

**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

COMMENTS OF VERIZON¹ AND VERIZON WIRELESS

I. INTRODUCTION AND SUMMARY.

The Commission has charted a reasonable course in responding to the latest Tenth Circuit remand of the non-rural high cost Universal Service Fund (USF).² Given the import of the still-evolving National Broadband Plan, it makes sense to maintain the existing non-rural mechanism for the time being and to avoid a significant increase in support for voice services while the Commission converts the high cost fund into a broadband-focused program. The Commission should adopt these two tentative conclusions laid out in the *Remand NPRM*. In addition, the Commission should respond to the Tenth Circuit’s concerns in *Qwest II*³ based on findings regarding the sufficiency of current support and reasonably comparable rates that the Commission can make on the existing record in this matter.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *High-Cost Universal Service Support*, Further Notice of Proposed Rulemaking, 24 FCC Rcd 14858 (2009) (“*Remand NPRM*”).

³ *Qwest Communications Int’l v. FCC*, 398 F.3d 1222, 1236-37 (10th Cir. 2005) (“*Qwest II*”).

More specifically, the Commission should: (1) evaluate the non-rural fund in its proper context as one small piece of the universal service puzzle, which, as a whole, provides “sufficient” universal service funding to satisfy statutory objectives; (2) review the ample rate data on the record in this proceeding, which clearly demonstrate that rates for voice services in rural areas are already “reasonably comparable” to urban rates; and (3) decline to adopt new reporting requirements for bundled local and long distance voice services that are unnecessary to respond to the Tenth Circuit and would not advance statutory objectives or the Commission’s broadband agenda.

II. THE COMMISSION SHOULD ADOPT ITS TENTATIVE CONCLUSIONS REGARDING THE SIZE AND SCOPE OF THE NON-RURAL FUND.

Comprehensive reform of the USF is long overdue and is critical if the Commission expects to achieve the broadband objectives that it will set forth in the National Broadband Plan. As part of the plan, the Commission’s broadband team announced that it will be necessary to reorient the high cost fund away from support for legacy voice services in favor of a broadband focus.⁴ Given that, it does not make sense to retrofit the non-rural high cost portion of the USF merely to “better” support legacy voice services for a short time. Moreover, for reasons explained by Verizon and others in response to the Commission’s *Notice of Inquiry* in this matter, the existing non-rural fund has always been on solid statutory ground, and, at bottom, all the Tenth Circuit asked of the Commission on remand in this proceeding was to present evidence that existing USF funding is sufficient to achieve reasonably comparable rural and urban rates.⁵

⁴ National Broadband Plan Policy Framework, FCC Open Meeting Presentation, at 10 (USF Short and Medium Term Action), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295259A1.pdf (“Broadband Plan Presentation”).

⁵ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Inquiry, 24 FCC Rcd 4281 (2009) (“*Notice of Inquiry*”); Comments of Verizon and

Qwest II, 398 F.3d at 1237-39. The Commission should, therefore, adopt its tentative conclusions to retain the current non-rural mechanism for the time being and not to significantly increase support for voice services while converting the high cost fund into a broadband program. *Remand NPRM*, ¶¶ 3, 13.

In addition, in the short time since the Commission issued its *Notice of Inquiry* in this matter the fund has slipped further into crisis, and consumers' ability to pay for existing universal service programs is in serious question. The USF contribution factor (which results in universal service assessments that consumers pay on their bills) set a new record this quarter of more than 14 percent.⁶ Given the strain on the current fund, significantly increasing universal service support for legacy voice services while simultaneously converting the high cost fund into a broadband program is not a viable option. The Commission appropriately recognized this reality in the *Remand NPRM*. *Remand NPRM* ¶¶ 33-34 (discussing the Commission's "responsibility to be a prudent guardian of the public's resources" and "fairness" to consumers who pay into the fund).

This approach is also consistent with recent precedent from the D.C. Circuit. In upholding a cap on high cost support for competitive eligible telecommunications carriers, just last month the Court found that the Commission has an affirmative obligation to be fiscally responsible with universal service funding. *Rural Cellular Association, et al. v. FCC*, 588 F.3d 1095, 2009 U.S. App. LEXIS 26976, *16 (D.C. Cir. 2009) (holding that the Commission must "balance the risks of excessive subsidization with the principles set forth in § 254(b). . .the

Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, at 12 (May 8, 2009) ("Verizon Comments").

⁶ Proposed First Quarter 2010 Universal Service Contribution Factor, Public Notice, 24 FCC Rcd 14506 (2009) (announcing a new contribution factor of 14.1 percent).

Commission must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.”). Further, holding the line on universal service spending for voice services while the Commission transitions the high cost fund into a broadband program is, as it must be, in sync with development of the larger broadband plan. And the Commission’s broadband team recognized that if the USF is to play a role in meeting the nation’s broadband needs then the Commission must “cut[] inefficient spending in the high cost fund.” Broadband Plan Presentation at 11.

III. THE SUFFICIENCY OF UNIVERSAL SERVICE SUPPORT CANNOT BE DETERMINED BY CONSIDERING NON-RURAL HIGH COST FUNDING IN ISOLATION.

The Commission’s analysis in the *Remand NPRM* of the “sufficiency” – as that term is used in section 254 of the Act – of existing non-rural high cost support is correct. *See Remand NPRM* ¶ 28; 47 U.S.C. § 254(b)(5). In responding to the Tenth Circuit the Commission should adopt this approach, which walks through the various components of universal service and related programs and defines “sufficient” support within the context of all the elements of universal service – not the non-rural high cost fund standing alone. *Remand NPRM* ¶ 31. For supporting evidence that existing support is indeed sufficient, it is also appropriate, as the Commission does in the *Remand NPRM*, to look to today’s unprecedented levels of telephone subscribership (96 percent nationwide – the highest penetration rate on record). *Remand NPRM* ¶¶ 32-34.

As Verizon explained in its *Notice of Inquiry* comments, the non-rural fund is only one small piece of the whole universal service puzzle. Verizon Comments at 5-8. The non-rural fund itself is not designed to be “sufficient” to achieve all of Congress’ universal service

objectives in the Act. There are many different universal service programs (*e.g.*, multiple high cost programs, the E-rate program, the Rural Healthcare program, low income support programs) that, by design, work together. The result of all of these programs is today's nearly ubiquitous access to and very high rate of subscribership to communications services. Indeed, the non-rural fund accounts only for approximately \$350 million of the more than \$4.3 billion larger high cost fund, which itself is only a portion of the more than \$7 billion total federal USF.⁷ In addition, there are many state universal service programs, and, historically, regulators have also relied on access charges to subsidize the cost of local service in some high cost areas.

In meeting the current universal service objective to provide all Americans with affordable access to voice services there can be little doubt that, overall, the USF is quite effective. The Commission correctly concludes that this bigger picture is what ultimately matters for statutory purposes, and its proposed response to the Tenth Circuit on this point in the *Remand NPRM* is a reasonable approach. *Remand NPRM* ¶¶ 28-36.

IV. RURAL RATES ARE ALREADY REASONABLY COMPARABLE TO URBAN RATES.

There can by now be no dispute that urban and rural rates for voice services tend to be about the same, and to the extent there are differences rural rates tend to be lower. The empirical data demonstrate that this is true across the country in non-rural LEC study areas. Verizon Comments at 13-20. Wireless and IP-based services are also rapidly displacing traditional wireline services, and rates for these nationwide "all distance" services do not typically vary at all between urban and rural areas. *Id.* The Commission seeks comment in the *Remand NPRM* on how to address the Tenth Circuit's concerns regarding the "reasonable comparability" of rural

⁷ See Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2009 (Data Received Through August 2009), CC Docket No. 98-202, at 1-36 (Jan. 13, 2010).

and urban rates and tentatively concludes that “the statute does not require the Commission to make rural rates comparable to the ‘lowest urban rate.’” *Remand NPRM* ¶¶ 39-40; 47 U.S.C. § 254(b)(3). To address the Tenth Circuit’s broader concerns regarding rate comparability, the Commission can conclude from the existing record that there is no “gap” between rural and urban rates. And, as explained below, the Commission’s conclusion that the “target” rate for section 254(b)(3) purposes is *not* the “lowest urban rate” is correct.

In previous remand comments in this matter Verizon provided a detailed, more than 20-page analysis of rural and urban rates, proving that from 2001-06 rural rates were at a minimum reasonably comparable to urban rates – and on average were lower than urban rates. Verizon Comments at 13-14. In response to the Commission’s latest *Notice of Inquiry* on the remand, Verizon again undertook an exhaustive, labor-intensive analysis, reviewing tariff rates for every non-rural carrier in every study area. *Id.* at 14-15. Again, the data establish beyond doubt that rural rates are reasonably comparable to urban rates in non-rural study areas – and if anything rural rates tend to be lower than urban rates. *Id.* Rate data presented by others in this proceeding compel the same conclusion. *See, e.g.*, Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 05-337, CC Docket No. 96-45, at 13-16 (May 8, 2009) (presenting rate data from more than 11,000 non-rural carrier wire centers, which “showed that there was not that much difference between rural rates and urban rates”).

In addition, Verizon also presented extensive data regarding national pricing plans offered by wireless carriers and VoIP providers to consumers throughout the country – in both urban and rural areas. Verizon Comments at 16-20. More than ever before, these data indicate that consumers in rural areas have access to intermodal voice services at rates that are not just reasonably comparable to urban rates – they are *exactly the same as urban rates*. *See id.* Twice

the Tenth Circuit has indicated that it “would be inclined to affirm the FCC’s cost-based funding mechanism if it indeed resulted in reasonably comparable rates.” *Qwest II*, 398 F.3d at 1237. What tripped up the Commission in the past with the Court is the lack of “empirical findings” demonstrating that rural and urban rates are indeed reasonably comparable. *Id.* The empirical data now in the record in this proceeding make this connection and provide a more than adequate basis for the Commission to make such findings.

Further, nothing in section 254 or otherwise requires that the non-rural fund ensure that rates in rural areas approximate the *lowest* urban rate. *Remand NPRM* ¶ 39. Indeed, such a requirement would be impossible to satisfy and would make no sense. Even if the Commission could, without massive high cost funding, provide enough support to bring all rural rates in line with whatever the lowest urban rate is (which is doubtful), that would still ensure a continued gap between the lowest urban rate and other urban rates. Nothing in section 254(b)(3) indicates that the Commission should – or is even permitted to – artificially drive all rural rates down to the lowest rate in the country at a huge expense to all consumers who pay for the USF. The statute only requires that rural and urban rates be “reasonably” comparable overall. 47 U.S.C. § 254(b)(3). Moreover, as discussed above, rural rates today actually tend to be *lower* than urban rates.

V. NEW REPORTING REQUIREMENTS FOR BUNDLED VOICE SERVICES WOULD NOT SERVE STATUTORY OBJECTIVES OR THE BROADBAND AGENDA.

Given the trend in the market toward bundled local and long distance voice services – both wireline and wireless – the Commission seeks comment on potential new nationwide calling plan reporting and certification requirements for carriers and states. *Remand NPRM* ¶ 20 (asking whether it would be useful for the Commission to “monitor[] these [bundled] rates over

time so that the Commission can adjust its definition of reasonably comparable rates as the marketplace changes”). The Commission should not adopt additional reporting and certification requirements. These additional requirements are not necessary to respond to the Tenth Circuit’s concerns, nor would such requirements serve the larger broadband agenda.

New reporting requirements for voice services do not make sense in light of the Commission’s announced intention to transition the high cost fund away from support for traditional voice services in favor of support for broadband. Broadband Plan Presentation at 10. If the high cost program will ultimately focus on broadband and the modern communication services consumers demand, then additional reporting and certification requirements for voice services will serve no purpose. In addition, the Commission tentatively concludes in the *Remand NPRM* – appropriately – that the non-rural fund satisfies statutory requirements “as is.” *See Remand NPRM* ¶ 21. Thus, layering more reporting and certification requirements on legacy voice services is not necessary to respond to the Court, and these new requirements would be inconsistent with the Commission’s conclusion that it need not make changes to the non-rural fund. *Id.*

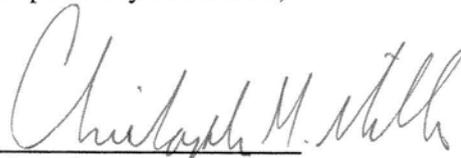
Moreover, the Commission has an affirmative obligation to refrain from, and indeed to eliminate, reporting obligations that are not necessary to achieve a tangible, legitimate regulatory objective. 47 U.S.C. § 160(a)(1) (requiring the Commission to forbear from unnecessary regulations); *see also* 44 U.S.C. § 3506(c)(3)(A) (providing that under the Paperwork Reduction Act the Commission must be able to certify that any reporting obligation is “necessary for the proper performance of the functions of the agency, including that the information has practical utility.”). Once the Commission concludes, as it must in this proceeding, that rural and urban rates are indeed reasonably comparable, then new, “just in case” reporting obligations would not

have practical utility. If, in the future, the Commission has reason to believe that its conclusions regarding reasonably comparable rates may no longer be accurate (which is hard to imagine given the clear trend toward national pricing plans for any distance services over broadband connections), then the Commission could revisit its data needs at that time.

VI. CONCLUSION.

For these reasons, the Commission should adopt its tentative conclusions regarding the scope and size of the current non-rural high cost fund and make additional findings, on the existing record, regarding the sufficiency of current funding and reasonably comparable rates to respond to the Tenth Circuit. The Commission should decline to adopt new reporting requirements for bundled local and long distance voice services.

Respectfully submitted,



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