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VIA ECFS

EX PARTE

September 24, 2008

Via E-mail and/or Hand Delivery

Ms. Marlene H. Dortch,
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matters of Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337; In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122*

Dear Ms. Dortch:

Qwest Communications International Inc. (“Qwest”) submits this *ex parte* on reform of the high-cost universal service support fund and reform of the method for contributing into the federal universal service fund (or “FUSF”). Qwest reiterates its support for its proposals (1) to immediately reform the non-rural high-cost support mechanism to comply with the Tenth Circuit’s mandate in *Qwest II* and (2) to create a separate federal universal service fund to support broadband deployment to high-cost areas. Qwest also discusses its opposition to the more recent reforms to high-cost support advocated by AT&T and Sprint.¹ Finally, in contrast to a recent proposal by AT&T and Verizon, Qwest reiterates its support for moving to a contribution

¹ Comments of AT&T Inc., CC Docket No. 96-45 and WC Docket No. 05-337, filed Apr. 17, 2008 (“AT&T Proposal”); *Ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Mr. Anthony M. Alessi, counsel for Sprint Nextel, dated May 12, 2008 (“Sprint Proposal”). AT&T proposes a “Broadband Incentive Fund” to provide support for deploying fixed broadband Internet access service to unserved areas within a price cap incumbent local exchange carrier’s (“ILECs”) service area, an “Advanced Mobility Fund” for providing support for deploying mobile wireless broadband Internet access service to areas which have no such service available or have the service using either Code Division Multiple Access or Global System for Mobile Communications wireless technologies, but not both. Sprint offers a four-step plan for reducing high-cost support.

methodology for federal universal service support that is based on numbers for those services which are based on telephone numbers and on revenues for those services that are not.

HIGH-COST UNIVERSAL SERVICE FUND REFORM

In reforming the federal high-cost support mechanisms, the Federal Communications Commission (“Commission”) should address (1) its obligations under the Tenth Circuit remand of *Qwest II* and (2) the provision of support to fund deployment of broadband to unserved areas. Qwest has previously provided proposals to accomplish both of these objectives. AT&T’s proposal does not adequately address these issues, and Sprint’s proposal does not address these issues at all.

Qwest outlines below certain shortcomings in AT&T’s suggested approaches for funding and transitioning to the Broadband Incentive Fund and for using high-cost support to enable deployment of an additional mobility system where one already exists. Sprint’s proposal ignores the need to address the Tenth Circuit’s directives in *Qwest II* and it fails to remedy the lack of federal high-cost support to many high-cost areas. Instead, it is solely a mechanism for reducing the size of the high-cost fund.

Tenth Circuit Mandate. The Commission must move forward to adopt rules that address the Tenth Circuit’s mandate in *Qwest II*. It has been three years since the Tenth Circuit held the Commission’s rules governing the non-rural high-cost support mechanism invalid for the second time and stated that it “fully expects the FCC to comply with [its] decision in an expeditious manner, bearing in mind the consequences inherent in further delay.”² The Commission needs to implement lawful high-cost support rules for non-rural carriers.

Qwest has offered the Commission a solution for complying with the Tenth Circuit’s mandate.³ Qwest has proposed that the Commission replace the current non-rural support mechanism with federal support targeted to the highest cost wire centers (*i.e.*, those with a cost per line of more than 125 percent of the national average urban rate) served by non-rural ILECs. The resulting increase in the size of the fund could be mitigated by limiting the rule modification to medium-sized ILECs.

In contrast, Sprint’s proposal does not speak to this critical reform obligation at all. And AT&T’s proposal suggests that it would resolve the Commission’s remand obligations under *Qwest II* by completely replacing the existing invalid non-rural high-cost support mechanism for basic voice services with a mechanism for funding broadband services. Yet, even if such an approach to non-

² *Qwest v. FCC*, 398 F.3d 1222, 1239 (10th Cir. 2005) (“*Qwest II*”).

³ See, *ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Ms. Shirley Bloomfield and Mr. R. Steven Davis, Qwest, CC Docket No. 96-45 and WC Docket No. 05-337, dated May 5, 2008, and its attached *Proposal for Implementing the Tenth Circuit’s Remand in QWEST II* (“Qwest Proposal”), by Mr. Andrew D. Crain, Qwest.

rural high-cost support is adopted, the Commission still has an obligation under *Qwest II* to explain how this funding mechanism enables reasonably comparable rates and service between rural and urban areas and is sufficient funding for FUSF-supported services.⁴

Qwest's proposal for complying with the Tenth Circuit's mandate includes an initial retargeting of support to the highest-cost wire centers served by non-rural carriers who serve multi-wire center study areas. Any plan that does not include such a reallocation would only perpetuate the problematic lack of targeted support in the existing distribution mechanisms. Sprint's proposal does not address the glaring need to better target high-cost support to high-cost areas and thus makes no effort to improve the poor allocation of funds under the existing high-cost mechanisms. Nor does AT&T's proposal address the inequitable allocation of federal high-cost support among the states for basic voice services. Adoption of Qwest's proposal, even on an interim basis, would implement the Tenth Circuit's directives and improve the allocation of high-cost support for basic voice services.

Support for Broadband Services. Simultaneously, but separately, Qwest supports using federal universal service funds to spur deployment of broadband in unserved areas. Qwest has proposed a new federal universal service program that would provide one-time grants to selected applicants to deploy broadband to unserved areas, without replicating the mistakes of the existing high-cost support mechanisms.⁵

AT&T has proposed its Broadband Incentive Fund ("BIF"), as a federal universal service fund to support broadband deployment. Overall, Qwest supports the concept of high-cost universal service funds supporting deployment of broadband service to unserved areas through one-time grants to selected applicants. But the primary source of funding for the BIF should not be the legacy high-cost support of all of the price cap carriers. AT&T's proposal would simply shift funding within each state from the current high-cost support in that state to broadband funding in that state.⁶ This approach wrongly assumes that the current allocation of federal high-cost support among the states is appropriately targeted for both the support of voice grade services and the expansion of broadband services. The current allocation of federal high-cost support among the states, especially from the non-rural fund, does not target high cost support consistently from state to state and simply ignores many high cost areas within certain states. Similarly, the rural fund's lack of targeted high cost support leaves many high cost rural areas without adequate support. Simply transitioning poorly-targeted voice grade funds to broadband would do grave harm to future broadband deployment in unserved areas. Instead there should be separate identification of

⁴ *Id.* at 8-10.

⁵ *See ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa E. Newman, Qwest, CC Docket No. 96-45, dated July 9, 2007 and its attached Proposal for Broadband Deployment to Unserved Areas at 2, 11 ("Qwest Broadband Proposal").

⁶ AT&T Proposal at 22.

high-cost areas both for voice grade services and areas without wireline broadband service that should trigger the federal support needed within a state.

AT&T's proposal that the transition from voice-grade to broadband support occur once a state commission grants a price cap ILEC full pricing deregulation is also problematic.⁷ AT&T asserts that full retail pricing deregulation is an appropriate trigger because an ILEC will not need high-cost support for its traditional voice services once it can price its services at market-based levels.⁸ But, this assumes that the market will tolerate any cost for basic telephone service. This is just not likely to be true for certain high-cost wire centers. If telephone service is to remain affordable in the highest cost wire centers, and reflect reasonably comparable rates and service to urban rates and service, federal high-cost support still will likely be needed to cover the costs of providing service in those wire centers. Retail price deregulation by a state commission has no bearing on the cost to provide service and thus cannot eliminate those high costs that create the need for federal high-cost support. Nor does retail price deregulation address carrier of last resort responsibilities. The costs to provide service and the obligation to provide service are not reduced or eliminated by retail price deregulation. As such, AT&T's proposal for funding broadband deployment potentially leaves price cap ILECs with high costs and an obligation to provide basic telephone service, but without federal high-cost support to enable reasonably comparable rates and service.

Instead, Qwest has proposed that funding for deployment of broadband to unserved areas should come from instituting a restriction -- above and beyond the implementation of the interim cap on funding competitive eligible telecommunications carriers ("CETCs") -- that would limit universal service support for wireless CETC's to a single handset per household.⁹ The remainder of the funding available for high-cost support for basic voice services would remain available to support those services.¹⁰

⁷ *Id.*

⁸ *Id.*

⁹ As the Commission found in adopting an interim cap on CETC high-cost support, neither court precedent nor competitive neutrality requires an identical set of high cost rules for all ETCs. *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, 23 FCC Rcd 8834, 8842-45 ¶¶ 16-22 (2008).

¹⁰ Qwest believes this restriction would not contravene Congress' prohibition in the 2005 Consolidated Appropriations Act, which prohibits the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service payments." Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat. 2809 (2004) (2005 Consolidated Appropriations Act). *See also* Consolidated Appropriations Act, 2008,

AT&T's Advanced Mobility Fund also raises several concerns. It would be appropriate to use high-cost funds to support deployment of broadband service (including mobile broadband) and deployment of mobile voice services to unserved areas.¹¹ But it would be unreasonable to use high-cost support to enable deployment of an additional mobile system where one already exists. AT&T's proposal to use high-cost support to fund two, and only two, specific mobile technologies is problematic for at least two reasons. First, it may well create a disincentive to invest in other mobile technologies in high-cost areas, as they would not be eligible for federal high-cost support. Second, using high-cost support to subsidize two different technologies is the wrong focus for universal service support. AT&T's proposal would continue to use federal support to subsidize competition. At its core, the proper purpose of federal universal service funding is to enable the universal availability of the supported services. For a mobility fund, that can be accomplished by supporting the deployment of a mobile service to a truly unserved area. Further, to the extent another provider has already deployed mobile service to an area without federal universal service high-cost support, it makes little sense that a second provider should receive such support to deploy additional mobile services to the same area.

Additionally, in determining what constitutes an unserved area for purposes of mobile services deployment, the Commission should keep in mind that not all areas which lack mobile service necessarily need mobile service, or at least do not warrant federal universal service support to enable that service. For instance, it may not be necessary for federal support to be used to deploy wireless service in very remote wilderness areas. The Commission should develop an appropriate definition of "unserved area" to ensure effective deployment of mobile services consistent with the principles of universal service.

AT&T proposes to finance its mobility fund by moving all of the high-cost support that is currently received by wireless carriers to the new fund. But this assumes that the high-cost support wireless carriers are currently receiving is appropriate. Yet, nothing has been done to verify that wireless carriers truly need this level of support to enable universal availability of mobile services. Prior to providing monies to the mobility fund, the Commission should evaluate what is an appropriate funding level for mobile providers.

With respect to AT&T's proposed broadband incentives for rate of return carriers, neither these carriers, nor any carriers, are or should be permitted to have broadband deployment covered under the existing federal high-cost support mechanisms. Instead, support for broadband should be through a separate fund, which would support broadband deployment to unserved areas through one-time grants.

Pub. L. No. 110-161, § 511, 121 Stat. 1998 (2007) (extending prohibition until September 30, 2008). Unlike the Joint Board's 2004 recommendation, Qwest's proposal would allow universal service support for up to one connection per carrier for each household.

¹¹ See Qwest Broadband Proposal at Section III entitled "A Third Generation Policy for Facilitating the Rollout of Broadband to Unserved Areas."

As to harmonizing access charges, there are policy reasons to reduce access charges. But the notion that reducing access charges is necessary to provide an incentive to deploy broadband is not one of them. High access charges have not been a disincentive for providers to deploy broadband. Market supply of broadband service is a function of the market price of broadband and the cost to deploy broadband, including the capital available for its deployment. If anything, high access charges provide additional cash flow to fund broadband projects. Certainly market demand for broadband is not inhibited by high access charges. Finally, AT&T's proposal for reducing and replacing access charge revenues for price cap and rate of return ILECs is only effective and fair if it applies to competitive LECs as well as incumbents. Otherwise, implementing these alternative recovery mechanisms only creates pricing disparities.

CONTRIBUTION METHODOLOGY REFORM

Any change in contribution methodology needs to be competitively neutral and require equitable contributions of all providers who use North American Numbering Plan ("NANP") numbers and all providers of interstate telecommunications services.¹² The federal universal service burden should be shared fairly among all end users of competing services and should not influence or drive customer purchasing behavior.

These goals are best accomplished by a hybrid numbers and revenues contribution methodology in which a flat-fee contribution is required for each NANP unique working telephone number ("UWTN") for services that are numbers based, and a revenue-based contribution is required for interstate transport services to end users not associated with numbers.

The Commission should reject proposals to base contributions solely on telephone numbers, such as that recently submitted by AT&T and Verizon.¹³ The AT&T/Verizon Proposal would not assess any contributions for services without an associated telephone number, such as special access services. By doing so, the proposal would impose a larger contribution burden on consumer and small business customers than a hybrid numbers/revenues contribution methodology. Currently special access services account for approximately 19 percent of interstate revenue subject to universal service contributions. Thus, exempting these services alone from contribution obligations presumably would increase the per-telephone number charge on consumers by approximately that percentage.

¹² See *ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa E. Newman, Qwest, CC Docket No. 96-45, dated May 4, 2006 and its attached PowerPoint presentation Universal Service Contribution Methodology.

¹³ *Ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Mary L. Henze, AT&T Services Inc., and Kathleen Grillo, Verizon, WC Docket No. 06-122 and CC Docket No. 96-45, dated Sept. 11, 2008 ("AT&T/Verizon Proposal").

The AT&T/Verizon Proposal also faces a legal vulnerability that is avoided by a hybrid numbers/revenue contribution methodology. Under Section 254(d), “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis.” Exempting broad categories of telecommunications services that are not associated with telephone numbers, including special access services, arguably violates this statutory requirement.

Assessable Telephone Numbers. Under a hybrid contribution methodology, contributions should be assessed for telephone number-based services on the provider who has the retail relationship with the end-user customer. Each unique working telephone number should be assessed a one-unit fee. Those telephone numbers should include public switched telephone numbers including facsimile numbers, numbers used for VoIP, numbers “ported in” from another carrier, wireless numbers, paging numbers, toll-free numbers, 500 numbers, and 900 numbers. There should be a few exceptions to the one-unit-per-number rule: (1) private branch exchange (“PBX”) trunks should be assessed one unit regardless of the number of UWTNs associated with the trunk; (2) each ISDN PRI should be assessed five units for each nine UWTN’s, consistent with the subscriber line charge (“SLC”) for ISDN PRI; and (3) Centrex numbers should be assessed one unit for each nine UWTNs, consistent with the SLC for Centrex.

Wireless family plan numbers also should each be assessed a full unit. Any contribution methodology, such as the AT&T/Verizon Proposal, that would give a reduced assessment to the lines in a wireless family plan is not competitively neutral.

Numbers that should be excluded from the contribution base include numbers provided to resellers, numbers “ported out” to another carrier, numbers used for UNE-P/QPP or like services, numbers used for administrative purposes, and numbers that are not “active” working telephone numbers including aging numbers, unassigned numbers, reserved numbers, and numbers donated back to the industry pool.

Assessable Revenues. For the revenues-based contributions, providers of interstate transport services to end users should contribute based on their revenues from providing private line and dedicated services not associated with numbers such as DS1s, DS3s, OCNs, DDS, frame relay, and voice grade. Using revenues to determine contributions on these services avoids the issue of where to draw the lines in developing “tiers” for high-capacity services offered by different providers and technologies. As with the current revenue-based system, revenues from wholesale products provided to wholesale customers should be excluded.

Consistent with the Commission’s *Wireline Broadband Internet Access Order*,¹⁴ FUSF contributions should not be assessed on wireline broadband Internet access services including digital subscriber line and cable modem services.

¹⁴ *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory*

Ms. Marlene H. Dortch
September 24, 2008

Page 8 of 8

Implementation. The Commission should provide at least eighteen months to implement any change in contribution methodology, and should establish a means to recover implementation costs analogous to the cost recovery mechanism used for local number portability (“LNP”) implementation. The changes that will need to be made to implement a new contribution methodology will require significant system revisions and information technology work, training, and systemization for contributors. And, the costs to implement these changes will be significant as well. Permitting cost recovery here in a manner similar to that permitted for LNP would recognize and support the competitive neutrality principle in the universal service context and ensure that the costs of implementing a new universal service contribution methodology will not discourage competition or otherwise interfere with the goal of making telephone service universally available.

Respectfully submitted,

/s/ Melissa E. Newman

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Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), aff’d sub nom. Time Warner Telecom. v. FCC, 507 F.3d 205 (3d Cir. 2007).