

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

In the Matter of)	
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)	
Iowa Telecom Petition for Interim Waiver of the Commission's Universal Service High- Cost Loop Support Mechanisms)	WC Docket No. 05-337
)	
Iowa Telecom Petition for Forbearance Under 47 U.S.C. 160(c) from the Universal Service High-Cost Loop Support Mechanisms)	

REPLY COMMENTS OF IOWA TELECOM

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REPLY COMMENTS OF IOWA TELECOM

Iowa Telecommunications Services, Inc. (“Iowa Telecom”) replies to the comments filed in response to its request for interim waiver and/or forbearance of the Federal Communications Commission’s (“FCC” or “Commission”) universal service high-cost loop support mechanisms.¹ The Commission should grant the Petitions’ request that Iowa Telecom be eligible for high-cost universal service support under the non-rural high-cost loop support mechanism until such time as the FCC adopts a final successor regime to the *Rural Task Force Order* that allows rural price cap carriers to receive loop support based on their networks’ forward-looking economic costs.

¹ See *Iowa Telecom Petition for Interim Waiver of the Commission’s Universal Service High-Cost Loop Support Mechanisms*, WC Docket No. 05-337 (filed May 8, 2006) (“*Waiver Petition*”); *Iowa Telecom Petition for Forbearance Under 47 U.S.C. 160(c) from the Universal Service High-Cost Loop Support Mechanisms*, WC Docket No. 05-337 (filed May 8, 2006) (“*Forbearance Petition*”) (collectively the “*Petitions*”). The requested relief does not apply to the Montezuma Mutual Telephone Company, which became a wholly-owned subsidiary of Iowa Telecom effective July 1, 2006. Iowa Telecom intends to operate the Montezuma exchange on a non-integrated basis, until such time that Iowa Telecom can evaluate the operations of that company and determine the most appropriate regulatory framework for that company on a going-forward basis. See, e.g., *Forbearance Petition* at n.2.

I. INTRODUCTION AND SUMMARY

Commenters are supportive of Iowa Telecom’s requested result: to be eligible for universal service support based on its network’s forward-looking economic costs. These commenters correctly recognize that Iowa Telecom is at a unique disadvantage as the only pure rural price cap carrier at both the federal and state level – a classification that forces the company to determine its universal service support under the rural mechanism’s embedded cost calculation. Without a change in the basis for universal service support, Iowa Telecom will be left with the Hobson’s choice of either raising rates for end-user customers or curtailing much-needed investment for network upgrades. Commenters also point to the Commission’s solid endorsement of the forward-looking economic cost methodology as further supporting Iowa Telecom’s requested relief.

While several commenters express outright support for the Petitions, a few parties question the means by which this change in universal service policy should be effectuated: they do not believe that the Commission should waive or forbear its universal service rules in this context. Instead, they prefer that Iowa Telecom’s desired change occur as part of a different proceeding, or through adoption of a preferred comprehensive reform package. This is truly form over substance. These same commenters have consistently endorsed the use of forward-looking economic costs for rural carriers including Iowa Telecom in prior comments – and admit as much in this proceeding. Commenters who object to Iowa Telecom’s request for “special treatment” cannot reconcile this inconsistency – nor can they plausibly justify the fairness of Iowa Telecom’s current regulatory treatment.

What is more, Iowa Telecom is statutorily entitled to ask the Commission to rule on the Petitions on their merits, and its requests may not merely be lumped together with global universal service reform efforts. In any event, grant of Iowa Telecom’s petitions requires no

modification to any universal service mechanism and would in no way prejudice comprehensive reform. In contrast, those commenters advocating that Iowa Telecom's immediate concerns be addressed in future comprehensive reform efforts do not even agree on which proceeding Iowa Telecom's unique conditions would be best addressed.

In keeping with the general agreement on the ultimate relief for Iowa Telecom, the Commission can easily discard the remaining procedural issues raised by commenters. As demonstrated in the Petitions, Iowa Telecom's requests satisfy each of the requirements of the Commission's forbearance test as well as the waiver standard. Moreover, the Commission has ample authority to provide the requested relief, and such grant would be consistent with the Commission's past precedent and universal service policy. As is its practice, the Commission should also disregard attempts to interject unrelated issues into this analysis.²

As highlighted by the commenters, Iowa Telecom's unique and inconsistent regulatory situation requires an expeditious remedy. Fortunately, the relief Iowa Telecom seeks – to calculate eligibility for universal service support based on its network's forward-looking economic cost – is fully consistent with Commission precedent as well as commenters' positions in this and related proceedings. The FCC should grant the Petitions without delay.

² Similarly, the Commission should be sensitive to the fact that the majority of the criticism comes from a single party, Sprint Nextel. It bears highlighting that Sprint Nextel nonetheless concedes its agreement with the Petitions' desired end result: as it is "generally support[ive of] the use of an appropriate forward-looking economic cost methodology." Opposition of Sprint Nextel, WC Docket No. 05-337, at 10 (July 3, 2006) ("*Sprint Nextel Comments*"). The apparent genesis of Sprint Nextel's lengthy response is a separate and distinct interconnection-related proceeding before the Iowa Utilities Board between Iowa Telecom and Sprint Nextel. The Commission need not address any of the issues from this completely unrelated proceeding, nor should the Commission give weight to any of Sprint Nextel's allegations described herein given its apparent animosity toward Iowa Telecom's pursuit of a fair and proper adjudication of that unrelated matter.

II. COMMENTERS ARE NEARLY UNANIMOUS IN THEIR SUPPORT OF IOWA TELECOM'S REQUESTED RELIEF.

Iowa Telecom seeks to be eligible for universal service support based on the forward-looking economic cost of its network, a result supported widely by the commenters in this proceeding. Granting Iowa Telecom this temporary relief is consistent with Commission policy and would not affect or delay ongoing efforts to reform comprehensively the universal service fund.

A. Iowa Telecom's Universal Service Funding Should be Based on its Network's Forward-Looking Economic Costs.

Iowa Telecom is gratified by commenters' recognition that Iowa Telecom's unique situation as the only pure rural price cap carrier places it in an "untenable position" under current universal service rules "that demands Commission attention and action."³ Commenters further concur that the best solution to Iowa Telecom's predicament is a transition to a forward-looking economic cost methodology.

Under its current regulatory classifications, ITTA explains, Iowa Telecom is "caught in a trap in which its federal and state wholesale and retail pricing mechanisms and corresponding incentives do not align with the [embedded cost] method by which rural carriers become eligible for high-cost loop support."⁴ Instead, Iowa Telecom's price-cap regulation makes the company more suitable for treatment under the non-rural, forward-looking economic cost-based mechanism. AT&T further notes that because of this regulatory incongruity, "Iowa Telecom faces the Hobson's choice of imposing significant rate increases or foregoing network

³ Comments of AT&T Inc., WC Docket No. 05-337, at 3 (July 3, 2006) ("*AT&T Comments*"); see *Forbearance Petition, Appendix* at 9-12 (detailing the regulatory effects of this unique classification).

⁴ Comments of the Independent Telephone and Telecommunications Alliance, WC Docket No. 05-337, at 1-2 (July 3, 2006) ("*ITTA Comments*").

investment necessary to provide advanced services to its customers.”⁵ It is precisely these outcomes that Iowa Telecom seeks to avoid by transitioning to the non-rural universal service mechanism at this time.

Commenters identify not only Iowa Telecom’s individualized need to calculate universal support based on forward-looking economic cost, but also note the Commission’s longstanding endorsement of this methodology.⁶ As Embarq makes clear, “the Commission has long held that forward-looking economic cost ... is the correct costing methodology upon which to base explicit support.”⁷ Consistent with the *Rural Task Force Order*, which mandated that “rural carriers would shift gradually to a forward-looking economic cost methodology,”⁸ CTIA agrees that there is “no need” for Iowa Telecom “to remain on an embedded-cost mechanism.”⁹

Indeed, even the commenters that oppose Iowa Telecom’s current Petitions have been ardent advocates of transitioning rural carriers like Iowa Telecom to a forward-looking economic cost-based methodology. Sprint Nextel admits that it “generally supports the use of an appropriate forward-looking economic cost methodology for distribution of all high-cost

⁵ *AT&T Comments* at 2.

⁶ Iowa Telecom takes no position as to whether all mid-sized or larger rural carriers should be required to transition from one mechanism to another. Given the unique conditions in which Iowa Telecom operates, grant of the Petitions would not require that any other carrier be transitioned to the non-rural mechanism.

⁷ Comments of Embarq Corporation, WC Docket No. 05-337, at 1 (July 3, 2006) (“*Embarq Comments*”).

⁸ *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, 16 FCC Rcd. 11244, ¶ 4 (2001) (“*Rural Task Force Order*”).

⁹ Comments of CTIA – The Wireless Association, WC Docket No. 05-337, at 3 (June 30, 2006) (“*CTIA Comments*”).

universal service funds” yet takes the exact opposite position in this proceeding.¹⁰ Nonetheless, Sprint Nextel’s consistent contention that embedded costs “may reflect inefficiencies” while “use of a forward-looking economic cost model sends the correct signal to new entrants regarding the actual cost of entering the market”¹¹ apply fully to Iowa Telecom’s current situation.

Similarly, the National Association of State Utility Consumer Advocates (“NASUCA”), which also opposes the Petitions, has informed the Commission that “[a]pplication of forward-looking costs builds an incentive structure into universal service, rewarding efficiency” and “is necessary in an environment of emerging competition.”¹² Based on these advantages, NASUCA acknowledges in its comments that it has “advocated moving all rural carriers with more than 100,000 access lines to a forward-looking cost test” – a threshold that would include Iowa Telecom.¹³

¹⁰ *Sprint Nextel Comments* at 10. *See* Section III *infra*.

¹¹ Comments of Sprint Nextel Corporation, CC Docket No. 96-45, at 9 (Sept. 30, 2005). In addition, before their merger, both Sprint and Nextel consistently advocated for rural carriers to determine their eligibility for universal service support based on forward-looking economic costs. *See* Comments of Sprint Corporation, CC Docket No. 96-45, at 2 (Oct. 15, 2004) (“Sprint has consistently stated that forward-looking economic costs ... are appropriate to use when determining explicit universal service support, for two specific reasons: 1) forward-looking costs send the proper signals to potential entrants regarding the cost of entering the market and, more importantly, 2) embedded costs that reflect rate of return regulation will incorporate the perverse incentives to reward inefficiency that are inherent in that type of regulation.”); Comments of Nextel Communications, Inc., CC Docket No. 96-45, at 7-8 (Oct. 15, 2004) (arguing that “a forward-looking cost methodology is preferable to an embedded cost methodology in a competitive market because it provides appropriate and necessary signals for investment, entry and innovation in telecommunications markets” and advocating for “transitioning all [carriers] with over 50,000 supported lines in a study area, or 100,000 lines in a state, to a forward looking cost methodology”).

¹² Reply Comments of NASUCA, CC Docket No. 96-45, at 39-40 (Dec. 14, 2004) (“*NASUCA Rural Reply*”).

¹³ Comments of The National Association of State Utility Consumer Advocates, WC Docket No. 05-337, at 2 n.5 (July 3, 2006) (“*NASUCA Comments*”) (citing *NASUCA Rural Reply* at 2). NASUCA attempts to distinguish its general position from the situation when a single

It is seemingly disingenuous for commenters that have stood by the effectiveness of a forward-looking economic cost methodology for companies like Iowa Telecom to suddenly oppose it in this instance, in which that methodology would provide Iowa Telecom funding in accordance with section 254's universal service mandate. If the mechanism is lawful and appropriate, as they maintain, then Iowa Telecom should be provided these funds based on an objective assessment of its network and the application of section 254's universal service goals. Iowa Telecom urges the Commission to heed these parties' long-held positions on the use of forward-looking economic costs, rather than their knee-jerk reaction to the application of this methodology to Iowa Telecom.

B. Ruling on the Petitions as Statutorily Required Need Not Affect or Delay Comprehensive Reform.

With the appropriate solution to the regulatory inconsistencies faced by Iowa Telecom readily apparent, the Commission should expeditiously grant the Petitions to allow Iowa Telecom to receive support under the non-rural high-cost mechanism pending comprehensive reform of the Commission's current universal service regime. The Commission is statutorily obligated to consider the individual merits of Iowa Telecom's Petitions, and may not defer that examination until the completion of global universal service reform. Swift consideration is warranted because Iowa Telecom is in clear need of relief and no final consensus or agreement on reworking the high-cost loop mechanisms is in sight. The Commission can grant Iowa Telecom the requested relief without affecting or prejudicing its broader rulemakings.

carrier would be transitioned to the forward-looking economic cost-based mechanism. However, the factors NASUCA identifies that make the use of forward-looking economic costs necessary apply equally to Iowa Telecom whether the company transitions to that methodology individually or as part of a group.

Iowa Telecom is statutorily entitled to ask the Commission to address its Petitions on the merits, and the Commission may not simply deny or dismiss them, as some commenters suggest, because of the pendency of comprehensive universal service reform.¹⁴ The D.C. Circuit has held that the forbearance mechanism under section 10 of the Communications Act of 1934, as amended (“the Act”) is “a viable and independent avenue of appeal” regardless of the availability of “an alternative route” for relief under another Commission proceeding.¹⁵ Indeed, the Commission “has no authority to sweep [a forbearance petition] away by mere reference to another, very different, regulatory mechanism.”¹⁶

A number of commenters would prefer nonetheless that Iowa Telecom receive its requested relief through a separate Commission rulemaking or through a commenter-backed comprehensive reform package.¹⁷ None of these parties, however, provides any rationale as to how denying the requested relief here will hasten the adoption of that same result in a subsequent proceeding. Similarly, Sprint Nextel provides no explanation for its opinion that acting on this discrete petition could significantly delay the FCC in moving forward with comprehensive reform.¹⁸

Moreover, none of these parties rebut that waiting for the resolution of other Commission proceedings would unnecessarily delay grant of clearly-needed relief to Iowa. It was in 1997 that the Commission announced it would use forward-looking economic costs to distribute high-

¹⁴ See *CTIA Comments* at 4.

¹⁵ *AT&T Corp. v. FCC*, 236 F.3d 729, 731, 738 (D.C. Cir. 2001).

¹⁶ *Id.* at 738.

¹⁷ See *AT&T Comments* at 3, *CTIA Comments* at 1, *NASUCA Comments* at 6, *Sprint Nextel Comments* at 11.

¹⁸ See *Sprint Nextel Comments* at 11.

cost loop support to all incumbent local exchange carriers (“ILECs”).¹⁹ Iowa Telecom has dutifully waited for the Commission to develop a successor regime to the modified embedded cost approach the Commission mandated for rural carriers in the *Rural Task Force Order*. Yet with the recent expiration and indefinite extension of the *Rural Task Force Order*’s five-year period, no resolution is likely in the near term.²⁰

The unique nature of Iowa Telecom’s requested relief is only underscored by the fact that these commenters suggest *different* ongoing proceedings in which Iowa Telecom’s concerns should be addressed. CTIA recommends that the Federal-State Joint Board on Universal Service (“Joint Board”) consider Iowa Telecom’s requested relief in its review of the basis of universal support for rural carriers,²¹ while AT&T asks for “prompt action” in the Commission’s Tenth Circuit remand proceeding on the non-rural mechanism as the “best way to resolve Iowa Telecom’s situation.”²² As a practical matter, neither of these proceedings is likely to be

¹⁹ See *Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, ¶ 199 (1997) (“*First Report and Order*”) (subsequent history omitted).

²⁰ See *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Order, CC Docket No. 96-45, WC Docket No. 05-337, FCC 06-69 (May 16, 2006) (causing the current rules under which rural carriers are eligible for high-cost universal service support to remain in effect after the June 30, 2006 deadline until such time as the Commission adopts new rules).

²¹ *CTIA Comments* at 2 (citing *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, Public Notice, 19 FCC Rcd 16083 (2004)). NASUCA also suggests resolution of Iowa Telecom’s request in this proceeding. *NASUCA Comments* at 8.

²² *AT&T Comments* at 3; see *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd. 19731 (2005). Sprint Nextel states that the Commission should address Iowa Telecom’s request “as part of its overall reform of the universal service fund distribution mechanisms” without specifying a proceeding. *Sprint Nextel Comments* at 10.

concluded in the near future, and the Commission can grant Iowa Telecom’s straightforward request without resolving the complex issues raised in either of those proceedings.

Other commenters properly recognize that Iowa Telecom can receive support under the non-rural mechanism without affecting ongoing Commission rulemaking, and that, therefore, the Petitions should be granted. In particular, Embarq notes that while the Commission has declined to date to modify its existing non-rural high-cost model to better suit rural carriers, Iowa Telecom’s Petitions “do not request any modification” of either the non-rural high-cost model or the process of determining support based on forward-looking economic cost.²³ Since no change of underlying mechanisms or procedures is requested, grant of the Petitions would not prejudice, or, as NASUCA inaccurately claims, “preempt” any broader Commission proceedings.²⁴ In sum, the Commission should decline any requests to defer consideration of Iowa Telecom’s Petitions or combine them with overarching universal service efforts, and, instead, should grant the temporary relief requested.

III. THE COMMISSION HAS AMPLE AUTHORITY TO GRANT THE PETITIONS.

Iowa Telecom’s request that the default non-rural mechanism be applied to it due to its unique operating conditions is fully consistent with the Commission’s authority to forbear or waive its rules under the Act. The Petitions demonstrate Iowa Telecom’s satisfaction of each statutory requirement, and the company has pledged to invest all universal service funding in a

²³ *Embarq Comments* at 3.

²⁴ *NASUCA Comments* at 8. In fact, in considering forbearance petitions under section 10, the Commission has emphasized that it may only address “the regulatory and statutory provisions at issue” and “cannot [] issue comprehensive proclamations” of the type that would result from a rulemaking proceeding. *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd. 19415, ¶ 14 (2005) (“*Qwest Forbearance Order*”). Commenters’ fears that action on Iowa Telecom’s petitions would prejudice larger proceedings are baseless.

manner consistent with the Commission's rules. The attempts of some commenters to challenge this authority do not withstand scrutiny.

A. Iowa Telecom Satisfies all Statutory Requirements.

Iowa Telecom has fully met the standards for forbearing from or waiving the Commission's high-cost funding rules to permit Iowa Telecom to be eligible for high-cost universal service support based on its network's forward-looking economic cost. No commenter has disputed that Iowa Telecom's petition for forbearance meets the first prong of the forbearance test; therefore, this reply is limited to prongs two and three and the waiver standard.²⁵ Contrary to some critics' claims, Iowa Telecom has shown that enforcement of the Commission's rules "is not necessary for the protection of consumers" and that waiver and/or forbearance is in the public interest.

1. *Forbearance Would Benefit Consumers in Iowa Telecom's Service Area.*

As detailed in the *Forbearance Petition*, Iowa Telecom satisfies the second prong of the forbearance test, because enforcement of the Commission's rules specifying how rural carriers calculate their eligibility for high-cost universal service support "is not necessary for the protection of consumers."²⁶ Instead, it is the application of those rural rules to Iowa Telecom – requiring the company to use the rural, embedded cost mechanism for universal service purposes

²⁵ As explained in the Petitions, the statutory forbearance test requires the Commission to forbear from applying any provision of its rules if it finds that: 1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; 2) enforcement of such regulation or provision is not necessary for the protection of consumers; and 3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a). The FCC also has the authority under section 1.3 of its rules to waive its rules at any time "for good cause shown." 47 C.F.R. § 1.3.

²⁶ *Forbearance Petition* at 6.

despite the application of price cap regulation – that disadvantages consumers in Iowa. Indeed, AT&T recognizes in its comments that the current framework “places Iowa Telecom, *and its customers*, in an untenable position.”²⁷ When Iowa Telecom is permitted to calculate support based on its forward-looking economic costs, it will be able to further invest in its network, accelerating network upgrades and deployment of advanced services without corresponding rate increases.²⁸ This would undoubtedly benefit consumers.

Furthermore, the benefits accruing to customers when Iowa Telecom receives support under the most appropriate high-cost mechanism far outweigh any suggested cost to consumers of a minimal increase in the overall size of the universal service fund. Iowa Telecom’s request, which would increase the ILEC portion of the universal service fund by less than 0.2 percent, surely would not “burden the fund” as Sprint Nextel contends.²⁹ In fact, as the former Sprint argued when applying to be designated as an eligible telecommunications carrier (“ETC”), the Commission has shown a “ready willingness” in other contexts to grant petitions that “will increase the overall [universal service] fund by up to one percent”³⁰ – a threshold Iowa Telecom is substantially beneath. Sprint Nextel’s concerns for the overall size of the fund apparently are not so great that it considered not seeking ETC status to support its wireless operations.³¹

²⁷ *AT&T Comments* at 3 (emphasis added).

²⁸ *Forbearance Petition, Appendix* at 14-17.

²⁹ *Sprint Nextel Comments* at 2. The 0.2 percent calculation (\$7.7 million compared to the total high-cost fund, \$3.49 billion) is an updated figure to correct a minor calculation error in the Petitions, which has no bearing on the analysis. *See Forbearance Petition, Appendix* at 21.

³⁰ Reply Comments of Sprint Corporation, CC Docket No. 96-45, at 5 (June 9, 2004) (emphasis omitted).

³¹ According to Universal Service Administrative Company estimates, Sprint is projected to receive more than \$24 million in the third quarter of 2006 alone (more than \$97 annualized) in universal service support based not on its costs, but rather on the costs of the ILEC in its service

As Sprint Nextel correctly points out, the Commission has permitted such a “minimal” increase previously in granting a forbearance petition that otherwise benefits consumers.³² Here, Iowa Telecom has demonstrated the requisite benefits to consumers in Iowa that support grant of its forbearance petition. Sprint Nextel also ignores that – absent Commission relief – further end-user rate increases could be necessary to fund needed network investment efforts, which would have more direct negative effects on consumers.³³

2. *Iowa Telecom’s Requested Relief is in the Public Interest.*

Iowa Telecom meets both the waiver standard and the third prong of the forbearance test as demonstrated by the public interest showing in the Petitions.³⁴ Specifically, Iowa Telecom has demonstrated that, in its singular position as the only pure rural price cap carrier, the embedded cost mechanism is ill-suited to its operational realities and grant of the Petitions would benefit the public by spurring investment and competition in Iowa.

As explained in detail in the Petitions, a switch to the non-rural mechanism will provide support for Iowa Telecom’s substantial undertakings to invest in its telecommunications

territories. Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2006, Appendix HC 01 (Universal Service Administrative Company, May 2, 2006). This is in sharp contrast to Iowa Telecom, which receives no high-cost loop support for its operation in over 400 rural Iowa communities.

³² *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095, ¶ 17 (2005) (“*TracFone Wireless Order*”); see *Sprint Nextel Comments* at 5 & n.5 (citing same).

³³ See *Forbearance Petition, Appendix* at 16 (“Rural customers should neither be forced to bear the cost of construction through steep rate hikes, nor be deprived of advanced services. Yet, the FCC’s current regulations threaten to leave Iowa Telecom without viable options to preserve and advance universal service under [section 254].”).

³⁴ *Forbearance Petition* at 6-8; *Waiver Petition* at 2-4.

infrastructure in Iowa, to the benefit of consumers.³⁵ Iowa Telecom acquired a substantially underinvested network that requires costly upgrades, but the rural mechanism calculates Iowa Telecom's eligibility for support based only on its historic costs, not on the actual forward-looking expenditures necessary to operate a modern network. Iowa Telecom has already raised customer rates to fund needed investment.³⁶

Iowa Telecom's detailed explanation of important upgrades and their substantial cost, the need for a prior rate increase and the impact of the embedded cost mechanism belie Sprint Nextel's claim that "no facts on the record" show that funding is needed to subsidize needed investment.³⁷ In fact, AT&T found Iowa Telecom's stated facts sufficient to conclude that, under its current regulatory regime Iowa Telecom is in the unenviable position of either "imposing significant rate increases or foregoing network investment necessary to provide advanced services to its customers."³⁸ It is squarely in the public interest to provide Iowa Telecom with another alternative: namely, high-cost loop support based on the true costs of its network.

Sprint Nextel's and NASUCA's colorful characterizations of Iowa Telecom's motives in seeking relief are gross manipulations. Receiving universal service funding in the manner most consistent with Iowa Telecom's operations and pursuant to the FCC's implementation of section 254's universal service mandate is far from an attempt by Iowa Telecom to "game" the

³⁵ *Forbearance Petition, Appendix* at 15.

³⁶ *Forbearance Petition, Appendix* at 14.

³⁷ *Sprint Nextel Comments* at 7.

³⁸ *AT&T Comments* at 2.

system”³⁹ or “create its own rules.”⁴⁰ Similarly, granting Iowa Telecom’s requested relief would provide the company with a level of funding that more closely reflects its network investment, not an undeserved “windfall.”⁴¹ The same commenters that have recognized the clear benefits of a forward-looking economic cost-based mechanism for investment and competition cannot now rationally claim that it defeats the public interest to allow Iowa Telecom to use the very mechanism they have been encouraging the FCC to adopt.⁴² Further, as detailed above, the Commission itself has long supported the use of a forward-looking economic cost-based mechanism. Application of forward-looking costs is consistent with the Commission’s stated goals, will enhance the provision of services to over 400 rural Iowa communities, and is in the public interest.

B. The Petitions’ Requested Relief is Consistent with Commission Authority and Universal Service Policies.

Both the Commission’s waiver and forbearance authority provide a proper procedural means by which to provide Iowa Telecom its desired relief. Specifically, Iowa Telecom seeks

³⁹ *NASUCA Comments* at 8.

⁴⁰ *Sprint Nextel Comments* at 10.

⁴¹ *Id.* at 1. In making the allegation that Iowa Telecom’s relief would be a “windfall,” Sprint fails to acknowledge its own wireless ETC receipts. *See, supra*, n. 31.

⁴² Given the regulatory anomaly of Iowa Telecom (pure rural price cap carrier at both the federal and state levels), it is unclear whether grant of Iowa Telecom’s petitions would cause any other carrier to seek similar relief, or whether such a carrier could provide adequate factual support for its request. Regardless, Sprint Nextel’s complaint about the potential for “copycat” petitions is not relevant to either the waiver or forbearance standard. *See Sprint Nextel Comments* at 2 (contending, without support, that granting Iowa Telecom’s petitions “would inevitably trigger similar demands by other carriers”). Furthermore, Sprint Nextel fails to explain the alleged public interest harm in allowing other carriers to calculate support under the funding mechanism most tailored to their operational and regulatory realities. Indeed, copycat petitions (if they were to occur) would also seemingly serve Sprint Nextel and other commenters’ long-term advocacy goals by shifting even more carriers to the non-rural mechanism.

forbearance or waiver from the current universal service carve-out for rural carriers to permit receipt of support available to all other carriers under the default non-rural mechanism. No new rules or mechanisms are necessary.

Sprint Nextel and NASUCA, however, suggest that the Commission's authority does not permit the Commission to waive/forbear from an exception to a general policy, thereby allowing the general policy to control.⁴³ They argue that granting the Petitions alone would result in Iowa Telecom's eligibility under neither high-cost program, because, in their view, a rulemaking proceeding is necessary to ensure Iowa Telecom's eligibility under the non-rural fund. This is simply untrue: these parties misconstrue the relationship between the non-rural and rural mechanisms, the Commission's authority, and relevant Commission precedent.

As an initial matter, the Commission's two high-cost loop programs are inextricably linked, and cannot be viewed in isolation. The Petitions demonstrate in some detail that the rural mechanism – based on embedded costs – is an exception to the general Commission policy that universal service support should be based on forward-looking economic costs.⁴⁴ The *Rural Task Force Order* allowed a subset of ILECs, rural carriers, to avoid the default mechanism for a five-year (now indefinite) period.⁴⁵ Iowa Telecom seeks forbearance and/or waiver to allow the default rule of general applicability to control, which is fully within the FCC's authority. It is therefore untrue that no universal service mechanism would apply to an ILEC if the rural rule is no longer applicable.

⁴³ *NASUCA Comments* at 6 (suggesting that “[t]his is not forbearance, nor is it waiver. This is positive rulemaking.”). CTIA also “questions whether forbearance and/or waiver petitions are appropriate legal vehicles” without substantiation or explanation. *CTIA Comments* at 1.

⁴⁴ *See Forbearance Petition, Appendix* at 3-9; *see also, supra*, section I.

⁴⁵ *See, supra*, n.20.

The regulated action is analogous to the relief from dominant carrier regulations the Commission granted Qwest in the Omaha Metropolitan Statistical Area.⁴⁶ Upon forbearance from dominant carrier regulation, Qwest became subject to the default non-dominant carrier requirements without the need for further proceeding or rulemaking.⁴⁷ Yet under NASUCA and Sprint Nextel’s analysis, Qwest would be subject to no regulation at all – neither dominant carrier or non-dominant carrier – if regulatory relief from dominant carrier regulation was granted. This is nonsensical; if an unnecessary policy is lifted, the underlying general policy applicable to other carriers must control. As such, Iowa Telecom does not request that the Commission adopt new universal service rules through its forbearance authority, only that an unnecessary exception is lifted.

C. Some Commenters Mischaracterize the Requested Relief and the Intended Use of Universal Service Support.

It appears that much of NASUCA and Sprint Nextel’s concerns with the Petitions lie in a basic misunderstanding of Iowa Telecom’s requested relief and its intended use of high-cost loop funding. With respect to the requested relief, Iowa Telecom seeks only to be eligible for support under the current non-rural mechanism, and does not seek a change to that mechanism’s operation. Thus, Iowa Telecom would only be eligible for funding if the Iowa statewide average cost under the Synthesis Model is at least two weighted standard deviations above the nationwide

⁴⁶ *Qwest Forbearance Order*; see also *TracFone Wireless Order* (lifting a specific requirement for ETC status (*i.e.*, facilities requirement) to permit TracFone to be eligible for universal service support).

⁴⁷ *Qwest Forbearance Order*, ¶¶ 15, 39-43 (explaining that the FCC “forbear[ed] from applying any dominant carrier tariffing requirements to Qwest for mass market switched access services, conditioned upon its compliance with the same permissive detariffing obligations that apply to Cox and other competitive LECs.”).

cost benchmark.⁴⁸ Iowa Telecom does not seek to receive support based on its costs alone or seek any other modification to the current non-rural mechanism as NASUCA suggests.⁴⁹

Similarly, these two commenters inaccurately assert that the intended use of universal service funding by Iowa Telecom is to invest in unsupported services, particularly broadband-only facilities.⁵⁰ To the contrary, Iowa Telecom is committed to the statutory requirement that all high-cost support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁵¹ The apparent confusion is due to a misreading of the Petitions, in which Iowa Telecom provides a broad overview of all significant efforts made by the company in the last five years to jumpstart long-needed investment and expansion of network facilities and infrastructure.⁵² Part of that investment program has been substantial

⁴⁸ 47 C.F.R. § 54.309(a).

⁴⁹ *NASUCA Comments* at 6. Iowa Telecom has estimated that it would be eligible for \$22 million under the non-rural mechanism through its calculations under the Commission’s Synthesis Model. *See Forbearance Petition, Appendix* at 20. NASUCA seeks an explanation of this calculation, because it previously determined under its distinct reform proposal that Iowa Telecom would be eligible for less support. *NASUCA Comments* at n.23. This is not an apples-to-apples comparison, as NASUCA’s calculations are based on its own suggested rule changes that would shift all large rural carriers to a new mechanism, and would also change the formula used to determine funding. *NASUCA Rural Reply* at 28-29 (explaining that rural carriers transitioned to the non-rural mechanism would “not use the non-rural benchmark,” but would receive support based on the “average loop costs for all rural carriers than have 100,000 or more lines within a state”).

⁵⁰ *NASUCA Comments* at 9, n.33 (arguing that “it does not appear [that Iowa Telecom] intend[s] to use the support for the statutory purposes.”); *Sprint Nextel Comments* at 6-7 (universal service funding “[i]s not intended to be a fund to subsidize any carrier’s broadband deployment.”).

⁵¹ 47 U.S.C. § 254(e).

⁵² *Forbearance Petition, Appendix* at 13-15.

investment in broadband facilities and deployment.⁵³ Based on a selected reading of this overview, Sprint Nextel suggests that Iowa Telecom “should not be requesting funding ... to offset its non-supportable costs.”⁵⁴ Yet, nowhere in the Petitions is such a request made; Iowa Telecom will only invest its universal service receipts in a manner consistent with Commission requirements, as it does today with respect to Interstate Access Support funds.⁵⁵

IV. THE COMMISSION SHOULD REJECT ATTEMPTS TO INTERJECT UNRELATED ISSUES.

The Commission’s objective in this proceeding should be limited to an evaluation of whether Iowa Telecom satisfies the statutory forbearance test or the Commission’s waiver standard with respect to the request to be eligible temporarily for support under the non-rural

⁵³ The commenters reference only some of Iowa Telecom’s significant investment efforts, excluding references to the replacement of analog equipment, upgrades to switching facilities, and the rebuilding of local loops to improve the robustness of available services and service quality. *Id.*

⁵⁴ *Sprint Nextel Comments* at 7. It is noteworthy that absent from commenters’ analysis is any discussion of the Commission’s explicit finding that “[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services.” *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty Second Order on Reconsideration, 16 FCC Rcd 11244, 1322, ¶¶ 199-200 (2001) (“*Fourteenth Report and Order*”). The Commission has further explained that “even though advanced services are not directly supported by federal universal service ... [w]e recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.” *See Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, ¶ 13 (2003).

⁵⁵ Iowa Telecom has historically received approximately \$1.5 million annually of Interstate Access Support under CALLS. *Forbearance Petition, Appendix* at n. 47. Sprint Nextel finds that this “admission” is relevant. *Sprint Nextel Comments* at 9. Yet as demonstrated in the Petitions, receipt of support under one component of the universal service fund bears no relation to the need for support from an altogether separate universal service program. *Forbearance Petition, Appendix* at n.6. These funding sources go to support different jurisdictional network components.

funding mechanism. A straightforward analysis of both standards suggests that this should be an easy task particularly given the equities and unique circumstances at issue. Nevertheless, one commenter seeks to interject unrelated issues to muddle this analysis. None of these issues has any bearing on which high-cost funding mechanism is appropriate for Iowa Telecom.

A. A Prior Iowa Telecom Forbearance Petition Addressed Unrelated Regulatory Issues.

Iowa Telecom's 2001 forbearance petition⁵⁶ addressed the maximum permissible interstate switched access charges under the FCC's *CALLS Order*,⁵⁷ and has no bearing on these universal service-related Petitions designed to support deployment of local loop plant. In that instance, Iowa Telecom sought targeted relief to reset its average traffic sensitive ("ATS") rate under the *CALLS Order*, because its "newly-formed status" limited the "opportunity to assess whether its ATS target rate adequately reflected its cost[s]."⁵⁸ The Commission granted relief given the unique circumstances faced by Iowa Telecom with respect to interstate access charges.

Sprint Nextel manipulates a single sentence in the *CALLS Forbearance Order* to imply that Iowa Telecom is now effectively double dipping, seeking multiple relief from the same occurrence. Specifically, Sprint Nextel quotes the Commission's statement that granting Iowa

⁵⁶ See *Petition for Forbearance of Iowa Telecommunications Services, Inc. D/B/A Iowa Telecom Pursuant to 47 U.S.C. 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study*, CC Docket No. 01-331, at 27-28 (filed Nov. 26, 2001) ("*CALLS Forbearance Petition*").

⁵⁷ *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd. 12962 (2000) ("*CALLS Order*").

⁵⁸ *Sprint Nextel Comments* at 8 (quoting *Petition for Forbearance of Iowa Telecommunications Services, Inc. D/B/A Iowa Telecom Pursuant to 47 U.S.C. 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study*, Order, 17 FCC Rcd 24319, ¶ 17 (2002) ("*CALLS Forbearance Order*").

Telecom’s “alternative request will fully address [Iowa Telecom’s] concerns”⁵⁹: from that general statement, Sprint Nextel concludes wrongly that Iowa Telecom pledged that its only investment-related concerns would be addressed by that forbearance petition.⁶⁰ This is a gross misstatement of the scope of that proceeding and any fair reading of either that decision or Iowa Telecom’s request. By its own terms, the 2001 petition addressed only the need for additional “interstate access revenues [to] be used to fund the interstate portion of the costs associated with upgrading [Iowa Telecom’s] infrastructure.”⁶¹ In contrast, these Petitions address intrastate loop costs and investment never addressed in the earlier proceeding.⁶² Accordingly, Sprint Nextel’s demand for an explanation “why [the 2001] relief proved insufficient for its needs” misstates fundamentally the purpose of the Commission’s earlier grant, and the basis for the current request.⁶³

⁵⁹ *Id.*

⁶⁰ *Id.* at 2 (arguing that Iowa Telecom “already received forbearance from the enforcement of the Commission’s access charge rules ... ostensibly so that Iowa Telecom can fund its infrastructure upgrades”).

⁶¹ *See Petition for Forbearance of Iowa Telecommunications Services, Inc. D/B/A Iowa Telecom Pursuant to 47 U.S.C. 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study*, CC Docket No. 01-331, at 27-28 (filed Nov. 26, 2001).

⁶² As detailed in the Petitions, it would have been premature for Iowa Telecom to seek any relief with respect to intrastate loop costs in November 2001. *Forbearance Petition, Appendix*, at 3-9. At that time, the Commission was only six months into the five-year term of the *Rural Task Force Order*, and Iowa Telecom had no reason to believe that the five-year transition period would be exceeded. In addition, the 2001 petition addressed specific concerns with the *CALLS Order*, which did not address high-cost loop support.

⁶³ *Sprint Nextel Comments* at 8.

B. The Petitions Are Not an Attempt to Circumvent the FCC’s Parent Trap Rule or to Ease the Effects of a Bad Business Decision.

Contrary to Sprint Nextel’s claims, the need for regulatory relief in this proceeding is not a direct result of Iowa Telecom’s acquisition of GTE’s properties, nor a desire to escape the consequences of a business decision.⁶⁴ Instead, the Petitions seek to determine the proper universal service eligibility standards for these properties, regardless of ownership. As such, the long-since rejected criticism of Iowa Telecom’s purported failure to do its regulatory due diligence misses the mark.⁶⁵ In fact, the requested relief in the Petitions would be indistinguishable from a request made by GTE if the exchanges had not been acquired: the uncontested fact remains that these properties do not belong under the rural mechanism given their price cap regulatory structure, the historic under-investment in the exchanges and the significant going-forward costs of local loop modernization.⁶⁶

Nor is this request an attempt to elude the FCC’s parent trap rule, which limits the amount of universal service funding an acquiring carrier can receive in certain instances.⁶⁷ Sprint Nextel suggests that it is “contrary to public interest to permit carriers to purchase exchanges on the assumption that they can later obtain additional universal service funding.”⁶⁸ No such “assumption” was ever made by Iowa Telecom. As an initial matter, it is not clear that

⁶⁴ *Id.* at 14-15. Similar accusations were unsuccessfully raised in response to the 2001 petition as well. *See CALLS Forbearance Order*, n.28.

⁶⁵ *Sprint Nextel Comments* at 14.

⁶⁶ If anything, the acquisition of these properties by Iowa Telecom only improves dramatically the equities at issue in this case, given Iowa Telecom’s clear commitment to and track record of investing in its network infrastructure. *See Forbearance Petition, Appendix* at 13-14.

⁶⁷ *See* 47 C.F.R. § 54.305.

⁶⁸ *Sprint Nextel Comments* at 3.

parent trap restrictions even apply to Iowa Telecom’s acquisition of entire study areas from GTE.⁶⁹

In any event, the Commission has concluded that the parent trap rule is also not necessary if support is provided to the purchaser based on the network’s forward-looking economic costs: the requested result in this instance. Specifically, the Commission has explained that the parent-trap rule was adopted because of concern that, until support for both the seller and purchaser is based on a forward-looking economic costs methodology, “potential universal service payments may unduly influence a carrier’s decision to purchase exchanges from other carriers.”⁷⁰ In light of the express purpose of rule, it would be illogical to interpret the rule in such a manner as to actually impede efforts to provide support based on forward-looking economic costs.

C. Iowa Telecom’s Corporate Finance Policies are Irrelevant to this Analysis.

Iowa Telecom’s overall corporate finance policies, and its dividend practice specifically, are fully consistent with that of other similarly situated carriers, and are designed to ensure the continued availability of needed private or public capital resources and investment. Nevertheless, Sprint Nextel attempts to interject Iowa Telecom’s 2005 dividend payments into this dispute without context or explanation.⁷¹

Payment of dividends at the level of Iowa Telecom’s has been required in order for a mid-sized rural telecommunications carrier to raise capital in today’s financial marketplace. Iowa Telecom’s dividend payments are therefore a necessary component of its operations and do not represent a source of cash that could otherwise be invested in its network. Further, Iowa

⁶⁹ See *Forbearance Petition, Appendix* at n.55.

⁷⁰ *Rural Task Force Order*, ¶ 91; *First Report and Order*, ¶ 308.

⁷¹ *Sprint Nextel Comments* at n.14.

Telecom is an integrated provider of local, long distance, wholesale, and Internet access service, as well as customer premises equipment and telephone directories. Iowa Telecom's corporate financial results are dictated by more than simply wireline telecommunications offerings, and therefore only a portion of Iowa Telecom's net income is attributable to services that universal service funds do and would support.

Contrary to Sprint Nextel's assertion, Iowa Telecom's efforts to raise equity capital as a publicly traded company, as well as its efforts to increase local rates, underscore the company's commitment to dedicating all reasonable resources to the development of its network to the benefit all of its customer base. Dividend payments are used to compensate equity owners for the use of their funds, and do not provide any useful information about whether Iowa Telecom should receive high-cost loop support pursuant to section 254 of the Act.

It is interesting that Sprint Nextel appears to object to the payment of dividends by carriers who receive high-cost loop support. The Commission has long recognized that dividends are an appropriate means by which to compensate equity holders, and that payment of such dividends does not impact qualification for universal service funding. The same is true in this instance.

D. Interconnection Disputes Bear No Relation to the Petitions.

The real nature of Sprint Nextel's opposition, it appears, relates to Sprint Nextel's attempt to re-argue an ongoing state interconnection dispute in this proceeding. The ongoing dispute has twice been the subject of an Iowa Utilities Board proceeding, and is currently under judicial review. Iowa Telecom and Sprint Nextel continue to disagree on the extent to which and the manner in which sections 251 and 252 of the Act apply to a wholesale-only provider of certain services to what has currently been identified as a single cable television operator. Iowa Telecom wants to assure the Commission, however, that it has been, and continues to be, willing

to enter into interconnection arrangements directly with telecommunications carriers in accordance with the requirements of sections 251 and 252 of the Act.⁷²

Despite its attempts in this proceeding to portray Iowa Telecom as an outlier, Sprint Nextel has conceded freely in another context that “Iowa is just one of many states where wholesale carriers have had to litigate to interconnect to support cable telephone or VoIP services. Two states have denied wholesale carrier interconnections with” rural carriers altogether.⁷³ This same issue is under consideration in a distinct ongoing Commission proceeding as well.⁷⁴

By mischaracterizing the true nature of the dispute, Sprint Nextel also ignores Iowa Telecom’s long history of cooperation with carriers seeking to interconnect in order to compete for end-user customers in Iowa Telecom’s territory.⁷⁵ While Sprint Nextel attempts to portray itself as the victim of improper behavior by Iowa Telecom, Sprint Nextel also conveniently omits the fact that while it was certificated to provide wireline competitive local exchange service in Iowa, it never provided such service in Iowa Telecom’s territories and recently withdrew from

⁷² In fact, Iowa Telecom has entered into dozens such agreements, and currently competes with more than 20 competitive wireline carriers, several of which have successfully established their first interconnection arrangements with Iowa Telecom in the last two years (some even during the pendency of Sprint’s interconnection request).

⁷³ Reply Comments of Sprint Nextel, WC Docket No. 06-55, at 10 (Apr. 25, 2006).

⁷⁴ See *Time Warner Cable’s Petition for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55 (Mar. 1, 2006).

⁷⁵ Instead, Sprint Nextel attempts to portray a pattern of anti-competitive conduct by referencing an unrelated complaint filed by Coon Creek Telecommunications, Corp. (“Coon Creek”), which is not even interconnection-related. *Sprint Nextel Comments* at n.43. Further, the Iowa Utilities Board (“IUB”) dismissed a similar complaint from that same entity less than three months ago. *Coon Creek Telecommunications v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket No. FCU-06-31 (Iowa Utils. Bd. Apr. 17, 2006) (order dismissing complaint without prejudice).

the Iowa wireline competitive retail market altogether.⁷⁶ With this perspective, it is clear that Sprint Nextel's allegations of anti-competitive conduct are misleading and unfounded.

V. CONCLUSION

For the foregoing reasons, the Commission should grant the Petitions in an expedited manner, providing Iowa Telecom with sufficient flexibility to be eligible for high-cost universal service support under the non-rural high-cost loop support mechanism until such time as the FCC adopts a final successor regime to the *Rural Task Force Order*.

Respectfully submitted,

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⁷⁶ See *Sprint Communications, L.P.*, Docket No. FCU-05-21 (Iowa Utils. Bd. Mar. 3, 2006) (order cancelling certificate and issuing order in lieu of certificate).