Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
National Cable & Telecommunications	)	GN Docket No. 09-51
Association Petition for Rulemaking To	)	
Reduce Universal Service High-Cost	)	WC Docket No. 05-337
Support Provided to Carriers in Areas	)	
Where There Is Extensive Unsubsidized	)	RM-11584
Facilities-Based Voice Competition	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (Qwest), submits these comments in accord with the Federal Communications Commission's (Commission) Public Notice[1] regarding the National Cable & Telecommunications Association's (NCTA) Petition for Rulemaking filed on November 5, 2009 in the above-referenced dockets. Qwest does not support the specific rule that NCTA proposes, but supports the Commission initiating a rulemaking to further consider a process for eliminating high-cost support in areas where a facilities-based, wireline carrier is offering comparable services without universal service high-cost support.

I. INTRODUCTION AND SUMMARY

The NCTA proposal is a creative concept for universal service high-cost reform. However, it is flawed and incomplete in its methodology, and represents only one potential piece of the badly needed universal service overhaul.

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[1] *See* Public Notice, Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking To Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There Is Extensive Unsubsidized Facilities-Based Voice Competition, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584, DA 09-2558, rel. Dec. 8, 2009.

It is well-recognized that the federal universal service fund, and particularly the universal service high-cost program, are in need of significant reform. Some extremely rural areas served by Qwest and others receive no support at all, while in other areas wireline companies receive significant support where wireline competitors have built without subsidies -- suggesting, as NCTA contends, that such subsidies are unnecessary. Moreover, wireless companies received hundreds of millions of dollars to overbuild existing providers and each other, often in areas that could not reasonably be considered rural or high cost. The exponential growth in the federal fund over the last several years is testament to these errors in application.

A more targeted approach to the existing wireline fund is necessary for fairness, for competitive neutrality, and to provide the funding needed to support broadband deployment in unserved and uneconomic areas. If properly implemented, proposals like NCTA's may be a component of high-cost support reform. However, any plan must be carefully crafted to provide support everywhere it is needed, and eliminate support everywhere it is not.

The heart of the NCTA proposal -- that high-cost support should not be offered to one wireline competitor where another unsubsidized wireline competitor extensively offers comparable services -- is not unreasonable. Unfortunately, the NCTA proposes an inaccurate and unreasonable means of identifying those areas where subsidies would be -- and would not be -- provided. Just as support might be unnecessary where competition has built facilities without government assistance, sufficient high-cost support must be provided in high-cost areas where unsubsidized wireline competitors do not offer service. The NCTA proposed 75% coverage threshold would incorrectly identify many high-cost areas where competitors have chosen not to build (up to 25% of the lines in a service area) as areas that should receive no subsidy at all. The other customers in a service area where high-cost support had been wholly eliminated would not be willing to pay above cost prices to subsidize those in the higher cost areas. They would, more likely, purchase from the competitor (presumably a member of NCTA).

High-cost support must be provided for the higher cost areas where the unsubsidized competitor does not offer service. And, that support must be provided consistent with the costs to provide service to these customers that cannot be recovered through prices for supported services.

Further, any implementation of a process to eliminate support in extensively competitive high-cost areas must not occur without reform of the non-rural high-cost support distribution mechanism. Re-targeted non-rural high-cost support is key to a more efficient universal service high-cost support program.

The Commission has a legal obligation to remedy the non-rural high-cost support mechanism in accord with its obligations under the Tenth Circuit's remand invalidating the existing mechanism.[2] Additionally, the Commission needs to reform the high-cost program so that high-cost support is based on the area served and not the company providing the service.

Finally, a mechanism for eliminating high-cost support should not apply to interstate access support (IAS) or interstate common line support (ICLS). Any reform of those support mechanisms should be addressed with intercarrier compensation reform.

II. SUFFICIENT HIGH-COST SUPPORT MUST BE PROVIDED IN HIGH-COST AREAS WHERE UNSUBSIDIZED WIRELINE COMPETITORS DO NOT OFFER SERVICE

Qwest agrees that high-cost support should be eliminated in areas where there is one or more unsubsidized facilities-based wireline competitors, but sufficient high-cost support must be provided in areas where there are no such unsubsidized competitors. This includes areas that

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[2] *See Qwest v. FCC,* 398 F.3d 1222 (10th Cir. 2005); *mandamus denied as moot*, Case No. 09-9502, 10th Cir. Mar. 20, 2009 (*Qwest II*).

currently receive no high-cost support because of the use of state-wide averaging in current high-cost distribution mechanisms. Developing a mechanism for evaluating the continued need of high-cost support in competitive areas is needed. Such a mechanism should help to reduce inefficient use of high-cost support and re-direct those monies to more efficient uses such as broadband deployment to unserved areas or providing support to high-cost areas that currently receive no support due to state-wide averaging. Any process implemented should be a consistent approach that applies to high-cost support for both rural and non-rural carriers. Each step of universal service high-cost support reform should move away from the rural carrier versus non-rural carrier distinctions and move towards a consistent approach to support based on the nature of the area served.

III. THE PROPOSED TRIGGERS FOR BRINGING A PETITION ARE NOT LIKELY TO BE EFFECTIVE IN IDENTIFYING AREAS WHERE HIGH-COST SUPPORT SHOULD BE WHOLLY ELIMINATED

NCTA proposes that one trigger for identifying an area where support should be reduced or eliminated would be a study area where at least 75% of the households can purchase voice services from a competitive, facilities-based wireline provider.[3] NCTA explains that "[e]stablishing a threshold at the 75 percent level makes it less likely that the Commission will be presented with proposals to reduce support in situations where a competitor only serves the low-cost portion of the study area."[4] Qwest disagrees. The nature of many rural areas with most customer locations in or near a town and fewer locations much further out of town suggests that a 75% threshold is actually likely to identify areas where the competitor only serves lower-cost areas. For example, in one of Qwest's high-cost wire centers, Laramie, Wyoming, it is the case

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[3] The use of a study area may be inappropriate for this analysis for companies that operate multi-wire center study areas. A different wireline competitor may operate in each wire center. The focus of the data should be on a wire center or sub-wire center level.

[4] Petition at 12-13.

that over 87% of Qwest's lines are in the lower-cost in-town area of 11 square miles, while the remaining 13% of customers are in the higher-cost 2,075 square miles of out-of-town area. Assuming that this wire center is typical for the study area, a competitor could trigger the 75% threshold without having incurred any costs to serve the outlying higher costs areas.[5]

Second, any percentage coverage threshold for reducing federal support is in fact arbitrary and arguably irrelevant to identifying areas that should be reviewed. The Commission should not provide support for serving any customer location that has an unsubsidized competitive alternative. Thus, any area where customer lines are receiving high-cost support and an unsubsidized wireline competitor is offering service to those same customer locations warrants scrutiny. A 75% threshold may identify areas where more high-cost support should be eliminated than a 65% threshold would, but Qwest is not aware of any data that suggest that 75% is anything more significant than an arbitrary threshold.

But, most importantly, under any approach for selecting the areas to be reviewed, the Commission must recognize that sufficient support is required for every customer location that does not have an unsubsidized wireline competitive alternative. Absent a demonstration by the petitioner that unsubsidized wireline providers offer service to every customer location in the high-cost area, high-cost support for the area should not be wholly eliminated. Otherwise, the Commission runs the risk that it will reduce universal access to services by either eliminating the provider offering the service in non-competitive areas, or making the price of service in those non-competitive areas unaffordable.

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[5] Further, currently in Wyoming, the federal High-Cost Model support is directed only to the out of town customers because the Commission granted a waiver to the Wyoming PSC to target support in that manner. Consequently, in Wyoming, the 75% trigger most likely would be counter-productive, as it would likely mis-identify areas for scrutiny where support should not be reduced.

Similarly, a threshold where only 50% of the households in an area are served by an unsubsidized competitor will identify an area warranting scrutiny, but at most that should implicate a reduction, but not elimination, of high-cost support. Support should not be eliminated where there are households that do not have service available from an unsubsidized competitor.

Also, areas where retail rates for local exchange service have been deregulated is not a good trigger for identifying high-cost areas where support is no longer needed. Although areas where retail rates have been deregulated are generally associated with a finding of a competitive market for those services, it is not a finding that every consumer in the area has a competitive alternative service offering. Support will still be needed to offset the costs of providing service to those customers without a competitive service alternative. Nor can it be assumed that where rates have been deregulated an incumbent local exchange carrier (ILEC) can recover those costs through higher prices to its customers. It is the policy of the United States to provide the universal availability of supported services in rural, high-cost, and insular areas. Even if a local exchange provider is allowed to charge a rate high enough to cover the cost of serving a high-cost area, it does not mean that customers will be able or willing to pay that high rate. For example, if the cost to serve a rural town is $130 per line per month, it is unlikely that residents there are willing or able to pay such a rate. Public policy concerns demand that a subsidy be provided to support service to the area, otherwise the service will not continue to be extended to high-cost areas.

IV. SUPPORT WILL BE NEEDED FOR ALL UNSERVED LINES TO OFFSET CURRENTLY-SUPPORTED COSTS THAT CANNOT BE RECOVERED THROUGH CURRENT PRICES FOR THE SUPPORTED SERVICES

Under the NCTA proposal, once a petition has been filed for review of high-cost support in a study area, the support recipient, in order to continue receiving high-cost support, must demonstrate the costs that it cannot recover through the prices of all services provided over the network in the non-competitive portion of the study area. In order to do this, the Commission will need to determine what constitutes the non-competitive portion of the study area. The Commission will need to determine how many locations in the area under review are not served by a wireline competitor. A location is not served if a consumer would incur significant costs beyond basic installation costs to receive service from an unsubsidized wireline competitor.

Qwest disagrees with NCTA's proposal that the Commission should consider the support recipient's ability to recover the non-competitive network costs from the price of all services provided over the network. Instead, only the price for supported services should be considered. And, the price against which costs should be analyzed is the price at which the support recipient is currently offering the supported services. If the support recipient is only receiving support for the costs of voice services, then only benchmark revenues from the voice services should be considered. The benchmark revenues can be a Commission-approved rate or a prevailing market rate for a known set of voice grade services. If a support recipient also receives support for other services, such as broadband, an appropriate benchmark revenue can be developed for the combination of voice and broadband services in a similar manner.

Additionally, Qwest disagrees with NCTA's proposal to immediately limit the costs evaluated to only those associated with installation and maintenance of loop plant. Until there is comprehensive high-cost universal service reform, all costs that are currently included in determining costs to provide supported services should be included in the analysis. The only costs that should be removed are those specifically attributed to providing service in the competitive area. If the Commission intends to implement this type of high-cost support reduction mechanism before it implements comprehensive high-cost federal universal service fund reform, it should address the same costs that are currently supported. Subsequently, if the Commission implements comprehensive reform to include transitioning support of voice services to a maintenance fund, it can incorporate a reduction of costs supported at that time.

V. IMPLEMENTATION OF THIS MECHANISM SHOULD NOT OCCUR FOR NON-RURAL HIGH-COST SUPPORT PRIOR TO IMPLEMENTATION OF TENTH CIRCUIT REMAND REFORMS

The Commission's decision in accord with the Tenth Circuit's second remand in *Qwest II* of the Commission's non-rural high-cost support distribution mechanism is long overdue.[6] At a minimum, the Commission should complete that obligation simultaneous with, if not prior to, any other reform of the non-rural high-cost support program. An NCTA-like reform should identify areas where high-cost support can be reduced, but it does nothing to address areas where federal high-cost support is needed but is not currently being provided. If areas needing support are not first correctly identified (*e.g.*, are identified only as the areas currently receiving non-rural support), there will continue to be insufficient support to maintain voice services in high-cost areas served by non-rural carriers as support is transitioned to broadband.

VI. A HIGH-COST SUPPORT REDUCTION MECHANISM SHOULD NOT APPLY TO IAS AND ICLS

IAS and ICLS were created by the Commission in order to maintain a cap on the subscriber line charge (SLC) that ILECs may charge to their end users, while simultaneously eliminating the implicit support that was contained in switched access charges that were imposed

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[6] Note 2, *supra.*

by ILECs on interexchange carriers that was preserving the lower SLCs.[7] Unless the Commission is prepared to remove the cap on SLCs that ILECs may charge, this support should be maintained.[8] Ultimately, IAS and ICLS reform should be addressed in the context of intercarrier compensation reform as it is more directly connected to the rates ILECs may charge to interconnecting carriers.

Additionally, whether there is a competitive carrier that is not receiving IAS or ICLS support is irrelevant to whether the ILEC should continue to receive IAS or ICLS support in an area. Competitive carriers have never been subject to SLC caps and their rates are generally not regulated. Consequently, they can recover their interstate service costs from their end user rates and do not need IAS or ICLS to recover those costs. Given that competitive carriers should not be receiving IAS or ICLS support in the first place, any absence of IAS or ICLS support for a competitor should not impact whether the ILECs should continue to receive that support in an area.

VII. CONCLUSION

For these reasons, Qwest supports the NCTA Petition for Rulemaking, so that the Commission can consider designing a process for eliminating high-cost support where a

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[7] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1477 ¶ 23 (2008), 73 Fed. Reg. 11580 (Mar. 4, 2008).

[8] But, removing the SLC cap may run counter to the universal service principle of keeping supported service rates affordable.

facilities-based wireline competitor is providing unsubsidized comparable service. But Qwest does not support the specific NCTA proposal for that process.

Respectfully submitted,

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January 7, 2010

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed with the FCC via its Electronic Comment Filing System in GN Docket No. 09-51, WC Docket No. 05-337 and RM-11584; 2) served via email on Mr. Gary Seigel at gary.seigel@fcc.gov, Ms. Katie King at katie.king@fcc.gov and Mr. Theodore Burmeister at Theodore.burmeister@fcc.gov of the Federal Communications Commission, Wireline Competition Bureau, Telecommunications Access Policy Division; and 3) served via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

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