

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

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

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

USTelecom¹ is pleased to submit its comments in response to the Commission’s Further Notice of Proposed Rulemaking (“Further Notice”)² in the matter of High-Cost Universal Service Support. The Further Notice responds to the issues raised by the U.S. Court of Appeals for the Tenth Circuit (“Tenth Circuit”) in the *Qwest II* decision. As noted by the Commission, *Qwest II* remanded certain aspects of the Commission’s high-cost universal service support mechanism for non-rural carriers, which determines the amount of support to be provided to each state by comparing the statewide average forward-looking cost per line for non-rural carriers to a nationwide cost benchmark.

USTelecom urges the Commission to not delay in addressing the need for better targeting of high-cost funds to the individual areas most in need of support. In this proceeding in particular, the Commission should take discrete, interim steps to improve the distribution of support to granular high-cost areas served by price cap carriers. Such steps would be consistent with and help advance plans for further improvements to

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See Further Notice of Proposed Rulemaking, WC Docket No. 05-337 and CC Docket No. 96-45 (December 15, 2009).

universal service policies which are likely to be recommended as part of the National Broadband Plan and undertaken as a part of the comprehensive universal service reform that implements those recommendations.

I. THE COMMISSION’S RESPONSE TO QWEST II SHOULD BE A PRELUDE TO COMPREHENSIVE REFORM

Comprehensive reform of the high-cost universal service mechanism is long overdue and urgently necessary. In that regard, USTelecom has advocated multiple fundamental reforms of the high-cost mechanisms.³ These reforms include the following: (1) applying an end user rate benchmark when calculating high-cost support for fixed-line Eligible Telecommunications Carriers (“ETCs”), (2) beginning the gradual removal of access support from funding provided to competitive ETCs (“CETCs”), (3) phasing out support for multiple wireless CETC lines per household, (4) abandoning the per line support rule as the basis for determining high cost funding for mobile CETCs, (5) implementing competitive processes to reduce the number of mobile CETCs to one per geographic area, (6) gradually shifting support for mobile CETCs to construction of wireless infrastructure on a project basis, and (7) moving to a numbers and connections based system for universal service contributions. An additional necessary reform that should be accomplished in the instant proceeding is improved targeting of support to the individual wire centers of price cap carriers that serve high-cost areas.

Any modifications made to the non-rural high-cost universal service mechanism should not in any way affect the operation of rate of return carriers under the rural high-cost mechanism. Any changes applying to rate of return carriers under the rural

³ See Comments of the United States Telecom Association in CC Docket No. 96-45, *In the Matter of High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, submitted April 17, 2008.

mechanism should be made in the context of comprehensive reform of high-cost universal service support and not as incidental to the response to the Court in *Qwest II*.

II. IMPROVED TARGETING OF HIGH-COST SUPPORT IMPROVES SUFFICIENCY OF THE FUND AND THEREFORE BETTER SERVES THE ACT'S PUBLIC POLICY GOALS

The Commission should adopt interim steps in this proceeding that aid in the overall transition to fully reformed high-cost universal service mechanisms. Primary among these steps is improved targeting of federal funds to the high-cost areas that are most in need of support.

Determining support based on statewide average costs and study area average costs creates results contrary to the Act's public policy goals.⁴ The lack of more granular targeting negatively impacts companies' ability to provide quality services and access to advanced telecommunications and information services in high-cost areas. High-cost areas may be obscured by averaging within a state or study area, denying those high-cost rural customers the benefits intended by the universal service program.

Statewide and study area averaging create implicit subsidies no longer sustainable in today's competitive environment. States that contain high-cost areas but have lower costs on average are denied access to non-rural high-cost universal service funding for those high-cost areas. Within states, lower cost urban and suburban areas naturally tend to attract the most competitive entry, thus limiting the ability of the incumbent to implicitly subsidize high-cost rural portions of the study area without suffering a significant competitive disadvantage. And of course, the stress placed by this regime increases as a company faces more competition in its lower cost areas, and thereby has

⁴ Section 254(b)(1) and 254(b)(2), (47 U.S.C. 254).

less revenue to internally subsidize its high-cost areas.

To address these issues, the Commission should adopt two reforms that will better target high-cost funds to the areas most in need of support. First, the Commission should stop its practice of classifying an entire state under the non-rural high-cost fund as either eligible or not-eligible for support based on statewide average costs. Customers of non-rural carriers in high-cost areas should not be penalized with insufficient high-cost support simply because they reside in states where costs vary and statewide average costs thereby fail to meet the threshold for qualifying for support. The non-rural fund also should not suffer the burden caused by overall expansion of federal universal service when the Court has twice found that Commission rules do not appropriately implement the Act.

Second, the Commission should permit price cap carriers, on a holding company basis, to make a one-time election to calculate all of their support under the forward-looking mechanism. This simple, interim step also could be immediately implemented. Permitting an election on a one-time only basis at the holding company level will eliminate any opportunities for regulatory gaming.

The effect of this second reform would be to transition from targeting support based on conditions across study areas to targeting support based on conditions in granular wire centers. Since many price cap carriers' study areas can be quite sizable, support levels under the current regime can be unduly influenced by significant variability in costs among wire centers. In order to best identify the truly high-cost areas within study areas and thus properly calculate and direct support, wire center specific data should be used in place of costs based on the entire study area. The method for

calculating support under the current cost-proxy model for the non-rural high-cost fund can be used to target support to the wire center level without regard to state or study area averaging.

Identifying the truly high-cost rural areas within states and study areas now receiving inadequate support due to averaging, need not unduly increase the size of the non-rural high-cost fund. Even absent comprehensive reform, the Commission has numerous mechanisms at its disposal to control the size of the fund, including adjusting the cost benchmark. Moreover, any small increase in the size of the fund due to improved targeting would be tolerable, particularly when measured against the significant benefits it would achieve.

III. NEW REPORTING AND CERTIFICATION REQUIREMENTS ARE NOT NECESSARY

Rates for voice service are already reasonably comparable. States have certified to that effect for several years and the Commission has established a process under which a state could seek additional funds, if needed, to achieve comparability. The record confirms that rural rates are comparable to urban rates.⁵ Instead, reforms to the fund should better target support within study areas, and address the definitional issues raised by the Tenth Circuit.

Over the years the Commission has struggled with providing a legally supportable definition of reasonable comparability. The Commission should adopt its tentative conclusion that the statute does not require the Commission to make rural rates comparable to “the lowest urban rate.”⁶ Section 254(b)(3) requires only that rural and

⁵ See NASUCA May 8, 2009 Comments at 13-16, Verizon May 8, 2009 Comments at 14-15.

⁶ Remand NPRM Paragraph 39.

urban rates be “reasonably comparable.” It does not require that all rural rates be driven down to the level of the lowest urban rate, particularly when urban rates themselves vary considerably.

The Commission should not modify the rates it requires the states to compare, or impose new certification requirements on carriers.⁷ New reporting and certification requirements are not necessary to respond to the Tenth Circuit’s specific concerns. Moreover, the imposition of new reporting and certification requirements for voice services would make little sense in light of the Commission’s acknowledgment that any rules adopted in this proceeding are likely to be interim rules and in effect only until comprehensive universal service reform is adopted in the aftermath of the National Broadband Plan.⁸

IV. APPLYING THE NON-RURAL HIGH-COST MECHANISM TO PRICE CAP STUDY AREAS WOULD HARMONIZE UNIVERSAL SERVICE AND PRICING REGULATORY REGIMES

As proposed above, at the initiation of implementation of a modified non-rural high-cost universal service mechanism, carriers on a holding company basis should be afforded a one-time election to convert all of their price cap study areas to determining support using the non-rural high-cost mechanism. While enabling better targeting of high-cost support, this optional reclassification of eligibility also would better align universal service and pricing regulatory regimes. Adopting this approach makes more sense than the artificial distinction of how the Act defines rural telephone company, a

⁷ Remand NPRM Paragraphs 15 and 20.

⁸ Notice at paragraph 13.

distinction designed for purposes other than determining the proper mechanism or level of universal service support applicable to a particular area.⁹

The price cap regime and the non-rural fund's forward-looking mechanism exhibit substantial similarities. First, the price cap regime breaks the link between actual costs and price. Similarly, the non-rural fund's use of a forward-looking cost proxy model breaks the link between actual costs and the level of universal service high-cost support determined to be needed to assure reasonably comparable and affordable rates. Second, companies electing price caps have made a conscious decision to tolerate the higher level of risk inherent in separating costing from pricing. Likewise, because use of a forward-looking cost proxy model also separates embedded costs from universal service support, application of the forward-looking model may entail a higher level of risk as well.

In some instances, legacy issues cause receipt of an insufficient level of universal service support, but these problems would be largely addressed by the reclassification of eligibility for the non-rural fund. For example, Iowa Telecom, a price cap company receiving support under the rural fund, receives an insufficient level of support based on underinvestment by the company from which it acquired its facilities.¹⁰ If Iowa Telecom, as a price cap company, was able to access the non-rural fund and use the forward-looking cost-proxy model, it would be able to increase its already ambitious level of

⁹ The definition of "rural telephone company" in the Act is used in Section 251 to determine interconnection responsibilities. The non-rural fund is available to study areas or companies not meeting the definition of rural telephone company, who surpass certain cost thresholds and provide the required supported services.

¹⁰ See *Iowa Telecom Petition for Interim Waiver of the Commission's Universal Service High-Cost Loop Support Mechanisms*, WC Docket No. 05-337 (filed May 8, 2006).

investment and provide a higher level of advanced services over its joint use facilities to customers in its Iowa study area.

V. CONCLUSION

The Commission should make changes to the non-rural high-cost fund in this proceeding that will aid in the overall transition to reform of all the high-cost universal service mechanisms. In particular, improving the targeting and applicability of the forward-looking mechanism is an important reform that the commission could and should adopt without delay. This reform would ensure support reaches the high-cost areas most in need of federal funds.

Respectfully submitted,

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