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

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON THE JOINT BOARD RECOMMENDED DECISION

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

April 17, 2008

TABLE OF CONTENTS

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

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON THE JOINT BOARD RECOMMENDED DECISION

I. INTRODUCTION AND SUMMARY

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits these comments to the Federal Communications Commission ("FCC" or "Commission") in response to the Notice of Proposed Rulemaking issued in these dockets.[2] The *Comprehensive Reform NRPM* seeks "comment on ways to reform the

---

[1] NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 ("05-337/96-45"), Notice of Proposed Rulemaking, FCC 08-22 (rel. January 29, 2008) ("*Comprehensive Reform NPRM*"). Unless otherwise specified, all subsequent citations are to 05-337 or 96-45 or both.

high-cost universal service program."[3] NASUCA's interest here, as in previous universal service comments, is that its members represent the customers who are intended to be the beneficiaries of universal service programs, but are also those who ultimately pay for the programs.

The Commission specifically seeks comment on the recommendations of the Federal-State Joint Board on Universal Service ("Joint Board") regarding comprehensive reform of high-cost universal service support.[4] In the *Comprehensive Reform Recommended Decision*, the Joint Board proposed major structural changes to the federal high-cost universal service fund ("USF"), including the establishment of new separate funds to support broadband[5] and mobility,[6] with the remainder of the current high-cost USF becoming a provider of last resort ("POLR") fund.[7] NASUCA supports these initiatives, and provides comments regarding the appropriate details of implementing these changes.[8]

---

[3] *Comprehensive Reform NPRM*, ¶ 1.

[4] Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) ("*Comprehensive Reform Recommended Decision*").

[5] *Comprehensive Reform Recommended Decision*, ¶¶ 12-15.

[6] Id., ¶¶ 16-18.

[7] Id., ¶¶ 19-23.

[8] The Commission incorporates into the *Comprehensive Reform NPRM* two other notices of proposed rulemaking also issued on January 29, 2008: one seeking comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers ("ETCs"), including elimination of the "identical support rule" and the other seeking comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas. 05-337/96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. January 29, 2008) ("*Identical Support NPRM*"); id., Notice of Proposed Rulemaking, FCC 08-5 (rel. January 29, 2008) ("*Reverse Auctions NPRM*"). In a Public Notice (DA 08-499) released on March 4, 2008, the Commission indicated that it would accept consolidated comments all three NPRMs. Given the limited scope of the other two NPRMs, NASUCA is filing separate comments on them but incorporates those comments by reference here.

Yet NASUCA does not view the *Comprehensive Reform NPRM* as being limited to comments on the *Comprehensive Reform Recommended Decision*. Many of the issues raised in the *Comprehensive Reform Recommended Decision* regarding the high-cost fund have been discussed with the FCC before; these comments reiterate many of NASUCA's previously-expressed positions on those issues. Further, as to many issues, the Joint Board either does not come to a conclusion,[9] or requests that the Commission seek further comment.[10] And although the *Comprehensive Reform Recommended Decision* was adopted by unanimous vote, the separate statements accompanying the decision indicate a lack of consensus on many individual issues.[11] Based on these factors, NASUCA also addresses issues outside the four corners of the *Comprehensive Reform Recommended Decision*, in order to assist the Commission with the expeditious consideration of issues for long-range reform of the USF that have remained undecided.[12]

For more than five years, the FCC and the Joint Board have been deliberating various alternatives for the reform of the Universal Service Fund, without any significant progress.[13] During this period of time, the Joint Board has considered a wide variety of USF reform options that have been gathered by the Board since 2002. Finally, facing the imminent threat of the high-cost fund spiraling upward and out of control, the Joint Board

---

[9] See, e.g., *Comprehensive Reform Recommended Decision*, ¶ 19 (no outline of any new and unified system for providers of last resort).

[10] See, e.g., id., at ¶ 70 (allocating funds among the states).

[11] See, e.g., id., Statement of Commissioner Deborah Taylor Tate.

[12] NASUCA has, however, tried not to stray from the subject of the high-cost fund. It is anticipated that others will do so, as in the past, particularly with respect to the USF contribution mechanism.

[13] See Comments of the National Association of State Utility Consumer Advocates on "Long-Term, Comprehensive High-Cost Universal Service Reform" (May 31, 2007) ("NASUCA 2007 Comments") at 3-5.

acted in mid-2007 by recommending a cap on support for competitive eligible telecommunications carriers ("CETCs"), to apply for one year after the Joint Board made its recommendation on comprehensive and fundamental high-cost universal service reform.[14] The Joint Board promised that a comprehensive recommendation for consideration would be submitted to the FCC within six months. That comprehensive recommendation was embodied in the *Comprehensive Reform Recommended Decision*.

NASUCA does not endorse each and every proposal that is included in the *Comprehensive Reform Recommended Decision*. However, the framework that has been put before the FCC represents an imaginative, comprehensive and far-reaching reform that the FCC should adopt.

The recommendation by the Joint Board represents such a broad spectrum of change that it is not surprising that there will be many suggestions to make it better. NASUCA looks forward to continuing debate and progress on fine-tuning the reform proposals that have been put forward by the Joint Board. The FCC should, however, recognize that it must first endorse or reject the major concepts that have been recommended by the Joint Board, and then move with speed to flesh out the administrative details needed to transform these goals into effective universal service support mechanisms.

Further, there continues to be a significant and urgent need to protect the sustainability of the USF in order to meet obligations that are required by the statutes to protect and preserve universal service. The FCC should immediately impose a cap on

[14] Recommended Decision, 22 FCC Rcd 8998 (Fed-State Jt. Bd. 2007) ("*Recommended Decision on CETC Caps*").

CETC funding, as recommended by the Joint Board in May 2007,[15] in order to allow adequate time for implementation of needed reforms. This should be the Commission's first order of business and need not await receipt of additional public comments. The Commission set the *Recommended Decision on CETC Caps* for public comment two weeks after the *Recommended Decision* was issued, but has not yet acted, although the reply comments were filed more than nine months ago and five months after the issuance of the *Comprehensive Reform Recommended Decision*.

In addition, the *Comprehensive Reform Recommended Decision* also includes a recommendation for "an overall cap on high-cost funding" at "$4.5 billion, which is approximately equal to the 2007 level of high-cost funding."[16] NASUCA strongly agrees with the concept of capping the overall fund while the current fund is transitioned to the three-part fund envisioned by the Joint Board.

The Commission should also be reminded that it has yet to resolve the most fundamental issues regarding the high-cost fund: how to define "reasonably comparable" and "affordable," such that the high-cost fund is supposed to yield services and rates for those services that are affordable, and that are reasonably comparable between rural and urban areas.[17] Absent that definition, it is literally impossible for the Commission to determine that any configuration of the high-cost fund -- either the new pieces or the remainder that will become the POLR Fund -- is sufficient to meet the requirements of 47

---

[15] Id.

[16] *Comprehensive Reform Recommended Decision*, ¶ 26. The Joint Board also recommends that "during the transition period, each of the five major support mechanisms be separately capped at their 2007 levels." Id., ¶ 32.

[17] See, e.g., NASUCA reply comments (May 26, 2006) ("NASUCA NRHC Reply Comments"), in response to FCC 05-205 ("*NRHC NPRM*").

U.S.C. § 254.

The *Comprehensive Reform Recommended Decision* raises a number of issues regarding the POLR Fund, which, even after the dollars for the Broadband Fund and the Mobility Fund are removed, will remain the largest piece of the USF. It is possible that the POLR fund itself could be substantially restructured for the long term, after full consideration of the issues raised by the Joint Board. In the meantime, however, there are actions that can be taken based on comments already received by the Commission to reform the current fund, in order to better target support and to ease the burden on consumers nationwide who are paying into the Fund.

Additional points made in these comments include:

- ETCs will not be required to qualify for more than one of the funds but will not receive funding from the other funds unless they qualify for the other funds;

- Each Fund should support only a single carrier in a specific geographic area;

- The Broadband Fund:

    - should be created based on a determination that wireline broadband service qualifies as a supported service under the Act

    - should be accompanied by a redefinition of "broadband" service

    - should be funded from amounts in the current fund that actually support broadband, or from a separate assessment on broadband service

    - should be limited to funding wireline broadband service

    - should focus on unserved areas;

- The Mobility Fund:

    - should be created based on a determination that mobility service qualifies as a supported service under the Act

    - should be funded from amounts in the current fund that go to wireless carriers

  - should focus on unserved areas;

- The POLR Fund:

  - should include an explicit definition of the Provider of Last Resort responsibility

  - should provide support only to those rural areas where, absent support, rates would not be affordable or would not be reasonably comparable to rates in urban areas

  - should combine the current parts of the high-cost fund

  - should be based to the greatest extent possible on forward-looking costs, capped at the actual costs of carriers

  - should be based on an updated, properly-performed cost model

  - should impose the model first on non-rural carriers (utilizing the current statewide averaging), then on the larger rural carriers (utilizing a national benchmark of similarly-sized carriers), and finally, when appropriately refined, could be applied to the smallest rural carriers

  - should, for both rural and non-rural carriers, include NASUCA's prior recommendations

  - should operate under a cap set at the current amounts spent for wireline basic service support

  - should not operate so as to substantially increase the amount in the fund, especially for non-rural carriers, given the current reasonable comparability between non-rural carriers' rural and urban rates

  - should exclude amounts currently paid for Interstate Access Support;

- The issues raised by the Joint Board regarding the POLR Fund deserve investigation, but risk substantially increasing the size of the Fund;

- States have a role in allocating the Broadband Fund and the Mobility Fund within their boundaries, but the POLR Fund should be allocated according to the federal models; and

- There is a substantial need for more effective auditing of the high-cost fund, especially if it is divided into the three parts proposed by the Joint Board.

These comments are accompanied by four Appendices: the first sets forth NASUCA's proposal for starting up the Mobility Fund; the second discusses the issue of reasonable rate comparability (updated from NASUCA's comments on support for non-rural carriers); the third sets out the support currently received by non-rural carriers; and the fourth discusses the differences between rural and non-rural carriers.

II. THE COMMISSION'S EFFORTS AT RESOLVING UNIVERSAL SERVICE ISSUES DO NOT SEEM TO BE FOCUSED ON RESULTS.

In comments responding to the Joint Board's request for comments last Spring, NASUCA included a section titled "The Joint Board's and the Commission's efforts at resolving universal service issues do not seem to be focused on results."[18] Unfortunately, it is necessary to make virtually the same remarks here, directed primarily at the Commission, especially in light of the Commission's failure to take the key step for constraining the high-cost USF by capping CETC funding, as recommended by the Joint Board in May of 2007.

As NASUCA stated last May, the stakeholders in the universal service discussions -- consumers and their representatives, the industry, and state and federal regulators -- continue to puzzle over the myriad of issues surrounding this complex subject. The Commission, although deserving of praise for the amount of energy devoted to the debate, appears not to be able to date to come to a resolution in any significant

[18] NASUCA 2007 Comments at 3-5.

area, and appears to be easily distracted by new or peripheral issues while older and more fundamental issues remain unresolved.

The prime example is the resolution of the most crucial issue for high-cost universal service support: definitions of what constitute "reasonably comparable" and "affordable" rates and services, and what would make the USF "sufficient." These key terms in 47 U.S.C. 254(b) are the underpinnings and the purpose of the universal service programs, yet remain undefined. The Commission's definitions have twice been rejected by the courts.[19] And the last round of reply comments on the definitions were submitted almost two years ago, but no decision has been reached.[20] These issues arose in the context of the USF for non-rural carriers, but this is one respect in which the decision is likely also to apply to rural carriers.[21]

The Joint Board cannot be absolved of responsibility for delays here, either. Reply comments on fundamental changes to the high-cost fund for rural carriers were submitted in December 2004.[22] Further, in 2005, the Joint Board requested comments on

---

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

[20] See, e.g., NASUCA NRHC Reply Comments. Other long-pending inquiries include the process by which states can request supplemental universal service funding, where reply comments were filed in February 2004. See, e.g., NASUCA reply comments (February 13, 2004), in response to Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003) ("*Order on Remand*"). The single request to date under the initial supplemental support mechanism -- that of the State of Wyoming -- remains pending more than three years after the request was filed. See DA 05-412 (rel. February 14, 2005).

[21] It should be recalled 47 U.S.C. § 214(e)(2) provides that a state commission "may" designate more than one ETC in territories served by rural telephone companies. "Rural telephone companies" are defined in 47 U.S.C. § 153(47). In all other areas -- i.e., those served by "non-rural" telephone companies -- a state commission "shall" designate more than one ETC. As discussed elsewhere in these comments, the statutory definition is not the only difference between rural and non-rural telephone companies.

[22] See, e.g., NASUCA reply comments (December 14, 2004), in response to FCC 04J-2 ("NASUCA RHC Reply Comments").

four USF proposals submitted by members and staff of the Joint Board, which included short-term and long-term reforms to the existing rules.[23] No recommendation to the FCC came out of those efforts. Those issues are also presumably not moot under the POLR fund.

In the May 2007 *Comprehensive Reform Public Notice*, there were a variety of subjects set forth, some of which were not crucial to "long term, comprehensive high-cost universal service reform." Likewise, a number of the issues included in the *2007 Comprehensive Reform Recommended Decision*, on which the Commission has now requested further comment, are not central to that reform process. NASUCA remains concerned that once again some of these issues will distract the Commission from the mission required by Section 254 of the 1996 Telecommunications Act, and will move it further away from taking effective steps on which many comments have already been submitted.[24]

III. FUNDAMENTAL HIGH-COST FUND DISTRIBUTION REFORM

NASUCA strongly endorses the Joint Board's proposal to modify the existing high-cost USF by establishing three separate funding mechanisms for future funding.[25] The Joint Board proposes to first take action in response to the statutory requirement that

---

[23] See, e.g., NASUCA reply comments (October 31, 2005), in response to FCC 05J-1.

[24] Indeed, it does not appear that either the Commission or the Joint Board is doing anything formal to address the question of the accuracy of the Commission's studies of telephone subscribership. See NASUCA ex parte (August 11, 2005). If the flaw is in the data collection, then it should be fixed. The issue appears to have eased somewhat (see Belinfante, Telephone Subscribership in the United States (rel. February 2008)), but these concerns, going as they do to the heart of universal service, deserve a higher priority than they appear to have been given.

[25] *Comprehensive Reform Recommended Decision*, ¶¶ 2, 11.

the Commission's USF policies should recognize the changing requirements and needs of customers in modifying its definition of supported services, by including broadband and mobility as supported services. It has been twelve years since the passage of the 1996 Telecommunications Act, and the basic definition of supported services has not changed. The Joint Board's recommendation would convert the existing fund that supports wireless services, broadband-capable facilities and traditional plain old telephone service ("POTS") into three distinct funds.[26]

The Joint Board recommends "an overall cap on high-cost funding" that would amount to "$4.5 billion, which is approximately equal to the 2007 level of high-cost funding."[27] According to USAC, actual 2007 disbursements from the high-cost fund totaled $4.29 billion.[28] That level should be adopted as the overall cap.[29]

First, NASUCA supports the establishment of a separate Broadband Fund that will replace the existing funding for broadband services that is embedded within the "all-purpose" USF high-cost funding mechanism.[30] The national demand for broadband service and the broader public interest make it appropriate to define broadband as a supported service, and make necessary a new national goal that will achieve ubiquitous broadband services throughout both rural and non-rural carriers' territories at affordable and reasonably comparable rates. This proposal involves a new fund directed first to

---

[26] Id.

[27] *Comprehensive Reform Recommended Decision*, ¶ 26.

[28] USAC 2007 Annual Report at 43.

[29] One thing the overall cap should do is to diminish the arguments in favor of changing the current contribution mechanism to one based on numbers or connections. It would be especially troubling to attempt such a mammoth change while the fund itself is undergoing these major structural changes.

[30] *Comprehensive Reform Recommended Decision*, , ¶ 12.

bringing broadband to unserved territories,[31] a broadband definition that recognizes the service requirements and transmission speeds needed for the future,[32] and a transition plan to move existing broadband funding from the current mechanism into the separate and distinct Broadband Fund.[33]

NASUCA differs somewhat from the Joint Board in its recommendation for broadband funding, however. Rather than assume an immediate requirement of an additional $300 million per year for broadband funding,[34] NASUCA would recommend that existing high-cost funding used for broadband purposes be quantified and moved into the new Broadband Fund, followed by such changes as are needed, either up or down, to achieve ubiquitous broadband capabilities within a reasonable period of time. Such services should be provided at affordable rates that are reasonably comparable to those charged in urban areas.[35] In the alternative or in addition, funding for broadband could come from a new assessment on broadband providers. It is only reasonable that if broadband is to become a supported service, broadband should itself contribute to the fund.

Second, NASUCA supports the establishment of a separate Mobility Fund to replace existing wireless ETC support (over $1 billion,[36] representing 23% of the total

---

[31] Id. A definition of territories "unserved" by broadband will need to be established. It will also be necessary to define "underserved" areas.

[32] Id., ¶ 72.

[33] Id., ¶ 27

[34] Id. ¶ 29.

[35] Broadband service should also be made available to Lifeline customers at a discount.

[36] USAC 2007 Annual Report at 45 (total CETC support for 2007 estimated at $1.18 billion; almost all of that amount – 98% -- goes to wireless carriers).

$4.29 billion high-cost fund). Wireless services are not a substitute for existing wireline networks that provide essential local telecommunications through over 160 million access lines to customers throughout the nation.[37] But the phenomenal growth of wireless networks both results from and has created a public need and preference for mobility because of the mobility network's own unique characteristics. Public funding should be provided to ensure nationwide mobility services to meet public mobility needs, but only where the high cost of network construction has prevented rural and insular communities from receiving adequate mobility services at reasonable prices.[38] For this reason, initial mobility funding should be directed to unserved communities. Subsequent funding should then be considered for underserved areas. As with the Broadband Fund, both "unserved" and "underserved" would need to be defined with regard to mobility services.

Third, NASUCA supports a plan to transition existing wireless funding and existing broadband funding from the legacy high-cost fund. The remainder would become the POLR Fund. NASUCA supports retaining the remaining funding levels of universal service support to existing wireline recipients (the legacy wireline network) in order to preserve universal service in remote, insular, and/or high-cost communities, while issues regarding the proper format and funding for the POLR Fund are being hashed out.

As discussed above and more extensively below, the Commission must still define the key universal service terms in the Act, being "reasonably comparable" and

---

[37] Wireline Competition Bureau, Industry Analysis and Technology Division, "Local Telephone Competition: Status as of June 30, 2007," (March 2008) at 1, accessible at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.pdf.

[38] It should be noted that most of the major wireless carriers provide plans that are uniformly priced nationwide, meaning that reasonable comparability of prices should not be an issue.

"affordable," as part of any long-term reform of the high-cost fund. That fund is supposed to support rates that are reasonably comparable in rural areas to those charged in urban areas, and that are affordable regardless of location. The connection between levels of support and the resultant rates has never really been part of the USF; it is crucial for that connection to be drawn going forward in order to properly evaluate the impact of the USF and reforms to the fund.[39]

Consistent with past recommendations, NASUCA recommends adoption of immediate significant reforms to the existing funding mechanisms for the legacy network in order to better target funding, to minimize excessive funding and waste, and to eliminate fraud. The current and various parts of the high-cost fund should be combined. As much as possible of the high-cost fund should be based on the forward-looking costs of an efficient network, but funding should never exceed the embedded costs of the recipient. In the *First Report and Order*, the Commission agreed with the Joint Board's recommendation that forward-looking economic costs should be the basis for universal service support because, unlike embedded costs, they provide appropriate incentives for investment, entry, and innovation in the marketplace.[40] Forward-looking cost tests better simulate the results of a competitive market, even where competition does not actually exist.

Clearly, the current model for calculating such costs must be updated, and the funding mechanism should be modified to reflect the increased costs associated with

---

[39] The "affordable" and "reasonably comparable" goals would also apply to the services covered by the Broadband Fund and the Mobility Fund.

[40] Report and Order, 12 FCC Rcd 8776 (1997) ("*First Report and Order*"), ¶ 224.

smaller wire centers, declining density and other relevant cost factors. In recognizing that the "rural difference"[41] is real, the POLR distribution mechanism could be modified so as to shift its emphasis from strict adherence to model costs for larger networks to recognize the significant deviations from model results that can be observed in the smallest wire centers with the lowest density. The smallest and highest cost networks should continue to be targeted by the USF to the extent necessary to ensure affordable and comparable rates for rural customers. But the fund should also continue to recognize the significant differences between the largest firms, for which statewide averaging remains the appropriate means of determining support, and the smallest firms that have no ability to spread costs across a network.

Along with this restructuring of the USF, NASUCA agrees with the Joint Board that the definition of ETC will have to change.[42] Thus carriers that seek to take from the POLR fund will fall under the current ETC regulations, and new definitions will have to be adopted to determine eligibility for the Broadband Fund and the Mobility Fund. Carriers that take under only one of the funds will not be required to meet the requirements for the other two funds, and should not, unless separately qualified, receive payments from the other funds.

Ultimately, the existing wireline voice network may be converted to a broadband network. This will mean that virtually all of the current wireline support ($3.1 billion[43])

---

[41] "The Rural Difference," Rural Task Force White Paper 2 (January 2000) (available at http://www.wutc.wa.gov/rtf) ("*The Rural Difference*"); see *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*"), ¶ 17.

[42] *Comprehensive Reform Recommended Decision*, ¶ 68.

[43] USAC 2007 Annual Report at 45.

could be transitioned to the Broadband Fund. But for the foreseeable future, the need to support a wireline POLR network will remain.

IV. THE BROADBAND FUND

A. The Broadband Fund Should Be Limited To Wireline Broadband Service.

The Joint Board asserts that broadband meets the statutory qualifications for being designated a supported service under 47 U.S.C. § 254(c)(1).[44] With one significant exception, NASUCA agrees, and also supports the basic proposals contained in paragraphs 12-15 of the *Comprehensive Reform Recommended Decision* for the establishment of a separate Broadband Fund.

The Joint Board proposals assume that broadband will be a supported service, whether provided by a wireless provider or a wireline provider. But because of the current significant differences between wireless and wireline broadband capabilities, only wireline broadband meets the test of 47 U.S.C. § 254(c)(1) for being a supported service. Thus at the outset the Broadband Fund should only be available for wireline broadband expansion.

The Joint Board recommends that broadband Internet service be defined as a supported service under the 1996 Act.[45] NASUCA agrees, in general. But the growth and public demand for wireless broadband presently falls significantly short of meeting

---

[44] *Comprehensive Reform Recommended Decision*, ¶ 58.

[45] Id., ¶ 58, citing 47 U.S.C. § 254(c)(1). This should mean that Lifeline customers should be eligible for discounts on their broadband services, consistent with NASUCA's previous positions. See *In the Matter of Sprint Spectrum LLC Petition for Declaratory Ruling*, WC Dockets 03-109 and 07-138, NASUCA Comments (August 9, 2007) at 3-4. See *Comprehensive Reform Recommended Decision*, ¶ 71.

the § 254(c)(1) standards in order to qualify for receipt of funding under the USF. At some point in the future, it is conceivable that the existing mobility networks may evolve into mobility broadband networks that could qualify for high-cost support based on the unique service capabilities inherent in wireless networks, just as not until recently did both wireline broadband and standard wireless service meet the criteria under § 254(c)(1).

The Joint Board is correct to recommend that the initial focus should be on bringing broadband to unserved areas, followed by underserved areas. As mentioned above, the first step there must be to define "unserved" and "underserved." To that end, the Commission has already engaged in an inquiry to determine where broadband has been deployed, and what transmission speeds are available.[46] Increasingly, there are resources available that can assist in that effort.[47]

B. Redefinition Of "Broadband" Is Necessary.

NASUCA would also emphasize to the Commission that the current definition of "broadband" falls woefully short of public expectations for bandwidth and transmission speeds.[48] At this time, the FCC should give priority to redefining broadband in terms of

---

[46] See, e.g., *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket 07-38 ("07-38"), NASUCA Comments (June 15, 2007) ("NASUCA 07-38 Comments").

[47] E.g., the ConnectedNation initiative (see http://www.connectednation.com) and the recent announcement by CostQuest Associates (see http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519843496).

[48] *Comprehensive Reform Recommended Decision*, ¶ 56, 72.

the current needs and expectations of the public.[49] It is virtually impossible to move forward to quantify existing broadband availability until the FCC defines precisely the bandwidth and transmission speeds that qualify as "broadband" service. In determining network speeds, the Commission should attempt to establish ***minimum*** transmission speeds that would provide economical network deployment, while at the same time having the capability of meeting higher standards based on future needs.[50]

C. Distribution Of The Broadband Fund By The States Is Appropriate.

NASUCA supports the Joint Board proposal to look first to the states for the distribution of broadband funding, subject to federal standards.[51] NASUCA also supports the Joint Board proposal to allow state flexibility in the process used to award construction grants for new broadband facilities and for limited ongoing support.[52] Consistent with its long-standing positions, NASUCA fully supports the concept that universal service broadband funding should not be awarded to duplicate networks or to multiple providers in the same geographical areas.[53]

There is, of course, the question of how the Broadband Fund is to be allocated **among** the states. The Joint Board did not "propose a specific algorithm for the state

---

[49] On March 19, 2008, the Commission announced its order in 07-38, indicating that it would "[e]xpand the number of broadband reporting speed tiers to capture more precise information about upload and download broadband speeds in the marketplace…." News Release (March 19, 2008). The order providing details has not been released as of this writing.

[50] See, e.g., NASUCA 07-38 Comments at 11-13; 07-38, Communications Workers of America ex parte (February 29, 2008).

[51] *Comprehensive Reform Recommended Decision*, ¶¶ 13-14.

[52] Id.

[53] Id., ¶ 15.

allocations."[54] NASUCA agrees that "a major input factor should be the number of residents of each state who are unable to purchase terrestrial broadband Internet service at their residences."[55] That will require an accurate census of those unserved residents.

D. Funding The Broadband Fund

The *Comprehensive Reform Recommended Decision* contains no specific discussion of how the Broadband Fund is to be funded. It is safe to assume, then, that the intention was for funding to come from the mechanism that is the source of the dollars for the current USF. This would, of course, increase the drain on the USF.

Significant amounts of the current high-cost fund are actually used to fund investments in broadband service, as numerous carriers acknowledge.[56] At the very least, those dollars should be cut from the high-cost herd and be allocated to the Broadband Fund.

NASUCA would propose an alternative, that could be used as an addition to the current levels of funding. That is, additional money for the Broadband Fund could come from a separate assessment on broadband services. The Commission previously assessed digital subscriber line ("DSL") service to support the entire USF, but that assessment ended in 2006.[57] As information services that use telecommunications, cable modem service and DSL are both within the Commission's discretion to assess for universal

---

[54] Id.

[55] Id.

[56] See, e.g., *In the Matter of Hawaiian Telecom, Inc. Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules*, WC Docket No. 08-4, Petition of Hawaiian Telecom (December 31, 2007) at 21-23.

[57] *In the Matter of the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, et al., Report and Order, FCC 05-150, 20 FCC Rcd 14853 (2005), ¶¶ 112-113.

service purposes.[58]

Like traditional wireline voice services, broadband service shows "network effects." That is, the larger the network, the more value accrues to each user. These effects underlie and justify the entire universal service scheme, and justify assessing broadband service to help pay for the expansion of broadband service for which the Broadband Fund will be created.

Adding funding for the Broadband Fund to the USF will add burden to an already overburdened source, unless current high-cost funding is transitioned to the Broadband Fund. Creating a separate assessment on DSL and cable modem services will alleviate the burden on current funding.[59] And if the Broadband Fund begins in limited form, the burden on broadband customers from such an assessment should be minimal.[60] One source estimated that U.S. broadband revenue for 2007 totaled $31.4 billion.[61]

Future broadband goals will be difficult to establish until such time as the total

---

[58] 47 U.S.C. § 254(d).

[59] As noted above, NASUCA does not propose that wireless broadband service be eligible to receive money from the Broadband Fund. Given network effects, however, it would nonetheless be appropriate to assess the growing wireless broadband services to pay into the Broadband Fund. The fact that wireless broadband services do not receive universal service funding is irrelevant to whether they should be required to pay into the Broadband Fund: First, stand-alone long distance providers do not receive universal service funds, despite the fact that interstate long distance revenues have traditionally been the primary source of funding for the federal fund. Second, many non-rural local carriers receive no funding, despite the fact that they pay into the fund based on their subscriber line charges being considered to be interstate revenues, as well as based on their own interstate traffic. The very nature of the fund dictates, among other things, that there will be imbalances, by industry, by state, and by carrier, between amounts paid into the fund and benefits received.

[60] NASUCA has proposed a "Jump Start Mobility Trial" (see Appendix 1) that would fund limited expansion of mobility services to unserved areas in each state with construction starting as early as 2010. NASUCA recommends considering the same approach for the Broadband Fund.

[61] See http://www.plunkettresearch.com/Telecommunications/TelecommunicationsStatistics/tabid/96/Default.aspx (accessed March 20, 2008).

number of unserved customers is quantified, along with available funding and estimated costs. The FCC should establish a long-term goal based on that data, which will provide policy-makers with the necessary information needed to prioritize spending.

V. THE MOBILITY FUND

NASUCA supports the Joint Board recommendation that a new Mobility Fund be established to ensure adequate mobility services for all areas of the nation, including state and federal highways.[62] NASUCA would emphasize that the recognition of mobility service as a supported service is based on the growth that the wireless industry has experienced since passage of the 1996 Act.[63] Under those circumstances, "mobility" meets the definition of supported services under 47 U.S.C. § 254(c)(1).

Americans now have a reasonable expectation that quality mobility services should be available in all populated areas of the country, including along state and federal highways. The record is clear, however, that wireless services are inadequate as a full substitute for the wireline network. As the Commission has stated, "wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. …[R]ather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service."[64]

---

[62] *Comprehensive Reform Recommended Decision*, ¶ 16.

[63] Id., ¶ 65.

[64] *Identical Support NPRM*, ¶ 9 (footnote omitted). See also id., ¶ 10 ("the majority of households do not view wireline and wireless services to be direct substitutes…").

This inadequacy is particularly evident when considering the evolving nature of wireline telecommunications into a universal broadband network. Yet mobility services with their own unique capabilities are increasingly important to a mobile American society. Therefore, mobility networks should now be recognized separately as vital to our country, defined based on wireless (not wireline) standards, with funding to qualifying carriers based on a set of reasonable customer service expectations that will need to be developed and approved by the FCC. In so doing, the FCC should be mindful of the requirements within the Telecommunications Act that supported services should be affordable and reasonably comparable between urban and rural customers.[65]

As with broadband services, NASUCA supports the Joint Board proposals that the Commission should partner with the states in the distribution of mobility funding within the states, since state commissions have far greater knowledge than federal regulators as to the needs of local customers and the capabilities of telecommunications providers within their states.[66] Likewise, NASUCA agrees that the Mobility Fund should focus first on currently unserved areas, then move on to underserved areas.[67] NASUCA also agrees that only one provider in any geographic area should receive mobility funding.[68]

In Appendix 1 to these comments, NASUCA sets forth specific proposals for the transition from existing wireless funding under the high-cost mechanism to the Mobility Fund, including a mobility jump-start that could produce trial build-out projects in every

---

[65] 47 U.S.C. § 254(b)(3). Clearly, Lifeline customers should be able to take advantage of mobility services. See *Comprehensive Reform Recommended Decision*, ¶ 71.

[66] *Comprehensive Reform Recommended Decision*, ¶ 17-18.

[67] Id., ¶ 16.

[68] Id., ¶ 18.

state as early as 2010. The proposals also discuss how the Mobility Fund could be allocated among the states. Given the magnitude of current wireless funding, the transition will be important so as not to disrupt customers' service in any area of the country.

VI. THE PROVIDER OF LAST RESORT FUND

The Joint Board has recommended the transfiguration of the current high-cost fund into a POLR fund, apparently contingent upon the creation of the separate Mobility and Broadband Funds. By implication at least, providers that receive mobility and/or broadband funding would not have POLR responsibilities. Carriers that receive POLR funding would, of course, bear the POLR responsibility. These things should be made explicit in the Commission's decision.

The Joint Board recommends that the POLR Fund should "be comprised of the sum of all existing Incumbent LEC support mechanisms…."[69] With the overall high-cost USF at $4.5 billion (according to the Joint Board) or $4.3 billion (according to USAC), that would establish the upper limit for the POLR Fund. Yet the Joint Board "recommends a transition during which existing funding mechanisms would be reduced, and all, or at least a significant share, of the savings transferred to the new Funds and mechanisms described above."[70] The projected amounts are $300 million for the

[69] Id., 19.

[70] It is not clear which reductions are referred to, or what the savings would result from.

Broadband Fund[71] and $1.0 billion for the Mobility Fund.[72] This would apparently leave $3.2 billion (or $3.0 billion, according to USAC) for the POLR Fund. The Joint Board further states, "Except for possible funding reductions discussed below, these [ILEC support] programs would be left intact for the present."[73]

It is important that the FCC and the stakeholders fully recognize that the existing high-cost fund consists of multiple support mechanisms that are both complex and also to some extent contradictory in many of their concepts. Reform is crucial in order to harmonize all of the high-cost support mechanisms with the goals of the Act. The various support mechanisms that must be dealt with in any reform proceeding are summarized here.[74]

Support for non-rural carriers comes principally from two sources: (1) the high-cost model support mechanism, and (2) the interstate access support mechanism.[75] These mechanisms amounted to $1.3 billion in 2007, including CETC support.[76]

●*High-cost model support* ("HCM") is based on the following:

1. The total unseparated costs of serving each exchange of each non-rural incumbent are estimated by the FCC's Hybrid Cost Proxy Model.

---

[71] Id., ¶ 29.

[72] Id., ¶ 28.

[73] Id., ¶ 19. Again, it is not clear which specific "possible funding reductions" are being referred to. Yet as shown in Section VI.E., below, most of the subjects raised by the Joint Board would likely increase the fund. That particularly seems true of the Joint Board's proposal that "the Commission … focus its attention on developing a unified POLR mechanism" (id., ¶ 20) as separately discussed in Section VI.D., unless current expectations are scaled back.

[74] This succinct description owes much to former Joint Board member Billy Jack Gregg.

[75] There are a small number of rate-of-return non-rural carriers that receive Interstate Common Line Support, as described below, rather than Interstate Access Support.

[76] USAC 2007 Annual Report at 44.

2. These exchange costs are aggregated and divided by the total number of lines served by the incumbent non-rural carrier.

3. If there is more than one non-rural incumbent within a state, the costs of the non-rural carriers within the state are averaged together.

4. The average cost per line of each state is compared to a national cost benchmark, which currently is $28.13 per month.[77] Those states with costs in excess of the benchmark are eligible for high-cost model support.

5. The amount of support for each state is based on 76% of the dollar amount above the benchmark times the number of lines served.

6. In states with more than one non-rural incumbent, support is allocated among carriers based on an FCC algorithm.

HCM amounted to $346 million in 2007, of which a substantial amount went to CETCs.[78]

●*Interstate access support* ("IAS") is based on the following:

1. Each price cap carrier reports its total embedded costs for interstate common line, marketing and transport ("CMT") expenses.

2. These costs are compared to the revenues produced by the carrier's subscriber line charge ("SLC") imposed on end users. If the carrier is not able to recover all of its CMT costs with a SLC at or below the current SLC cap ($6.50 for single-line residential customers), then the carrier is eligible to receive IAS for the amount of CMT costs in excess of the cap.

---

[77] The current benchmark amounts to 131% of the national average cost produced by the model.

[78] USAC 2007 Annual Report at 43.

3. The Universal Service Administrative Company ("USAC") aggregates all claims for interstate access support, from both incumbents and CETCs. If the claims exceed the target of $162.5 million per quarter ($650 million per year), then an FCC algorithm is used to prorate support among the carriers.

IAS amounted to $645 million in 2007; again a substantial amount went to CETCs.[79]

Support for rural carriers comes principally from three sources: (1) the high-cost loop support mechanism; (2) local switching support; and (3) the interstate common line support mechanism. In 2007, these mechanisms provided $2.986 billion in support, including to CETCs.[80]

●*High-cost loop support* ("HCL") is based on the following:

1. The total unseparated loop costs of each incumbent carrier (both rural and non-rural) are submitted to the National Exchange Carrier Association ("NECA"). NECA submits a report to the FCC and USAC setting forth the average loop cost of each incumbent study area, as well as the national average loop cost.

2. The average cost per line of each rural study area is compared to the national average cost per line. Those study areas with costs greater than 115% of the national average are eligible to receive HCL. The current 115% benchmark amounts to $28.64 per line per month.

3. Rural carriers serving fewer than 200,000 lines are eligible to receive support

---

[79] There are a number of larger rural carriers who are price-cap carriers and receive support under IAS. This amounted to $147 million in 2007. Rural CETCs received $11 million in IAS in 2007. (Source: Monitoring Report.)

[80] USAC 2007 Annual Report at 43.

based on 65% of the costs in excess of the 115% benchmark. Those with costs in excess of 150% of the national average cost per line are eligible to receive support based on 75% of costs that exceed the 150% benchmark. Rural carriers serving over 200,000 lines receive lesser amounts of support, being 10% of costs in excess of the 115% benchmark; 30% of costs in excess of a 160% benchmark; 60% of costs in excess of a 200% benchmark; and 75% of costs in excess of a 250% benchmark.

4. The annual growth in HCL is limited by the "rural growth factor," which is the sum of inflation and the change in the number of rural loops. The rural growth factor has essentially capped the HCL fund since 2002. USAC applies the cap by raising the cost benchmark until the allowed amount of aggregate support is produced. The effective benchmark is currently 129% of the national average cost per loop. This means that many rural carriers with loop costs between 115% and 129% of national average cost per line receive no HCL.

HCL amounted to $1.443 billion in 2007.[81] Less of this – but still a substantial amount – went to CETCs.

●*Local switching support* ("LSS") is based on the following:

1. Only rural carriers serving less than 50,000 lines within a study area are eligible for local switching support.

2. Unlike HCL, LSS is not paid to carriers with high switching costs compared to the national average. Eligibility is based solely on size. LSS is based on the carrier's unseparated local switching revenue requirement multiplied by the local switching

---

[81] USAC 2007 Annual Report at 43.

support factor.[82] The factor will produce support that is a percentage of the total local switching revenue requirement.

LSS amounted to $460 million in 2007.[83] Again, substantial dollars went to CETCs operating in the rural ILECs' territories.

●*Interstate common line support* ("ICL") is based on the following:

1. Similar to IAS, ICL allows rate-of-return carriers to recover the portion of their interstate common line revenue requirement not recovered through subscriber line charges.

2. The interstate common line revenue requirement is based on the embedded interstate CMT.

3. Even though ICL, like HCL, is based primarily on loop costs, there is no cap on the size of the ICL fund.

ICL was $1.392 billion in 2007.[84] Again, the CETC share was substantial, but less than for IAS.[85]

Clearly, these diverse mechanisms, having evolved over time, could be unified to provide a coherent support mechanism. NASUCA agrees that the POLR fund should begin as the remainder of the existing wireline high-cost fund that is not subject to transition to the Mobility Fund or the Broadband Fund. POLR funding represents, for the

---

[82] The LSS factor is defined as the difference between two interstate dial equipment minute ("DEM") factors.

[83] USAC 2007 Annual Report at 43.

[84] USAC 2007 Annual Report at 43.

[85] Four non-rural carriers remain under rate-of-return and receive ICL. This amounted to $49 million in 2007, 3.5% of the total ICL funding.

most part, the existing funding that supports only the legacy narrow-band voice services that are eligible for existing support. But NASUCA does not believe that the newly-capped POLR Fund should merely remain intact, as explained below.

The Joint Board recommends that the Commission seek further comment on the allocation of funds among the states, focusing on the Broadband Fund and the Mobility Fund.[86] It is reasonable to assume, then, that the POLR Fund will continue to be allocated as it is at present, according to the needs of individual companies under the various programs.

A. Defining POLR

If an explicitly-designated "POLR" fund is to be created, it is vital to define what constitutes the POLR responsibility. After all, the incumbents will be accepting federal dollars with an expectation that they will meet, as presumably they have in the past, the expectations and requirements of the federal program.

The Commission should begin with the purposes of the fund under 47 U.S.C. § 254. First, it should be the carriers' responsibility (both rural and non-rural carriers) to certify that their rates are affordable, and that their rural rates are reasonably comparable to urban rates.[87] State commissions should also be required to verify and certify this, as under the current rules for non-rural carriers.[88]

Then there are the concepts inherent in being a provider "of last resort." The statutory requirement for being an ETC is merely that the carrier "shall, throughout the

---

[86] *Comprehensive Reform Recommended Decision*. ¶ 70.

[87] This of course will depend on the Commission arriving at definitions of these terms.

[88] 47 C.F.R. § 54.316.

service area for which the designation is received" offer supported service and advertise the availability of those services.[89] There is not much specificity in that requirement.

One state that has expressed the POLR (or COLR) concept is California. The California Public Utilities Commission recently stated that:

> The regulatory concept of a COLR is rooted in the idea that by accepting the franchise obligation from the state to serve a designated area, **a COLR is obligated to serve all customers in the area that request service**. By contrast, though multiple providers compete for customers, competitors may target specific market niches that are profitable.[90]

Similarly, in Indiana the statutory definition of POLR is "a provider that: (1) holds a certificate of territorial authority issued by the commission; and (2) **is required to offer local exchange service throughout a defined geographic area**."[91] Likewise, in Virginia, the law defines a COLR as "any telecommunications company which is **obligated to offer basic local telecommunication service to all customers who request service in a geographic area** defined by the commission and cannot abandon this obligation without approval from the commission."[92] The key concept here is the obligation to serve, expressed more concretely than in the Telecom Act. The Commission should adopt regulations embodying that concept.

Once the POLR responsibility is defined, then there should be substantial changes from the current general high-cost fund mechanism to recognize those changes and

---

[89] 47 U.S.C. § 214(e)(1). The statute also requires the ETC to provide service at least partially through its own facilities.

[90] *Re Assess and Revise the Regulations of Telecommunications Utilities*, 2007 WL 2694318, at *9 (Cal. PUC) (emphasis added).

[91] IC 8-1-32.4-9 (emphasis added).

[92] V.A.M.S. 386.020 (emphasis added).

reform existing funding. But first the statutory concepts from § 254 must be addressed.

B. Defining "Reasonably Comparable" And "Affordable"

As discussed above, the Commission desperately needs to define the key terms from the Act, being "reasonably comparable" and "affordable." Although the Commission most recently took comment on this subject in the context of support for the large non-rural carriers, it is to be hoped that the comments on that subject also have relevance for smaller rural carriers. Appendix 2 attached here, discussing this issue, is adapted from NASUCA's comments filed in response to the *NRHC NPRM*.[93]

In those comments NASUCA presented rate data as of February 2006 for more than 11,000 wire centers nationwide -- urban, rural and in between -- served by non-rural carriers. NASUCA noted that the rate data submitted should have been sufficient to allow the Commission to determine which rural rates are not reasonably comparable to urban rates, and thus should be supported by the federal high-cost USF. The Commission has not made that determination, however. That data should still be sufficient for this purpose.[94]

With regard to the rural carriers, this is one area where there can be immediate uniformity with the definitions established for the non-rural carriers. Rates that are "affordable" depend on the customer's ability to pay, and rates that are not affordable for customers of a non-rural company would likely also not be affordable for rural companies' customers. Similarly, there need not be a different standard for judging

---

[93] NASUCA Comments (March 27, 2006) ("NASUCA NRHC Comments")

[94] Under some state commission's misguided deregulatory efforts, even urban carriers around the nation have increased their rates. For example, Cincinnati Bell Telephone has increased its basic local service charge in Ohio by $2.50 a month since NASUCA's rate census was provided to the Commission. This may have skewed the urban average.

whether the rural rates of rural carriers are reasonably comparable to urban rates than for judging comparability for non-rural carriers.[95]

C. Establishing A Link Between Support And Reasonable Comparability And Affordability[96]

It is safe to say that when Congress tasked the Commission with ensuring that rural rates were reasonably comparable to urban rates, basic service rates were regulated -- that is, set with the approval of or within limits set by state regulators. Congress reasonably assumed that there would be oversight to ensure that the federal assistance actually resulted in reasonably comparable rates.[97]

Such oversight is increasingly absent, however. Since then, a tide of rate deregulation has swept the nation, in large part due to claims of competition for telephone services, including the services supported by the USF. From state to state, the constraints that once applied to the rates for basic service are diminishing, as a result of state legislative action or state regulatory initiative.[98]

This has led to deregulated (or less-regulated) basic service rates, that in many cases are alleged to be "market-based." This is one area among many in which the states must be responsible for their decisions. A state that has given its ILECs discretion to set their own rates for basic service cannot certify that universal service support is being

---

[95] As noted, virtually all of the urban rates are charged by non-rural carriers.

[96] This section is adapted from NASUCA's NRHC Comments.

[97] State commissions continue to affirm this to the Commission each year for non-rural carriers. 47 C.F.R. § 54.316.

[98] E.g., Indiana. See http://www.upi.com/Hi-Tech/view.php?StoryID=20060301-110338-4271r.

applied so as to ensure reasonably comparable rates.[99] That state should certainly not be able to apply for supplemental federal support under either the current FCC mechanism[100] or the back-stop mechanism described in NASUCA's NRHC proposal.

The trend toward deregulated rates demands even closer examination by the Commission in determining whether those rates are affordable and whether rural rates are reasonably comparable to urban rates. It also demands closer examination of whether federal funds are used to make those rural rates reasonably comparable to urban rates. Clearly, under such circumstances it is a matter of faith whether those rates would no longer be reasonably comparable in the absence of federal support, and there is no guarantee that the granting of support will produce reasonably comparable rates. Indeed, it would be reasonable for the Commission to determine that a state, having relinquished control over its retail basic service rates, can have no control over whether those rates are reasonable or reasonably comparable, and thus should not receive any high-cost support.[101] If carriers with deregulated rates are to be eligible to receive federal POLR funding, the best way to ensure that their funding is used to ensure reasonably comparable and affordable rates is to require the funds to be used as direct credits to customers bills.

As part of this deregulation on the state level, ILECs and their local rates are obviously and increasingly no longer subject to the traditional constraints of rate-of-

---

[99] Such states have typically made the decision that (allegedly) "market-based" rates are per se just and reasonable.

[100] See *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), ¶ 93.

[101] Of course, if rates are deregulated but do not increase, support should continue.

return regulation. Especially where rates are no longer regulated and there is no constraint on ILEC earnings, it is inappropriate for other consumers around the country to contribute to ILEC's supracompetitive returns.[102] Even where rate-of-return regulation still exists, there are infrequent checks on high returns. This would make it appropriate for carriers to be required to certify that their returns were within a range of the Commission's reasonable return number of 11.25%.[103]

The Joint Board requests that the Commission seek comment on impacts of its recommendations on Lifeline customers.[104] The Lifeline program should be used to protect eligible customers from the increase in local rates that the ILECs have been able to impose.

D. Other Reform Actions

The Joint Board recommends that "during the transition period, each of the five major support mechanisms be separately capped at their 2007 levels."[105] Further, the Joint Board recommends that the Commission "establish a process and a timetable so that it will review and modernize the existing high-cost mechanisms for rural and non-rural carriers, with the objective of developing a coherent system that can be applied to all incumbent carriers."[106] Yet there are actions that should be taken in the short-term so that the POLR support mechanism will be properly structured, many of which are

---

[102] For example, in Ohio, all of the largest ILECs earned a return on equity in 2006 that was in excess of 11.25% (and some many times that), all under a regime where most of their rates were supposedly "market-based." Some of those carriers received federal "high-cost" funds, being IAS.

[103] This number, in effect since 1991, is obviously long in need of updating.

[104] *Comprehensive Reform Recommended Decision*, ¶ 73.

[105] Id., ¶ 32.

[106] Id., ¶ 23.

recommendations previously presented to the Commission. These can be done regardless of the Commission's long-term strategies for the high-cost fund.

One thing that need not be done in the short term is to totally eliminate the distinction between rural and non-rural ETCs. The key reasons for this -- the differences between the smallest rural companies and the largest companies -- are set out in Appendix 4.

The Joint Board bases its recommendation for developing a "unified" fund on the statement that "[t]he present support mechanisms are substantially different for rural and non-rural carriers, and support for customers served by one kind of carrier can be significantly more generous than for comparably situated customers served by the other kind of carrier."[107] Under the current system, the "more generous" support goes to rural carriers, not to their customers, given (a) the use of study-area embedded costs for rural carriers and (b) the use of statewide average forward-looking costs for the non-rural carriers.[108] Unless the Joint Board's intention is to **reduce** support for rural carriers by making it less "generous," the result of unifying the fund will be to **increase** funding for non-rural carriers.[109] Yet as shown in Appendix 2, at current rates and levels of support, non-rural carriers' rural rates are, for the most part, reasonably comparable to their urban rates, indicating that current support is at least sufficiently generous.

It would be preferable to have a unitary fund. That would hopefully remove

---

[107] Id., ¶ 20.

[108] For rural carriers as with non-rural carriers, there is no necessary link between the amount of support and whether rates are affordable and reasonably comparable.

[109] As discussed in Section VI.D.1., below, NASUCA has proposed reductions to the rural high-cost fund that could be carried over to the POLR fund.

whatever bias there might be in the current dual-fund structure. Many of the problems of the funds can be cured without unification, however, as discussed below. And as also discussed below, unifying the fund should not result in substantial increases in the amount of support, given the current affordability and reasonable comparability of non-rural carriers' rates.

Even after the removal of the Mobility Fund amounts, and the possible removal of broadband support amounts, the POLR fund will remain the largest piece of the USF. It is therefore still necessary to undertake reforms for that piece, in order to promote the long-run sustainability of the fund and to ensure that the fund is no more than sufficient to produce affordable, reasonably comparable rates.

1. Reforms for high-cost support for rural companies

The Joint Board recommends that the Commission

> maintain, for the present, the existing [rural local exchange carrier] RLEC support mechanisms, distributed through the proposed POLR Fund. Funding for RLECs will continue to be based, for the present, on the provider's embedded costs as supported by modeling, but may be subject to a competitive bid approach at a later date.[110]

Rural telephone companies, which the Joint Board refers to as RLECs, are defined in the Act:

> The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity--
>
> (A) provides common carrier service to any local exchange carrier study area that does not include either--
>
> (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

[110] *Comprehensive Reform Recommended Decision*, ¶ 39. It is not clear how current rural carrier support is "supported by modeling."

> (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
>
> (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
>
> (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
>
> (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

These companies are small, therefore, but they are not all necessarily "high-cost." The Commission's rules should provide support to small companies only in rural areas where costs are such that, absent support, their rates would not be affordable or reasonably comparable to rates in urban areas. The current rural support mechanisms do not accomplish that purpose.

Support for rural carriers amounted to $2.99 billion for 2007, which was 43% of the total $6.95 billion USF and 70% of the total $4.29 billion high-cost fund.[111] Contrary to the Joint Board's hesitation, there are steps that should be taken in the near term to reform this part of the POLR Fund. And these steps can be taken in the short term, even if the longer-term goal is unifying the funding for rural carriers with that for non-rural carriers.

NASUCA has recommended that larger rural carriers with 100,000 or more access lines be transitioned to a support system based on forward-looking costs.[112] These large rural carriers have much more in common with the smaller non-rural carriers that currently base support on forward-looking costs than they do with the smallest rural

---

[111] USAC 2007 Annual Report at 44, 51. (This includes support for CETCs.)

[112] NASUCA RHC Reply Comments at 2, 8.

carriers. Companies under common ownership within a state should be combined for this analysis.[113]

As discussed above, the current non-rural mechanism supports 76% of a company's costs that are in excess of two standard deviations of the national average of forward-looking costs for non-rural companies. By contrast, the current rural high-cost mechanism begins to provide support at 115% of the national average cost, progressively increasing to cover 75% of the carrier's costs above the benchmark. Such a "stair-step" support function, rather than the simple "on/off" function used for non-rural carriers, would be more appropriate for the larger rural carriers that would use forward-looking costs under NASUCA's proposal. The stair-steps should be the same as those used for the current rural mechanism.

Further recognizing the distinctions between even the larger rural carriers and the non-rural carriers, however, the benchmark upon which support is based for the larger rural carriers should be the nationwide average of the peer group of larger rural carriers, those with 100,000 or more access lines within a state, instead of the statewide average benchmark used for the non-rural carriers. Support for the larger rural carriers should be determined by comparing each company's costs to the relevant benchmark.

In December 2004, NASUCA stated,

> The combined impact of NASUCA's proposal would reduce rural high-cost loop support and local switching support (currently about $1.732 billion a year) by $200 million, an 11.5% reduction. The reductions come for the largest rural carriers. Carriers with fewer

---

[113] Due to this combining, some rural carriers will lose local switching support as a result of exceeding the 50,000 access line threshold for that form of support. Similarly, rural study areas of companies that have non-rural study areas within a state should be combined with the non-rural areas and excluded from the rural sample.

> than 50,000 access lines in a state -- the smallest, most rural carriers -- are unaffected by NASUCA's proposals.[114]

Given the increasing presence of CETCs that share the rural funding, it appears that the impact of these changes on the rural incumbents would be less today. Yet these changes to rural carrier support remain necessary, especially if the current rules are not changed to eliminate support for duplicate networks and the identical support rule. Further, treating the larger rural carriers like the large non-rural carriers is a step towards a unified fund.

It should also be noted that of the three support mechanisms available to rural carriers -- HCL, ICL, and LSS -- only the first two are triggered by the carriers' costs. Eligibility for LSS, by contrast, depends merely on the carrier's size -- with carriers serving fewer than 50,000 access lines being eligible. The Commission should review this mechanism given its lack of connection to cost.

There remains, of course, the over-riding issue discussed above, but heretofore focused on the non-rural companies: whether rural rates are affordable and are reasonably comparable to urban rates. "Urban" rates, by definition, are charged by non-rural carriers. As discussed in Appendix 2, the weighted urban average rate in 2005 was $19.57. Unfortunately, there is no rate census for rural carriers like the one NASUCA supplied for non-rural carriers in response to the *NRHC NPRM*. The Commission should (indeed, must) conduct such a review, in order to comply with the thrust of *Qwest I* and *Qwest II*.

One of the asserted justifications for "augmenting" support for non-rural carriers is that that "rural customers of large 'non-rural' carriers can have significantly higher

---

[114] NASUCA RHC Reply Comments at 8, citing USAC 4Q04 Report, Appendix HC01, p. 35 (quarterly amount annualized).

rates than comparable customers of smaller 'rural' carriers…."[115] Without a rate census, the extent of this problem cannot be known. But the solution to the problem is not likely to be increasing support to the non-rural carriers. The iterative process described in NASUCA's second alternative for the non-rural carriers (discussed in the next section) could also be used to "flush out" rural carriers that receive large amounts of support but have rates that are well below the national urban average. It is not clear that other customers across the nation should be supporting such rates.[116]

2. Reforms for high-cost support for non-rural companies

"Non-rural" companies are not separately defined in the Telecommunications Act. Thus such companies are simply those that are not rural telephone companies, as defined above.[117]

"With regard to non-rural LECs, the Joint Board believes further analysis of current nonrural support funds is required before adoption of specific changes in structure."[118] This essentially disregards the extensive comments the Commission already received on the issue of high-cost support for non-rural companies,[119] most of which remain relevant. As noted above, support for non-rural carriers represented $1.30 billion for 2007, or 18.7% of the total USF and 30% of the total $4.47 billion high-cost

---

[115] *Comprehensive Support Recommended Decision*, ¶ 42.

[116] Here again, if a state wishes to maintain such rates, that should be the state's individual responsibility to support.

[117] 47 U.S.C. § 214(e)(2) makes the distinction by referring to "an area served by a rural telephone company" and to "all other areas."

[118] *Comprehensive Support Recommended Decision*, ¶ 40.

[119] See, e.g., NASUCA NRHC Comments.

fund.[120]

In the NRHC Comments, NASUCA presented a compilation of the total support (as of 2005) received by non-rural carriers in the various states. (As will be seen, few states receive no "high-cost" funding.) That compilation is updated here, as Appendix 3, to put non-rural funding into perspective. For the most part, as seen from comparison with the 2005 column, these numbers have not significantly changed since the 2005 numbers were presented.

A crucial part of the current debate centers around whether the non-rural carriers need more support for the rural areas that they serve. The *Comprehensive Reform Recommended Decision* states,

> The Joint Board conceptually agrees that providers of service to rural areas should be treated similarly. Current support mechanisms tend to provide stronger incentives for rural LECs than for non-rural LECs to provide comparable and affordable rates and services in rural and high-cost areas. While the Joint Board seeks to minimize this disparity for rural consumers, regardless of provider, we also acknowledge the complexities and potential costs of such a transition.[121]

The specific issue invoked by the Joint Board is "determining non-rural support on a wire center or even a sub-wire center basis, as opposed to the current statewide average cost basis."[122] NASUCA continues to believe that the Commission should maintain the current practice of statewide cost-averaging for the large non-rural carriers. Where statewide average cost for non-rural carriers is below the relevant federal benchmark,[123] it

---

[120] USAC 2007 Annual Report at 44. This includes amounts paid to CETCs.

[121] *Comprehensive Support Recommended Decision*, ¶ 40.

[122] Id., ¶ 41.

[123] *Order on Remand*, ¶¶ 49, 64.

is appropriate for support, if any, to be an intrastate issue decided by individual states.[124]

As the *Comprehensive Reform Recommended Decision* states,

> [T]he Tenth Circuit upheld the existing statewide averaging mechanism as a reasonable method of support allocation consistent with the Act, and it later rejected an argument advanced by Qwest and SBC that it was arbitrary and capricious for the Commission to fail to induce states to move from implicit to explicit state support mechanisms.[125]

Thus there should be a heavy burden to overturn this longstanding practice. Indeed, the Commission should examine whether support for non-rural ILECs should be capped at the **lesser** of their actual costs and the model costs.[126] In the end, however, it should again be noted that the continuing moves by individual states to deregulate basic rates increase the burden on the FCC to meet the requirements of the Act as it relates to affordable and comparable rates.

In its comments on the *NRHC NPRM*, Qwest, one of the non-rural carriers most frequently arguing that it needs more support, acknowledged that the difference between the rural and non-rural funds has largely been driven by the larger non-rural carriers' ability to provide implicit support due to their larger scale and scope of operations.[127] Qwest complained, however, that this ability had been eroded due to competition.[128] But

---

[124] That is true whether or not the state contains low-cost metropolitan areas, i.e., if the rural costs for the areas of the state served by non-rural carriers are not high enough to force high rates. It is especially true in states that have low-cost metropolitan areas.

[125] *Comprehensive Reform Recommended Decision*, ¶ 41 (citations omitted).

[126] This recommendation has been revived from NASUCA's 1997 comments in 96-45, based on the fact that non-rural carriers in some states now have actual costs below the model costs. This does not appear to be a flaw in the model's assessment of forward-looking costs, but the result of the telephone companies' restricting spending below forward-looking levels, for whatever reason(s).

[127] Qwest NRHC Comments at 21.

[128] Id.

that is no justification for doing away with statewide averaging. If competition has eliminated the implicit support used by non-rural carriers, and that causes a need for increases in the non-rural carriers' rural rates, then that is an issue for the respective state commissions. If subsequent rate increases result in rural rates that are not reasonably comparable to national urban rates, then and only then will that be an issue for the federal USF, consistent with its statutory purposes. Qwest used the example of competition in Omaha, Nebraska as a basis for its argument.[129] Yet despite this competition and its supposed impacts, Qwest's rural and urban rates in Nebraska are not that much different.[130]

Fundamental to Qwest's preference for the individual wire center cost standard is the assumption that supporting individual wire centers is the only way to ensure that support will be sufficient.[131] By those terms, it is important to note that, according to Qwest, "Using the latest available Synthesis Model wire center cost output, this would result in a total non-rural support fund **of approximately $1.9 billion**, a significantly higher amount than the current non-rural fund size of $290.9 million."[132] An increase to **6.5 times** the current amount was and is indeed "significantly higher."

Yet Qwest then indicated that the wire center determination should instead be used merely as a means of allocating the current funding amount, which is what might occur under the Joint Board's proposal to cap the current piece-parts of the high-cost

---

[129] Id. at 21.

[130] See NASUCA NRHC Comments, Attachment C.

[131] Qwest NRHC Comments at 21.

[132] Id. at 32 (emphasis added). It is not clear (because Qwest did not include the calculation in its comments) whether the increase to $1.9 billion included payments to CETCs.

fund. Qwest recommended that "the non-rural and rural high-cost programs (including Local Switching Support and Safety Net Additive Support) be capped at 2004 levels."[133] Thus Qwest must have assumed that the funding level in 2004 was sufficient, and was merely arguing about its allocation, seeking a "more equitable allocation."[134]

Qwest did not supply any numbers showing the effect of its reallocation of federal non-rural high-cost support. Attachment 4 to NASUCA's NRHC Reply Comments put Qwest's proposal into context, however, reflecting that reallocation of HCM support. As that Attachment showed, the $293 million in HCM support received by ten states in 2005 would have been reduced by $188 million, which would leave those ten states with $105 million.[135] That $188 million would have been split among the forty states that received no 2005 HCM support.[136] The micro effects of Qwest's proposal were noticeable: Six states would have received less than $500,000 each.[137] Four other states would have received less than $1 million each. It further appeared, almost ironically, that Qwest's proposal would have gained it only $8 million a year in total additional support for all of its states. It is unclear what impact such a dilution of support amounts can have on keeping rural rates reasonably comparable and affordable in those states.[138]

---

[133] Id. at 32.

[134] Id. at 33.

[135] These calculations included CETC lines and support. Notably, under Qwest's proposal, Maine would have added $1.7 million to its current support, and South Dakota would have gained $480,000.

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

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

[138] Just as it is unclear how the $686,000 in HCM support (or $4.68 per line per year) that Cincinnati Bell currently receives for its Kentucky territory yields reasonably comparable rates. Likewise, for example, the 25¢ per year per line that AT&T receives in IAS. See Attachment 1 to NASUCA's NRHC Comments.

Obviously, there are numerous possibilities between these two extremes (and also beyond the extremes). Depending upon the benchmarks used, a fund of virtually any size could be constructed; the process could also work in reverse, with the amount of the fund predetermined and benchmarks created to produce a fund of that size. All of this would be for naught, however, if the requirements of *Qwest I* and *Qwest II* to determine what "affordable" and "reasonably comparable" mean, and thereby to determine what size fund is "sufficient," are not met. Absent that, it is doubtful that any support mechanism will pass muster.

As part of the complaints that non-rural carriers receive insufficient support, AT&T (in its NRHC comments) complained that the rural fund was six times the non-rural fund, even though non-rural carriers serve twice as many rural customers as the rural carriers.[139] AT&T, of course, ignored IAS and ICL, especially in its claim that it received no federal high-cost support.[140] In 2005, AT&T received a total of almost $18 million per year in high-cost support in six of its thirteen states.[141] As shown in Appendix 3, the amount now received by AT&T has increased to $217.8 million in fourteen of the twenty-two current AT&T states.[142] Further, the total rural fund is indeed larger than the entire non-rural fund, but as noted above, in 2007 rural carriers collected $2.99 billion

---

[139] AT&T NRHC Comments at 7.

[140] Id.

[141] NASUCA NRHC Comments at 16-19.

[142] AT&T in Texas is counted here as receiving no high-cost USF; in 2007 it received all of $90,000 in IAS.

while non-rural carriers received $1.30 billion from all the "high-cost" sources.[143]

AT&T also overlooked the fact that the non-rural carriers also serve most of the low-cost, high-density customer locations in the country, whereas rural carriers serve few such areas. **On balance**, as shown by the results of the Commission's high-cost model, most of the non-rural carriers' costs are fairly close to the urban average.[144] As USAC Appendix HC16 shows, under the current two standard deviation[145] test, non-rural carriers in ten states receive HCM funding. If the test were lowered to give support to non-rural carriers with statewide costs within one standard deviation of the mean, this would support only seven additional states. And this would be supporting 16%[146] of the states, with costs of $24.78 compared to the national average of $21.43. Surely some greater discrepancy is required for costs to not be reasonably comparable to the average cost.[147]

Assuming a separate non-rural POLR fund, NASUCA previously presented two alternatives on high-cost support for the Commission's consideration.[148] Both alternatives are based on the fact that the key purpose of the non-rural high-cost fund is,

---

[143] USAC 2007 Annual Report at 44. (Again, these amounts -- for rural and non-rural alike -- include payments to CETCs.) AT&T's "six times" calculation included only the HCM amounts in the non-rural fund.

[144] See BellSouth NRHC Comments, Appendix A.

[145] See *Qwest II*, 398 F.3d at 1228, n. 2; see also http://www-stat.stanford.edu/~naras/jsm/NormalDensity/NormalDensity.html. In a normal distribution, two standard deviations encompasses approximately 95% of the cases, Id. Half of that range is above, and half is below, the average. This means that all but 7.5% of the cases on the high end are within two standard deviations from the average.

[146] One standard deviation encompasses 68% of the cases in a normal distribution. Id. Similar to the preceding footnote, that means that only 16% of the states' averages are not within one standard deviation of the national average.

[147] As previously mentioned, the key comparison (not included in the FCC's current model) would be to the nationwide average **urban** cost.

[148] See NASUCA NRHC Comments at 65-88.

as discussed above, to meet the statutory principle that non-rural companies' **rates** in the high-cost and rural portions of their service territories should be "reasonably comparable" to rates in urban areas. Both of NASUCA's proposals replaced the current three pieces of the non-rural high-cost USF with a single fund.

Those proposals would also be appropriate for non-rural carriers under the POLR Fund. NASUCA incorporates its first and second alternative proposals here as if fully rewritten.[149] The Commission should consider these proposals for the long run, because they bring the USF closer to its statutory purposes.

Backstopping both proposals would be a mechanism where individual states could set forth specific conditions that justify providing federal support in areas that -- through the standard operation of the mechanism -- would not receive support, or require additional support. Here again, both of NASUCA's proposals build on the current system.[150]

3. The commission should consider eliminating IAS (and perhaps ICL).

The Commission adopted IAS in 2000, in the *CALLS Order*.[151] The order was focused on "reforming" the interstate access charge system for price-cap companies; the reform was accomplished by substantially reducing those interstate charges.[152]

The reductions led, however, to substantial revenue reductions for the affected companies. The Commission responded to those reductions by replacing the revenues

---

[149] NASUCA NRHC Comments at 65-90.

[150] See *Order on Remand*, ¶ 93.

[151] *In the Matter of Access Charge Reform*, CC Docket No. 96-262, et al., Sixth Report and Order, et al., FCC 00-193, 15 FCC Rcd 12962 (2000) ("*CALLS Order*") ("CALLS" stood for the so-called Coalition for Affordable Local and Long distance Service.)

[152] The *CALLS Order* was upheld in *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

through two means. First, the Commission approved major increases to the non-bypassable SLC.

More importantly for the immediate purpose here, the Commission also added $650 million to the high-cost USF,[153] done through the creation of IAS.[154] The CALLS universal service support was supposed to have lasted only five years, ending July 1, 2005.[155] IAS was capped at $650 million. Unlike HCM, IAS is based on a carrier's embedded costs, going against the Commission's fundamental principle that support based on forward-looking costs is superior.

Similarly, ICL support came as a "revenue make-up" after the access charge reductions ordered for rate-of-return carriers in the *MAG Order*.[156] ICL had no end-date, and was not capped. It is also based on embedded costs.

Almost all non-rural carriers are price-cap carriers, eligible for IAS; a few are rate of return carriers eligible for ICL.[157] Contrariwise, almost all rural carriers are rate-of-return carriers, but a few are under the price-cap regime.

These two forms of support substantially increased the number of non-rural ILECs receiving high-cost support. As shown above, in 2007 only fourteen non-rural

---

[153] *CALLS Order*, ¶¶ 201-205.

[154] Id., ¶¶ 206-207.

[155] Id., ¶ 198.

[156] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *et al.*, Second Report and Order, *et al.* FCC 01-304, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

[157] Of the non-rural ILECs, only ACS in Alaska, SureWest in California, North State in North Carolina, and the Puerto Rico companies received ICL support in 2005.

ILECs in ten states did not receive **any** "high-cost" support.[158] In 2007, fifteen non-rural companies in ten states received high-cost model funding. On the other hand, non-rural carriers in **forty-seven** jurisdictions received either interstate access or interstate common line support in 2007, but no HCM support.

In 2007, IAS amounted to $645 million, and ICL amounted to $1.39 billion. As discussed above, most of the IAS went to non-rural carriers and to CETCs operating in their territories. Similarly, most of the ICL went to rural carriers and to CETCs operating in the rural carriers' territories.

Focusing particularly on IAS, it was explicitly designed to replace revenues lost from the reduction of interstate access charges. Yet minutes of use ("MOU") on the interstate side have continued to decline as the years pass, as shown in the following table:

Total Interstate MOU by Quarter		(MOU in billions)			
Year	1Q	2Q	3Q	4Q	Total
1998	124.0	131.3	130.7	132.8	518.8
1999	135.6	138.1	138.3	140.3	552.3
2000	142.6	142.6	141.5	140.2	566.9
2001	138.1	137.1	133.3	131.3	539.8
2002	124.8	124.4	119.6	118.0	486.8
2003	114.2	112.1	109.9	107.8	444.0
2004	109.3	106.1	105.1	102.0	422.5
2005	101.2	100.4	100.5	98.8	400.9
2006	98.1	95.3	94.0	91.8	379.2
2007	90.6	88.4	86.4	83.3	348.7
Source: NECA Quarterly MOU Studies					

That means that IAS, remaining at the same level, has replaced an ever-dwindling revenue stream. Interstate access has increasingly been replaced by wireless and/or

[158] See Appendix 3.

Internet long-distance calling; much of the revenue from those sources accrues to the non-rural ILECs or their affiliates. The Commission should eliminate IAS, as was promised in the *CALLS Order*.[159]

The Commission should also consider the purpose for and the need for ICL.[160] This should, at the very least, be accomplished in any consideration of a unified fund.

E. Issues Raised By The Joint Board

In the *Comprehensive Reform Recommended Decision*, the Joint Board raises a number of issues regarding the POLR fund.[161] As mentioned above, it is not clear whether these, or some other recommendations, are viewed as the source of the "possible funding reductions" from which the two new funds are to be sourced.[162]

As also discussed above, it seems evident that some of the attempts to unify the fund[163] will increase the size of the fund. This is especially true for moves to base non-rural support on a wire center basis without statewide averaging.[164] That is true unless the benchmarks used are radically changed.

As another reason for unifying the fund, the Joint Board notes that "existing rules

---

[159] A number of carriers receiving IAS have expressed concerns that a cap on CETC support not "inadvertently" reduce IAS payments to ILECs. See, e.g., Embarq ex parte (March 6, 2008); Independent Telephone & Telecommunications Alliance ex parte (March 6, 2008). Given the lack of basis for IAS, these concerns should be dismissed both in the short-term and in the long-term as well.

[160] It appears that the interstate MOUs for rural carriers have declined much more slowly than for non-rural carriers, which may argue for leaving ICL intact. On the other hand, because loop costs are included in both ICL and in HCL, there may be some duplication of support.

[161] *Comprehensive Reform Recommended Decision*, ¶¶ 20-22,

[162] Id., ¶ 19.

[163] Id., ¶ 20.

[164] Id., ¶ 42.

freeze support upon sale of an exchange."[165] Here again, "unfreezing" support will almost certainly increase the amount of support sought, and received, again unless the benchmarks are changed. Access to federal support at any particular level should not be a key consideration in acquisitions.

Likewise, if "the current support mechanisms do not recognize all costs,"[166] it is hard to see how recognizing more costs will not increase the size of the fund, again unless the benchmarks are changed. And again, under the current system -- and as proposed to be continued by the Joint Board -- there is no connection between the amount of support given and the rates customers pay for the supposedly supported services.

The Joint Board also proposes "modernization" of the high-cost fund.[167] Specifically, the Joint Board first notes that

> [n]ew entrants often compete only in densely populated areas that have relatively low costs. This makes it much more difficult for incumbent LECs to charge the same rates in both their low-cost densely populated areas and their higher cost, more remote areas. None of the existing support mechanisms adequately recognizes this phenomenon, which generally occurs on a smaller scale than the typical telephone exchange.[168]

There are a number of problems with the assertions about this "phenomenon."

To the extent that this concern touches the issue of support for the rural portions of non-rural carriers' territory, the issue was addressed above in discussing reforms for the non-rural carriers.[169] The bottom line is that the "difficulty" has not, in most

---

[165] Id., ¶ 20, citing 47 C.F.R. § 54.305.

[166] *Comprehensive Reform Recommended Decision*, ¶ 21.

[167] Id., ¶ 22.

[168] Id.

[169] See Section VI.D.2., supra.

instances, actually translated into higher rates in the rural areas served by the non-rural carriers, which means that support for those areas need not be increased.

It may be, however, that this Joint Board statement is intended to address cost and competition **within** individual ILEC exchanges or wire centers. The proposition is that, within an exchange, costs vary between the town center and the outlying portions of the exchange, and that competitors supposedly target the denser town center and neglect the higher-cost "hinterlands" of individual exchanges. This should be an issue principally for non-rural carriers. In 2001, rural carriers were permitted to divide their wire centers into zones for disaggregation of high-cost support.[170] These concepts may need to be adopted for non-rural carriers, or may need to be re-examined for rural carriers. There has been some subsequent public discussion of this issue,[171] but there are many questions about methodology and other aspects.[172]

Other points mentioned by the Joint Board include "[t]he dependency, in many cases, of competitive providers on incumbent LECs for backhaul and interconnections … [as] a further outgrowth of the changing landscape."[173] It is not clear how this would

---

[170] *Fourteenth Report and Order*, ¶¶ 144-164.

[171] See, e.g., Balhoff & Rowe, Universal Service Funding: Realities of Serving Telcom Customers in High-Cost Regions (Summer 2007), accessible at http://www.balhoffrowe.com/pdf/USF%20Funding%20Realities%20of%20Serving%20Telecom%20Customers%20in%20High%20Cost%20Regions%207-9-07.pdf.

[172] Inter alia, such questions would include: (a) In calculating the costs of providing supported services, were the costs of the loop attributed entirely to basic service or allocated among all services? (b) In arguing that competitors neglect the hinterlands, what is the density differential for the competitors? In other words, how many fewer customers per square mile are the competitors serving compared to the incumbent, not just how many fewer customers overall? (c) Given the emphasis on some rural companies attacking adjacent carriers' territories, would not that imply that the attacks would likely be coming in those adjacent higher-cost hinterlands, rather than the lower-cost town center of the exchange? See also NASUCA 2007 Comments at 15-19.

[173] *Comprehensive Reform Recommended Decision*, ¶ 22.

impact the amount of support needed by the ILECs; presumably they are being adequately compensated by the competitive providers. If it does not impact the need for support, it should not be a USF issue.

In addition, the Joint Board notes that "most of the existing mechanisms were introduced before local exchange competition became a reality, and may not appropriately adjust support to reflect line losses due to competition."[174] Again, the implications of this statement are unclear: Is the notion that support is not appropriately being adjusted **downward** due to line losses, or that support should be increased **despite** the loss of lines? How this impacts the POLR responsibility on which the POLR Fund is proposed to be based is also unclear.

The Joint Board notes that none "of the mechanisms in place reflect the increased importance of non-regulated revenues generated by telecommunications plant."[175] Further, the Joint Board asserts that

> the High Cost Loop program has experienced significant increases in this decade in loop costs qualifying for support. Under the current cap, the effect has been to significantly reduce support over time for carriers whose costs have remained relatively constant.[176]

To the extent that the increase in loop costs is driven by preparing the loop to provide services, such as broadband, whose revenues are not currently considered, this argues for a better allocation of loop costs in order to ensure that only basic service is supported.

---

[174] Id.

[175] Id.

[176] Id.

But the HCL cap has existed since 1993,[177] suggesting in addition that it may be time to revisit the purpose of the cap. But this becomes largely irrelevant if the entire fund and its piece-parts are capped, and if the POLR Fund is to be a single source of support rather that the multi-parts of the current fund.

In the end, "the Joint Board recommends that the Commission establish a process and a timetable so that it will review and modernize the existing high-cost mechanisms for rural and non-rural carriers, with the objective of developing a coherent system that can be applied to all incumbent carriers."[178] NASUCA strongly agrees that the Commission needs to establish a process and a specific timetable for acting on the existing high-cost mechanisms as the transition to the POLR fund is accomplished. Many of those issues have already been extensively commented on. As discussed above, there are things that the Commission can and should do to reform the current fund before considering longer-range measures. It is not necessarily the case, however, that there can ever be a single mechanism that will address universal service needs for all companies, from the largest (with millions of access lines) to the smallest (with mere dozens of lines). Yet that is an appropriate aspiration, as discussed in Section G. below.

F. The Commission's High-Cost Model Must Be Fixed And Updated.

As noted above, the key piece of the the non-rural high-cost fund depends on the forward-looking high-cost model.[179] As also discussed above, NASUCA has

---

[177] *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993).

[178] *Comprehensive Reform Recommended Decision*, ¶ 22.

[179] Although it must be noted that only a quarter of the non-rural fund is actually derived from the HCM; the remainder comes from IAS.

recommended that the larger rural telephone companies be transitioned to HCM for their support. There was broad agreement that the forward-looking cost concept on which the model is based is the most appropriate for a long-run fund.[180]

But the model currently in use is, especially in these times of high-tech, most charitably described as antique. It desperately needs to be brought into the 21st century. NASUCA has argued for years that the Commission's cost models for universal service support were outdated, and need serious overhauling.[181]

On February 20, 2007, the Joint Board held an *en banc* hearing that, inter alia, addressed cost modeling. The Joint Board's *Comprehensive Reform Public Notice* described how

> at the *en banc* hearing, a GIS expert presented a brief overview of GIS technology – the hardware, software, and methods that allow people to create, store, analyze and distribute spatial information. In addition, an expert in network cost modeling described the significant advances in network modeling, such as utilizing road-based networks, that have occurred since the Commission adopted its cost model.[182]

Such advances need to be incorporated into the HCM.[183]

In NASUCA's 2005 comments on this subject, in addition to addressing the customer location issue later discussed at the *en banc* hearing, NASUCA noted that switch and special access data needed to be brought up-to-date, including the allocation

---

[180] See, e.g., *First Report and Order*, ¶ 224.

[181] See, e.g., NASUCA Comments (May 27, 2005) at 63-64.

[182] Public Notice, 07J-2 (rel. May 1, 2007) ("*Comprehensive Reform Public Notice*", ¶ 5 (footnotes omitted).

[183] This would include the use of geo-coded customer locations and networks located along roads, that were not part of the original model.

of special access among wire centers. NASUCA also noted that the costs of broadband services needed to be excluded from the costs of basic service. Indeed, the model needs to be updated to properly allocate all costs among the services that use the network, basing the costs of supported POLR services only on POLR costs.[184] Finally, NASUCA presented data that would allow the Commission to focus its cost model on urban costs vs. rural costs.[185]

The rural carriers have typically argued that the FCC's model does not adequately address issues particular to the smallest carriers. It is to be hoped that an updated model will do a better job in that respect. And additional work will likely be needed if a model is to be workable for all carriers, both the largest and the smallest.

G. Long-Range, Comprehensive Reform Of Existing High-Cost USF Mechanisms

NASUCA and numerous other parties have already proposed significant reform measures to deal with the existing problems inherent within the rural and non-rural mechanisms, as discussed above. If the Commission caps the fund and the individual piece parts of the current high-cost fund and does not add broadband and mobility funding to the equation, however, some of the financial urgency of reforming the existing fund may be lessened.

The Commission could then proceed in a logical manner to integrate the rural and non-rural carrier POLR funding mechanisms and to eliminate the disparities that exist between the two mechanisms for funding rural high-cost areas. The FCC should

---

[184] Specifically, the model must be updated to include current levels of fiber deployment, with its multiple uses, that were essentially unheard of when the model was developed.

[185] NASUCA Comments (May 27, 2005) at 63-64.

integrate the two funding mechanisms by extending the use of the model to all wireline carriers coupled with a flexible funding mechanism that recognizes those factors that were highlighted in the Rural Task Force study relating to the increasing cost variations that can be observed as company size, wire center size and access line density declines. As discussed above, however, the use of a statewide average cost benchmark continues to be appropriate for the largest carriers that also serve urban areas; such averages cannot feasibly be used for smaller carriers that serve only rural territory.

The FCC could implement any number of deviations to the funding of high-cost areas without losing control of the fund, as long as the starting point is held constant based on a fund cap. Starting with an available fund of support, high-cost support could be distributed to the high-cost wire centers based on the goals of the policy-makers, and in amounts necessary to maintain affordable rates that are reasonably comparable between rural and non-rural areas of the country.

VII. TRANSITIONING FROM THE CURRENT FUND

As discussed above, the Joint Board has recommended an overall cap on the high-cost fund, and caps on the individual elements of the current fund. Further,

> [t]he Joint Board also recommends a transition during which existing funding mechanisms would be reduced, and all, or at least a significant share, of the savings transferred to the new Funds and mechanisms described above. During the transition period, gradual elimination of support from the identical support rule will provide a source of funding for the Mobility and Broadband Funds.[186]

[186] *Comprehensive Reform Recommended Decision*, ¶ 27.

The recommendation to no longer support more than one network[187] in a given area -- rather than, strictly speaking, the elimination of the identical support rule[188] -- will allow the elimination from the POLR Fund of what in 2007 amounted to over $1.0 billion in funding. This funding would be available for the Mobility Fund and the Broadband Fund.

If that transition takes five years (as proposed by a former Joint Board member[189]), this would mean that $200 million each year could be moved to the two new funds from the POLR Fund. (Of course, this will not mean that the amounts consumers pay to support the three funds will decrease.) Five years seems a reasonable period for the transition.

But these items do not represent "reductions" or "savings" for the overall fund. Those things will have to come, in the short term, from ideas such as those discussed in Section VI.D. above. In the longer term, NASUCA will be happy to provide input to the Commission on ways to manage the POLR Fund (and the Broadband Fund and the Mobility Fund), as well as comment on specific proposals from the Joint Board.

The goal of all three of the funds should be that support will be available only for high-cost areas where, absent support, the services would not be available at all, would not be available at affordable rates, or would not be available at rates comparable to those charged for the services in urban areas. And only a single network should be supported in any specific area. That will meet the goals established in the Telecommunications Act.

---

[187] Id., ¶ 35.

[188] "Elimination of the identical support rule" would simply allow current CETCs -- including wireless CETCs -- to receive support based on their own costs rather than on the costs of the underlying ILEC.

[189] Id., n.28.

VIII. STATES' ROLES AND RESPONSIBILITIES

In the *Comprehensive Reform Recommended Decision*, the Joint Board addresses a wide variety of issues regarding the responsibilities of states in the Broadband Fund and the Mobility Fund. More generally, the "Joint Board recommends strengthening the state-federal partnership regarding universal service."[190] As demonstrated in NASUCA's earlier comments in these dockets, NASUCA strongly agrees with this idea.[191]

Specifically for the Broadband Fund and the Mobility Fund, the Joint Board concluded that states are best suited to identify unserved areas. States' "detailed knowledge will allow states to target Broadband and Mobility support to those areas, consistent with the universal service principles listed in 47 U.S.C. § 254(b)."[192] In addition, "states should have flexibility in the method of awarding funds to carriers because they are in the best position to assess the status of their markets and identify which geographic areas are unserved."[193] NASUCA agrees, with regard to the Broadband Fund and the Mobility Fund.[194]

The Telecom Act provides that "[t]here should be specific, predictable and sufficient Federal and State mechanism to preserve and advance universal service."[195] The Commission originally declined to adopt a mechanism to induce states to adopt their

---

190 Id., ¶ 44.

191 See, e.g, NASUCA NRHC Comments at 60-62.

192 Id., ¶ 46.

193 Id., ¶ 47.

194 NASUCA also agrees with the Joint Board's proposals for Commission principles and rules to govern this state flexibility. Id.

195 47 U.S.C. § 254(b)(5).

own universal service support mechanisms, but the *Qwest I* court found that the Commission was "obligated to formulate its policies so as to achieve the goal of reasonable comparability by inducing 'sufficient ... State mechanisms' to do so."[196] In the *Order on Remand*, the Commission adopted just such an inducement mechanism,[197] which the *Qwest II* court found to be adequate.[198]

Yet despite the legality of the inducement mechanism, under its aegis, almost twenty states that receive substantial federal support still do not have a functioning intrastate high-cost fund.[199] Many of the federal support dollars in those states actually come from IAS, which, as discussed above, has little to do with whether the state is high-cost.

As the services supported by the USF expand to explicitly include broadband and mobility,

> [t]he Joint Board recommends … an approach in which all states are entitled to a base funding level. States could receive supplemental funding when they generate matching funds. For example, a state that does not provide a minimum match, perhaps 20 percent, for USF broadband support would still receive its base level of universal service support for broadband but no additional, supplemental funding from the federal fund.[200]

NASUCA believes that such provisions, under "detailed federal guidelines,"[201] will

---

[196] *Qwest I*, 258 F.3d at 1200.

[197] *Order on Remand*, ¶¶ 89-92.

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

[199] Compare Appendix 3 herein to Liu & Rosenberg, State Universal Service Fund Mechanisms: Results of the NRRI's 2005-2006 Survey (National Regulatory Research Institute, 2006) at 8.

[200] *Comprehensive Reform Recommended Decision*, ¶ 50.

[201] Id., ¶ 52.

provide reasonable inducements for state contributions.

Given the ground-breaking nature of the Broadband Fund and the Mobility Fund, it makes sense for the states to determine where within their borders the funds are to be expended. That same principle should not apply to the POLR Fund. POLR support should continue to be distributed according to specific directions of the federal rules. The central flaw in a mechanism that allows states to allocate their POLR funding is easily explained through a hypothetical, as shown in NASUCA's NRHC Reply Comments:

> Assume a state with only two carriers. It has been determined that Carrier A is entitled to $95 in support, based on whatever federally-dictated standard is adopted. It has also been determined that Carrier B is entitled to only $5 in support. A block grant of $100 is then given to the state. If there is to be a change that will justify giving this authority to the states, the state commission can either increase the support for Carrier A or increase the support for Carrier B. (If the state leaves the allocation alone, then there is no need for a state process.) If the state gives the entire $100 to Carrier A, then Carrier B will have been deprived of support. Similarly, if the state gives carrier B $10 of support, then Carrier A will have been deprived of support that the federal standard determined was needed. This makes little sense.[202]

Notably, the Joint Board does not propose any change in this system.

IX. THE NEED FOR AUDITS

In the end, NASUCA agrees with the Joint Board that it remains in the public interest for [USAC] to continue to distribute universal service funds and conduct periodic audits. Therefore, although states would award Broadband and Mobility Funds, the funds would be processed and audited by USAC.[203] But that auditing process needs to be enhanced.

---

[202] NASUCA NRHC Reply Comments at 30-31.

[203] *Comprehensive Reform Recommended Decision,* ¶ 49.

The grave need for increased auditing is shown by the report of the FCC's Inspector General issued October 3, 2007 on "The High Cost Program: Initial Statistical Analysis of Date from the 2006/2007 Compliance Audits."[204] In a "simple random sample of recipients from the high-cost fund, the estimated erroneous payment rates was 16.56%."[205] A simplistic projection of this erroneous payment rate across the entire $4.287 billion high-cost fund would mean erroneous payments of more than $700 million. Although most of the problems appear to be with data collection and retention,[206] rather than outright fraud, consumers who pay into the fund deserve to know that their funds are being legitimately spent. As the Inspector General stated, "Without documents supporting the reported numbers, it is impossible to determine if the amounts claimed comport with Commission rules and are otherwise appropriate."[207] The FCC should protect consumers against improper use of these federal funds by stepping up auditing and enforcement, especially with a move to the three-part fund proposed by the Joint Board.

X. CONCLUSION

NASUCA supports the creation of the new Broadband Fund and the Mobility Fund, as described above. NASUCA also supports reforming the POLR Fund so that only carriers in truly high-cost areas receive support, in amounts sufficient but no more

---

[204] Accessible at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A6.pdf.

[205] Id. at 2. Admittedly, the other USF programs also have compliance problems.

[206] Id. at 22, 27.

[207] Id. at 27.

than sufficient to ensure that rates and services in rural areas are reasonably comparable to those in urban areas. Fundamental to all these reforms should be the support of only one network for each purpose in any given area.

Respectfully submitted,

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

April 17, 2008

APPENDIX 1

NASUCA WIRELESS REFORM PROPOSAL

The following scenario describes one methodology that could be followed to implement wireless reform:

The existing wireless universal service support is approximately $1 billion per year. The Joint Board proposals would impose a cap for wireless carrier funding at approximately $1 billion.

Assuming a five-year transition to the mobility fund, the Joint Board plan would reduce existing wireless support under existing mechanisms in year one by $200 million.[208] The resulting $200 million would be directed toward the build-out (construction) of new mobility services for the purpose of providing mobility services to unserved territories. During the succeeding four years, the existing funding for wireless carriers under existing mechanisms will be reduced by 20% each year and the new wireless build-out fund for unserved areas will be increased by an equal amount. At the end of the five-year period, the current USF funding mechanisms for wireless carriers will be eliminated. The mobility fund will continue to support mobility build-out through construction grants until basic universal mobility service is achieved.

The new mobility fund should be allocated among the states by the FCC and then

[208] Those reductions should begin in areas where multiple wireless CETCs are now designated. A first step for this first step would be to limit the total amount of wireless CETC support to no more than the amount of wireline ETC support. Then the reductions could move to areas where some wireless carriers provide service without federal support.

distributed by the states.[209] The fund would provide one-time construction support for new wireless towers in territories where there is presently no mobility capability. While constructions grants would be a one-time event, distribution of funding could be spread over several years to accomplish network build-out in unserved geographical areas over a reasonable period of time.

While the initial emphasis may be directed toward funding unserved communities, the Joint Board has recommended that the FCC seek additional comment on the issues surrounding the use of universal service funds to improve wireless service in underserved, as opposed to unserved, areas.[210] Should the FCC decide to include underserved areas within the definition of supported mobility services, then there would be a need to develop specific controls to fund future mobility expansion in such areas, excluding support for redundant networks in areas where competitive forces are already at work.

The *Comprehensive Reform Recommended Decision* also calls for funding to provide mobility capabilities for all state and federal highways where public health and safety considerations dictate deployment.[211] NASUCA submits that areas where existing mobility services are competitive and where market forces are working adequately to meet customers' mobility needs -- which is likely along highways -- need not be considered for USF support.

---

[209] In states where there is no entity authorized to disburse the funds, the FCC will have to assume that responsibility, as it has for ETC designation.

[210] *Comprehensive Reform Recommended Decision*, ¶ 71.

[211] Id., ¶ 16.

The new mobility fund could be allocated among the states by the FCC based on factors such as highway mileages, households, population, square miles, etc. that have no existing mobility service providers. The FCC will need to adopt rules to accomplish the state allocation process. In developing such rules, the FCC should seek input and consider whether there is a difference in network expansion costs for mobility services between different states or areas based on terrain or other factors. State funding could be awarded based on flexible standards that will be established by the FCC, including options for bidding, auctions or state hearings that include carrier proposals, consumer input, sworn statements and an ultimate decision for deployment based on the public interest.

The FCC should first determine those mobility costs that qualify for universal service funding. Those costs will, more than likely, include the actual costs of site selection and tower construction. While existing mobile carriers have internal economic benchmarks that trigger expansion, the bid or auction process would be aimed toward providing the minimum additional amount necessary to trigger expansion into unserved territories. The bid or auction process should result in awards to the most efficient, low-cost providers, so as to minimize reliance on the fund, subject to the provider's qualifications and quality of its service proposal. State participation could be achieved in the funding of wireless mobility by requiring a specified percentage of the funding to be provided via state matching, or by augmenting the basic federal funding amount when states choose to provide matching support.

Given the initial purpose of the Mobility Fund to create service in currently unserved areas, and given that the main reason for lack of service in such areas would be lack of cell towers, the primary funding in fact need not go to wireless carriers themselves, but could go to entities that construct the towers[212] and then would lease space to the wireless companies. Funding from federal dollars will necessitate some constraint on the lease prices of the tower constructors, unless there is enough wireless competition in the area to force down the prices once the towers have been constructed.

The following NASUCA "strawman" proposal for conducting initial trial deployment in all states would authorize funding to provide incentives for states by granting additional tower construction based on state or carrier matching amounts. The mobility trial deployment would require annual USF funding of $10 million to $20 million over a three to five year period starting in 2010.

---

[212] Those entities should not be affiliated with or dependent on any wireless carrier.

In order to expedite the transition to a mobility fund, the following implementation steps are placed into the record as NASUCA's preliminary strawman proposal:

- Step 1: FCC announces initial mobility grants in trial areas for states for tower construction in unserved areas starting 2010. States initially limited to one geographical area with 3-5 towers, each, depending on state matching. COMPLETION DATE: JUNE 2008

- Step 2: States select geographical areas for initial mobility deployment. COMPLETION DATE: DECEMBER 2008

- Step 3: FCC rules for trial purposes regarding minimum mobility service quality (signal strength, Lifeline, pricing, customer service, etc). COMPLETION DATE: DECEMBER 2008

- Step 4: FCC defines mobility expenses for trial purposes that qualify for USF funding. COMPLETION DATE: DECEMBER 2008

- Step 5: States conduct auction, bid, or administrative hearings to select least-cost provider and award construction grants. FCC earmarks USF funding of $47*-$93** million[213] for trial construction awards to be spent over 3-5 year period starting 2010. COMPLETION DATE: DECEMBER 2009

- Step 6: States award construction grant funding to recover full cost of construction over 3-5 year period. Funding will cease at the end of funding period. COMPLETION DATE: DECEMBER 2009

- Step 7: States that mandate no state or carrier contribution limited to one geographic area and a maximum of three towers. States that require 20% matching limited to a maximum of four towers. States that provide 40% matching limited to a maximum of six towers.

- Step 8: FCC directs USAC to develop funding mechanics for trial purposes to administer funding based on state approval subject to approval by Common Carrier Bureau. USAC actual funding to carriers limited to amount of state award subject to actual costs as submitted by winning bidders. Carriers must demonstrate that they actually spent the USF dollars for the intended purpose. COMPLETION DATE: DECEMBER 2009

---

[213] See calculations below.

- Step 9: FCC develops and promulgates state mobility distribution formula for future allocation of mobility funding, including final rules regarding qualifying expenses, minimum service requirements and USAC procedures. COMPLETION DATE: DECEMBER 2009

- Step 10: FCC develops long term goals for achieving Mobility Universal Service including transition schedule and tracks results. COMPLETION DATE: DECEMBER 2009

CALCULATION OF SUPPORT AMOUNTS:

* Towers per state:	3
* Total Towers	156
* Tower Cost	$300,000
* Total construction cost	$46,800,000
* Annual USF expense (3 year build-out)	$15,600,000
* Annual USF expense (5 year buildout)	$9,360,000
**Towers per state	6
**Total towers	312
**Tower cost	$300,000
**Total construction cost	$93,600,000
**Annual USF expense (3 year build-out)	$31,200,000
**Annual USF expense (5 year build-out)	$18,720,000

APPENDIX 2

REASONABLE COMPARABILITY

AND THE CURRENT RANGE OF RATES

A. REVIEWING THE TENTH CIRCUIT'S VIEWS

In order to arrive at a proper definition of what makes rural rates "reasonably comparable" to urban rates, the views of the Tenth Circuit in its two rejections of the FCC's definitions must be considered. Indeed, it might be easier to approach a definition by reviewing what the Tenth Circuit said about what makes rates **not** reasonably comparable. Of course, part of the problem with the Tenth Circuit's analysis was that it was based, perforce, on the Commission's **lack** of rural rate analysis.

Qwest I rejected the Commission's first definition of "reasonably comparable," which was "a fair range of urban/rural rates both within a state's borders, and among states nationwide."[214] That "fair" range triggered a standard that supported only areas where **costs** were 135% of the national urban cost.[215]

In *Qwest I*, the court's key criticism was that the FCC had picked the 135% number without reviewing any actual rates. Despite parties having submitted some rate data, the court complained, "There is no record of the FCC's evaluation of this data; it apparently adopted the benchmark without explicit empirical findings in this regard."[216]

---

[214] *Qwest I*, 258 F.3d at 1201, citing *Ninth Report and Order*, ¶ 54, n.8.

[215] *Qwest I*, 258 F.3d at 1197.

[216] Id. at 1202.

NASUCA urges the Commission not to commit that error again; NASUCA's rate census allows avoidance of the error.

To make matters worse, the *Qwest I* court found that the Commission's selection of the 135% was arbitrary. The court stated,

> The FCC is not a mediator whose job is to pick the "midpoint" of a range or to come to a "reasonable compromise" among competing positions. As an expert agency, its job is to make rational and informed decisions on the record before it in order to achieve the principles set by Congress. Merely identifying some range and then picking a compromise figure is not rational decision-making.[217]

The *Qwest I* court did say that it would likely have supported the 135% benchmark if "the FCC's 135% benchmark [had] actually produced urban and rural rates that were reasonably comparable, however those terms are defined…."[218] In *Qwest I*, the court sympathized with Vermont and Montana, however, which had asserted that some rural rates would be 70-80% higher than urban rates under the funding mechanism set out in the *Ninth Report and Order*.[219] The court stated, "We doubt that the statutory principle of 'reasonable comparability' can be stretched that far."[220] It is not clear, however, *which* urban rates the court was referring to.

Later, the *Qwest II* court noted that in the *Order on Remand*,

> the FCC … found it reasonable to assume that Congress was aware of the variance in urban rates at the time, on the basis of then available WCB survey information, and that Congress would not have required rural rates to be any closer to a national urban

[217] Id. at 1203.

[218] Id.

[219] Id. at 1201.

[220] Id.

> average than other urban rates. Underlying this assumption is the FCC's determination that Congress considered rural and urban rates reasonably comparable in 1996.[221]

In response to the *Qwest I* remand, "[t]he Commission then defined 'reasonably comparable' in terms of a national urban rate benchmark, i.e., rural rates are deemed reasonably comparable if they fall within two standard deviations, or roughly 138%, of the national urban average."[222] The *Qwest II* court reviewed the rates allowed under the "two standard deviations" benchmark, however, and found that the benchmark did not meet the Commission's duty to "advance" universal service.[223]

It certainly appears that if a two standard deviation benchmark had been shown to preserve and advance universal service, the Tenth Circuit would have approved its use. It is clear that the Commission's prior lack of consideration of statutory principles and language doomed the prior reasonable comparability standards. The Commission must look at the data and follow the dictates of the statute.

---

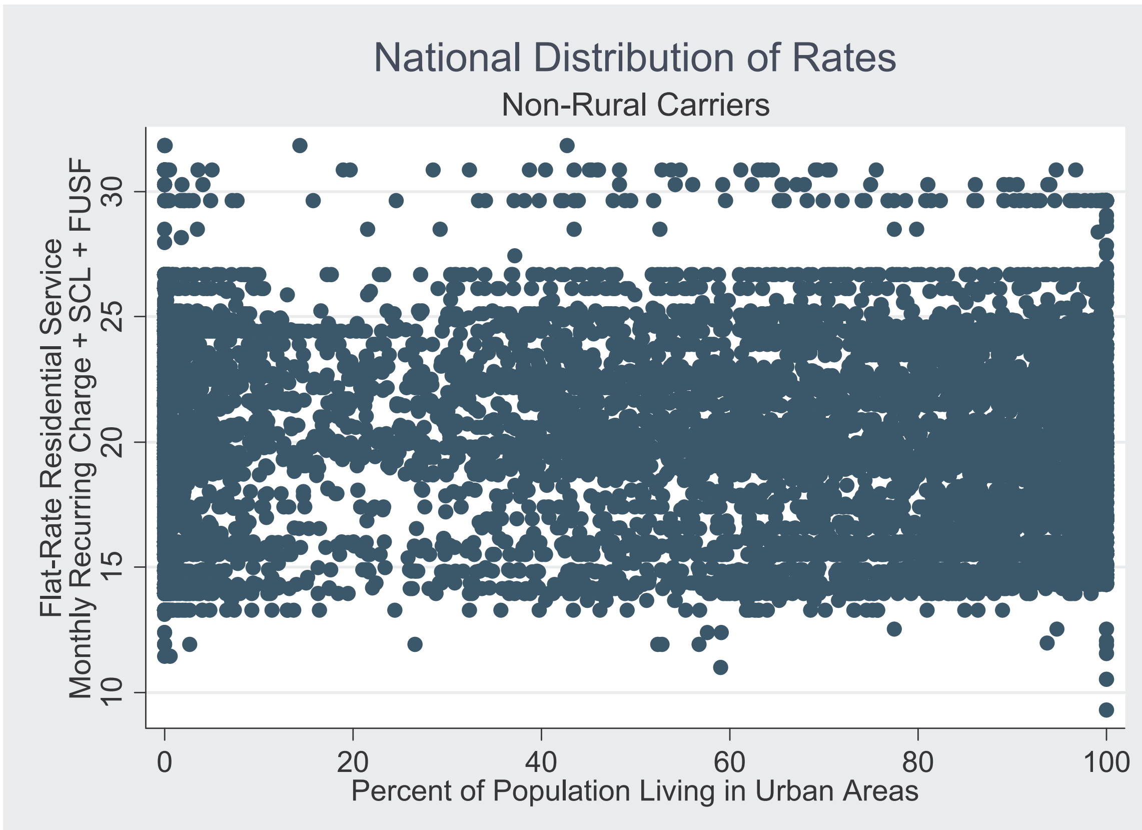
[221] *Qwest II*, 398 F.3d at 1235, citing *Order on Remand*, ¶¶ 39-40.

[222] *Qwest II*, 398 F.3d at 1228, citing *Order on Remand*, ¶ 38. Also in the Court's words, "A standard deviation is a statistical term representing the difference between input values in a range and the mean or average. One standard deviation encompasses 68.27% of the values in a given range. Two standard deviations encompasses 95.45% of the same values. In a hypothetical survey of 100 varying rates charged by telecommunications carriers, two standard deviations from the mean will encompass nearly 96 of the rates in the range, leaving roughly 4 rates outside the grouping." 398 F.3d at 1228, n.2. It should be noted that the "4 rates outside the grouping" include two that are below the mean and two rates at the high end. Thus under the FCC's analysis, only two rates out of the hundred would be deemed high enough not to be reasonably comparable to the mean.

[223] Id. at 1236-1237 (internal citations omitted).

B. THE RANGE OF CURRENT RATES

In the NASUCA NRHC Comments, NASUCA presented a scatter diagram that showed the variety of non-rural carrier rates included in the rate census.[224] The scatter diagram is reproduced here:



The following chart simplified the many points on the scatter diagram:

[224] NASUCA NRHC Comments, Appendix C.

Percent of wire center population living in urban areas	Number of Wire Centers	Average price of flat-rate residential service + SLC + FUSF	Standard deviation	Minimum	Maximum
0%	1,808	21.00	3.79	11.43	31.82
0-20%	3,979	20.81	3.76	11.43	31.82
20-40%	545	20.47	3.56	11.91	30.86
40-60%	1057	20.42	3.72	10.99	31.82
60-80%	1,393	20.34	3.71	12.54	30.86
80-100%	4,278	19.40	3.86	9.29	30.86
100%	1092	19.57	4.20	9.29	29.64
Sample avg. (0-100%)	11,252	19.63	3.85	9.29	31.82

Assuming no major changes since 2005, the data show that there is not that much difference between current non-rural carrier rural rates and current non-rural carrier urban rates. The rural minimum rate is 23% greater than the urban minimum rate, but the average rural rate is only 7% greater than the average urban rate. Most importantly, the highest rural rate is only 7% higher than the highest urban rate. Further, there are only about 245 wire centers that have current rates greater than two standard deviations above the urban average.[225] Most of these wire centers are rural, **but some are urban**. On the other hand, there are fifteen jurisdictions where no non-rural carrier rate is greater than

[225] They are served by Cincinnati Bell in Kentucky, Verizon in Vermont, Qwest in Wyoming, Verizon in New York, CenturyTel in Alabama, and BellSouth in Georgia.

one standard deviation from the urban average.[226] **The extent to which the current comparability of rates has occurred as a result of the Commission's current non-rural high-cost mechanism is, of course, uncertain.**

C. THE IMPACT OF CURRENT NON-RURAL HIGH-COST SUPPORT

The data presented by NASUCA suggested that little beyond the level of support currently awarded is necessary to maintain the current level of comparability. Yet there did not appear to be any correlation between the level of support received and the degree of comparability. (Such a correlation would be provided by both of NASUCA's proposed alternatives set forth in the NRHC Comments.)

The current non-rural high-cost support mechanisms have little relationship to rates, and cannot be shown to cause rural rates to be reasonably comparable. Thus an early challenge in resolving high-cost support issues is to determine -- as best as possible -- the impact of the current level of support on rates.

NASUCA proposed that for non-rural carriers this would initially be done as part of a transition, in order to determine subsets of wire centers for prioritization in the initial round of the process. It would also need to be done on an ongoing basis.

NASUCA proposed that this could be done by applying (or, rather, "imputing") support on a per-line basis in non-rural carriers' rural wire centers. In the initial iteration,

[226] Alaska, Arizona, Delaware, District of Columbia, Florida, Iowa, Louisiana, New Jersey, Nevada, Oregon, Pennsylvania, Tennessee, Texas, Utah and Washington. Local calling areas do not figure in to this comparison, which they should.

the Commission should start with non-rural carriers' wire centers that contain no more than 20% urban territory, as a benchmark for what is "rural."[227]

The first piece of current support is HCM. For some wire centers, HCM is significant; for others it is not. HCM support is reported on a per-line per-wire center basis in USAC Appendix HC15. This is where the process of "imputing" current high-cost support to rural rates could begin.

IAS, on the other hand, is available in numerous wire centers and to numerous companies that do not receive HCM support. It is allocated by the ILEC's unbundled network element zones (again, without direct connection to cost of service), but the wire centers in each zone can be identified. This support is reported on a per-line per zone basis in USAC Appendix HC13. Looking at the rate census data, however, there are only a few states where IAS contributes significantly to overall funding.[228]

ICL is the only form of high-cost support received by those few states' non-rural companies that receive it.[229] For some of the companies, ICL is significant. ICL funding is reported on a per-line basis in USAC Appendix HC10.

Appendix F2 to the NASUCA NRHC Reply Comments listed, by state, the non-rural carriers' rural wire centers (defined as 0% to 20% urban using Census Bureau criteria) that received HCM, IAS or ICL funding, their rates, their per-line support, and

---

[227] Whether or not the Commission progresses to "less rural" definitions of rural, to the extent that there is IAS or ICL that goes to wire centers that do not meet this definition, it would likely be phased out.

[228] The most substantial impact appears to be in Alabama, Kentucky, Nebraska, West Virginia and Wyoming.

[229] ACS of Anchorage in Alaska, SureWest in California, North State in North Carolina and PRTC Central in Puerto Rico. See table in Section VI.D. of main text.

the impact of imputing the federal support to the rates.[230] Appendix F1 to the NASUCA NRHC Comments explained the data contained in Appendix F2. NASUCA would incorporate here by reference Appendices F1 and F2 to the NRHC Reply Comments.

Specific examples were presented. For instance, in Mississippi, the DNCNMSMA wire center had $95.17 per month in HCM support targeted to it, and received $4.72 in IAS. Combined with the $20.55 rate plus SLC, this implied that the rate would be $120.44 without support, above most likely benchmarks. On the other hand, the BSLSMSMA wire center in Mississippi received only $0.10 in HCM support. Imputed to the $22.27 rate plus SLC, this would have been a $22.37 rate, likely under any reasonable comparability benchmark.[231] (This analysis did not include the impact of local calling areas.)

Notably, however, in 1999 Mississippi received only $4 million in high-cost support. In 2005, that number had increased to $35 million. It is difficult to see how the support, much less **the increase in support**, had any actual effect on the rates.

Overall, after the substantial tasks of gathering the rate data, determining support on a wire center basis, and combining the two, there was little opportunity to systematically assess the results of this imputation. That opportunity has not presented itself in the years since this data was filed with the Commission.

---

[230] The version of the Appendix included with NASUCA's NRHC Initial Comments had a few gaps in the data. The version filed with the NRHC Reply Comments was complete.

[231] As discussed in NASUCA's proposal (see NASUCA NRHC Comments at 83-85), since actual support will be based on cost, if a wire center has high rates but low costs it will not receive support under the combined model. Any support for such wire centers will be the responsibility of the states, given that those rates are not based on costs.

One thing was clear, however, and remains true today: **There is no connection or correlation between the level of support received by a non-rural carrier's rural wire center and the basic service rate charged in that wire center**. This is true of HCM support looked at separately, and of IAS/ICL separately[232]; it is also true of combined total support (HCM plus IAS/ICL). There is a strong suspicion that the same is true of the rural carriers' support mechanisms.

The *Qwest I* court would have approved of the Commission's support mechanism if such a connection had been shown, and the *Qwest II* court agreed, but found that the Commission had not made empirical findings in that regard.[233] Unfortunately, the evidence shows that the Commission could not make such empirical findings.

D. THE RANGE OF NON-RURAL CARRIERS' RATES AND REASONABLE COMPARABILITY

Based on NASUCA's census of non-rural carriers' rates, the highest urban rate was 151% of the urban average and the highest urban rate was only 8.7% higher than a rate two standard deviations above the average ($27.27). It seems clear that the Tenth Circuit's view of reasonable comparability was overly constricted -- due to the Commission's failure to have assessed a complete record -- especially because following such a view would require support for rural rates that are **below the highest urban rate**.

The Tenth Circuit compared high rural rates as allowed under the previous support mechanisms to the lowest urban rates, finding the difference disturbing.[234] Yet NASUCA's survey showed that the highest urban rates were also not reasonably

---

[232] Not surprising, because neither IAS nor ICL were designed to have an impact on rates.

[233] *Qwest II*, 398 F.3d at 1237, referring to *Qwest I*, 258 F.3d at 1202.

[234] 398 F.3d. at 1237, citing *Qwest I*, 258 F.3d at 1201.

comparable to the lowest urban rates, under any of the views of the Tenth Circuit.

The existence of these ranges -- which, as previously noted, the Commission correctly assessed were within Congress' contemplation in putting together the 1996 Act[235] -- argues strongly for the use of the weighted average urban rate as the starting point for any rate benchmark. There was no indication that Congress intended the comparison to be to the lowest urban rates; if so, there would be support for a multitude of rural customers without any support for urban customers paying the same -- or higher -- rates.

It would appear that if all non-rural carriers' rural rates were lowered to be no higher than the highest urban rate, then there would be no significant difference between urban and rural rates. Certainly that action would lower the rural average rate to be even closer to the urban average. This would result, however, in rural rates being **equal** to urban rates, which does not appear to comport with Congress' use of the term "reasonably comparable," rather than "equal," in § 254(b)(3). Therefore, it would seem appropriate to adopt some range above the highest urban rate that would still enable rural rates to be "reasonably comparable" to urban rates. On the other hand, moving toward equality would certainly be "advancing" universal service.[236]

A typical dictionary defines "comparable" as:

1 Admitting of comparison with another or others: "The satellite revolution is comparable to Gutenberg's invention of movable type" (Irvin Molotsky).

---

[235] *Order on Remand*, ¶¶ 39-40.

[236] *Qwest II*, 398 F.3d at 1236-1237.

2. Similar or equivalent: pianists of comparable ability.[237]

"Comparable" does not mean "equal." If Congress had intended rural rates to be equal to urban rates, the 1996 Act would have said so. Congress even added the qualifier "reasonably," so that rural rates were supposed to be only "reasonably comparable" to urban rates. As noted, Congress was generally aware of the range of rates in 1996.[238] So was the Commission in the *Ninth Report and Order* and the *Order on Remand*. Yet the Commission did not review a comprehensive database of urban and rural rates before establishing the benchmark. (And, according to *Qwest I*, the Commission did not address any of the data it had apart from the 95-city urban rate sample.[239])

NASUCA submits that its dataset was comprehensive. The Commission should use the database to determine what is reasonably comparable. Or the Commission should order an update to the dataset,

The data show that the range of urban rates without the subscriber line charge and FUSF charges is $6.75 to $19.26, with a weighted average of $12.76. With this information in hand, it would be unreasonable to give any relevance to the lowest urban rates without considering the full range of rates as it existed when the Act was passed. Unfortunately, it appears that this is what the Tenth Circuit did, **based on the record before it**.

---

[237] The American Heritage® Dictionary of the English Language, Fourth Edition (2000), accessed at http://dictionary.reference.com/search?q=comparable on February 20, 2006.

[238] The legislative history, however, does not contain reference to a rate study.

[239] *Qwest I*, 258 F.3d at 1202.

A review of NASUCA's dataset of non-rural carriers' rates, adding in the SLC, showed as follows:

Standard deviation of rural rates from rural average	Rate	Rural rate as % of rural average	Rural rate as % of urban average
0	21.00	100%	107%
1	24.79	118%	127%
2	27.27	130%	139%
3	32.37	154%	165%

It would appear, however, that the Tenth Circuit might prefer the issue to be looked at as follows:

Percentages of rural (0-20% urban) average ($20.81)	Rural rate	Rural rate as % of urban average: $19.40	**Rural = 0% urban** Estimated number of lines "needing support" (i.e., above, e.g., 120% of rural average)	**Rural = 0-20% urban** Estimated number of lines "needing support" (i.e., above, e.g., 120% of rural average)	**Rural = 0-40% urban** Estimated number of lines "needing support" (i.e., above, e.g., 120% of rural average)
(1)	(2) = $20.81 * (1)	(3) = (2) / $19.40			
120%	$24.97	128%	261,546	674,858	889,571
125%	$26.01	133%	139,487	381,345	515,511
133%	$27.68	142%	52,376	132,227	185,414
140%	$29.13	149%	50,709	126,511	171,157
150%	$31.22	160%	2,899	13,694	13,694
166%	$34.54	177%	0	0	0

Thus with a rural average of $20.81, 125% of the average is $26.01. If "rural" is defined as 0% urban, there are, as highlighted in the table, about 140,000 rural lines served by non-rural carriers that would be eligible for support, i.e., that have rates above $26.01. Likewise, 140% of the rural average is $29.13. If "rural" includes wire centers that are up to 40% urban, there are, as also highlighted in the table, about 170,000 lines that would be eligible for support.

Based on all of this data, the specific concerns raised by the Tenth Circuit can be addressed here:

- In *Qwest I*, the court expressed its "concern that a discrepancy of 70-80% between some rural rates and urban rates might impermissibly stretch the boundaries of rate comparability."[240] Yet the data show that the discrepancy among urban rates is just as great as the discrepancy between urban and rural rates. Even so, NASUCA's proposed second alternative includes a process to gradually reduce the comparability standard, such that the range of rural rates above urban rates will be lowered and eventually eliminated, thus advancing universal service as required by *Qwest II*.[241]

- In *Qwest II*, the court first complained that "rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%."[242] The highest urban rate ($29.64) is more than three times the lowest urban rate, while the highest rural rate ($31.82) is somewhat less than three times the lowest rural rate. Congress did not, in fact, say that rural rates would be reasonably comparable to the **lowest** urban rate. Rather, § 254(b) directs that rural rates be reasonably comparable to urban rates generally. The best reflection of the general urban rate is the national weighted average urban rate.

- In *Qwest II*, the court also worried that "[e]ven if such rural rates are compared against the national urban average, we fail to see how they could be deemed reasonably comparable, especially in light of our previous consideration."[243] Looking at the entire universe of non-rural carriers' rates, rather than the selection presented to the Tenth Circuit, current non-rural carriers' rural rates appear to be reasonably comparable to urban rates. Under NASUCA's proposed second alternative, however, the initial focus is on reducing high rural rates. And the continuing focus will be on further reducing the comparability threshold.

A reasonable comparability standard can be constructed based on the record here, and should meet the Tenth Circuit's concerns.

---

240 *Qwest I*, 258 F.3d at 1201.

241 *Qwest II*, 398 F.3d at 1236-1237.

242 Id. at 1237.

243 Id.

This discussion is based on using the national urban average as a benchmark (or the basis for a benchmark). In the *NRHC NPRM*, the Commission also asked for comment "on whether the Commission should compare rural and urban rates within each state instead of, or in addition to, comparing rural rates in all states to a national urban rate benchmark."[244] NASUCA submits that the Commission should compare rural and urban rates within each state as a subsequent step, i.e., "in addition to" the comparison to the national benchmark.

Appendix D to NASUCA's NRHC Comments set out scatter diagrams for rates within each state, derived from the national rate census data. This data showed that in some states, all rates, including urban rates, were set at levels above the national urban average.[245] This is the result of state-specific ratemaking. For example, in a particular state, rural rates might be 150% of the national urban average but only 125% of the state urban average. NASUCA submits that in this situation, it should be primarily the state's responsibility to provide support, if any is needed, for those rural rates.[246] This was reflected in Step Four of NASUCA's second alternative proposal.

On the other hand, many states have maintained statewide averaged urban and rural rates.[247] States that have done so for non-rural carriers and receive no or minimal

---

[244] *NRHC NPRM*, ¶ 19.

[245] This includes Alabama, Colorado, Massachusetts, Maine, Montana, North Dakota, New Mexico, Rhode Island, Vermont and Wyoming

[246] The Commission also asks, "Would a state-specific urban rate benchmark provide states more flexibility in designing state rates?" Id. Not exactly; a state-specific benchmark would give the Commission more flexibility to deal with existing state ratemaking flexibility.

[247] Based on eyeballing the state scatter diagrams, that appears to be the case in Arizona, Colorado, Delaware, Idaho, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Montana, North Dakota, New Hampshire, New Jersey, New Mexico, Nevada, Oregon, Utah, Washington, Wisconsin and West Virginia.

federal support for those carriers should be able to continue this practice. States with carriers with averaged rates that receive federal support would be addressed in the early stages of NASUCA's second alternative proposal.[248]

As the Commission stated in the *NRHC NPRM*, the Tenth Circuit rejected the Commission's use of a range because the range merely preserved "the disparity of rates existing in 1996" while doing nothing to "advance" universal service.[249] The non-rural high-cost mechanism must both preserve **and** advance universal service. This does not mean that there can be no benchmarks; it means that the application of the Commission's benchmarks is required to advance universal service.[250] NASUCA's second alternative proposal does so by -- over time -- narrowing the range of "acceptable" (i.e., non-supported) rural rates, and by expanding the definition of rural areas to include more territory.[251]

---

[248] Efforts of the states to restructure rates to maximize their share of the USF should be rejected. One such rejectable effort would be deaveraging, i.e., increasing rural rates and decreasing urban rates, in the expectation of receiving federal support as a result.

[249] *NRHC NPRM*, ¶ 19.

[250] *Qwest II*, 398 F.3d at 1236.

[251] See Section X. and XIV.D., to NASUCA's NRHC Comments.

APPENDIX 3

SUPPORT RECEIVED BY NON-RURAL ILECS

State	Non-rural carrier(s)	2007 HCM support ($ millions)	2007 IAS/ICL support ($ millions)	2007 total support ($ millions)[252]	2005 total support ($ millions)	Total 2007 support / loop / month
Alabama	South Central Bell[253]	24.1	9.9	34.0	35.1	$1.65
	CenturyTel (Southern)	4.7	3.3	8.0	9.4	$4.64
	CenturyTel (Northern)	8.3	2.0	10.3	10.7	$7.25
Alaska	ACS of Anchorage	0	4.3	4.3	4.6	$2.69
Arizona	Qwest	0	12.3	12.3	12.7	$0.46
Arkansas	Southwestern Bell	0	1.0	1.0	5.5	$0.06
California	Verizon (Contel)	0	5.7	5.7	5.9	$1.17
	Verizon (GTE)	0	18.1	18.1	18.9	$0.39
	SureWest	0	2.0	2.0	3.7	$1.34
	Pacific Bell	0	8.6	8.6	0	$0.04
Colorado	Qwest	0	19.2	19.2	20.2	0.69
Connecticut	SNET	0	1.0	1.0	0.5	0.02
DC	Verizon	0	0	0	0	0
Delaware	Verizon	0	0.3	0.3	0.3	0.04
Florida	Verizon	0	18.3	18.3	28.1	0.77
	Southern Bell	0	10.2	10.2	10.2	0.15
Georgia	Southern Bell	0	17.4	17.4	15.8	0.41
Hawaii	Verizon	0	2.2	2.2	6.8	0.29
Idaho	Qwest	0	0	0	0	0
Iowa	Qwest	0	0.5	0.5	0.6	0.04
Illinois	Verizon	0	6.2	6.2	6.8	0.89
	Verizon (Contel)	0	3.4	3.4	3.9	2.40
	Illinois Bell	0	0	0	0	0

[252] Totals may not be exact due to rounding.

[253] ILEC names in this table are as they were in 2005. Principal changes would be to include as AT&T all the companies now under that banner.

State	Non-rural carrier(s)	2007 HCM support ($ millions)	2007 IAS/ICL support ($ millions)	2007 total support ($ millions)	2005 total support ($ millions)	Total 2007 support / loop / month
Indiana	Verizon	0	14.2	14.2	15.7	1.71
	Verizon (Contel)	0	5.0	5.0	5.3	2.24
	Indiana Bell	0	0	0	0	0
Kansas	Southwestern Bell	0	0.5	0.5	9.6	0.04
Kentucky	Cincinnati Bell	0.7	0.2	0.9	1.0	0.42
	South Central Bell	9.1	6.6	15.7	17.2	1.27
	ALLTEL	3.9	5.5	9.4	14.7	2.01
Louisiana	South Central Bell	0	8.9	8.9	9.6	0.41
Maine	Verizon	1.6	0.1	1.7	2.1	0.23
Massachusetts	Verizon	0	1.8	1.8	1.9	0.04
Maryland	Verizon	0	2.6	2.6	2.3	0.06
Michigan	Verizon	0	0.5	0.5	0.4	0.06
	Michigan Bell	0	0	0	0	0
Minnesota	Qwest	0	0	0	0	0
Mississippi	South Central Bell	86.0	14.8	99.8	113.7	7.19
Missouri	Southwestern Bell	0	0	0	3.5	0
	CenturyTel (Central)	0	0.8	0.8	0.8	0.79
	CenturyTel (Southwest)	0	2.6	2.6	2.9	1.04
Montana	Qwest	14.5	0.4	14.9	16.7	3.96
Nebraska	ALLTEL[254]	2.6	0	2.6	3.9	0.85
	Qwest	2.3	3.0	5.3	5.8	1.30
North Carolina	Verizon	0	4.2	4.2	7.5	2.07
	North State	0	2.8	2.8	4.9	1.98
	Verizon (Contel)	0	5.0	5.0	5.0	2.95
	Southern Bell	0	4.6	4.6	10.0	0.18
North Dakota	Qwest	0	0.5	0.5	0.5	0.25
Nevada	Central	0	1.6	1.6	1.5	0.17
	Nevada Bell	0	4.0	4.0	3.0	0.92
New Hampshire	Verizon	0	1.8	1.8	1.9	0.22
New Jersey	Verizon	0	0	0	0	0

[254] ALLTEL in Nebraska is the only carrier to receive only HCM support and no access support.

State	Non-rural carrier(s)	2007 HCM support ($ millions)	2007 IAS/ICL support ($ millions)	2007 total support ($ millions)	2005 total support ($ millions)	Total 2007 support / loop / month
New Mexico	Qwest	0	4.4	4.4	4.2	0.47
New York	Verizon	0	7.2	7.2	8.4	0.07
	Frontier Rochester	0	0	0	0	0
Ohio	Verizon	0	7.2	7.2	8.1	0.72
	Cincinnati Bell	0	0	0	0	0
	Ohio Bell	0	0	0	0	0
Oklahoma	Southwestern Bell	0	0.9	0.9	3.8	0.06
Oregon	Verizon	0	10.4	10.4	13.9	2.13
	Qwest	0	2.6	2.6	2.6	0.18
Pennsylvania	Verizon North	0	3.4	3.4	3.4	0.55
	Verizon	0	9.0	9.0	0	0.15
Puerto Rico	PRTC Central	0	9.1	9.1	9.0	4.71
	PRTC	0	49.0	49.0	58.2	4.10
Rhode Island	Verizon	0	.035	.035	0.06	0.01
South Carolina	Verizon	0	4.9	4.9	6.0	2.69
	Southern Bell	0	4.9	4.9	5.2	0.32
South Dakota	Qwest	1.5	.009	1.5	1.6	0.67
Tennessee	South Central Bell	0	6.8	6.8	7.3	0.25
Texas	GTE	0	18.7	18.7	19.2	1.16
	Contel	0	3.3	3.3	3.3	2.52
	Southwestern Bell	0	0.09	0.09	0	0
Utah	Qwest	0	1.2	1.2	1.1	0.11
Vermont	Verizon	7.7	2.0	9.7	10.3	2.43
Virginia	Contel	0	26.8	26.8	38.2	3.83
	Verizon	0	10.9	10.9	11.6	0.30
Washington	Verizon	0	4.6	4.6	15.9	0.56
	Contel	0	2.1	2.1	4.9	2.00
	Qwest	0	2.6	2.6	0	0.10
West Virginia	Verizon	21.9	7.6	29.5	30.6	3.14

State	Non-rural carrier(s)	2007 HCM support ($ millions)	2007 IAS/ICL support ($ millions)	2007 total support ($ millions)	2005 total support ($ millions)	Total 2007 support / loop / month
Wisconsin	Verizon	0	0	0	0	0
	Wisconsin Bell	0	0	0	0	0
Wyoming	Qwest	8.8	3.9	12.7	14.6	4.74

APPENDIX 4

DIFFERENCES BETWEEN RURAL AND NON-RURAL CARRIERS[255]

It may be that it is possible to unify the rural and non-rural carrier programs to some extent. For now, however, it appears that combining the largest non-rural carriers with the smallest rural carriers in a single mechanism will likely harm the smallest of the small and their customers. The small companies are significantly different from their non-rural counterparts.[256]

The non-rural carriers are, by definition, the largest ILECs in the nation. They serve rural areas in the various states, yet their predominant service areas -- as signaled by the term "non-rural" -- are not rural, and indeed encompass most of the urban, low-cost areas in the states. The Commission should recognize the characteristics of those companies, and not attempt to adopt a single support mechanism for carriers of all sizes without careful study.

The Commission has adopted a different cost-evaluation methodology for the non-rural carriers than for the rural carriers: Non-rural carriers are subject to a cost model that uses forward-looking costs, while the rural carriers' analysis continues to use embedded costs.[257] NASUCA has proposed that larger rural carriers (with more than 100,000 access lines within a state) be transitioned to a forward-looking cost model.[258]

This differential treatment is justified by the significant differences between rural carriers and non-rural carriers. The Rural Task Force paper on "The Rural Difference" authoritatively summarizes these differences, focusing on the characteristics of the rural carriers.[259]

In most states, the non-rural companies' rural territory is a small part of the ILEC's operation, dominated by urban and suburban territory. In almost all cases, these companies are affiliates of some of the largest corporations in the country. And in most

[255] This material is adapted from NASUCA's initial comments (submitted October 3, 2005), in response to FCC 05J-1.

[256] That is why, for example, NASUCA proposed, for the meantime, shielding carriers with fewer than 100,000 access lines within a state from the move to basing costs on a forward-looking cost model; indeed, recognizing these differences is behind NASUCA's proposal that larger rural carriers not be treated the same as non-rural carriers even under forward-looking costs. See NASUCA RHC Reply Comments at 20-21.

[257] Compare *Ninth Report and Order*, ¶ 2 to *Fourteenth Report and Order,* ¶ 8.

[258] NASUCA RHC Reply Comments at 20-21.

[259] "The Rural Difference," Rural Task Force White Paper 2 (January 2000) (available at http://www.wutc.wa.gov/rtf) ("*The Rural Difference*"); see *Fourteenth Report and Order*, ¶ 17. As shown in *The Rural Difference*, the smaller the carrier, the greater would be its difficulty in adapting to a rate structure that does not include current levels of support from all sources.

cases, these local companies produce healthy earnings for their investors.

All of these distinctions support definitions of "sufficient" and "reasonably comparable" for the non-rural carriers that tend to limit, rather than expand, the level of federal universal service support provided to the non-rural carriers. Many of these carriers clearly have the resources -- on the intrastate level and the interstate level -- to ensure that their rural rates are reasonably comparable to their urban rates, without support from the federal USF.

Moving to the rural side, it is important to recognize why rural rates might tend to be higher than urban rates. The first reason is that many of the direct costs of service in rural areas will tend to be higher than in urban areas.[260] The second reason is that most of the service in urban areas is provided by large telephone companies, which may also serve rural areas. By contrast, much of the service in rural areas is provided by smaller companies. The smaller companies have less of an ability to spread their common and other costs across a smaller customer base without increasing rates to levels that might not be reasonably comparable to those of their larger urban counterparts.

Indeed, it is this ability to spread common costs -- and indeed, all higher costs of service -- across a larger customer base that underlies much of the current federal support program for non-rural companies. The use of statewide average costs[261] allows larger companies to maintain reasonably comparable rural rates because they are supported by the lower urban costs the company also experiences. For example, AT&T Ohio serves considerable rural territory across the state of Ohio.[262] Yet AT&T Ohio also serves seven of the eight major metropolitan areas in the state.[263] As a result, AT&T Ohio's *statewide average* costs are low, and no explicit universal service support is needed to ensure comparable rates.

By contrast, in Ohio a small telephone company -- like the state's smallest, Vaughnsville Telephone Company with 330-some access lines in northwestern Ohio -- serves only rural territory, and has only a few customers over which to spread its common costs.[264] Thus for Vaughnsville, rates will tend to be not reasonably comparable to urban rates, unless there is explicit universal service support.

This is true in rural areas of northwest Ohio where conditions are hardly extreme. It is even more true in rural areas in other states, where mountainous conditions or very

---

[260] Although there might be exceptions: For example, some of the costs of laying lines in urban areas can be higher, because they involve digging up and repairing streets.

[261] *Order on Remand*, ¶ 25. This principle was not reversed by *Qwest II*, which reversed other portions of the *Order on Remand*.

[262] See http://www.puc.state.oh.us/pucogis/statewidemaps.htm.

[263] Id.

[264] See http://www.puc.state.oh.us/website/telserv3.

widely scattered customers make the costs of service significantly higher than a "lower cost" rural company.[265] These costly conditions are also, of course, observed for large non-rural telephone companies like Qwest in Colorado, but, as in Ohio for AT&T Ohio, Qwest in Colorado has lower-cost areas to balance out its high-cost areas. Once again, because Qwest's statewide average costs in Colorado are low,[266] no additional explicit support is necessary.

The presumption should be that, unless a larger rural carrier overall has high costs, it does not have a need for federal support in order to keep service affordable and reasonably comparable in the high-cost areas of its territory. High costs, especially high deployment costs, would be reflected in a company-specific forward-looking cost test, as NASUCA discusses below.

As described in NASUCA RHC Reply Comments, a key recommendation is that the Commission move from the current system, which essentially recognizes only two categories of carriers -- rural and non-rural -- to a system that subdivides the rural category according to the significant differences among rural carriers.[267] In the *Fourteenth Report and Order*, the Commission said that the rural mechanism adopted there "strikes the appropriate balance at this time."[268] It is time to further adjust the mechanism.

The Rural Difference shows not only the many differences between non-rural carriers and rural carriers, but the diversity among rural carriers. It should be intuitively obvious that a carrier with 300 access lines would not have much in common with a carrier that had 100,000 access lines, and, of course, have even less in common with a carrier that had a million or two access lines. But *The Rural Difference* specifically shows that, by and large, carriers that serve more than 20,000 access lines have embedded cost characteristics that are not radically different from non-rural carriers (one could say that their embedded costs are reasonably comparable to non-rural carriers).[269] Once below 20,000 access lines, cost structures increase substantially until the smallest carriers (those with less than 1,000 access lines) have embedded operational costs double

---

[265] For example, Vaughnsville's approximately 400 customers are spread over service territory of less than ten square miles. By contrast, rural carriers in Alaska and Wyoming serve, respectively, areas with 0.58 and 1.25 persons per square mile. *The Rural Difference* at 9.

[266] As shown on Appendix HC16 of USAC's universal service fund reports for the second quarter of 2008, the average non-rural carrier costs of Colorado and Ohio are virtually the same, $23.26 per line vs. $23.27 per line.

[267] NASUCA RHC Reply Comments at 20-21.

[268] *Fourteenth Report and Order*, ¶ 28.

[269] Indeed, because the comparison in *The Rural Difference* is between rural carriers and all non-rural carriers (including the largest regional Bell Operating Companies), it appears likely that a comparison between the larger rural carriers and the smaller non-rural carriers (like Roseville and Northstate) would show even less of a difference.

and triple those of the average rural carrier, and three or four times those of non-rural carriers.

The Rural Difference discusses a range of "operational related variables."[270] The graphs included in that discussion show commonalities among carriers with 20,000-50,000 lines, with 50,000-100,000 lines and with more than 100,000 lines, in contrast to the 10,000-20,000 lines and the five smallest groups. Commonalities are seen in the following categories: average lines per local switch,[271] loops per sheath mile,[272] total plant (gross) investment per loop,[273] average gross central office equipment ("COE") investment per loop,[274] average COE transmission investment (gross) per loop,[275] variability in COE transmission investment per loop,[276] average cable and wire facilities investment per loop,[277] and average plant expenses per loop.[278] Based on this, the Commission clearly needs to update its cost models before attempting to unify the rural and non-rural funds.

---

[270] *The Rural Difference* at 43-57.

[271] Id. at 45.

[272] Id. at 46.

[273] Id. at 47.

[274] Id. at 50.

[275] Id. at 51.

[276] Id. at 52.

[277] Id. at 53.

[278] Id. at 54.