

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

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June 21, 2007

SUMMARY

The comments in this proceeding confirm that the cap on high cost CETC support, as proposed, has two central flaws. *First*, and most importantly, the comments demonstrate that the proposed cap will deny service to those consumers and areas that need it most, including tribal lands and Alaskan Native regions. While commenters supporting the cap ignore this difficult issue, both industry and state comments reveal that the proposed cap will block planned service deployment to unserved and underserved areas across the country. AT&T's proposal to prevent newly eligible CETCs from receiving funds until a particular date each year would amount to an entry halting annual CETC freeze that would only exacerbate this problem.

To lessen the harmful impact on underserved areas, the Commission should incorporate GCI's proposal for a targeted exclusion from the cap. GCI's proposal would maintain uncapped funding for CETCs providing service to tribal lands and Alaskan Native regions, subject to strict conditions including: requiring any CETC collecting uncapped funds to deploy broadband service of at least 400 kbps moving up to 1 Mbps; imposing safeguards to ensure that support funds are deployed to advance basic connectivity; and eliminating duplicative support to multiple lines provided by a carrier to a residential or single line business account. Limited in scope, GCI's cap exclusion proposal may serve as a model for targeted relief in other underserved areas and a pilot program for long term reform efforts.

Second, the Commission should incorporate into the cap the critical distinction between complementary and substitute CETCs services identified by GCI and other commenters, including rural local exchange carriers. The Commission can achieve much

of the cost control sought by the Joint Board, without unduly undermining the principal of competitive neutrality, by excluding from the cap substitute CETCs, which predominantly provide basic connectivity, and thus compete in the same product market as the incumbent carrier. The small, and shrinking, differences in regulatory treatment between substitute CETCs and incumbent local exchange carriers cannot justify capping support for one but not the other.

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General Communication, Inc. (“GCI”) hereby replies to the comments filed in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) on the recommendation of the Federal-State Joint Board on Universal Service (“Joint Board”) that the Commission impose an interim cap on the amount of high-cost support that competitive eligible telecommunications carriers (“CETCs”) may receive.¹ The comments confirm that the proposed cap would deny service to those areas and consumers most in need, and therefore cannot be reconciled with the fundamental goals of universal service. Commenters supporting the cap fail to address this difficult issue, implicitly endorsing the status quo as sufficient for today’s unserved and underserved consumers. The Commission should reject this outcome and incorporate GCI’s proposal for a targeted exclusion from the cap. More broadly, the Commission should recognize

¹ *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07-88 (rel. May 14, 2007); *Federal-State Joint Board on Universal Service*, Recommended Decision, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1 (rel. May 1, 2007) (“Recommended Decision”).

the principled distinction between complementary and substitute services noted by GCI and other commenters, and incorporate that distinction into any cap in order to control the high cost fund without abandoning competition and its benefits.

I. THE COMMENTS CONFIRM THAT THE CAP AS PROPOSED HURTS UNSERVED AND UNDERSERVED AREAS, AND CAP PROPONENTS FAIL TO ADDRESS THE HARD ISSUES.

A. The Comments Confirm That The Proposed Cap Harms Those Areas Most In Need Of Support – Those That Are Currently Unserved and Underserved.

As GCI explained in its comments, the proposed cap curtails support, and thus the deployment of facilities and services, to precisely those areas where support has been slow to come – the most underserved communities, including tribal lands and Alaskan Native regions. As one illustration of this, GCI detailed how the FCC, by adopting the cap as proposed, would effectively block GCI’s planned roll-out of facilities, and advanced wireless and broadband services, to hundreds of rural communities in Alaska. The comments filed in response to the NPRM demonstrate that GCI’s situation is not unique and confirm that the cap will hit the hardest in unserved and underserved areas across the country.

ComspanUSA (“Comspan”), for example, delivers broadband voice, data, and video services over its own fiber facilities to rural communities throughout Oregon. Directly fulfilling the twin goals of the 1996 Telecommunications Act (the “Act”) – competition and universal service – Comspan delivers “these services to those high-cost areas of the state that have largely been ignored by the incumbent local exchange carriers

(“ILECs”) and the local cable companies.”² In its comments, Comspan details its existing networks and services in rural Oregon communities and recounts how those services have put competitive pressure on the ILEC and cable companies to upgrade their networks. Notably, Comspan reports that it now has plans in the works to build networks in ten more towns across Oregon within the next year. If the FCC adopts the proposed cap, however, Comspan explains that, like GCI’s planned roll-out, its “expansion plans will be stopped in their tracks, and citizens in Oregon’s underserved communities will be denied precisely those benefits and services that the Act was intended to promote.”³ Similarly, in its comments, Mid-Rivers Telephone Cooperative, Inc. (“Mid-Rivers”) reports that it “has additional plans to continue the expansion of its facilities,” including “facility overbuilds in the seven CLEC exchanges” but that the cap, as proposed, will thwart those planned deployments.⁴ These are just a few concrete examples of the harm caused by the proposed cap. By eliminating opportunities for investment and deployment, the proposed cap would deprive rural and underserved consumers – those most in need of universal service support – of the technological advances and benefits of competition that characterize today’s urban markets.

A number of states criticize the cap for precisely this reason, pointing out that it will hinder, or even prevent, the development of telecommunications infrastructure in areas that need it most. The Montana Public Service Commission, for example, explains that, as proposed, the cap could “put in jeopardy the build out commitments of some

² *Comments of ComspanUSA* at 2 (filed June 6, 2007) (“Comspan Comments”).

³ *Id.*

⁴ *Comments of Mid-Rivers Telephone Cooperative, Inc. Regarding Joint Board Recommendation to Cap High-Cost Fund* at 3 (filed June 6, 2007) (“Mid-Rivers Comments”).

Montana CETCs,” and “will likely stymie CETC expansion” of services in Montana thereby “stifling the achievement of Congress’s universal service goals.”⁵ The Maine Public Utilities Commission similarly argues that the proposed cap will “irreparably harm” residents of the state’s hard-to-serve rural areas because the proposed cap will “likely cause delay in the construction of towers in Maine that have been planned for the next year, even if Maine designates no additional CETCs.”⁶ In states like South Carolina, which has designated no CETCs, the deployment of new competitive services would be blocked entirely.⁷

For similar reasons, the Navajo Nation Telecommunication Regulatory Commission (“NNTRC”) unanimously passed a resolution on May 31, 2007, urging the FCC “to reconsider the need to implement an interim cap and to explore other ways of controlling fund growth without impeding the source of investment in our rural infrastructure that the Navajo Nation so desperately need.”⁸ As the Navajo Nation explained in its letter to Chairman Martin, “[e]ven today, large parts of the Navajo Nation have no landline service, and the limited wireless service available does not always provide adequate coverage.”⁹ The cap as proposed “will only serve to slow the deployment of wireless services into these under served rural areas” and “will limit

⁵ *Initial Comments of the Montana Public Service Commission* at 2, 5 (filed June 6, 2007).

⁶ *Comments of the Maine Public Utilities Commission* at 2, 3 (filed June 6, 2007).

⁷ *Comments of the South Carolina Office of Regulatory Staff (“SCORS”)* at 2 (filed June 6, 2007).

⁸ *The Navajo Nation Telecommunication Regulatory Commission Resolution #NNTRC-07-002, Capping of the High Cost Portion of the Universal Services Fund* at 2 (May 31, 2007) (filed June 6, 2007).

⁹ Letter from Dr. Joe Shirley, Jr., President, The Navajo Nation, to Chairman Kevin J. Martin, FCC at 1 (May 31, 2007) (filed June 6, 2007).

competition, which in turn will affect the efforts of the ILEC to expand its telecommunication infrastructure on the Navajo Nation.”¹⁰ As the NNTRC demonstrates, the Commission risks harming those most in need if it moves forward with an overbroad cap.

In a targeted fashion that is designed to drive broadband deployment, GCI’s cap exclusion proposal would preserve opportunities for new telecommunications infrastructure development on Native Lands, including the 27,000 square miles of land federally entrusted to the Navajo Nation. This proposal would also preserve opportunities for deployment in the Alaskan bush. As Unicom, an Alaska wireless carrier noted, there is “great need for service,” in such remote locations despite “the difficulty and expense in providing wireless services to villages with few access lines,” because wireless service provides rural residents “a vital communications link to family members and emergency services.”¹¹ As set out in Exhibit 1 to GCI’s comments, this narrow exclusion to the cap would maintain uncapped funding for CETCs providing service to tribal lands and Alaskan Native regions, subject to strict conditions including: requiring any CETC collecting uncapped funds to deploy broadband service of at least 400 kbps moving up to 1 Mbps; imposing safeguards to ensure that support funds are deployed to advance basic connectivity; and eliminating duplicative support to multiple lines provided by a carrier to a residential or single line business account.¹² GCI urges

¹⁰ *Id.* at 1-2.

¹¹ *Comments of Unicom, Inc.* at 1 (filed June 6, 2007).

¹² Letter from Tina Pidgeon, V.P. Federal Regulatory Affairs, GCI to Marlene Dortch, Secretary, FCC, re Federal-State Joint Board on Universal Service, High Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 31, 2007) attached to *Comments of General Communication, Inc.* as Exhibit 1 (filed June 6, 2007).

the Commission to avoid the cap's devastating impact on future deployment in the country's hardest-to-serve areas by adopting GCI's carefully targeted exclusion proposal. While GCI's proposal alone will not address the harmful impact of the cap for all underserved areas, it will address the immediate need for continued support for now-planned deployments in tribal lands and Alaskan Native regions and, once successful, may serve as a model for targeted relief in other underserved areas.

B. Supporters Of The Cap Fail To Address The Hard Issues.

Supporters of adopting the cap as recommended by the Joint-Board largely ignore the effect it will have on rural consumers' access to competition-driven, efficient universal service and advanced telecommunications. Most make no mention at all of the fact that by curtailing support, the cap eliminates opportunities for investment in areas that most need it.¹³ Others, like the Alaska Telephone Association ("ATA"), go even farther, implying that CETC support serves no purpose.¹⁴ ATA suggests there is no reason "why a CETC would be serving in a high-cost area" and questions whether CETCs provide "any" public service.¹⁵ ATA does not explain how its position can be reconciled with its members' subsidiaries' requests for CETC status and their assertions that universal service funding is necessary to their deployment plans.¹⁶ In light of its own

¹³ *Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies* (filed June 6, 2007); *Comments of CenturyTel, Inc.* (filed June 6, 2007) ("CenturyTel Comments"); *Comments of the National Exchange Carrier Association, Inc.* (filed June 6, 2007).

¹⁴ *Comments of the Alaska Telephone Association* at 4 (filed June 6, 2007) ("ATA Comments").

¹⁵ *Id.* at 2, 4.

¹⁶ Copper Valley Wireless, Inc., ("CVW"), a wholly owned subsidiary of Copper Valley Holdings, Inc., which is a wholly owned subsidiary of Copper Valley Telephone Cooperative, Inc. (a member of ATA), has told the Regulatory Commission of Alaska

members' recognition of the need for continued universal service funding in remote areas of Alaska, ATA's self-serving attempt to rewrite the 1996 Act and Commission precedent should be dismissed out of hand.

ATA also claims that the cap will have little or no impact on CETCs because they will still receive some universal service support funding.¹⁷ NASUCA, which acknowledges that "the receipt of universal service funds eases wireless carriers' deployment of services in rural areas," dismisses the effect of the cap on service deployment as "speculative."¹⁸ The comments reveal otherwise. As GCI, Comspan, Mid-Rivers and the states cited above demonstrate, the harmful impact of the cap is concrete and certain. If the cap is adopted, current plans for impending service deployment will not be carried out in the hardest-to-serve regions of Alaska, Oregon, Montana, Maine, and many other states. Opportunities for future service deployments will evaporate. Competition in these areas – and the resultant benefits of technological innovation, service quality improvements, increased efficiency, and lower cost provision of universal service – will never materialize. There is nothing speculative about it.

("RCA") that "it is not financially feasible for CVW to incur the necessary debt to complete the network improvements . . . unless it can obtain USF support in the requested service area." *Copper Valley Wireless, Inc.'s Application for Designation as an Eligible Telecommunications Carrier in the Cordova Telephone Cooperative, Inc. Study Area*, Regulatory Commission of Alaska Docket U-07-015, at ¶6 (filed February 2, 2007). Cordova Wireless Communication, Inc. ("CWC"), a wholly owned subsidiary of Cordova Telephone Cooperative, Inc., an ATA member, has told the RCA "it is not financially feasible for CWC to incur the debt necessary to complete the required network improvements . . . unless it can obtain USF support in the requested service area." *Cordova Wireless Communication, Inc.'s Application for Designation as an Eligible Telecommunications Carrier*, Regulatory Commission of Alaska Docket U-06-059, at ¶ 8 (filed June 6, 2006).

¹⁷ *ATA Comments*. at 2.

¹⁸ *Comments of the National Association of State Utility Consumer Advocates Supporting a Cap on the High-Cost Universal Service Fund* at 6 (filed June 6, 2007).

Consumers in unserved and underserved states, towns and villages throughout the country will be harmed by the adoption of the cap as proposed.

C. AT&T's Proposal Is An Entry Halting Annual CETC Freeze.

In its comments, AT&T argues that the FCC should modify the cap to “limit the CETCs eligible to receive such capped funding in each state in any given year to those designated as CETCs as of a particular date during the prior year.”¹⁹ But AT&T’s proposal amounts to an annual CETC freeze that slows new entry, and would deny areas with no CETCs any ability to benefit from competition during the duration of the freeze.²⁰ Both GCI’s and Comspan’s comments are powerful examples of why an annual CETC freeze is a bad idea that hurts the Commission’s broader goals of ubiquitous broadband deployment. Further, any CETC freeze – even an annual freeze – has perverse effects, as it necessarily continues funding in areas with greater deployment and service while precluding funding in those areas that are not yet served. This merely entrenches, rather than improves, the existing divide between telecommunications haves and have nots.

AT&T says that such a freeze is necessary because the proposed cap would be disruptive to CETC business plans by making high-cost support more unpredictable.²¹ But the problem that AT&T identifies is a problem with the cap as a whole. Making the shifts on a single fixed date each year would not make those shifts more predictable – it

¹⁹ *Comments of AT&T, Inc.* at 3 (filed June 6, 2007) (“AT&T Comments”).

²⁰ In some states, where there were no CETCs receiving funds in 2006, the cap itself will effectively result in a total CETC freeze locking out new entry for the duration of the interim cap. In South Carolina, for example, although there are six pending petitions for CETC eligibility, the state has not designated any CETCs. *SCORS* at 2.

²¹ *AT&T Comments* at 9.

would just make those unpredictable changes occur once a year. Moreover, AT&T fails to acknowledge that the designation of additional CETCs does not, in and of itself, drive significant support beyond designating just a single CETC. The fact is that CETCs *only* receive support for lines actually served. As CETCs compete among themselves and with the incumbent for customers, it is really the incumbent that is receiving duplicative support for customers who have cut the cord. To control growth of the fund, the Commission should focus on the critical issues of continued support for ILECs for lines not served and multiple support payments for lines and handsets on single accounts.

II. THE COMMENTS SUPPORT EXCLUDING SUBSTITUTE SERVICES FROM THE CAP.

A. Commenters Either Agree That The Cap Should Not Apply To CETCs Providing Basic Connectivity Or Wrongly Ignore The Critical Distinction Between CETC Substitutes and Complements.

The Commission can cap the fund without sacrificing the principle of competitive neutrality, and commenters rightly urge the Commission to meet each of these goals. The Kansas Corporation Commission (“KCC”) explained that the “public interest in controlling the size of the fund” must be balanced against the need to “retain the principle of competitive neutrality” and thus “ensur[e] that markets operate without regulatory interference.”²² The KCC’s comments found that “despite the Joint Board’s claim to the contrary,” the cap “does not appear to be competitively neutral.”²³ “Abandoning the Commission’s principle of competitive neutrality,” the KCC explained, “will distort the

²² *Comments of the Corporation Commission of the State of Kansas* at 2, 5 (filed June 5, 2007).

²³ *Id.* at 2.

competitive marketplace.”²⁴ The KCC urged instead that the “reform of the USF should retain the principle of competitive neutrality” and concluded that the FCC should reject the proposed cap “because it leads to a distribution of support which is not competitively neutral.”²⁵

GCI agrees that the cap, as proposed, sacrifices too much in the way of competitive neutrality. As Comspan puts it, the cap is “like throwing a hand grenade at a kidnapper,” controlling the growth of the high-cost fund, “but at too great a cost” to the Act’s competitive goals.²⁶ Competition leading to the efficient provision of basic connectivity need not, and should not, be casualties of even the Commission’s interim reforms, which will surely lay some groundwork for long-term reform concepts.

To prevent this result, the cap should exclude CETCs providing service that substitutes for the basic connectivity on which consumers have come to rely. The cap, as proposed, ignores the crucial distinction between those CETCs providing consumers with basic connectivity on the one hand and those CETCs that provide complementary services that supplement basic connectivity on the other. As GCI and a number of commenters propose, the Commission should exclude from the cap CETCs that predominantly provide substitute service. Modified in this way, the cap will still achieve the vast bulk of the cost control sought by the Joint Board, without undermining the core principal of competitive neutrality.

Indeed, all of the commenters that address this issue, whether or not they support the cap, call on the FCC to distinguish between CETCs that substitute for basic

²⁴ *Id.*

²⁵ *Id.* at 2, 5.

²⁶ *Comspan Comments* at 9.

connectivity (and thus compete in the same product market as the ILEC) and CETCs that merely complement that basic connectivity. Comspan, for example, explains that its “services compete head-to-head with and serve as complete substitutes for ILEC services,” pointing out that continuing support to such substitute CETCs would have zero effect on the growth of the fund “if the current system did not provide continued support to the ILEC even after the ILEC loses the customer.”²⁷

Similarly, Midcontinent Communications, a competitive provider of cable telephony serving rural areas of North Dakota, South Dakota and Minnesota, argues that the Commission should “adjust” the proposed cap “to make clear that where incumbent[] LECs and new entrants are competing directly, each competitor receives the same per-customer universal service disbursement as the incumbent.”²⁸ Echoing GCI’s comments, Midcontinent urges the Commission to reject the cap “to the extent that it would impair high-cost disbursements to competitors providing substitute service.”²⁹ By excluding substitute CETCs from the cap, the Commission can “achieve the purposes of curtailing growth in demands on the high-cost fund without compromising burgeoning competition in high-cost areas.”³⁰ Furthermore, Mid-Rivers confirms GCI’s assessment that wireline CETCs, which predominantly provide substitute service, “are not a major contributor to the growth of the” high cost fund, concluding that there is “no need to apply a cap” to such carriers because “no significant benefit” would result.”³¹

²⁷ *Id.* at 7.

²⁸ *Comments of Midcontinent Communications* at 1 (filed June 6, 2007).

²⁹ *Id.* at 6.

³⁰ *Id.*

³¹ *Mid-Rivers Comments* at 7. *See also, Comments of Surewest Communications* at 5-6 (filed June 6, 2007) (arguing that the cap should not apply to wireline competitors).

Even rural ILECs recognize the need for a distinction between wireline carriers, like ILECs and many substitute CETCs on the one hand, and wireless carriers, which are predominantly complementary CETCs, on the other. The Western Telecommunications Alliance, which represents 250 RLECs west of Mississippi river, “believes that it is time... for the Commission” to distinguish between wireline and wireless carriers, pointing out that, on the whole, the latter “are predominantly complementary or supplementary services” that compete in different markets.³² While this technology-specific assessment of complements and substitutes is too crude and thus, inaccurate (not to mention, already rejected by the Joint Board), the Western Telecommunications Alliance clearly recognizes that distinctions do exist. The comments filed by the remaining cap supporters simply do not address the distinction between substitute and complementary services. But this ignores reality. The FCC should not follow suit. The stakes – competition and the efficient provision of universal service – are too high.

B. The Proposed Cap’s Competitive Bias Cannot Be Justified By Differences In Regulatory Treatment For ILECs And CETCs.

A number of supporters of the proposed cap, including CenturyTel, NTCA, and Verizon, attempt to justify the proposed cap on CETCs by pointing to differences in the regulatory treatment of ILECs and competitors.³³ The Joint Board relied on these differences when it declined to apply the cap to ILECs.³⁴ But these differences do not justify the dramatically different treatment of ILECs and competitors under the cap, as

³² *Comments of Western Telecommunications Alliance, Comments Supporting Interim Cap on Portable CETC Support* at 4, (filed June 6, 2007).

³³ *CenturyTel Comments* at 8; *National Telecommunications Cooperative Association Initial Comments* at 8 (filed June 6, 2007); *Comments of Verizon and Verizon Wireless* at 10 (filed June 6, 2007).

³⁴ *Recommended Decision* at ¶ 6.

the differences in regulatory treatment between ILECs and substitute CETCs are already slight and are likely to continue to diminish in the future.

Many ILECs are no longer (or never were) subject to rate regulation. Furthermore, many small ILECs do not have retail rate regulation, and many other incumbents receive substantial pricing flexibility. In Alaska, for example, an ILEC with competition faces no retail price regulation except for basic stand-alone residential service, and even that will be gone by 2010.³⁵ Carrier of last resort (“COLR”) obligations can be shared in Alaska, and in any event 214(e) means that any CETC must be prepared to serve the entire study area within a year in the event the ILEC withdraws as a CETC.

The differences in regulatory treatment that remain are rapidly disappearing. Verizon is currently seeking to escape federal rate regulation (which means it could charge any rate it wants, because it could always change the federal rate if the state rate were too low) over the vast majority of the Eastern seaboard.³⁶ Qwest has now sought

³⁵ See 3 AAC § 53.243 (granting significant pricing freedom in the business and residential markets and providing that the current cap on ILEC price increases for stand-alone residential and single-line business services expires on June 30, 2010, at which point carriers will face no regulatory restraint on their ability to raise prices for these services).

³⁶ See *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Philadelphia Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Pittsburgh Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Area*, WC Docket No. 06-172 (filed Sept. 6, 2006); *Petition of the Verizon Telephone Companies for*

the same relief for 4 MSAs in the western United States,³⁷ and has received such relief in Omaha.

The competitive bias inherent in the proposed cap's application to CETC substitutes but not ILECs cannot be justified by such minimal and shrinking differences in regulatory treatment. The Commission should honor the principle of competitive neutrality by excluding from the cap any CETCs competing in the same product market as the ILEC.

CONCLUSION

For the above reasons, GCI urges the Commission to adopt GCI's targeted cap exclusion proposal. In addition, the Commission should exclude from the cap CETC substitutes that provide basic connectivity and thus compete directly against the ILEC.

Respectfully submitted,



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Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006).

³⁷ *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 (2005).*