

**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	)	CC Docket No. 96-45
Universal Service	)	

**COMMENTS OF TIME WARNER CABLE INC.**

Time Warner Cable Inc. (“TWC”) respectfully submits these comments in response to the Commission’s Notice of Inquiry (“NOI”) in the above-captioned dockets.<sup>1</sup> TWC, the nation’s second-largest cable operator, offers a facilities-based VoIP service, Digital Phone, that allows it to compete head-to-head with service providers that receive substantial subsidies under existing high-cost support mechanisms. Accordingly, TWC has a strong interest in the issues raised by the NOI.

**DISCUSSION**

The NOI seeks to refresh the record regarding the Commission’s review of the non-rural high-cost support rules, while also seeking input on the relationship between those issues and broader USF reform initiatives.<sup>2</sup> TWC appreciates the Commission’s interest in exploring whether recent proposals will enable it to respond adequately to *Qwest II*. The Commission, however, should avoid making piecemeal revisions to the universal service program. As explained below, meaningful and lasting reform is best achieved via a comprehensive approach. In any event, regardless of how the Commission proceeds, it should focus on curtailing

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<sup>1</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Inquiry, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Apr. 8, 2009) (“NOI”).

<sup>2</sup> *Id.* ¶ 1 (noting remand ordered in *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

unnecessary spending rather than perpetuating unwarranted subsidies that distort competition and ultimately harm consumers.

**I.     PIECEMEAL REFORM OF UNIVERSAL SERVICE WOULD BE COUNTERPRODUCTIVE.**

As discussed further below,<sup>3</sup> there can be no legitimate dispute that the current high-cost funding mechanisms—both non-rural and rural—are sorely in need of an overhaul. While the Commission must address the well-established problems with the non-rural mechanism, they cannot be solved in a vacuum. Rather, their resolution will depend on a number of factors related to universal service and intercarrier compensation generally, many of which are currently subject to change in proposals now pending before the Commission. Thus, while the Commission correctly asks whether any decisions in connection with the non-rural high-cost support mechanism should precede, serve as a basis for, or await more comprehensive action,<sup>4</sup> because all of the high-cost programs are plagued by the same core problems, only the last of these three options would lead to rational and enduring reform.

Indeed, the Commission has previously recognized the virtue of taking a comprehensive approach to universal service reform. As noted in the NOI, in the past several years the Commission has explored a number of comprehensive reform proposals—most recently, in its effort to overhaul universal service and intercarrier compensation late last year<sup>5</sup>—each time emphasizing (implicitly if not explicitly) the interrelated nature of the federal universal service

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<sup>3</sup>     *See infra* Section II.

<sup>4</sup>     NOI ¶ 21.

<sup>5</sup>     *High-Cost Universal Service Support, et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, *et al.* (rel. Nov. 5, 2008).

system components and the risks inherent in addressing each of them in isolation.<sup>6</sup> Acting Chairman Copps has been particularly emphatic on the matter, explaining that “piecemeal Universal Service Fund (USF) reform is actually counter-productive to the far more important goal of rationally implementing comprehensive reform.”<sup>7</sup>

There is no reason for the Commission to proceed differently now, particularly because the non-rural support mechanism constitutes such a small component of the overall high-cost program. Comprehensive reform can and should occur now to avoid precedent-setting action in connection with one small piece of the puzzle that may not make sense in an overall reform context and could result in a potential loss of momentum in the effort to achieve broader reform. Whatever the Commission decides regarding the key questions about non-rural support raised in the NOI—such as whether to use costs, rates, or some other mechanism in assessing the sufficiency of support and reasonable comparability—necessarily will have broad implications for the far larger rural high-cost mechanism. The Commission should not make decisions that

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<sup>6</sup> See, e.g., NOI ¶ 1 & n.3. An exception was the Commission’s adoption of an emergency cap on high-cost support for competitive eligible telecommunications carriers, pending more fundamental universal service reform. See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd 8834 ¶ 1 (2008) (“*CETC Cap Order*”). That action, however, addressed the urgent need to restrain runaway funding growth in a manner that paved the way for subsequent reform, rather than impeding it. Moreover, the Commission expressly declined to take any further actions, preferring instead to await broader reform. See, e.g., *id.* ¶ 11 (“To the extent that there may be inefficiencies in incumbent LEC high-cost support, we anticipate addressing those in the context of comprehensive universal service reform.”).

<sup>7</sup> Statement of Commissioner Michael J. Copps, Approving in Part, Dissenting in Part, *Applications of Alltel Corp., Transferor, and Atlantis Holdings LLC, Transferee, for Consent to Transfer Control of Licenses, Leases and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 19517, 19529 (2007); see also, e.g., Dissenting Statement of Commissioner Michael J. Copps, *CETC Cap Order* at 8946-47; Statement of Commissioner Michael J. Copps, Approving in Part, Dissenting in Part, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1490 (2008) (referring to “the urgent need for comprehensive Universal Service reform” and stating that “[t]his is no place for piecemeal actions”).

will inevitably bear on the rural high-cost program without addressing those issues head-on. Indeed, it has been the Commission's failure to connect its existing non-rural support mechanism to broader universal service principles that has been a key factor in the Tenth Circuit's repeated decisions to remand for further consideration.<sup>8</sup>

Moreover, the recently enacted broadband stimulus legislation further underscores the need for a macro-level approach that considers all relevant factors before any individual component of USF reform is undertaken.<sup>9</sup> The new opportunities for federal funding created by that legislation could substantially diminish the need for high-cost support as it exists today, and thus, bear on how universal service funding should be distributed to any recipient. In fact, in its separate proceeding dedicated to the development of a national broadband plan, the Commission appropriately has sought comment on "the impact of broadband stimulus funds on the Commission's broader efforts to reform the distribution of high-cost support," among other issues related to universal service.<sup>10</sup> With respect to non-rural high-cost support, the NOI specifically states that any actions in this area should "be consistent with our longer term goal of developing a comprehensive national broadband plan," confirming the need to consider the issues in tandem.<sup>11</sup>

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<sup>8</sup> See, e.g., *Qwest II*, 398 F.3d at 1234 (holding that the Commission's definition of "sufficient" had "ignore[d] the vast majority of . . . principles" encompassed by section 254 and remanding for the Commission to "appropriately consider[] the range of principles identified in the text of the statute"); *Qwest Communications Int'l, Inc. v. FCC*, 258 F.3d 1191, 1202 (10th Cir. 2001) ("*Qwest I*") (same).

<sup>9</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

<sup>10</sup> *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51, at ¶ 40 (rel. Apr. 8, 2009) ("*Broadband Plan NOI*"); see also *id.* ¶¶ 39-41 (addressing other universal service issues), 80 (addressing use of high-cost and other programs to facilitate community broadband development).

<sup>11</sup> NOI ¶ 21.

## II. THE COMMISSION SHOULD FOCUS ON REDUCING HIGH-COST FUNDING.

Whether the Commission addresses the issue in the context of comprehensive reform or in isolation, it is clear that non-rural (and rural) high-cost support need not be increased. As TWC has explained in previous comments, the bloated nature of existing support mechanisms imposes significant and unwarranted burdens on consumers.<sup>12</sup> Indeed, the Fifth Circuit has noted that “excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”<sup>13</sup> Making matters worse, the Government Accountability Office has identified a litany of problems in connection with these funds.<sup>14</sup> Such factors have fueled a nearly unanimous cry for reform.

It appears that the Commission hardly requires any convincing. In a succession of decisions, the Commission has repeatedly recognized the tremendous strain on existing funding mechanisms.<sup>15</sup> That determination prompted the Commission last year to adopt a cap on high-cost support for competitive eligible telecommunications carriers (“ETCs”), an action that it explained was intended to “rein in the explosive growth in high-cost universal service support disbursements” and “halt the

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<sup>12</sup> See, e.g., Reply Comments of Time Warner Cable Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 4-5 (filed May 16, 2008) (“TWC High-Cost Reply Comments”); Comments of Time Warner Cable, WC Docket No. 05-337, at 4-6 (filed May 31, 2007) (“TWC Broadband Support Comments”); Comments of Time Warner Cable, CC Docket No. 01-92, at 21-28 (filed Oct. 25, 2006) (“TWC Missoula Plan Comments”).

<sup>13</sup> *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

<sup>14</sup> General Accountability Office, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program* (June 2008), available at <http://www.gao.gov/new.items/d08633.pdf>.

<sup>15</sup> See, e.g., *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶ 17 (2006) (“There is widespread agreement that the Fund is currently under significant strain.”); *Schools and Libraries Universal Service Support Mechanism*, First Report and Order, 17 FCC Rcd 11521 ¶ 2 (2002) (“Over the past several years . . . , we have witnessed increasing upward pressure on contributions caused by a variety of events, including declining interstate revenues coupled with increased demand for universal service support.”).

rapid growth of high-cost support that threatens the sustainability of the universal service fund.”<sup>16</sup> There is no sound reason to limit the cap only to competitive providers.

Consistent with the imposition of an emergency cap, further reforms should focus on curtailing, rather than expanding, spending. As discussed further below, TWC believes that reverse auctions offer a promising means of distributing support efficiently. Regardless of the particular distribution methodology employed, however, the Commission should ensure that funding is provided only to the extent *necessary* to yield affordable and reasonably comparable rates.<sup>17</sup> The absence of such a need-based component has been a chronic problem with high-cost support, and any changes to the support mechanism must first eliminate this problem to allow for successful reform. To that end, billions of dollars should not continue to be distributed based on mere presumptions of need, particularly where those presumptions are easily rebutted—as the record before the Commission so clearly demonstrates. Telephone subscription rates are very high—more than 95 percent of households had telephone service in 2008<sup>18</sup>—and bear no apparent relationship to high-cost support levels. To the contrary, there is abundant evidence showing that incumbent LECs often receive such support in areas where their end user rates are well *below* rates charged in urban areas, thus indicating that existing subsidy levels are excessive.<sup>19</sup> The Tenth Circuit was troubled by the fact that telephone subscription levels are not

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<sup>16</sup> *CETC Cap Order* ¶¶ 1, 5.

<sup>17</sup> See generally TWC High-Cost Reply Comments at 5-6; TWC Missoula Plan Comments at 22-24.

<sup>18</sup> Telephone Subscribership in the United States, Table 1 (rel. March 2009), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-289169A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289169A1.pdf).

<sup>19</sup> See *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, at ¶¶ 56-57, App. C (rel. Oct. 27, 2003); General Accounting Office, *Telecommunications: Federal and State Universal Service Programs and Challenges to Funding* at 15, App. IV (Feb. 2002) (“2002 GAO Report”).

necessarily correlated to (much less dependent on) the level of high-cost funding.<sup>20</sup> To survive further judicial review in this area, the Commission must demonstrate that the level of funding it selects has a sound empirical basis.<sup>21</sup>

The justification for continued high-cost subsidies has eroded further with the additional revenue streams that carriers receiving such subsidies have been able to generate through broadband Internet access and video services provided over their common infrastructure. The Joint Board appropriately recognized that the Commission should assess all of the revenue opportunities available to an eligible telecommunications carrier,<sup>22</sup> and Section 254(k) of the Act makes clear that supported services should “bear no more than a reasonable share of the joint and common costs of the facilities used to provide those services.”<sup>23</sup> In short, if non-rural carriers (and, for that matter, rural carriers) are to continue receiving substantial federal USF funding, they should demonstrate that affordable and reasonably comparable rates would not otherwise be available.

Apart from being largely unnecessary, continued high-cost support on the scale that exists today would distort competition and contravene established Commission principles favoring competitive neutrality.<sup>24</sup> High-cost support is overwhelmingly provided to traditional wireline and wireless telephone providers—including in particular circuit-switched incumbent LECs. While some cable telephony providers have become ETCs, the burdens and delays associated with

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<sup>20</sup> See *Qwest II*, 398 F.3d at 1233-34.

<sup>21</sup> See *id.* at 1237; NOI ¶ 23.

<sup>22</sup> *High-Cost Universal Service Support*, Recommended Decision, 22 FCC Rcd 20477 ¶ 31 (2007).

<sup>23</sup> 47 U.S.C. § 254(k).

<sup>24</sup> See, e.g., TWC Broadband Support Comments at 14-15; see also *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 47 (1997) (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

obtaining ETC status—particularly in light of the cap on funding for competitive ETCs and the unsettled regulatory status of interconnected VoIP services—create significant advantages for incumbent LECs. Increased funding for carriers already receiving high-cost support would only exacerbate existing practical competitive disparities, thus threatening to set back voice competition (in the very areas it is most needed) and broadband deployment more generally.<sup>25</sup> Particularly where the Commission has relied on the ability of consumers to substitute traditional wireline and VoIP services to impose various mandates on the latter, there can be no justification for maintaining dramatic funding imbalances between these services. Accordingly, any reform proposal—whether those identified in the NOI or others—should be applied in a technologically neutral manner to avoid picking winners and losers.

### **III. THE COMMISSION SHOULD CONSIDER USING REVERSE AUCTIONS TO DISTRIBUTE NON-RURAL SUPPORT.**

As TWC has stated in the past, comprehensive reform that targets high-cost support based on demonstrated need can best be achieved by implementing a new distribution system based on reverse auctions. Auctions would harness market forces to determine the optimal level of support necessary and eliminate the substantial waste in the existing high-cost program.<sup>26</sup> If properly designed, auctions also would be competitively neutral. Although the Commission has focused on reverse auctions primarily in the context of rural support—where the problem of excessive spending is the greatest—there is no reason why reverse auctions could not also be employed successfully in the context of non-rural support. Indeed, the Commission and others

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<sup>25</sup> The Commission has consistently found that actions intended to “spur consumer demand” for VoIP services will “in turn driv[e] demand for broadband connections, and consequently encourage[e] more broadband investment and deployment consistent with the goals of section 706.” *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 ¶ 29 (2007).

<sup>26</sup> See TWC High-Cost Reply Comments at 8-13.

have recognized the general efficacy of auctions,<sup>27</sup> and implementing them across the board would serve the goal of harmonizing the disparate support mechanisms.

The foreseeable alternatives to an auction-based distribution system all have significant flaws. For example, the current reliance on carriers' *costs* has created a disconnect from the statutory mandate to ensure affordable and reasonably comparable *rates* that has been at the heart of the successive remands by the Tenth Circuit. Making matters worse, the use of embedded costs (as in the rural high-cost program) introduces profound inefficiencies and wasteful spending while the use of forward-looking costs (as in the non-rural program) is highly complex and arguably unreliable in light of the substantially outdated input values.<sup>28</sup> Nevertheless, rural and non-rural providers continue to receive high-cost support on the basis of their supposed "costs"—devoid of any scrutiny regarding the allocation of such costs and their relationship to rates<sup>29</sup>—leading to excessive high-cost funding<sup>29</sup> that harms competition and consumers. Proposals that utilize a cost-based methodology (as all four of the specific proposals addressed by the NOI appear to do<sup>30</sup>) will not lead to meaningful reform in this area.

While the Commission proposed to remedy these shortcomings by calculating non-rural support based on comparisons of market rates, significant differences in rate design from one

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<sup>27</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348 ¶ 70 (1994) (stating that "auction designs [] award licenses to the parties that value them most highly"); General Accounting Office, *Strong Support for Extending FCC's Auction Authority Exists, But Little Agreement on Other Options to Improve Efficient Use of Spectrum* at 20-21 (GAO-06-236, Dec. 5, 2006) (stating that auctions are "relatively quick," "less costly," "transparent," and "effective in assigning licenses to entities that value them the most"); Scott Wallsten, *Reverse Auctions and Universal Telecommunications Service: Lessons from Global Experience*, 61 FED. COMM. L.J. 373-94 (Mar. 2009) (arguing for implementation of auctions based on experience in other countries).

<sup>28</sup> See NOI ¶ 24.

<sup>29</sup> See *supra* at 6-7.

<sup>30</sup> NOI ¶¶ 8-12.

area to another have made it difficult to make apples-to-apples comparisons. Indeed, the Commission has observed that no workable rate-based methodology has emerged since it sought comment on that concept in 2005.<sup>31</sup> If those challenges somehow could be overcome, a distribution scheme built on a comparison of rural and urban rates may well result in an appropriately sized fund, as the widespread entry of competitors like TWC offering any-distance calling plans has resulted in the availability of rates that do not vary with geography. This notwithstanding, even viewing incumbent LECs' rates in isolation, the GAO has determined that rural rates are often lower than urban rates.<sup>32</sup>

### CONCLUSION

For the foregoing reasons, TWC urges the Commission to proceed with comprehensive, rational reform of its high-cost support mechanisms, keeping in mind the importance of curtailing rather than expanding spending in this area. To that end, the Commission should continue to explore means of including reverse auctions as a centerpiece of its reform efforts.

Respectfully submitted,

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<sup>31</sup> See NOI ¶ 16; *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 ¶ 23 (2005).

<sup>32</sup> See 2002 GAO Report at 15, App IV.