

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

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

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON THE NOTICE OF INQUIRY**

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REFERENCES TO PRIOR NASUCA FILINGS

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337 (“96-45/05-337”), Comments of the National Association of State Utility Consumer Advocates (March 26, 2006) (“NASUCA *NRHC Remand* Comments”)

96-45/05-337, Reply Comments of the Comments of the National Association of State Utility Consumer Advocates (May 26, 2006) (“NASUCA *NRHC Remand* Reply Comments”)

96-45/05-337, Comments of the National Association of State Utility Consumer Advocates on the Joint Board Recommended Decision (April 17, 2008) (“NASUCA *RD* Comments”)

96-45/05-337, Combined Reply Comments of the National Association of State Utility Consumer Advocates on the Joint Board Recommended Decision (June 2, 2008) (“NASUCA *Combined RD* Reply Comments”)

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I. INTRODUCTION AND SUMMARY

Twenty-three sets of comments were filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“*NoI*”) that sought “to refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit ... in the *Qwest II* decision”¹ regarding the high-cost universal service fund for non-rural carriers. In addition to the National Association of State Utility Consumer Advocates (“NASUCA”), comments were filed by non-rural carriers, rural carriers, wireless carriers, cable providers, associations of carriers, state regulators and state consumer advocates.²

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337 (“96-45/05-337”), FCC 09-28 (rel. April 8, 2009) (“*NoI*”), ¶ 1, citing *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

² Comments were filed by AT&T Inc. (“AT&T”); CTIA – The Wireless Association (“CTIA”); Embarq; General Communication, Inc. (“GCI”); Independent Telephone & Telecommunications Alliance (“ITTA”); Iowa Telecommunications Services, Inc. (“ITSI”); Maine Public Advocate (“MeOPA”); National Cable & Telecommunications Association (“NCTA”); National Exchange Carrier Association, National

As predicted in NASUCA's comments, and as -- unfortunately -- invited by the *NoI*, many of the comments went well beyond the issues needed to address the *Qwest II* remand.³ These arguments and proposals, which are extraneous and unnecessary in this context, include:

- Unifying the non-rural and rural carrier high-cost support mechanisms⁴;
- Addressing wireless service and the identical support rule⁵;
- Adopting a reverse auction mechanism⁶;
- Providing explicit support for broadband service⁷;
- Revamping the USF audit process⁸; and

Telecommunications Cooperative Association, Organization for the Protection and Advancement of Small Telephone Companies, Eastern Rural Telephone Association, Western Telecommunications Association (“NECA, et al.”); Nebraska Public Service Commission (“NebPSC”); New Jersey Board of Public Utilities (NJ BPU”); New Jersey Division of Rate Counsel (“NJ Rate Counsel”); Public Utilities Commission of Ohio (“PUCO”); Qwest; Rural Cellular Association (“RCA”); Time Warner Cable Inc. (“TWC”); United States Telecom Association (“USTelecom”); USA Coalition; Verizon and Verizon Wireless (“Verizon”); Vermont Public Service Board and Maine Public Utilities Commission (“Vt PSB/Me PUC”); Windstream; and Wyoming Public Service Commission (“WY PSC”).

³ See VT PSB/Me PUC Comments at 3; Wy PSC Comments at 5.

⁴ See, e.g., ITTA Comments at 3; CTIA Comments at 5-6. NASUCA agrees with NECA, et al. that the Commission should “maintain its existing policy of recognizing critical differences between rural telephone companies, as defined by the Telecommunications Act of 1996, and non-rural carriers.” NECA, et al. Comments at 1-2; see also id. at 5-6.

⁵ See, e.g., CTIA Comments at 2-5; NJ BPU Comments at 5; ITTA Comments at 5; USTelecom Comments at 2. ITTA would have the ILEC and a single CETC split equally the support allocated to a specific wire center. ITTA Comments at 5; see also Embarq Comments at 20. This would totally divorce support from the number of lines actually served, and makes little sense.

⁶ See, e.g., NJ BPU Comments at 5; TWC Comments at 8-9. The many reasons to eschew the reverse auction concept for distributing support to incumbent carriers are summarized in NASUCA's 96-45/05-337 Comments on Using Reverse Auctions to Determine High-Cost Universal Service Support (April 17, 2008) and 96-45/05-337 NASUCA Combined RD Reply Comments (at 37-41).

⁷ See, e.g., Verizon Comments at 26-29; RCA Comments at 6-7; ITSI Comments at 2; CTIA Comments at 8-9.

⁸ USA Coalition Comments at 17.

- Changing the federal universal service fund (“USF”) contribution mechanism.⁹

Of these issues, only broadband will be discussed here. These reply comments focus on issues directly relevant to the Tenth Circuit’s remand.

NASUCA’s initial comments demonstrated, again largely by repetition of earlier comments, that the current high-cost USF for non-rural carriers, which includes three components¹⁰ and provides support to all but two jurisdictions, has produced non-rural carrier rural rates that are for the most part “reasonably comparable” to urban rates, as directed by 47 U.S.C. § 254(b). Therefore, there is no need to substantially increase the size of the non-rural carrier USF; indeed, the non-rural carrier fund could likely be significantly reduced without rendering rural rates not reasonably comparable to urban rates.¹¹

II. THE COMMISSION MUST EXPLAIN HOW THE NON-RURAL HIGH-COST FUND FITS INTO THE ACT’S PRINCIPLES.

As NASUCA’s initial comments demonstrated, the Commission must -- and can -- show how the non-rural high-cost fund meets the goals of the Act.¹² In that respect, NASUCA agrees with Verizon that:

⁹ See, e.g., AT&T Comments at 13-14; Verizon Comments at 3, 23-24.

¹⁰ There is funding from the high-cost model (“HCM”), interstate access support (“IAS”) and, for the non-rural rate-of-return carriers, interstate common line (“ICL”).

¹¹ But as discussed below, high-cost support for non-rural carriers’ rural telephone rates should not be eliminated (see NJ Rate Counsel Comments at 11) or replaced by support for broadband networks and services. See AT&T Comments at 3-4.

¹² NASUCA Comments at 34-43.

The Tenth Circuit's overarching concern with the last remand order was the Commission's failure to "consider fully the Act's principles as a whole." ... The court instructed the Commission to examine "the evolving nature of the system of supports" and develop a "comprehensive picture" of how universal service programs should be structured in the current market. ... To address the court's concerns, the Commission's order on remand should first explain how the non-rural fund fits into the larger universal service program. The Commission and the court cannot reasonably evaluate the non-rural fund in isolation. No individual part of the USF is designed to achieve all of the universal service objectives in the Act.

The non-rural fund is only one of numerous mechanisms that the Commission has put in place to address universal service in particular areas or for particular groups of customers that historically have received subsidized communications services.¹³

On the other hand, NASUCA must disagree with Verizon¹⁴ (and others¹⁵) who assert that subscribership rates are the key sign of universal service success. The 1996 Act codified additional principles, including that of reasonable comparability of rates; success on that score -- for non-rural carriers at least -- is shown by NASUCA's rate census.

RCA asserts that "[t]he principle of competitive and technological neutrality adopted by the Commission pursuant to Section 254 of the Act should form the underpinning of the new non-rural support mechanism."¹⁶ The notion that the Commission-created competitive-neutrality principle should control the Congressionally-specified principles in 47 U.S.C. § 254(b)(1)-(6) overlooks the *Qwest II* directive that the

¹³ Verizon Comments at 5 (citations and footnote omitted). Unfortunately, as discussed in Section IV. below, Verizon falls into the trap of considering only HCM support, stating that the non-rural fund is only \$350 million out of the total \$7 billion USF. *Id.* In 2008, the entire non-rural fund -- including HCM, IAS and ICL -- amounted to \$1.425 billion. USAC 2008 Annual Report at 48.

¹⁴ See Verizon Comments at 8.

¹⁵ NJ Rate Counsel Comments at 7; NCTA Comments at 7.

¹⁶ RCA Comments at 4.

Commission must consider “the range of principles identified in the text of the statute.”¹⁷

The Joint Board’s proposal for a Mobility Fund¹⁸ is far better suited to addressing the competitive interests of RCA’s, CTIA’s¹⁹ and the USA Coalition’s²⁰ members.²¹

As discussed at length in NASUCA comments, the principle of reasonable comparability should be the focus of the high-cost support program.²² The Commission can show that it considered the other principles without denying reasonable comparability its needed prominence.²³

III. STATEWIDE COST-AVERAGING FOR NON-RURAL CARRIERS SHOULD CONTINUE.

Many non-rural carriers complain that the current HCM, which compares statewide average costs to the national average cost in order to qualify non-rural carriers for support,²⁴ has deprived them of needed support. The support is supposedly made

¹⁷ *Qwest II*, 398 F.3d at 1234.

¹⁸ See NASUCA RD Comments at 21-23; NASUCA Combined Reply Comments at 18-22.

¹⁹ CTIA Comments at 9.

²⁰ USA Coalition Comments at 4, 6.

²¹ RCA’s arguments that support should be fully portable relies on the Commission’s expectation that competitors would “capture” ILECs’ lines. RCA Comments at 27, citing *First Report and Order*, 12 FCC Recd at 8932. Clearly, such capture has not been the dominant form of competitors’ access to high-cost funding. Instead, wireless ETCs have received support for lines **in addition to** those continuing to be supplied by the ILEC. See 96-45/05-337, Notice of Proposed Rulemaking, FCC 08-4 (rel. January 29, 2008), ¶ 9.

²² NASUCA Comments at 34-43; see also USA Coalition Comments at 7-9.

²³ See Vt PSB/Me PUC Comments at 19-21.

²⁴ As argued in NASUCA’s initial comments, the proper comparison should be to national average **urban** costs. See NASUCA Comments at 53; Vt PSB/Me PUC Comments at 3; MeOPA Comments at 3. NASUCA originally proposed using Census Bureau definitions for “urban” (see NASUCA NRHC Remand Comments at 21-23); MeOPA’s proposal to use unbundled network element zone 1 wire centers as the basis for urban costs (MeOPA Comments at 3) is reasonable.

necessary by the incursion of competition into the lower-cost urban areas, which supposedly deprives rural areas of the implicit support that was provided by urban revenues.²⁵

It must be recognized that *none* of these carriers has provided a single shred of data to support their position. There is no demonstration that any non-rural carrier’s rural rates have been increased (or even threatened to be increased) by the loss of this support, much less increased to the point where the rural rates are not reasonably comparable to urban rates.²⁶

In the absence of such data, there is no need – especially in this remand context – to abandon the statewide averaging concept for non-rural carriers.²⁷ As discussed in Section V. below, all the evidence is to the contrary: Given the level of current urban and rural rates around the country, and non-rural carriers’ rates within the states, statewide averaging can continue.²⁸

²⁵ See, e.g., AT&T Comments at 30-31; Embarq Comments at 2, 6, 8; ITTA Comments at 8-9; NebPSC Comments at 2; Qwest Comments at 2-4, 8; USTelecom Comments at 3-4.

²⁶ Likewise, there was no such data contained in the Embarq and Qwest proposals on which the Commission requested comment. And ITSI provides no data to show that its rates will not be reasonably comparable to urban rates absent additional support. More generally, ITTA states that “[m]any areas served by ITTA members ... do not receive sufficient USF support” (ITTA Comments at 1) without any data or any distinction between non-rural and rural carriers. And Vt PSB/Me PUC provide no data supporting their statement that “Vermont/Maine have been receiving insufficient federal support for their non-rural carrier for at least ten years....” Vt PSB/Me PUC Comments at 3. Vermont and Maine are projected to receive \$8.61 million and \$1.44 million respectively in non-rural high-cost support for their non-rural incumbent carrier (including HCM and IAS) in 2009 (USAC HC-01 2Q09); in 2008, Maine received \$7.5 million and Vermont received \$12.7 million in non-rural carrier study areas (including for competitive ETCs). USAC 2008 Annual Report at 48. They do not show how that level of support has yielded rural rates that are not reasonably comparably to urban rates. Indeed, Verizon’s analysis shows that in both Maine and Vermont rural and non-rural rates are identical. Verizon Comments, Exhibit 2, Attachment A at 4, 9.

²⁷ See Vt PSB/Me PUC Comments at 7-9.

²⁸ NASUCA does agree with MeOPA that the Commission should provide support only for rural wire centers. MeOPA Comments at 4.

IV. COMMENTERS CONTINUE TO OVERLOOK THE SIGNIFICANT SUPPORT PROVIDED BY IAS AND ICL.

As discussed in NASUCA's initial comments, the carriers continue to focus only on support provided under the HCM, ignoring the substantially greater amounts of support provided under the two other high-cost mechanisms available to non-rural carriers.²⁹ In 2008, HCM amounted to \$351 million, while IAS was \$585 million.³⁰

Thus Qwest's assertion that in 2009 it is projected to receive approximately \$25 million from the high-cost fund³¹ overlooks the \$41.95 million in IAS it should also receive, for a total high-cost USF amount of \$66.95 million.³² This distortion, consistent with that in the Qwest proposal,³³ is disingenuous at best. Likewise, Qwest's statement that HCM is provided to only ten states³⁴ overlooks the fact that under the current system, in 2008 all but two jurisdictions -- the District of Columbia and New Hampshire -- received high-cost support for non-rural companies, when IAS and ICL are included.³⁵

AT&T also complains that it "provides service to more rural access lines than any other carrier yet receives high-cost model support in just three of its 22 ILEC states."³⁶ This again ignores the fact that, including IAS, AT&T actually receives support in 14 of

²⁹ See, e.g., NASUCA Comments at 11, 56-57. One exception is Verizon. Verizon Comments at 6.

³⁰ USAC 2008 Annual Report at 47.

³¹ Qwest Comments at 4; see also *id.* at 7-8.

³² Consistent with Qwest's estimate, this is based on USAC HC-01 2Q09.

³³ Qwest Proposal at 1.

³⁴ Qwest Comments at 5; see also Windstream Comments at 14.

³⁵ USAC 2008 Annual Report at 48.

³⁶ AT&T Comments at 15. AT&T argues (*id.*) that this somehow violates the 47 U.S.C. § 254(b)(5) principle that support be "specific."

its ILEC states, in the amount of \$190 million.³⁷ (And it also overlooks the fact that two of AT&T's HCM states, Alabama and Mississippi, receive more HCM support than any other state.)

V. REASONABLE COMPARABILITY AND THE RANGE OF RURAL AND URBAN RATES

In its comments here, Qwest comes up with a number of mutually contradictory proposals: First, Qwest indicates that “it may be appropriate to define rural rates as ‘reasonably comparable’ to urban rates if the rural rates for the supported services fall within the full range of the Commission's selected published urban rates, as Embarq has proposed. Certainly this would make the range of rural rates co-extensive with the range of published urban rates.”³⁸ The most-recently published range of urban rates goes up to \$38.59³⁹, implying that only rural rates above that level would need support.⁴⁰ And this also makes rural rates “equal” to urban rates, doing away with the statutory directive that rural rates merely be “reasonably comparable” to urban rates.

But Qwest also proposes that the Commission could define rural rates as reasonably comparable to urban rates where “the rural rates in a given state are within 25% of the statewide average urban rate ... within the state.”⁴¹ And Embarq says that the range should be “10%-20% of the prevailing average urban rate within a state.”⁴² Unlike

³⁷ USAC HC-01 2Q09.

³⁸ Qwest Comments at 12; see also ITTA Comments at 4.

³⁹ 2008 Reference Book, Table 1.13.

⁴⁰ See also RCA Comments at 11.

⁴¹ Qwest Comments at 6, 12.

⁴² Embarq Comments at 16.

Qwest's first proposals, these proposals ignore the **range** of urban rates within the state; for example, a rural rate could be 25% above the urban average in the state, but only 10% above the highest urban rate in the state.

Qwest also proposes using rates within Metropolitan Statistical Areas ("MSAs"), which is quite a different sample than the 95-city average, and, in fact could include substantial rural territory. Assuming for the moment, however, that the 95-city sample is representative of statewide averages, Qwest's proposal would deem its rural rates in Utah to be reasonably comparable at \$28.39 (125% of the \$21.29 rate in Logan), while in Wisconsin a rate reasonably comparable to AT&T's rate in Milwaukee could be \$51.44 (125% of \$38.59). This makes little sense.⁴³

The PUCO also argues for the use of a statewide urban average to judge reasonable rate comparability.⁴⁴ The PUCO's argument is based on an incorrect premise, that the Tenth Circuit rejected the Commission's "broad 'zone of reasonableness'" because of "[t]he simple fact that even urban rates vary so much between state jurisdictions."⁴⁵ The Tenth Circuit was not presented with data on that broad range of urban rates, which led it to focus only on the lowest urban rates, rather than on the average urban rate, much less the full range of urban rates, and caused it to reject the

⁴³ The practical impact of using a statewide average rate is shown in the Wy PSC's comments. Wy PSC Comments at 11.

⁴⁴ PUCO Comments at 10. Notably, the PUCO approves of the use of a nationwide cost standard as the basis for establishing the need for support. *Id.* at 12.

⁴⁵ *Id.*

Commission's range of reasonableness.⁴⁶ Further, the *Qwest I* court rejected attacks on the use of national averages as the basis for support.⁴⁷

RCA proposes the use of a “benchmark of 125 percent of the national average urban rate for purposes of defining reasonably comparable urban rates.”⁴⁸ This is ostensibly based upon Qwest's earlier proposal⁴⁹; as noted above, Qwest itself has moved off this standard. It should also be recalled that using this standard, providing support above that threshold, and eliminating statewide averaging would, according to Qwest, increase the non-rural high-cost fund by \$1.2 billion.⁵⁰ Especially given the current level of non-rural carriers' rates, this is far more than would be needed to preserve and advance universal service. It should be possible both to preserve and advance universal service by cutting most current support levels, while allowing minimal increases in some areas.⁵¹

For its part, AT&T does not propose a specific comparability standard, but uses an example comparability standard of 1.2 (i.e., 120%) of the national urban average.⁵² This would narrow the differences among rural rates, but again ignores the current range of urban rates.

⁴⁶ See *Qwest II*, 398 F.3d at 1237, citing *Qwest I*, 258 F.3d at 1201.

⁴⁷ *Qwest I*, 258 F.3d at 1202, n.9.

⁴⁸ RCA Comments at 26.

⁴⁹ *Id.* at 13, citing Qwest Proposal at 4.

⁵⁰ Qwest Proposal at 4. Likewise, MeOPA's proposal to increase total support for non-rural ILECs by four-fold (MeOPA Comments at 8) seriously overstates the amount of support needed to maintain reasonably comparable rural rates. Apparently, this is largely due to the abandonment of statewide cost-averaging, and produces results such as granting high-cost support to “high-cost” carriers in Connecticut, Delaware, Indiana and Ohio. See MeOPA Comments, Appendix A.

⁵¹ As shown in NASUCA's initial comments (at 18-21), most non-rural carrier support is minimal when calculated on a per-line basis, thus cannot have a significant impact on reasonable comparability of rates.

⁵² AT&T Comments at 35.

Verizon proposes that “[t]he Commission should define “reasonably comparable” rates as those “that are similar to or within a reasonable range of urban rates, accounting for rates of all competing services regardless of technology.”⁵³ And Embarq says that the “plain meaning of reasonable comparability is that rural customers are able to purchase similar services ... at similar rates....”⁵⁴ In the first place, “similar to or within a reasonable range of” or simply “similar” provide almost no guidance to anyone. Indeed, those are quite similar to the definition that was rejected by the Tenth Circuit in *Qwest I*: “a fair range of urban/rural rates both within a state's borders, and among states....”⁵⁵

In addition, the phrase “accounting for rates of all competing services regardless of technology” does not help either, because the services provided using various technologies are functionally and structurally different. The wireline service that has been supported is basic telephone service (plain old telephone service or “POTS”), without frills and (importantly) not including long distance calling⁵⁶; wireless service typically includes many vertical features and nationwide long distance. And VoIP service, which typically includes vertical features and nationwide long distance, does not appear to currently receive any support. On the other hand, supported POTS typically includes unlimited local calling; the prices for wireless packages that include unlimited calling far exceed the typical urban (or rural) POTS rates. Far better to compare wireline

⁵³ Verizon Comments at 11.

⁵⁴ Embarq Comments at 3, 15.

⁵⁵ *Qwest I*, 259 F.3d at 1210.

⁵⁶ As proposed in NASUCA’s Initial Comments (at Appendix G), adjustments need to be made to reflect the constricted local calling areas of some rural exchanges, which result in increased expense for calls that elsewhere would be considered local.

to wireline, wireless to wireless, and VoIP to VoIP, rather than attempting to measure intermodal comparability as contemplated by Verizon's proposal.⁵⁷ As NJ Rate Counsel points out, wireless carriers and VoIP providers typically have a uniform national rate, so their rural rates are by definition reasonably comparable to their urban rates.⁵⁸

Further, some of the carriers propose to use the prices of wireline bundles to test comparability.⁵⁹ Under the Commission's rules and the statute, these vertical services are not supposed to be supported, so should not be used to test comparability.

Verizon presents, like NASUCA⁶⁰ and unlike most of the other carriers, data on actual carrier rates. Verizon

reviewed and analyzed basic residential tariff rate data for every non-rural carrier in every state. Throughout the country, residential rates of non-rural carriers are typically very similar within the states they serve regardless of whether their exchanges are located in rural or urban areas. It is not possible – and the Act does not require – for the Commission to achieve exact parity in non-rural carrier rates across states because state commissions, not the Commission, establish basic residential rates based on state-specific factors and policy judgments.

In many states, including Alaska, Iowa, South Dakota and other states traditionally considered to be “rural,” rates of non-rural carriers are the same throughout the state. Where a non-rural carrier does charge different residential local exchange rates, in all but a few isolated instances that carrier's rural rates are *lower* than its urban rates. For example, the highest residential rate charged by AT&T in Mississippi (\$19.01^[61])

⁵⁷ NASUCA does agree with Verizon that “[t]here is no requirement that urban and rural rates be identical.” Verizon Comments at 11; see NASUCA Comments at 28.

⁵⁸ NJ Rate Counsel Comments at 7; see also NCTA Comments at 8-9; CTIA Comments at 9. This is an additional reason for establishing different USF mechanisms -- such as a separate fund or reverse auctions - - for wireless carriers.

⁵⁹ See Embarq Comments at 16; ITTA Comments at 4-5; USA Coalition Comments at 9; USTelecom Comments at 5.

⁶⁰ NASUCA Comments at 17-18 and Appendix E.

⁶¹ According to Verizon, these rates include basic service and the SLC. Verizon Comments, Exhibit 2 at 2.

applies in urban areas such as Jackson, while rates as low as \$16.20 apply elsewhere in the state, including rural areas. Similarly, Qwest's highest rate in Idaho (\$20.95) applies in Boise, Pocatello, and Twin Falls, three of the largest communities in the state. And Hawaiian Telecom's highest rates (\$16.05) apply in Honolulu.

No non-rural carrier study area has a rate structure that uniformly applies higher rates to rural exchanges than to urban exchanges. In fact, out of the more than 50 non-rural carrier study areas that do not have uniform rates across all exchanges in the study area, only three study areas have *any* rural exchanges with higher rates than the rates in the study area's urban exchanges. In two of those study areas, Qwest-Nebraska and Qwest-New Mexico, the real dollar urban-rural rate differential is de minimis. The third study area, Qwest-Wyoming, has a unique rate structure that applies uniformly statewide with higher rates substantially offset by federal and state USF credits.⁶²

It is indeed refreshing to review comments from a carrier that is not focused on achieving more USF dollars for itself. Windstream blames this lack of disparity between non-rural carriers' rural and non-rural rates on the states,⁶³ but NASUCA is unaware of any states where **the carriers** have sought to lower their rates in urban areas and increase their rural rates.

GCI asserts that "the Commission should conduct a national comprehensive survey of all retail rates in urban and high-cost areas to establish the baseline data necessary to determine the comparability of urban and rural rates."⁶⁴ In its *NRHC Remand* comments, NASUCA presented the Commission with just such a comprehensive survey of non-rural carrier rates.⁶⁵

⁶² Verizon Comments at 16; see also *id.* at 20-21 (state certifications of reasonable comparability). The Wyoming exception is illustrated in the Wy PSC's comments (at 4-5), which also note the unfortunate limitations of those certifications. Wy PSC Comments at 8-10.

⁶³ Windstream Comments at 18.

⁶⁴ GCI Comments at 8.

⁶⁵ See NASUCA Comments at 17-18 and Appendix E.

That data, and other data in the record discussed herein, shows that under the current mechanism the range of rural carrier rates is not that much different from the range of urban rates, such that rural rates are currently reasonably comparable to urban rates. This is also true for the average urban rate compared to the average rural rate.⁶⁶ This is one of the many reasons why the level of federal support should be based on costs, not rates; this principle needs to be adequately explained for the Court.

As its final proposal, Qwest notes that “[i]n fact, it could be argued that ‘reasonably comparable’ should be defined to permit a wider range of rates to be viewed as ‘reasonably comparable’ so that carriers could charge higher rural rates to recover their costs in high-cost areas with less need for implicit or explicit subsidies.”⁶⁷ This goes against much of the direction of *Qwest I* and *II*, and must be rejected.

Embarq says that the Commission should “provide sufficient support and require[] recipients to commit to offer comparable rates.”⁶⁸ It is not at all clear how any of the carriers’ proposals would meet those goals. As stated by NCTA,

the Commission should find that existing levels of high-cost support are more than sufficient to ensure that telecommunications rates are affordable and that rural telecommunications rates are reasonably comparable to urban rates. The Commission does not need to expand the size of the high-cost fund to address the needs of non-rural carriers; it just needs to distribute support more efficiently.⁶⁹

⁶⁶ See NASUCA Comments at 27.

⁶⁷ Qwest Comments at 11, n.18:

⁶⁸ Embarq Comments at 15.

⁶⁹ NCTA Comments at 2.

VI. CONSIDERATION OF STATE EFFORTS

AT&T, in its review of the statutory principles underpinning universal service, complains that “the existing high-cost support mechanisms continue to rely heavily on implicit subsidies in state rates (primarily in intrastate access rates).”⁷⁰ According to AT&T, this violates the statutory principle that “[a]ll providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”⁷¹ AT&T does not make clear how the existence of intrastate implicit support means that some carriers (and their customers) make inequitable or discriminatory contributions to universal service. More importantly, AT&T’s reasoning directly contradicts the finding in *Qwest II* that the FCC was not required to eliminate implicit intrastate universal service support.⁷² Thus conditioning receipt of federal universal service support on reductions of intrastate access charges -- AT&T’s goal here⁷³ -- is not a necessary goal of FCC policy. It is especially not a necessary issue to address in the remand from *Qwest II*, particularly in light of *Qwest II*’s explicit approval of the Commission’s current inducement mechanism for state action.⁷⁴ AT&T’s arguments on this score are disingenuous at best.⁷⁵

⁷⁰ AT&T Comments at 13; see also *id.* at 17.

⁷¹ 47 U.S.C. § 254(b)(4).

⁷² *Qwest II*, 398 F.3d at 1232-1233.

⁷³ AT&T Comments at 13.

⁷⁴ *Qwest II*, 398 F.3d at 1238.

⁷⁵ Much of AT&T’s proposal is exceedingly vague, including the statement that “[r]ecipients of federal high-cost support should be required to reduce their intrastate access charges both to account for any increases in end-user rates needed to reach the comparability benchmark and for any support received through the reformed high-cost support mechanism.” AT&T Comments at 36. Nowhere else in AT&T’s comments is there any discussion that rates must be **increased** to reach the comparability benchmark.

Qwest notes that “[w]here rates are regulated to be artificially low relative to costs, it would be unwise and potentially contrary to universal service goals to interpret that no support is necessary.”⁷⁶ To the contrary, where rates are kept low through state action, there is no reason for federal support to be made available. This represents the proper balancing of state and federal responsibility, as stated by the Tenth Circuit in *Qwest I*: “[T]he Act requires the FCC to base its policies on the principle that there should be sufficient state mechanisms to promote universal service” and establish a “partnership between the federal and state governments” to preserve and advance universal service.⁷⁷

Embarq asserts that “the Commission should not assume that state commissions can, or necessarily will, satisfy the Commission’s section 254 obligations.”⁷⁸ As *Qwest I* shows, this is a shared federal and state responsibility. And the Commission (together with consumers in other states) has no obligation to take on the full burden of ensuring comparability if a state is not willing to meet its responsibilities. Only if the state is unable – because of high costs – to meet the obligation on its own, should the federal system take on additional responsibility.

Windstream, for its part, asserts that the Commission should adopt a rate benchmark, such that carriers whose rural rates are below the benchmark should not receive universal service support for those rural areas.⁷⁹ Given the current range of non-

⁷⁶ Qwest Comments at 6.

⁷⁷ *Qwest I*, 258 F.3d at 1203 (footnotes omitted).

⁷⁸ Embarq Comments at 10.

⁷⁹ Windstream Comments at 18-19.

rural carrier rates, it is not clear whether there are any non-rural carrier areas that have low rural rates and receive high-cost support, especially HCM⁸⁰; such an approach would be consistent with NASUCA's second alternative proposal reiterated in the initial comments.⁸¹ But NASUCA categorically rejects Windstream's proposal that the Commission "develop a means to ensure ... that carriers have the ability to increase rates [that are] below the prescribed benchmark, so carriers are not harmed by states that are unwilling to do so on their own."⁸² The Commission should not impose its judgment of local service ratemaking for that of the states, for example by determining that a non-rural carrier should be able to replace all the revenues lost from universal service support if a state determines that less than all of those revenues should be recoverable from local rates.

Vt PSB/Me PUC assert that the variations in state telecommunications policies that have led to differences in local rates make rates an inapt comparison to determine sufficiency of support.⁸³ Yet the statute, 47 U.S.C. § 254(b)(3) -- which all agree is the key for the high-cost fund -- refers to reasonably comparable **rates**. That is why NASUCA's second alternative proposal begins with a rate comparison, but then bases the **level** of support on costs.⁸⁴ State rate variations caused by state policy variations should

⁸⁰ Other than perhaps some of the non-rural carriers that receive IAS, which NASUCA has argued should be eliminated.

⁸¹ NASUCA Comments at 63-67.

⁸² Windstream Comments at 19.

⁸³ Vt PSB/Me PUC comments at 14-16.

⁸⁴ NASUCA supports MeOPA's proposal for a stair-step mechanism that increases support as costs increase. MeOPA Comments at 6-7; see also NASUCA RD Comments at 38 (use of stair-step mechanism for large rural carriers).

be the responsibility of those states to support, not the responsibility of consumers in other states to support through the federal USF.⁸⁵ Vt PSB/Me PUC simply do not provide any basis for their notion that measuring comparability using local rates may needlessly inflate the fund,⁸⁶ especially given the current range of local rates.

On the other hand, despite Vermont's and Maine's complaints about the inadequacy of federal support, it appears that only Maine has instituted an **intrastate** USF.⁸⁷ This is in contrast to Wyoming, which has not only adopted an intrastate USF, but has restructured local rates,⁸⁸ applied both federal and state high-cost funding as a direct credit to local rates,⁸⁹ *and* requested additional federal USF support to bring Wyoming's local rates within the reasonable comparability range.⁹⁰

⁸⁵ This includes states that have chosen to abandon the customer-preferred flat rate calling pattern. See Vt PSB/Me PUC Comments at 16, n.28.

⁸⁶ *Id.* at 16-17.

⁸⁷ National Regulatory Research Institute, "State Universal Service Fund Mechanisms: Results of the NRRI's 2005-2006 Survey" (July 2006).

⁸⁸ Albeit in a manner that is unfair to basic service customers and violative of 47 U.S.C. § 254(k), by loading all of the cost of the local loop onto basic service rather than sharing those costs among all of the services that use the local loop. See 96-45, Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier (December 21, 2004) at 7.

⁸⁹ Wy PSC Comments at 4.

⁹⁰ *Id.* at 6. As the Wy PSC notes (*id.*), this request has not been acted on by the Commission in the more than four years since it was made.

VII. FIXING THE HIGH-COST MODEL

A. Needed Changes To The Model

Qwest notes the need to fix the model, but questions whether the fixes can be accomplished quickly.⁹¹ NASUCA agrees that it will be difficult if not impossible to reform the model in the timeframe agreed to by the Commission -- i.e., by April 16, 2010.

NASUCA has previously discussed some of the changes that need to be made to the model.⁹² Vt PSB/Me PUC assert that some of the changes will require considerable effort: These include the use of geo-coded customer location data⁹³; the use of realistic network assumptions⁹⁴; and the proper treatment of special access lines.⁹⁵ MeOPA also recommends updating the technological foundation of the model,⁹⁶ and updating the equipment costs included in the model.⁹⁷ MeOPA states that other changes can be accomplished more quickly, including updating line counts.⁹⁸ MeOPA believes that geocoded customer information can be obtained much more quickly than estimated by Vt PSB/Me PUC.⁹⁹ NASUCA supports these improvements to the model.

⁹¹ Qwest Comments at 10; see also RCA Comments at 31.

⁹² NASUCA Comments at 50-53.

⁹³ See also Vt PSB/Me PUC Comments at 10.

⁹⁴ See id.; MeOPA Comments at 22 (use of minimum spanning road tree)

⁹⁵ Vt PSB/Me PUC Comments at 10; MeOPA Comments at 22, .

⁹⁶ MeOPA Comments at 21,

⁹⁷ Id. at 25.

⁹⁸ Vt PSB/Me PUC Comments at 11.

⁹⁹ MeOPA Comments at 24.

B. The Commission Should Not Rely Only On Customer Density As The Cost Driver.

Key to the Embarq and ITTA proposals is their notion that the cost model should be simplified to use only customer density as the sole driver of cost in an exchange.¹⁰⁰ AT&T also takes this position.¹⁰¹ This gross oversimplification must be rejected by the Commission.

Embarq “proposes that the Commission would use household density, multiplied by the number of households, as the metric for allocating high-cost support. This would be a competitively neutral and stable methodology that would reasonably accurately identify those areas where support is truly needed.”¹⁰² And ITTA states that “while many characteristics combine to create cost requirements in rural areas (*e.g.*, topography and terrain), population density is a readily quantifiable and objective measure that is a factor in determining costs to serve. The occasion of fewer customers in any fixed-network results in higher per-customer costs than would be obtained in more densely populated regions.”¹⁰³

The flaw in these proposals is easy to spot: Using customer density alone -- as determinative of both the need for support and the level of support -- assumes that a wire center serving five customers per square mile in, for example, flat northwest Ohio or Kansas, is as costly to serve as one with five customers per square mile in the Rocky

¹⁰⁰ Embarq Comments at 2, 11-12; ITTA Comments at 12-13.

¹⁰¹ AT&T Comments at 33.

¹⁰² Embarq Comments at 13.

¹⁰³ ITTA Comments at 12.

Mountains in Colorado or Idaho, or on the Aleutian Islands or Hawaii.¹⁰⁴ Indeed, a wire center with more customers per square mile in rugged terrain could be, on balance, more costly to serve than a less-densely populated wire center in the flatlands.

The current HCM is capable of including cost characteristics beyond density. There is no reason to abandon this capability in favor of a simplistic reliance on density alone.

VIII. THE QWEST, EMBARQ AND ITTA PROPOSALS

Notably, one of the key things about the Qwest proposal expressed in its comments is that Qwest's support for its own proposal is hardly rock-solid:

The approach offered by Qwest is one way to do this and comply with the Tenth Circuit's directives in *Qwest II*. Alternatively, Qwest also supports much of the approach of the Embarq proposal, particularly with the modifications suggested by the Independent Telephone and Telecommunications Alliance ("ITTA").¹⁰⁵

Likewise, Embarq also would appear to settle for the ITTA proposal.¹⁰⁶

As described in ITTA's comments,

the ITTA plan incorporates the Broadband and Carrier-of-Last-Resort Support (BCS) Solution filed by Embarq on September 18, 2008, but with one modification — ITTA recommends that the Commission decline the broadband component included in Embarq's BCS Solution, and instead adopt the Broadband Pilot Program (BPP) proposed by Qwest Communications on July 9, 2007. ITTA, however, urges a modification to the Qwest BPP: rather than funding the BPP using savings from imposing the restriction on funding multiple ETC handsets, ITTA proposes that the

¹⁰⁴ This is quite apart from the ability of the non-rural carrier serving these locations to support these operations with revenues from urban wire centers.

¹⁰⁵ Qwest Comments at 7 (citation omitted).

¹⁰⁶ Embarq Comments at 21-22. As MeOPA shows, Embarq's proposal would increase its HCL support seven-fold. MeOPA Comments at 20. It is not clear what the support would be under the ITTA proposal.

Commission should instead fund the BPP through normal USF operations.¹⁰⁷

This mosaic of proposals -- as detailed at pages 4-5 of the ITTA Comments -- must also be rejected by the Commission. Many of the flaws in the ITTA proposal have already been discussed.

First, it incorporates a notable feature of the Embarq proposal, echoed by Windstream.¹⁰⁸ Embarq would apply the support system in its proposal to all federal price cap companies, regardless of whether they are classified as rural or non-rural carriers.¹⁰⁹ It remains unclear why the form of federal regulation of interstate services should be a unifying factor for supporting the provision of local service.¹¹⁰ There is even less justification for this approach than to simply unifying the rural and non-rural mechanisms, which also does not make sense in the remand context.

To make matters worse, the ITTA proposal that Qwest and Embarq would accept allows rural price cap companies **to elect** to receive support under the non-rural mechanism.¹¹¹ This is nothing but self-serving, for what carrier would elect to **decrease** its federal support?¹¹²

The ITTA proposal also does away with statewide averaging; for the reasons

¹⁰⁷ ITTA Comments at i.

¹⁰⁸ Windstream Comments at 4, 7-9.

¹⁰⁹ Embarq Comments at 19.

¹¹⁰ See Windstream Comments at 10-11.

¹¹¹ ITTA Comments at 6; see also Embarq Comments at 22-23.

¹¹² ITSI also requests that the Commission grant its May 2008 waiver petition which would supposedly allow it to receive support under the HCM. ITSI Comments at 2. That, like the ITTA proposal, has little to do with the Tenth Circuit remand.

explained in Section III., above, the need for wire-center specific support for larger carriers has not been shown. ITTA would base support only upon density; this does not accurately reflect the costs of “high-cost” exchanges, as explained in Section VII.B., above. ITTA is also not specific regarding the comparability standard, proposing alternatively using the range of urban basic service rates in the Commission sample or the range of bundled rates. For the reasons set forth in Section V., above, this makes little sense.

In the end, Qwest’s proposal would increase the size of the non-rural high-cost fund by \$1.2 billion.¹¹³ The Embarq and ITTA proposals would add \$547 million in support that currently goes to wireless carriers to the \$447 million currently received by price cap carriers under the HCM (for non-rural carriers) and HCL (for rural carriers), for a total high-cost funding for price cap carriers of \$994 million.¹¹⁴ All of this without any showing that these carriers need this level of support in order to ensure reasonably comparable rates in their rural wire centers. These self-benefiting proposals must be rejected.

IX. THE VERMONT/MAINE PROPOSAL

Qwest and Embarq have effectively moved off their proposals, with both expressing preference for the ITTA proposal. Vt PSC/Me PUC have, by contrast, altered

¹¹³ Or \$344 million, if AT&T and Verizon are excluded.

¹¹⁴ Embarq Proposal, “Term Sheet” at Table 1.

their proposal, by substituting “adjusted model-based cost” for their “net subscriber cost” comparison.¹¹⁵

The purpose of this change is to

ensure that the Commission applies Fund support only for carrier plant used for supported universal services. Carriers’ loop, switching and interoffice equipment facilities are capable of providing many services in addition to local exchange service. For example, carriers use loop and interoffice investments to provide DSL and/or broadband services. They use switching investment to provide enhanced and ancillary services in addition to basic exchange service. Therefore, the Commission should remove (or “allocate away”) a portion of those facilities’ costs from the cost of supported services.

The Commission can easily remove these costs. First, it should remove a portion of loop cost revenue requirement from the model-derived loop costs. To accomplish this, the Commission should identify the number of lines which the carrier actually uses to provide broadband or DSL services. Next, it should identify the “throughput” or bandwidth of the services provided by each line. The higher the “throughput” per line sold, the larger the percentage of that particular line’s loop costs that should be removed from costs produced by the loop cost algorithm. This step has the effect of allocating a portion of the facilities’ costs associated with broadband services to those services. ...

Similarly, the Commission should remove a portion of switching cost from “modeled costs.” The number of vertical or ancillary services that are sold per line should determine the percentage amount of switching cost removed for cost modeling purposes for basic exchange service. After the Commission removes the appropriate amount of loop and switching costs, it can use the remaining “Adjusted Model-Based Costs” as a surrogate for rates.¹¹⁶

NASUCA agrees that these changes to the cost model are necessary in order to ensure that only the costs of supported services receive federal support.¹¹⁷ It appears,

¹¹⁵ VT PSB/Me PUC Comments at 12.

¹¹⁶ Vt PSB/Me PUC Comments at 13-14; see also NCTA Comments at 11.

¹¹⁷ It also appears that this allocation of costs for these additional services effectively accounts (from the other direction) for the additional revenue opportunities from the services. See MeOPA Comments at 5-6.

however, that these changes are better accomplished in the reform of the HCM rather than as a direct response to the Tenth Circuit remand.

X. BROADBAND ISSUES SHOULD BE ADDRESSED SEPARATELY.

AT&T's focus in its comments is on accomplishing a radical change in the non-rural carrier high-cost mechanism, based on its assertion that

[u]niversal service policy as it exists today at both the federal and state levels is centered on a business model that is dying. The plain old telephone service (POTS) model, by which local exchange carriers provide "basic local exchange service" combined with "interexchange access" to long distance services, will soon go the way of the slide rule – an earlier casualty of digital technology.¹¹⁸

In the first place, "soon," in the context of this Commission's response to the Tenth Circuit remand, is far longer than the April 16, 2010 deadline to which the Commission agreed. There are many things that would have to happen before AT&T's proposal could be adopted -- many things beyond the Commission's request to refresh the record on the non-rural high-cost mechanism. And, indeed, to paraphrase Mark Twain, as to POTS, the rumors of its death are greatly exaggerated.¹¹⁹ As ITTA states, "The Commission should not be misled into policies that abandon support for voice services."¹²⁰

NASUCA's initial comments reiterated the two key obstacles to providing universal service support to broadband: First, the fact that broadband service has not yet been designated a supported service under 47 U.S.C. § 254(c)(1). Which is not to say

¹¹⁸ AT&T Comments at 2.

¹¹⁹ See <http://www.nationalbook.org/twain100.html>.

¹²⁰ ITTA Comments at 7.

that broadband could not meet the criteria of the statute¹²¹; NASUCA has supported such a designation.¹²²

More fundamental, however, is the fact that under the statute, “[u]niversal service is an evolving level of **telecommunications services**....”¹²³ This Commission has (incorrectly) found, as AT&T among many others have argued, broadband is not a telecommunications service but an information service. Nowhere in AT&T’s comments is this conundrum addressed, so as to allow universal service support for broadband.

One possible way around this issue would be for the Commission to not explicitly support broadband, but rather to make provision of high-cost support conditional on the carrier providing ubiquitous broadband, as some (including Embarq here) have proposed.¹²⁴ It is not clear that such regulatory sleight-of-hand would pass appellate muster. Equally importantly, many of those commenting on the Embarq proposal reject the portion of the proposal that would condition the receipt of high-cost support on making broadband service available. As stated by Qwest,

The proposed commitment is not necessary to address the Tenth Circuit’s directives in *Qwest II*. Nor is it clear that it would be appropriate to condition support for high-cost program services on the provision of services that are not supported by the high-cost program. Further, any use of universal service funds to support broadband services should be addressed separately. The mechanisms for preserving and advancing universal access to basic telecommunications services should not be formally tied to broadband deployment commitments, especially where

¹²¹ I.e., being essential to education, public health, or public safety [47 U.S.C. § 254(c)(1)(A)]; having been subscribed to by a substantial majority of residential customers through the operation of market choices [47 U.S.C. § 254(c)(1)(B)]; being deployed in public telecommunications networks [47 U.S.C. § 254(c)(1)(C)]; and being consistent with the public interest, convenience and necessity. 47 U.S.C. § 254(c)(1)(D).

¹²² NASUCA RD Comments at 16.

¹²³ 47 U.S.C. § 254(c)(1) (emphasis added).

¹²⁴ See also NebPSC Comments at 4-5; MeOPA Comments at 9-11.

the support to be provided is not for the direct purpose of enabling that broadband deployment and does not recognize and address the costs of that deployment. Any such commitment only imposes risk that providers who cannot meet that commitment will not only fail to deploy broadband, but also fail to sustain basic telephone service in high-cost areas, due to the loss of federal support needed to provide those services.¹²⁵

Further, as stated in NASUCA's initial comments, given the amount of high-cost support received by most non-rural carriers, threatening to take away that support "would not likely influence the non-rural carriers in whose rural territories broadband deployment has fallen behind that in urban areas."¹²⁶

Far better, as the Joint Board, NASUCA,¹²⁷ and others,¹²⁸ have proposed, to establish a separate broadband fund that would rely on both 47 U.S.C. § 254(b)(2) and (b)(3).¹²⁹ Certainly, contrary to AT&T, funding for broadband should not -- at this time at least -- supplant support for basic telephone service.

XI. CONCLUSION

As NASUCA stated in the initial comments, "The Commission must arrive at a support mechanism for non-rural carriers that meets the requirements of § 254, or face rejection again in the courts."¹³⁰ That task must be accomplished on the timeline

¹²⁵ Embarq Comments at 19; Qwest Comments at 9; see also *id.* at 17-18.

¹²⁶ NASUCA Comments at 54; see also 96-45/05-337, et al., NASUCA, et al. Comments on Further Notice of Proposed Rulemaking (November 26, 2008) at 39-41. See also Windstream Comments at 22.

¹²⁷ NASUCA RD Comments at 16-21.

¹²⁸ See, e.g., ITTA Comments at 5.

¹²⁹ This would accommodate Windstream's proposal to fund broadband infrastructure through grants. Windstream Comments at 5. See also NCTA Comments at 6.

¹³⁰ NASUCA Comments at 67.

promised to the Tenth Circuit, i.e., by April 16, 2010. Therefore, as previously discussed by NASUCA,¹³¹ the Commission should not attempt broader USF reform within that timeframe.

TWC asserts that the non-rural support mechanism is only “a small component of the overall high-cost mechanism.”¹³² To the contrary, the non-rural mechanism is almost one-third of the entire high-cost fund.¹³³ And only the non-rural fund is subject to the Tenth Circuit remand. Further contrary to TWC’s assertions, federal stimulus funding for broadband service¹³⁴ actually underscores the need to reform non-rural support for voice service, which will not be impacted by the broadband funding.

NASUCA has provided the Commission with sufficient data and legal and policy arguments to allow it to address the concerns of the Tenth Circuit regarding the non-rural fund. NASUCA has also presented the Commission with two alternative proposals for a legally-compliant non-rural high-cost mechanism. Both of the proposals -- in different ways -- meet the needs of the statute and would therefore result in a fund that is sufficient, as required by § 254(e).

¹³¹ Id. at 3.

¹³² TWC Comments at 3.

¹³³ Per USAC’s 2008 Annual Report (at 48), non-rural disbursements were \$1.425 billion out of total high-cost funding of \$4.478 billion.

¹³⁴ TWC Comments at 4.

Respectfully submitted,

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