LOCAL CALLING AREAS MUST BE PART OF THE PROCESS OF EVALUATING RATES.

Sprint "recommends that the Commission continue to define reasonably comparable rates in terms of local rates only…."[201] Although NASUCA agrees with Sprint that the rates evaluated should not include "Internet access, cable, or other services which are often offered to customers in a package bundled with basic local service,"[202] the expansive local calling areas of urban exchanges and the constricted local calling areas of many rural areas means that evaluating "reasonably comparable" rates must include the "long distance" calling that rural customers must make to reach an equivalent community of interest. As CenturyTel notes, "State regulators and carriers adhere to widely divergent rate design principles; some may prefer larger local calling areas at relatively high monthly rates but with less need for toll calling, while others prefer smaller calling areas at lower monthly rates but with more toll calling."[203] The Commission's task is to ensure that the amount customers in rural areas for service reasonably comparable to

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[200] GCI Comments at 32.

[201] Sprint Comments at 7. That is, except where total revenue is evaluated, as in the urban component of NASUCA's first alternative proposal.

[202] Id. at 8.

[203] CenturyTel Comments at 7.

urban is at reasonably comparable rates; that is why consideration for constricted local calling areas must be built in to the mechanism. NASUCA's second alternative proposal does so.

The WisPSC includes in rates, for purpose of its intrastate fund, adjustments for measured-rate EAS and some amount of intraLATA toll.[204] In the example cited by WisPSC, this extended calling adds 60% to the price of basic service. This makes NASUCA's proposed 35% local calling area adder[205] a conservative estimate.

XI. THE NEED FOR STATE SUPPORT MECHANISMS

Qwest I and *Qwest II* stressed the need for a partnership between federal support mechanisms and state support efforts. *Qwest II* approved of the mechanism adopted in the Order on Remand to induce states to take action.[206] Very few of the commenters addressed the need for further state action in light of the reform of the non-rural high-cost mechanism.

Nebraska, Wisconsin and Wyoming described their intrastate USF efforts.[207] Other commenting states were silent about their efforts.[208] Nebraska proposed a 50/50 federal/state sharing up to an unspecified cap, with the federal fund responsible for all support above the cap.[209] Importantly, Nebraska recognizes that the form of state support

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[204] WisPSC Comments at 6 and fn. 10.

[205] NASUCA Comments at 53-54.

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

[207] NebPSC Comments at 15-20; WisPSC Comments at 2; WyOCA Comments at 5-6.

[208] See IUB Comments; MACRUC Comments, MassDTE Comments.

[209] NebPSC Comments at 20.

is up to the state to determine.[210] NASUCA submits that under these circumstances, the calculation of the state's 50% share and the determination of whether the state has met its share will be very difficult tasks. It appears that NASUCA's fallback supplemental mechanism, which requires a showing that the state has taken effective measures to ensure reasonably comparable rates but that those measures have fallen short, would be more effective on a case-by-case as-needed basis.

It does indeed, however, give rise to questions when it appears that the states that receive the most HCM support -- Mississippi and Alabama -- have no formal intrastate support mechanism. Likewise, states that receive millions of dollars per year in IAS and ICL have no intrastate support mechanism.

As discussed briefly in Section II.A. above, AT&T argues that states must take action to eliminate implicit support. AT&T asserts that "the public interest now *requires* that the Commission move forward once and for all, to eliminate implicit subsidies at all levels."[211] Again, the alleged erosion of intrastate implicit support is a matter for state commissions, and neither the need to adapt to such erosion or the means of adaptation are matters that this Commission should direct.

XII. THE NEED TO FIX THE HIGH-COST MODEL

CenturyTel, which has experience as both a rural and a non-rural carrier,[212] states that an embedded cost mechanism "would not likely produce more reliable estimates of

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[210] Id. at 21.

[211] AT&T Comments at 20 (emphasis in original).

[212] CenturyTel Comments at 1.

carriers' costs than the current mechanism."[213] CenturyTel, like NASUCA, argues for improving the Synthesis Model; specifically, like NASUCA, CenturyTel and others say that rural costs should be compared to an urban benchmark, rather than a national average cost benchmark.[214]

Vermont/Maine propose a number of other reasonable improvements for the cost model.[215] Vermont/Maine also recommend that the Commission issue "a Notice of Inquiry on modeling issues and an anticipated schedule for completing work on evaluating these changes to the model."[216] NASUCA agrees, although it should be possible for the Commission to begin this effort with a Notice of Proposed Rulemaking, rather than with a more preliminary Notice of Inquiry.

XIII. NASUCA'S FIRST ALTERNATIVE PROPOSED NON-RURAL HIGH-COST SUPPORT MECHANISM

CenturyTel's arguments against a revenue-based support mechanism[217] do not contradict the use of urban revenues as a benchmark in NASUCA's first alternative proposal as a benchmark against which to measure rural costs. None of the comments of other parties undercut this NASUCA proposal.

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[213] Id. at 2.

[214] Id. at 3, 17-18; see also CTIA Comments at 14-15; Vermont/Maine Comments at 37.

[215] Vermont/Maine Comments at 38.

[216] Id. at 39.

[217] CenturyTel Comments at 9-10.

XIV. NASUCA'S SECOND ALTERNATIVE PROPOSED NON-RURAL HIGH-COST SUPPORT MECHANISM

Sprint states:

> It makes little sense to provide high cost support to carriers that charge very low rates for basic local service. The Commission should provide non-rural high cost support only to the extent that a carrier's rate for basic local service exceeds, by a specified amount, a prescribed benchmark (such as the national average urban rate).[218]

That is the purpose of NASUCA's threshold rate comparison tests in the second alternative proposal, which consider current levels of support. Likewise, the combination of rate-based eligibility tests and cost-based support calculations should assuage CenturyTel's concerns about a mechanism that depended entirely on rate review.[219]

In essence, NASUCA's second alternative proposal uses a series of three screens to determine if a carrier is eligible for support. The proposal then uses the current cost-based mechanism to determine the amount of support for eligible carriers.

The first eligibility test looks at current rates in rural wire centers. If those rates are above the Commission-set rate threshold, a carrier is eligible for support.[220]

However, if the basic service rates are below the threshold, then consideration must be given to current levels of support. If current rates plus the per-line support in the wire center (if any) exceed the rate threshold, then the assumption is that rates would be

[218] Sprint Comments at 6-7.

[219] CenturyTel Comments at 3-8.

[220] As mentioned in NASUCA's initial comments (at 82), the Commission should address state rate decisions to have a narrow range between urban and rural rates as a disqualifier for federal support. Such decisions should place the burden of support on the state.

above the threshold if the support were eliminated. The carrier whose rates pass this second test would also be eligible for support.

The WisPSC has performed, for the State of Wisconsin, the type of imputation discussed by NASUCA.[221] The graph presented by WisPSC makes the same assumption made by NASUCA: that in the absence of federal support, the rates in the supported areas would be equal to the current rates plus the imputed amount of support.[222]

If a rural wire center's rates are below the threshold even with imputed support, the third and final test needs to be applied. The third test takes the rates with imputed support and adds a local calling area factor, to be set by the Commission for wire centers with limited local calling areas. Thus if the total of rates, imputed support, and local calling area adder are above the threshold, the carrier is eligible for support. **Only carriers whose rural rates plus support plus local calling area adder are still below the threshold would be categorically ineligible for support**.

NASUCA also proposed another test, allowing comparison of rates within a state that would disallow some federal support if urban rates within a state had been allowed to increase such that the disparity with rural rates within the state had narrowed. The WyPSC says that there should not be a comparison of rural and urban rates within each state.[223] Notably, MassDTE says that the comparison of rates within each state should be the **only** comparison.[224] It is not clear whether Wyoming's objection is to any in-state

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[221] WisPSC Comments at 3.

[222] The WisPSC graph also includes access charges as, in effect, a form of universal service support. This incorrectly assumes that access charges are not payment for IXCs' use of the incumbents' networks.

[223] WyPSC Comments at [4].

[224] MassDTE Comments at 15.

comparison at all, or just to an in-state comparison as the exclusive test. NASUCA submits that the in-state comparison can be a useful tool.[225]

Eligibility for support does not, of course, ensure that the carrier will receive support. Only if statewide costs are in excess of the cost benchmark set by the Commission will support be awarded.

Backstopping NASUCA's second proposal is, of course, an expanded version of the current supplemental support mechanism. Vermont/Maine assert that the "ad hoc" nature of the supplemental support system cannot meet the statutory tests of predictability and specificity.[226] This ignores the fact that the supplemental support mechanism was approved by the *Qwest II* court as an element of the necessary inducement for states to adopt their own support mechanism.[227] It also overlooks the fact that an ad hoc approach is best able to adapt to the various circumstances that lead to the need for supplemental support where initial federal and state efforts have not led to reasonably comparable rural rates.

As with NASUCA's first alternative proposal, none of the other comments undercuts the second alternative proposal. Both proposals deserve serious consideration by the Commission.

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[225] See NRIC Comments at 13-14.

[226] Vermont/Maine Comments at 16.

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

XV. NASUCA'S MECHANISMS SHOULD PRODUCE REASONABLY COMPARABLE RATES, SHOULD "PRESERVE" AND "ADVANCE" UNIVERSAL SERVICE, AND SHOULD YIELD A "SUFFICIENT" NON-RURAL HIGH-COST FUND.

BellSouth notes that:

> after two Commission orders, an Order on Remand and two Tenth Circuit opinions, only two core issues remain in order for the entire program to pass judicial muster. First, the Commission must define with specificity the statutory terms of "reasonable comparability" and "sufficiency." Second, the Commission must explain with empirical data and reasoned analysis how the proposed non-rural high-cost mechanism achieves these statutory objectives.[228]

Unfortunately BellSouth's proposals -- like AT&T's, Qwest's and Verizon's -- do not bring us any closer to meeting those two core issues. Both of NASUCA's alternative proposals do so, however, as discussed in the initial comments.

XVI. CONCLUSION

CTIA would like to see "states that continue to regulate LEC rates [to] have incentives to consider whether to keep carrier rates artificially low or increase those rates ….."[229] That might be in CTIA's interest -- if wireline rates are increased, wireless carriers' generally higher rates become marginally more attractive -- but given the variety of circumstances under which state commissions have found that rate increases are justified,[230] it would not likely be in consumers' best interests or in the interest of the universal service principles in the Act.

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[228] BellSouth Comments at 9.

[229] CTIA Comments at 7.

[230] Id.

On the other hand, Vermont/Maine propose that "the FCC could require (not just permit, as it presently does) that Federal high-cost support funds be used to reduce rates" through explicit bill credits.[231] Although one would hope that such would be the result, as some states currently do, and NASUCA has also put forth that possibility,[232] the question of to whom the credits would be given may be an issue best left to the states. NJRPA states,

> ETCs should be required to demonstrate specifically how they are using the high cost funds to narrow the urban/rural gap. Throwing money at the problem might satisfy the Court's mandate but would seriously disserve consumers, who ultimately must foot the bill. … If an ETC receives a high cost fund disbursement, it should be able to translate that disbursement into quantifiable rate reductions.[233]

Of course, current levels of support must be examined; they could increase, but would likely decrease as IAS and ICL are phased out. The end result should be rural rates that are reasonably comparable to urban rates. The carriers should be required to show that the support they receive has produced that result.

NASUCA has presented the Commission with extensive data and specific recommendations that will allow the Commission to meet the terms of the law and of the Tenth Circuit in the *Qwest* cases. The Commission should follow NASUCA's recommendations.

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[231] Vermont/Maine Comments at 40.

[232] NASUCA Comments at 86.

[233] NJRPA Comments at 16.

Respectfully submitted,

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