

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**REPLY COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Dated: May 26, 2006

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I. SUMMARY

The Massachusetts Department of Telecommunications and Energy (“MDTE”) hereby submits these Reply Comments pursuant to the Notice of Proposed Rule Making (“NPRM”)¹ concerning non-rural universal service issued by the Federal Communications Commission (“Commission” or “FCC”) on December 9, 2005, and published in the Federal Register on January 11, 2006, and in response to the initial comments on the NPRM submitted on or before March 27, 2006.

The FCC issued the NPRM in response to the United States Court of Appeals for the Tenth Circuit’s decision in Qwest Corp. v. Federal Communications Comm’n, 398 F.3d

¹ Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-205 (rel. Dec. 9, 2005).

1222 (10th Cir. 2005) (“Qwest II”), in which the Court remanded the FCC’s earlier Order on Remand² concerning a non-rural high-cost universal service support mechanism.

In the NPRM, the Commission requested comments on the following issues:

- (1) how the Commission should define the statutory term “sufficient” to take into account all the principles enumerated in Section 254(b);
- (2) how the Commission should define “reasonably comparable” under Section 254(b)(3), consistent with its concurrent duties to preserve and advance universal service;
- (3) how, in light of the interpretation of the key statutory terms, the Commission should modify the high-cost funding mechanism for non-rural carriers; and
- (4) whether the Commission should adopt a non-rural insular mechanism.

NPRM at ¶ 7.

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559 (2003) (“Order on Remand”). In the Order on Remand, the FCC sought to address an earlier remand by the Tenth Circuit of the FCC’s Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (“Ninth Report and Order”). In its review of the FCC’s Ninth Report and Order, the Tenth Circuit directed the FCC to “more precisely define the terms ‘sufficient’ and ‘reasonably comparable’ in a way that can be reasonably related to the statutory principles.” Qwest Corp. v. Federal Communications Commission, 258 F.3d 1191 (10th Cir. 2003)(“Qwest I”).

In its comments submitted on March 27, 2006, the MDTE recommended that the Commission:

adopt a definition of “sufficient” that gives significant weight to the principle of affordability; that the Commission define “reasonably comparable” in a manner that compares costs and rates between rural and urban areas within a state, rather than between states; and that the Commission adopt a funding mechanism that takes into account customers’ ability to pay, and relative costs and rates between rural and urban areas within a state, in order to ensure that the size of the universal service fund is only so large as necessary and that low-cost states are not over-subsidizing high-cost states.

Comments of the Massachusetts Department of Telecommunications and Energy, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, at 15-16 (filed with the FCC March 27, 2006) (“Initial Comments”). These Reply Comments are submitted to reiterate the MDTE’s overall position in its Initial Comments that any changes to the non-rural ILEC high cost universal service support program should promote economic efficiency and fairness. See also Comments of Middle Atlantic Regulatory Commission and State Commissioners of the MACRUC States, Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket 05-337, at 4 (filed with the FCC March 27, 2006)(stating that any resolution for changing the non-rural high cost fund must take into account the interests of all states, including “net contributor” states, and should “balance the needs of all these sates in an equitable and just manner”).

II. DISCUSSION

As the MDTE stated in its Initial Comments, “the correct rate (or cost) comparison is not between rural and urban rates in different states but between rural and urban rates within a state.” Initial Comments at 12. Accordingly, in redefining the term “reasonably comparable,” the FCC should compare rates³ between urban and rural areas within a state, rather than between states, in order to comply with the Court’s remand and to identify and correct problems with existing state ratemaking policies that may needlessly shift the burden of paying for telephone service in high-cost states to low-cost states. Id. at 4. The MDTE agrees with the comments of the CTIA - The Wireless Association that reasonable comparability does not necessarily mean that rural rates must be the same or lower than urban rates, and that the FCC should reject arguments that rural rates are unaffordable unless they are lower than those in urban areas. See Comments of CTIA - The Wireless Association, Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket 05-337, at 4-5 (filed with the FCC March 27, 2006).

³ As noted in the MDTE’s Initial Comments at 4 n.4 “[c]omparing rates may not be meaningful since in most states non-rural carriers have statewide geographically averaged local exchange basic rates. Therefore, a comparison of costs may also be necessary” (internal citation omitted).

As the FCC has noted, most states have geographically averaged basic residential service rates. NPRM at ¶ 18 n.71, citing Order on Remand at ¶ 22 n.55, App. C. However, in those states with geographically deaveraged rates, the FCC notes that “more than half [of states] reported using value-of-service pricing to establish relative rates for different geographic areas, which results in lower rates in rural, less populous areas relative to rates in urban areas.” Id. There are likely other means for high-cost states to provide or contribute more toward providing affordable telephone service to their residents before resorting to external subsidies (e.g., rate rebalancing, in-state Universal Service Fund (“USF”) funding, means-testing for eligibility to USF funds). See Comments of the Massachusetts Department of Telecommunications and Energy, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 4 (filed with the FCC April 10, 2002); see also Comments of SBC Communications Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 7 (filed with the FCC Sept. 30, 2005).

Accordingly, economic efficiency and fairness logically require that net-recipient states not be allowed to continue to set rates in rural areas – where costs are significantly higher – below rates for urban areas in their states, and continue to receive high-cost universal service support from low-cost payor states, many of which, like Massachusetts, have gone through the difficult process of rate rebalancing, to subsidize their residents.

Net-recipient states ought to be expected to redesign and justify their rates as a precondition of continued USF support eligibility.⁴

Requiring high-cost states to seek other means of providing affordable telephone service to their residents before resorting to external subsidies is consistent with the principle of sufficiency that high-cost universal service support should be “only as large as necessary to meet . . . statutory goal[s].” NPRM at ¶ 11; see also Order on Remand at ¶ 30. As the MDTE noted in its Initial Comments, a comparison of urban and rural rates within a state will shine the spotlight on those high-cost state policies that continue to shift the responsibility for telephone costs to low-cost states. See Initial Comments at 13.

MDTE recommends that in adopting a definition of “sufficient” and balancing the principles in Section 254(b), the Commission should give significant weight to the principle of affordability. See Initial Comments at 4, 15. The MDTE submits that non-rural high-cost support should be means-tested either by defining affordability in relationship to income such as that proposed by SBC Communications, Inc. or by eligibility requirements based on household income. Id. at 9. Such means-testing will limit subsidies to only those customers most in need of support and thereby will ensure that rates in net-payor states,

⁴ If necessary, the MDTE would not oppose affording such states a reasonable grace period, perhaps two or three years but not more, to complete such intrastate rate redesign.

such as Massachusetts, do not become unaffordable as a result of excessive USF surcharges.

See generally Comments of AT&T, Inc. Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, at 14-23 (filed with the FCC March 27, 2006).

III. CONCLUSION

In summary, the MDTE reiterates its recommendation that the Commission define “reasonably comparable” in a manner that compares costs and rates between rural and urban areas within a state, rather than between states (or on a nationwide basis) and that the Commission adopt a funding mechanism that takes into account relative costs and rates between rural and urban areas within a state, and that significant weight be given to the principle of affordability, in order to ensure that the size of the universal service fund is only so large as necessary and that low-cost states do not unfairly subsidize high-cost states. If users in low-cost states such as Massachusetts must be forced to defray USF costs, then so be it: but our users should not be forced to bear irrationally inflated and

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economically inefficient costs that sound federal regulation has the means in its power to mitigate - and that, without any sacrifice of fairness.

Respectfully submitted,

Commonwealth of Massachusetts
Department of Telecommunications and Energy

By:

/s/
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/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Brian Paul Golden, Commissioner

May 26, 2006

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