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October 3, 2007

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On October 3 2007, the undersigned of Birch Horton Bittner and Cherot, outside counsel to the Vermont Public Service Board, met with Ian Dillner, Legal Advisor to Chairman Kevin J. Martin. The purpose of the meeting was to discuss the status of the FCC's response to the 10<sup>th</sup> Circuit's decision in *Qwest Communications International, Inc. v. Federal Communications Commission*.<sup>1</sup> In the meeting, Vermont followed up on discussions with (then) Bureau Chief, Tom Navin and (then) Legal Advisor, Michelle Carey during March 2007, regarding timing of the remand proceeding. Vermont expressed its concern that the FCC move forward expeditiously with its remand, as the court directed.

The attached chronology was provided to Mr. Dillner in the meeting.

Please direct any questions to the undersigned. Thank you.

Sincerely,



Elisabeth H. Ross  
Counsel for Vermont Public Service Board

Attachment

cc: Ian Dillner

<sup>1</sup> *Qwest Comms. Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

## CHRONOLOGY

- 1996 Congress passes Telecommunications Act, adopting as universal service principle, that consumers in rural areas should have access to telecommunications services at rates that are reasonably comparable to rates charged for similar services in urban areas. Section 254(b)(3).
- Nov. 1999 FCC issues 9th Report and Order implementing non rural carrier USF mechanism.
- 2001 *Qwest Corp. v. FCC*: 10th Circuit Court reverses and remands Order No. 9 (Court found FCC, among other things, had failed to define key statutory terms, failed to justify cost 135% benchmark, and failed to evaluate data in the record comparing rural and urban costs under the proposed funding mechanism. Court directed FCC to define relevant statutory terms; assess whether funding mechanism will be sufficient to make rates reasonably comparable; provide adequate record support and reasoning for support level determined; and develop mechanisms to induce state action to assist in implementing USF goals.)
- Oct. 2003 FCC issues Remand Order. Chairman Martin criticizes the order in a separate statement: "I believe that today's effort . . . falls short in meeting our obligation to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban consumers...The existing nonrural mechanism "continues to base support on forward looking costs and creates a sparsely defined second supplemental support system based on rate comparisons. Today's recommendation falls short in its response to the court mandate that we define the statutory term 'reasonably comparable' for purposes of the cost-based support mechanism and fails to demonstrate, with any degree of specificity, how the proposed second mechanism will satisfy the statutory requirement that universal service support be 'specific, predictable and sufficient.'"
- Feb. 2005 *Qwest Communications Intl. v. FCC*: 10th Circuit Court reverses Remand Order in part. (Court found FCC, among other things, had not properly defined statutory terms, its comparability benchmark still allowed significant variance between urban and rural rates to continue unabated; and support not shown to be sufficient to make rates reasonably comparable. Court states expectation that FCC will act in "an expeditious manner".)
- Dec. 2005 FCC seeks comment on remand issues
- March 2006 Comment cycle closes
- Mid-March 2007 Vermont conducts meetings at the FCC to discuss timetable for resolving remand issues

- March 15, 2007  
(approx.) Chairman Martin states in response to questions posed by Senator Snowe in a February 7, 2007 Senate Commerce Committee hearing that he intends to circulate an order resolving this issue before the end of the year.
- March 19, 2007 The Maine, Wyoming, Vermont, Kentucky, Montana, Nebraska and South Dakota state commissions, and related state agencies, send letters to Chairman Martin asking that the FCC establish an early timetable for resolution of remand issues. No response has been received.