

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

High-Cost Universal Service Support

WC Docket No. 05-337

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

**REPLY COMMENTS OF THE USA COALITION**

The Universal Service for America Coalition (“USA Coalition”),<sup>1</sup> by its attorneys, hereby submits these reply comments in the above-captioned proceeding in response to the Notice of Inquiry requesting commenters refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit in the *Qwest II* decision.<sup>2</sup> The USA Coalition urges the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that innovation can be implemented into the communications network as rapidly and efficiently as possible. Ensuring that residents and business in rural, insular, and high-cost areas have adequate choices among services, technologies, and service providers is the best means of promoting the vibrancy, robustness, and redundancy of the communications network.<sup>3</sup>

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<sup>1</sup> The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

<sup>2</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Inquiry, FCC 09-28 (rel. April 8, 2009) (*Qwest II Remand NOI*).

<sup>3</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 7 (Aug. 8, 1996) (“By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advances services are met by means that enhance, rather than distort, competition.”) (*Local Competition Order*).

**I. THE BEST WAY FOR THE COMMISSION TO “ADVANCE” UNIVERSAL SERVICE IS BY ACKNOWLEDGING TODAY’S NEW COMPETITIVE AND TECHNOLOGICAL REALITIES**

In *Qwest II*, the Tenth Circuit remanded the Commission’s *Order on Remand* in part because the Commission had failed to adequately consider the Commission’s obligation “to advance” universal service as required by section 254.<sup>4</sup> The USA Coalition agrees with CTIA that “the best way for the Commission... to ‘advance’ universal service [is] by acknowledging today’s new marketplace and technological realities, and crafting a support mechanism based on efficient costs.”<sup>5</sup> As such, the USA Coalition joins with RCA in believing that “the new support mechanisms should drive carriers providing service in rural and high-cost areas toward efficient investments and the efficient operation of their networks.”<sup>6</sup>

As CTIA points out, “in order for the consumers in rural and high-cost areas to have access to [advanced services], the Commission’s high-cost mechanism should be focused on completing deployment projects in areas where it is uneconomic for carriers to do so without support.”<sup>7</sup> Unfortunately, as AT&T notes, the current high-cost model mechanism “was the product of a results-driven process that sought to control for the size of the federal universal service fund without regard to the other objectives of section 254(b)” and as such does not

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<sup>4</sup> *Qwest Commc’ns Intl’l, Inc. v. FCC*, 398 F.3d 1222, 1235 (10th Cir. 2005) (*Qwest II*) (remanding *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, FNPRM, and Mem. Opinion and Order, 18 FCC Rcd 22559 (2003) (*Order on Remand*)).

<sup>5</sup> CTIA Comments at 7.

<sup>6</sup> RCA Comments at 4.

<sup>7</sup> CTIA Comments at 12.

adequately reflect this goal.<sup>8</sup> In its reform efforts the Commission must take a more deliberative approach and ensure that all the principles included in the Act are reflected in its order.<sup>9</sup>

Universal service reform should focus on ensuring that consumers, and not service providers, are the ultimate beneficiaries of USF support.<sup>10</sup> To accomplish this, “the revised high-cost mechanism must be directed toward the services ... that consumers are embracing in today’s rapidly changing marketplace.”<sup>11</sup> As AT&T points out, this means that support cannot be limited to the traditional ILEC network.<sup>12</sup> Rather, the Commission must adapt its universal service plans to the market conditions found across the country. Current market conditions clearly reflect consumers’ increasing desire for mobile and broadband services, which is evidenced by subscribership to both high-speed lines (over 200 kbps in at least one direction) and advanced service lines (over 200 kbps in both directions) more than doubling in each of the last five six-month periods.<sup>13</sup> Furthermore, a recent study by the Center for Disease control revealed that one out of every five American homes (20.2%) had only wireless telephones during

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<sup>8</sup> AT&T Comments at 8.

<sup>9</sup> See *Qwest II*, 398 F.3d at 1234 (“We are troubled by the Commission’s seeming suggestion that other principles [besides reasonable comparability], including affordability, do not underlie federal non-rural support mechanisms.”).

<sup>10</sup> Embarq proposes that “networks should be supported rather than customers or lines.” Embarq Comments at 2. However, the Fifth Circuit has made clear that it is customers, not providers or their networks, which must be served by the universal service mechanism. *Alenco Commc'ns v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers.”).

<sup>11</sup> CTIA Comments at 8.

<sup>12</sup> AT&T Comments at 5 (“Supporting POTS simply cannot be the Commission’s long-term universal service goal.”); see also RCA Comments at 36 (“It simply would not make sense for the Commission to ground high-cost support rules in wireline-carrier-centric mechanisms that invest substantial amounts of high-cost funding to support infrastructure that delivers fixed voice service.”).

<sup>13</sup> CTIA Comments at 3 (citing HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2007, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (rel. Jan 2009) at tbls. 1-2).

the second half of the year, an increase of 2.7% in just the last six months.<sup>14</sup> USF policies should reflect, and not stymie, these consumer preferences.<sup>15</sup>

**II. SECTION 254 REQUIRES THE COMMISSION PROVIDE SUPPORT “SUFFICIENT” TO ENSURE THAT RURAL CONSUMERS HAVE ACCESS TO SERVICES “REASONABLY COMPARABLE” TO THOSE AVAILABLE IN URBAN AREAS**

**A. The Commission should rely predominantly on the principle of “reasonable comparability” in determining whether support is “sufficient.”**

The USA Coalition joins the Public Utilities Commission of Ohio in believing that “[t]he term ‘sufficient’ should not be regarded as either a stand alone term, or as a dollar value target.”<sup>16</sup> Rather, the phrase “specific, predictable and sufficient” is intended to refer to the federal and state mechanisms that are used to “preserve and advance” universal service, as discussed above.<sup>17</sup> Commenters in this docket are nearly unanimous in their agreement that the Commission has correctly identified the principle of “reasonable comparability” as the guiding principle of determining “sufficiency.”<sup>18</sup> As NASUCA noted in its comments, in *Qwest II* “the Tenth Circuit did not reject the Commission’s reliance on reasonable comparability, or its mechanism to bring about reasonable comparability; rather the Court objected to the

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<sup>14</sup> See Stephen J. Blumberg and Julian V. Lake, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey*, July-December 2008, at 1 (May 6, 2009).

<sup>15</sup> RCA cites two studies in its comments that confirm that the “mobile phone is a huge boon to an individual’s economic productivity and earning power.” As such, public policy, as well as statutory requirements, suggest that it is essential that consumers in rural and high-cost areas have access to the same advanced wireless services that are available in urban. RCA Comments at 5 (citing *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, Nicholas P. Sullivan, New Millennium Research (April 2008)).

<sup>16</sup> Ohio PUC Comments at 14.

<sup>17</sup> See *id.* at 14-15.

<sup>18</sup> See, e.g., NASUCA Comments at 35; RCA Comments at 9; Embarq Comments at 14-15; GCI Comments at 5.

Commission’s failure to address the other principles [contained in section 254].”<sup>19</sup> The USA Coalition believes that section 254(b)(3) requires that the Commission ensure that consumers in rural areas have access to a choice of service types, service providers, and services rates that are reasonably comparable to those in urban areas.<sup>20</sup> Support should be deemed “sufficient,” as the term is used in section 254(e) and in section 254(b)(5), when there is enough USF support available to ensure the three “reasonable comparability” standards (*i.e.*, service type, service provider, and service rates) enumerated above are met throughout the country.

Most commenters also support a Commission finding that rural rates that are “reasonably comparable” to urban rates are generally affordable.<sup>21</sup> As RCA notes:

To the extent that a universal service mechanism produces “reasonably comparable” services in rural and high-cost areas at rates approximating those in urban areas, the mechanism is both “sufficient” for purposes of Section 254(b)(5), and has adequately taken into account the principle that rates in rural and high-cost areas should be affordable.<sup>22</sup>

Furthermore, as NASUCA points out in its comments, “The Commission previously determined that it was better to address affordability issues unique to low income consumers through the federal low income programs [*i.e.*, Lifeline and Link-up] designed for this purpose rather than through the high-cost support programs.”<sup>23</sup> Despite the language in *Qwest II* instructing the Commission to further consider the principle of affordability, nothing in the order would prevent the Commission from justifying its reliance on the “reasonable comparability” standard on this

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<sup>19</sup> NASUCA Comments at 37.

<sup>20</sup> *See* CTIA Comments at 8.

<sup>21</sup> CTIA Comments at 9; NASUCA Comments at 39.

<sup>22</sup> RCA Comments at 20.

<sup>23</sup> NASUCA Comments at 38.

basis.<sup>24</sup> As such, on remand the Commission should demonstrate to the court's satisfaction that rural rates that are "reasonably comparable" with urban rates are generally affordable, and that in instances where such is not the case, other low-income programs are available to make up the difference.<sup>25</sup>

**B. The Commission must justify its reliance on costs to distribute USF support and set a cost benchmark that can survive judicial review.**

As part of its response to the *Qwest II* Order, the Commission must explicitly justify its decision to rely upon the costs incurred by a carrier serving a specific area, rather than upon the rates charged consumers in that area, in determining whether and how much support will be available in that area. The USA Coalition joins in GCI's call for the Commission to do a statistical analysis to evaluate whether there is a sufficient correlation between the costs incurred by a carrier and the rates charged by those carriers to consumers in order to justify basing the distribution of support upon the costs incurred.<sup>26</sup> Assuming that such a correlation exists, the advantage of using a carrier's costs, instead of rates, is that measuring a carrier's costs in serving its customers provides an objective and reliable basis for comparing differences in rural and urban areas and avoids the many difficulties that arise when comparability is based upon local rates.<sup>27</sup> Furthermore, as NASUCA notes, since the comparison demanded in § 254(b)(3) is of rural rates to urban rates, it only makes sense to make the cost comparison on the same basis, by comparing costs in the rural exchanges that might need support to national average urban costs.<sup>28</sup>

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<sup>24</sup> *Id.*; see also RCA Comments at 21; Vermont PSC Comments at 20.

<sup>25</sup> See CTIA Comments at 9.

<sup>26</sup> GCI Comments at 6; accord NASUCA Comments at 26.

<sup>27</sup> CTIA Comments at 15 (difficulties include distortions caused by bundling and regulatory requirements, including price cap and rate of return regulations).

<sup>28</sup> NASUCA Comments at 23.

To the extent that the Commission decides to retain its use of a carrier's costs to determine where and how much USF support will be available to carriers, the USA Coalition joins with commenters supporting the replacement of the two standard deviation benchmark rejected in *Qwest II* with a flat benchmark of approximately 120%.<sup>29</sup> As the combined comments of the Maine and Vermont public utility agencies explained, defining a "reasonable comparability" benchmark in terms of standard deviations results in a nearly constant failure rate, without regard to the actual distribution of costs throughout the country or whether such costs make affordable rates impossible.<sup>30</sup> A flat benchmark solves this problem – by setting the benchmark at a certain percentage above the average urban costs, the Commission can ensure that carriers with only slightly above average costs do not artificially drive up the size of the fund.<sup>31</sup> It also establishes a clear goal which the Commission can use to judge whether its mission to "preserve and advance" universal service is being accomplished.

### **III. THE COMMISSION SHOULD ENCOURAGE COMPETITION AS A MEANS TO MEET THE STATUTORY OBJECTIVES OF THE UNIVERSAL SERVICE PROGRAM**

Numerous commenters join the USA Coalition in recognizing that marketplace competition is critical to reaching the goals of the universal service program.<sup>32</sup> As GCI points out, "the 1996 Act recognized, competition, not regulation, propels innovation and the

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<sup>29</sup> RCA Comments at 13; AT&T Comments at 34-35.

<sup>30</sup> *See Comments of Vermont Public Service Board, Vermont Dept. of Public Service, and Maine PUC, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, High-Cost Universal Service Support, WC Docket No. 05-337 (filed Mar. 27, 2006)

<sup>31</sup> As NASUCA notes, "Comparable does not mean 'equal.' If Congress had intended rural rates to be equal to urban rates, the 1996 Act would have said so. Congress even added the qualifier, 'reasonably,' so that rural rates were supposed to be only 'reasonably comparable' to urban rates." NASUCA Comments at 28.

<sup>32</sup> *See, e.g.*, GCI Comments at 9, RCA Comment at 38, CTIA Comments at 16.

introduction of the most advanced and useful capabilities.”<sup>33</sup> The USA Coalition joins in GCI’s belief that “rural consumers will never have access to telecommunications and information services ... that are reasonably comparable to those service provided in urban areas unless competition – through open market entry and competitively neutral universal service policies – can occur in rural communities.”<sup>34</sup> As such, the USA Coalition echoes RCA’s call for the Commission to reject proposals that create “monopolistic or oligopolistic markets” in rural and high-cost areas. Specifically, the Commission should reject proposals such as that advanced by Embarq, under which only the incumbent LEC and a single competitive carrier would receive support for serving a study area.<sup>35</sup> Such a mechanism would have the effect of limiting competitive entry, as the two subsidized carriers would set their rates at the highest possible level that would still discourage competitive entry from carriers not receiving support. This is exactly the type of reform that GCI warns would “limit the ability of the market to bring new, transformational networks and services to rural America.”<sup>36</sup>

Because of the importance of competition to achieving a “reasonably comparable” choice of service types, service providers, and service rates in urban and rural areas, the USA Coalition joins RCA in calling upon the Commission to make the principle of competitive neutrality the underpinning of any new non-rural support mechanism.<sup>37</sup> Specifically, the Commission must reject proposals that would treat wireless carriers differently than other ETCs. For instance, Embarq’s proposal to deny competitive ETCs access to IAS and ICLS support

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<sup>33</sup> GCI Comments at 9.

<sup>34</sup> *Id.* (internal quotations omitted).

<sup>35</sup> *See* Embarq White Paper at 29.

<sup>36</sup> GCI Comments at 10.

<sup>37</sup> RCA Comments at 4.

would drive up the cost of wireless services for rural consumers, and reduce price pressures that restrain the rates incumbent LECs can charge for their services.<sup>38</sup> Similarly, Verizon's proposal to require all wireless carriers, and only wireless carriers, to bid to receive USF support similarly violates the principle of competitive neutrality.<sup>39</sup> Indeed, Verizon's proposal is particularly disingenuous because Verizon has agreed to forgo USF support in all of its study areas as a condition of its merger with Alltel.<sup>40</sup>

#### **IV. THE USF PROGRAM SHOULD ACTIVELY SUPPORT BROADBAND DEPLOYMENT**

The USA Coalition joins in the call for direct USF support of broadband services.<sup>41</sup> The most efficient way to facilitate broadband deployment is to make support for broadband facilities available to all ETCs in a competitively and technologically neutral manner. Some ETCs, including some members of the USA Coalition, would begin deploying broadband services today under the current rules if they were permitted to use USF support for broadband facilities and networks. Lifting the prohibition against using USF support to fund deployment of broadband facilities, networks, and services would be both the most effective and least expensive way of stimulating broadband deployment in rural areas.

The USA Coalition agrees with Windstream that the Commission should refrain from conditioning receipt of existing universal service funds on a carrier's ability to extend its broadband offerings. By effectively forcing some carriers to forgo high-cost funding, the Commission would not promote further deployment. Rather, "carriers subject to the new

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<sup>38</sup> *Contra* Embarq White Paper at 21.

<sup>39</sup> Verizon Comments at 28.

<sup>40</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258, ¶¶ 196-97 (rel. Nov. 10, 2008).

<sup>41</sup> *See, e.g.*, NASUCA Comments at 54.

broadband obligation ... might have to curtail further broadband deployment without continued access to this funding.”<sup>42</sup> Indeed, the chief beneficiaries of such a policy would be carriers that have already ubiquitously deployed their broadband networks, as these carriers will benefit from their competitors being denied funding.<sup>43</sup> However, no additional broadband networks will be deployed.

## V. CONCLUSION

Consistent with the recommendations set forth above and in its initial comments in response to the *Qwest II Remand NOI*, the USA Coalition urges the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that innovation can be implemented into the communications network as rapidly and efficiently as possible.

Respectfully submitted,



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<sup>42</sup> Windstream Comments at 22.

<sup>43</sup> *Id.*