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 Universal Service	CC Docket No. 96-45

COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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I. INTRODUCTION

The Massachusetts Department of Telecommunications and Cable ("MDTC")[1] respectfully submits these comments pursuant to the Further Notice of Proposed Rulemaking ("FNPRM") issued by the Federal Communications Commission ("FCC" or "Commission") on December 15, 2009, in the above captioned proceedings.[2] The Commission specifies that the FNPRM is a response to the remand of its "rules for providing high-cost universal service support to non-rural carriers" by the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit"),[3] and adheres to an agreement negotiated between the Commission and several parties in response to their petition filed with the Tenth Circuit last year for a writ of mandamus for Commission action in the *Qwest II* proceeding.[4] The Commission indicates that the impending deadline for the National Broadband Plan, in which it plans to address comprehensive universal service reform, warrants certain interim changes to the non-rural high-cost mechanism instead of wholesale reform of that mechanism.[5] Namely, the Commission proposes interim changes, inquiring as to whether it should "define 'reasonably comparable' rural and urban rates in terms of rates for bundled local and long distance services" and whether it should require

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[1] The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. *See* Mass. Gen. Laws c. 25C, § 1.

[2] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking Public Notice, FCC 09-112 (rel. Dec. 15, 2009) ("*Interim Changes FNPRM*").

[3] *Interim Changes FNPRM*, ¶ 1 (citing *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*")).

[4] *Interim Changes FNPRM*, ¶ 9. *See also* Petition for a Writ of Mandamus, *In re Qwest Corp.*, No. 09-9502 (10th Cir. filed Jan. 14, 2009). Due to the parties' negotiated agreement for the Commission to issue a final order responding to the court's remand by April 16, 2010, the court denied the mandamus petition as moot. *See Qwest Corp., et al. v. FCC*, No. 09-9502, slip op. (10th Cir. Mar. 20, 2009).

[5] *Interim Changes FNPRM*, ¶¶ 1-2.

carriers to certify these bundled rates.[6] The Commission asserts that these proposed interim changes will "address the court's concerns and changes in the marketplace."[7] However, the Commission also tentatively concludes that the current non-rural high-cost mechanism "is an appropriate interim mechanism for determining high-cost support to non-rural carriers … and it is … appropriate to maintain this mechanism on an interim basis until the Commission enacts comprehensive reform."[8] The Commission seeks comment on these tentative conclusions.[9]

The MDTC welcomes this opportunity to comment and supports the Commission's continued consideration of comprehensive universal service reform. The MDTC acknowledges the daunting task that Congress has imparted on the Commission in its development of the National Broadband Plan (the "Plan"). In addition, the MDTC recognizes the problematic timing between when the Plan is due to Congress and when the Commission's response is due to the Tenth Circuit. As a result, the MDTC offers the following for comment.[10]

II. DISCUSSION

1. *The MDTC cautiously supports the Commission's temporary postponement of reform of the non-rural high-cost mechanism until after the Commission's issuance of the National Broadband Plan and adoption of comprehensive reform as long as the Commission commits to a strict timeline for reform*

The MDTC is reluctant to support further Commission delay of amendment of the high-cost support mechanism for non-rural carriers, since elements of this mechanism have been in

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6 *Id*. at ¶ 2.

7 *Id*. at ¶ 1.

8 *Id*. at ¶ 3.

9 *Id*.

10 The MDTC's silence on any issue presented by the Commission in the FNPRM should not be construed as rejection or support of that issue.

dispute for over a decade.[11] When the Tenth Circuit issued its 2005 ruling, it indicated that it fully expected the Commission to comply with the decision "in an expeditious manner, bearing in mind the consequences inherent in further delay."[12] However, it has been nearly five years since the Tenth Circuit issued its remand. During that time, admittedly, the Commission has sought comment on much needed comprehensive reform of the entire high-cost mechanism.[13] However, it has failed to respond to the Tenth Circuit's concerns with a final ruling. The time for Commission action is long past due.

Despite the need for Commission action, however, the MDTC tentatively agrees with the Commission's conclusion that certain factors justify temporary postponement of fundamental reform of the non-rural high-cost support mechanism, namely implementation of the National Broadband Plan and adoption of comprehensive reform.[14] For instance, the MDTC agrees with the Commission's observation that comprehensive universal service reform is partly necessary due to the "significant changes" that have occurred in the telecommunications marketplace since

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[11] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, FCC 99-306 (rel. Nov. 2, 1999), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) ("*Qwest I*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, FCC 03-249 (rel. Oct. 27, 2003) ("Order on Remand"), *remanded*, *Qwest II*, 398 F.3d 1222.

[12] *Qwest II*, 398 F.3d at 1239.

[13] *See, e.g.*, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, FCC 08-4 (2008) ("*Identical Support Rule Notice*"); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, FCC 08-5 (2008) ("*Reverse Auctions Notice*"); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531, FCC 08-22 (2008) ("*Joint Board Comprehensive Reform Notice*"); *High-Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, FCC 08-262 (2008) ("*Comprehensive Reform FNPRM*").

[14] *Interim Changes FNPRM*, ¶¶ 1-3.

the Commission first implemented its high-cost support rules in 1999.[15] Further, when the necessity of comprehensive reform is coupled with the time frame of the recently-mandated National Broadband Plan, the MDTC determines that the Commission's temporary delay of reform of the non-rural high-cost support mechanism is prudent as long as the Commission establishes a strict timeline with the Plan to implement comprehensive universal service reform.

The Commission indicates that it will address comprehensive universal service reform as a part of its Plan, but specifies that it will have "insufficient time" between the release of the Plan in February (or March)[16] and the April deadline for responding to the Tenth Circuit "to implement reforms to the high-cost universal service mechanism consistent with the overall recommendations in the National Broadband Plan."[17] Congress mandated that the Commission develop the Plan to ensure that all Americans will have access to broadband and required that the Commission establish benchmarks to achieve this goal.[18] Congress required the Plan to include "an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States" and "a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public."[19] Such directives complement the universal service provisions of Title 47, which similarly require

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[15] *Id*. at ¶ 10. According to the Commission, these changes include "considerable changes in technology … and consumer buying patterns." *Id*. at ¶ 2.

[16] The Commission is required to deliver this plan to Congress no later than February 17, 2010, although Chairman Genachowski recently requested a one month extension. *See* American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(1); Letter from Chairman Genachowski to Congress on National Broadband Plan (Jan. 7, 2010). President Obama signed the Recovery Act into law shortly after parties filed the mandamus petition with the Tenth Circuit.

[17] *Interim Changes FNPRM*, ¶ 12.

[18] Recovery Act, § 6001(k)(2).

[19] *Id*.

careful and thorough consideration.[20] When it issues the National Broadband Plan, the Commission must ensure that it includes a strict timeline for implementing comprehensive universal service reform.

2. ***The MDTC tentatively supports expanding the definition of "reasonably comparable" rural and urban rates to include bundled service rates as a part of more comprehensive reform and believes that the Commission should also incorporate an appropriate analysis of costs and types of services provided***

Under the terms of the federal universal service statutory provisions, Congress directs the Commission to base its policies "for the preservation and advancement of universal service" on several principles, including the principles that:

> [Principle 1:] [q]uality services should be available at just, reasonable, and affordable **rates**[;] [and]
>
> [Principle 3:] **[c]onsumers in** all regions of the Nation, including low-income consumers and those in rural, insular, and **high cost areas**, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, **that are reasonably comparable to those services provided** in urban areas and **that are available at rates that are reasonably comparable** to rates charged for similar services in urban areas.[21]

The statute also specifies that eligible carriers that receive universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[22] In *Qwest II*, rejecting the Commission's previous analysis, the Tenth Circuit required the Commission to define "reasonably comparable" on remand "in a manner that comports with its concurrent duties to preserve and advance universal service."[23]

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[20] *See generally* 47 U.S.C. § 254.

[21] 47 U.S.C. § 254(b)(1), (b)(3) (emphasis added).

[22] 47 U.S.C. § 254(e).

[23] *Qwest II*, 398 F.3d at 1237.

The Commission now seeks further comment on how to respond to the Tenth Circuit's directive.[24] In addition, the Commission reaffirms its previous position that "there are numerous reasons to believe that cost represents a reasonable proxy for the ability of carriers and state regulators to ensure that rural rates remain reasonably comparable."[25] Further, the Commission inquires that "[i]n interpreting this [reasonable comparability] statutory provision, should we instead compare the variance in rural rates to the variance in urban rates?"[26] Finally, as a part of its interim rule changes inquiry, the Commission inquires as to whether it "should define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services" and whether such a definition would be "more consistent with the statute."[27]

The MDTC tentatively supports expanding the definition of "reasonably comparable" rural and urban rates to include bundled local and long-distance service rates as a part of more comprehensive reform and believes that the Commission should incorporate an appropriate analysis of the costs and types of services provided into the definition. The Commission should start by examining the statutory language cited above. The language requires that "reasonable comparability" be analyzed utilizing three primary markers: (1) *costs* of providing services; (2) *rates* charged for the services; and (3) *services* provided.[28]

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[24] *Interim Changes FNPRM*, ¶ 40. The Commission made similar inquiries in its 2009 *Remand NOI* and 2005 *NPRM*. *See Federal-State Joint Board on Universal Service, High-Cost Universal Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Inquiry, 24 FCC Rcd 4281, FCC 09-28, ¶¶ 14-16 (rel. Apr. 8, 2009) ("*Remand NOI*"); *Federal-State Joint Board on Universal Service, High-Cost Universal Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, FCC 05-205, ¶¶ 18-22 (rel. Dec. 9, 2005) ("*NPRM*").

[25] *Interim Changes FNPRM*, ¶ 22.

[26] *Id.* at ¶ 40.

[27] *Id.* at ¶¶ 2, 18 (emphasis added).

[28] 47 U.S.C. § 254(b)(3).

Similar to several parties already on record in this proceeding, the MDTC agrees that the Commission should continue to use cost as the primary basis for determining whether rates are reasonably comparable.[29] The Commission can find statutory support in the third principle listed in Section 254(b) when it is coupled with the statutory provision that specifies that eligible carriers that receive universal service support "shall use that **support only for the provision, maintenance, and upgrading of facilities and services** for which the support is intended."[30] Section 254 must be read in its entirety and the principles set forth in Section 254(b) cannot be separated from the directive of Section 254(e).[31] Section 254(e) contemplates that universal service support is to be used to help defray some of the *costs* of providing service.[32] If universal support is to be used by carriers to help defray costs, then it rationally follows that the Commission needs to perform a cost comparison to determine the appropriate level of support to those carriers. However, a cost analysis cannot be done in a vacuum and must incorporate an analysis of the types of services available and provided to consumers as well as the rates to provide those services. Therefore, the Commission is correct to utilize costs to help determine if rates (and services) in rural, insular, and high-cost areas are reasonably comparable to rates (and

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[29] *See, e.g.*, Qwest Communications NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 6 (filed May 8, 2009); Vermont Public Service Board and Maine Public Utilities Commission NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 14-16 (filed May 8, 2009); CTIA NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 15-17 (filed May 8, 2009); Alaska Regulatory Commission NOI Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 7-9 (filed June 8, 2009). However, while it is reasonable for the Commission to maintain in the interim the current non-rural high-cost support mechanism based on forward-looking economic costs, the MDTC refrains from supporting a particular cost model for comprehensive reform at this time.

[30] 47 U.S.C. § 254(e) (emphasis added).

[31] 47 U.S.C. § 254.

[32] The Commission notes that "basing support [purely] on retail rates would create perverse incentives for state commissions and carriers to the extent that rate levels dictated the amount of federal universal service support available in a state." *Interim Changes FNPRM*, ¶ 22. Similarly, if universal service support was based purely on costs, this would provide an unfair competitive advantage to certain carriers and provide a perverse incentive for carriers to invest inefficiently. Also, it would likely cause universal service support costs to balloon exponentially.

services) in urban areas. In the interim, the Commission simply needs to "pair rates to costs" in its "reasonably comparable" definition with empirical evidence based on the record, as the Tenth Circuit directed the Commission to do five years ago.[33]

The MDTC agrees with certain commenters that a reasonable comparability of rates analysis requires a comparison of a variance or range of rural and urban rates.[34] Both NASUCA and Embarq point to dictionary definitions of "comparable," which is defined as "similar."[35] In particular, the MDTC agrees with NASUCA's observation that Congress did not intend rates in rural areas to equal urban rates under the terms of Section 254, and that "[i]f Congress had intended rural rates to be equal to urban rates, the 1996 Act would have said so."[36] This observation, by default, extends to rejection of any determination that would require "*all* rural rates be no higher than the lowest urban rate."[37]

Finally, the MDTC tentatively supports incorporation of the rates for bundled local and long-distance services into the "reasonable comparable" definition as a part of comprehensive reform, since reasonable comparability needs to include an analysis of the services provided in rural versus urban areas. As numerous commenters and the Commission itself recognizes, many

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[33] *Qwest II*, 398 F.3d at 1237. *See also Qwest I*, 258 F.3d at 1202. Indeed, in *Qwest II*, the Tenth Circuit expressly directed the Commission to "fully support its final decision [for crafting the non-rural support mechanism] on the basis of the record before it." *Qwest II*, 398 F.3d at 1237.

[34] *See, e.g.*, Verizon and Verizon Wireless NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 2, 11 (filed May 8, 2009); Embarq NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 14-17 (filed May 8, 2009) ("Embarq NOI Comments"); NASUCA NOI Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 17, 27-28 (filed May 8, 2009) ("NASUCA NOI Comments").

[35] Embarq NOI Comments, at 15; NASUCA NOI Comments, at 28.

[36] NASUCA NOI Comments, at 28.

[37] *Interim Changes FNPRM*, ¶ 40. In addition, if the Commission required that all rural rates be capped at the lowest urban rate, then this would inappropriately preempt certain state ratemaking authority. *See* 47 U.S.C. § 152(b); *La. PSC v. FCC*, 476 U.S. 355, 374 (1986) (preventing the Commission from taking intrastate action solely because it furthered an interstate goal).

consumers now purchase bundled local and long-distance services.[38] Indeed, many consumers now purchase bundled telephone service *with* video and/or internet services.[39] If the Commission incorporates a comparability analysis on the types of services provided in rural versus urban areas, then this will better reflect today's marketplace realities. However, the MDTC agrees with certain commenters that a response to the Tenth Circuit requires focusing only on a comparison of currently supported services,[40] even if this response is interim in nature.

3. ***Comprehensive universal service reform efforts will require the Commission to implement updated data submission requirements for all types of voice and broadband providers***

The Commission proposes to update its "reasonably comparable" urban and rural rate definition based in terms of bundled local and long-distance services.[41] Further, the Commission inquires as to if it "determines that a more meaningful measure of rural and urban rate comparability should include rates for long distance services as well as local rates, how should [it] define a *typical package* of services on which to base the comparison?"[42] The Commission "invite[s] commenters to submit data on the rates and availability of bundled service offerings, identify sources of such data, and proposed methods of analyzing such data" and inquires as to whether requiring all types of providers, including cable voice and wireless providers, "to provide such data [will] assist the Commission in monitoring these rates over time so that the

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38 *See, e.g.*, *Interim Changes FNPRM*, ¶ 10; Comcast NOI Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45, Appendix A at 57 (filed June 8, 2009); Verizon and Verizon Wireless NOI Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 8 (filed June 8, 2009) ("Verizon NOI Reply Comments").

39 *See, e.g.*, *Interim Changes FNPRM*, ¶ 17; Verizon NOI Reply Comments, at 8.

40 *See, e.g.*, NASUCA NOI Comments, at 3; Wyoming Public Service Commission Ex Parte, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (filed April 2, 2009).

41 *Interim Changes FNPRM*, ¶ 2.

42 *Id.* at ¶ 19 (emphasis added).

Commission can adjust its definition of reasonably comparable rates as the marketplace changes."[43] In addition, the Commission indicates that it will address comprehensive universal service reform in the National Broadband Plan, and it will include broadband as a supported service through the Fund.[44]

The MDTC recommends that an extension of the "reasonably comparable" definition should occur during more comprehensive reform and that the Commission should mandate and update data submission requirements applicable to all types of voice and broadband providers prior to implementing any comprehensive universal service reform.[45] Further, the Commission should ensure that these updated data filings are mandatory, since, as the Commission itself has noted, agency attempts to collect any information on a voluntary basis from providers are not always successful.[46] The MDTC believes that such formal reporting requirements should be annual and will permit the Commission to better monitor the rates of different services over time "so that the Commission can adjust its definition of reasonably comparable rates as the marketplace changes."[47] As such, in response to the Commission's request for commenters to identify possible sources of pricing data on bundled services, the MDTC offers several data collection recommendations for bundled local and long-distance services for the Commission to utilize going forward.

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43 *Id*. at ¶¶ 19-20.

44 *Id.* at ¶¶ 1-3, 12.

45 The MDTC previously made similar observations in its comments responding to the *Comprehensive Reform FNPRM*. *See* MDTC Comments, at 19-20, 25-26 (specifying that "[p]rior to moving forward with any new [cost standard] methodology, the FCC needs to implement or utilize dependable cost studies and data analyses" and "the FCC should implement a new reporting requirement prior to implementing a new [universal service] contributions methodology").

46 *See In the Matter of A National Broadband Plan for Our Future,* GN Docket No. 09-51, Notice of Inquiry, FCC 09-31, Appendix n.50 (rel. Apr. 8, 2009).

47 *Interim Changes FNPRM*, ¶¶ 19-20.

a. ***The MDTC offers several data collection recommendations***

Although the Commission requests that commenters provide pricing data on bundled local and long-distance services, the Commission's request does not go far enough to ensure that providers submit information in a standardized format. Without a more standardized format to determine a reasonable array of "typical" packages purchased by consumers, the data that will be provided to the Commission will make it difficult for the Commission to properly amend the "reasonably comparable" definition to include bundled rates or to determine what would be a "typical package" of services.[48] The MDTC recommends that the Commission set out to compile a dataset on which to base any new determinations and use this dataset to establish annual reporting requirements going forward. This primary dataset should include, at a minimum, all local and long-distance and bundled voice plans provisioned to consumers, with localized customer counts for each plan. As a result, the MDTC offers the following data collection recommendations for bundled local and long-distance services in preparation for comprehensive reform.

In an effort to better determine the type and format of mandatory pricing data collection requirements going forward, the MDTC suggests that the Commission consider at least an initial round of extensive data gathering. The initial stage of data gathering should require that all types of voice providers, whether or not they currently may receive universal service support, detail all of the residential plans that they actually provide, listed in at least five separate generic categories: (1) local calling plans; (2) long-distance calling plans; (3) bundled local and long-distance calling plans; (4) bundled local and long-distance calling plans with at least one additional intermodal service component, which may include a video, broadband, and/or mobile

[48] *Interim Changes FNPRM*, ¶ 19.

service; and (5) promotional plans. These generic categories, which encompass unlimited calling plans, will account for the range of services that consumers actually purchase.

Generally, for each plan identified by the carrier, the carrier should certify the zip codes where each plan is actually being provisioned and should also certify the number of residential consumers that subscribe to the plan within each zip code. The MDTC anticipates that, with limited exception, subscribers will not be double-counted by a single provider. For instance, if a consumer subscribes to a local and long-distance calling plan bundle but is paying a discounted rate as a result of a promotional offer, that subscriber should be counted as a promotional plan subscriber. One exception for double-counting a consumer would be when a consumer subscribes to separate local and long-distance calling plans when the carrier does not offer a discounted "bundle." If such a situation exists, then that subscriber should be counted separately for both the local calling plan and the long-distance calling plan.

Local calling plans should include all stand-alone intra-LATA calling plans provisioned by the carrier. For each plan identified by the carrier, the carrier should identify the following charges: (1) monthly minimum charge; (2) monthly fee per line; (3) any range of per-minute calling charges that may accrue; (4) number of ancillary features included at no additional charge; and (5) any tiered levels of local pricing.[49]

Long-distance calling plans should include all stand-alone inter-LATA calling plans provisioned by the carrier. For each plan identified by the carrier, the carrier should identify the following charges: (1) monthly minimum charge; (2) monthly fee per line; (3) any range of per-

[49] This template for data gathering as well as the others below is intended to capture flat or unlimited calling rates, although not specifically stated.

minute calling charges that may accrue; (4) number of ancillary features included at no additional charge; and (5) any tiered levels of long-distance pricing.

For bundled calling plans that include both local and long-distance calling services and are either (a) offered at a discounted price in comparison to the combined price for the corresponding stand-alone local and long distance plans offered by the carrier, or (b) offered in lieu of stand-alone local and long distance plans offered by the carrier, the carrier should identify the type of plan being offered and should identify the following charges: (1) monthly minimum charge; (2) monthly fee per line; (3) any range of per minute calling charges that may accrue; and (4) number of ancillary features included at no additional charge.

Bundled calling plans with at least one additional intermodal service component should include all service packages provisioned by the carrier that incorporates local and long-distance calling plans combined with the provision of a broadband, video, and/or wireless voice service. For each plan identified by the carrier, the carrier should identify the following charges: (1) monthly minimum charge; (2) monthly fee per line; (3) any range of per minute calling charges that may accrue; (4) number of ancillary voice features included at no additional charge; and (5) additional communications service(s) included in the bundle.

Promotional plans are all plans provisioned to consumers that offer a discount to one of the communications service plans previously identified by the carrier at a discount that do not exceed one calendar year (12 monthly billing cycles). For each promotional plan, the carrier should identify: (1) to which existing plan(s) the promotion applies; (2) the number of monthly billing cycles the promotion will apply to the subscriber; and (3) the average gross discount amount.

The growing need for comprehensive universal service reform necessitates a comprehensive data collection effort by the Commission. In addition to the recommended data collection for calling plans, the MDTC observes that several other factors should also be taken into account. For instance, local exchange carriers that properly file a Statement of Business Operations and intrastate tariff with the MDTC are authorized to provide telephone service throughout the state.[50] In theory, all Massachusetts carriers' plans are available throughout the state, which includes both urban and rural areas. However, in reality, through limitations of either infrastructure or simple business choice and marketing, the majority of carriers only serve in more densely populated areas, or only offer certain services in particular parts of the state.[51] Therefore, the Commission must take the initial step of availing itself of a comprehensive collection of communication industry service offerings that incorporates pricing, options, and adoption information.

The MDTC recognizes that the suggested data collection potentially imposes an analytical burden on the Commission. Therefore, the MDTC suggests that the Commission provide states with the authority to aggregate and analyze the data in a manner prescribed by the Commission in an effort to mitigate the burden this data collection effort may impose on the

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[50] *See* Mass. Gen. Laws c. 159, § 19; 220 C.M.R. §§ 5.00 *et seq.*; *Investigation by the Department of Public Utilities on its own motion into the regulatory treatment of telecommunications common carriers within the Commonwealth of Massachusetts*, Docket No. D.P.U. 93-98, Final Order, at 12 (May 11, 1994). The Department of Public Utilities was a predecessor agency of the MDTC.

[51] *See, e.g.*, Verizon New England d/b/a Verizon Massachusetts, Tariff MDTE MA No. 10, § 14.2.17 (filed June 1, 2009; effective July 1, 2009, through Aug. 15, 2009). This tariff provision was a promotion that provided a $10 discount for 12 months to residential consumers who subscribed to a bundle that included local and long distance calling and either or both of Verizon's FiOS video or data product. *Id*. Verizon offered this promotion to customers who subscribed to service between July 1, 2009, and August 15, 2009. *Id*. In Massachusetts, the Verizon service territory encompasses 347 of the 351 municipalities in Massachusetts. However, by July 1, 2009, Verizon's FiOS product offerings were limited to approximately 94 of Massachusetts' densely populated municipalities. Therefore, consumers in 73% of the municipalities served by Verizon could not take advantage of this particular promotion.

Commission.[52] In addition, states could utilize the information as support for their certifications to the Commission or as a resource for state universal service support mechanisms.

4. ***The MDTC supports the Commission's tentative conclusion that a review of "sufficient" universal service should balance the statutory principles of reasonable comparability and affordability of rates in areas served by non-rural carriers with affordability of rates in other areas where customers are net contributors***

Section 254(e) specifies that the universal support received by carriers "should be explicit and sufficient to achieve the purposes of [Section 254]."[53] The Commission seeks comment on its tentative conclusion "that in designing its non-rural high-cost mechanism the Commission should principally balance the statutory principles of reasonable comparability and affordability of rates in areas served by non-rural carriers … with affordability of rates in other areas where customers are net contributors to universal service funding," noting the recent determination made by the United States Court of Appeals for the District of Columbia Circuit that "the concept of 'sufficiency' can reasonably encompass 'not just affordability for those benefited, but fairness for those burdened.'"[54] The Commission observes that if it "dramatically increased the size of the non-rural fund to reduce rural rates to make them more comparable to the lowest urban rates, carriers serving other areas of the country would likely increase their rates to pay for the spike in their non-rural support contributions, making rates in those areas less affordable."[55]

The MDTC fully supports the Commission's tentative conclusion to balance the principles of reasonable comparability and affordability of rates in areas served by non-rural

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[52] MDTC staff, for instance, has experience performing this kind of analysis.

[53] 47 U.S.C. § 254(e).

[54] *Interim Changes FNPRM*, ¶ 33 (citing *Rural Cellular Ass'n v. FCC*, 2009 WL 4722826, at *6 (D.C. Cir.)). The MDTC acknowledges that the Commission made several other general inquiries on how to define "sufficient" and how it should utilize the principles of Section 254(b) in the definition, but the MDTC refrains from comment on those inquiries at this time. *See Interim Changes FNPRM*, ¶¶ 28-32, 34-36.

[55] *Interim Changes FNPRM*, ¶ 32.

carriers with affordability of rates in other areas where customers are net contributors, at least until comprehensive universal service reform can be implemented.[56] Massachusetts is a net contributor state that receives in support only a fraction of the contributions it makes to the Universal Service Fund ("USF"). For instance, in Massachusetts, service providers received a total of $36,467,000 in USF support (only $2.365 million towards high-cost support) in 2008, but state contributions totaled $163,789,000.[57] Since 2006, this equates to a $5 million reduction of total USF support for Massachusetts, but an increase of contributions by over $7 million.[58] Therefore, the MDTC maintains its position that "[u]niversal service policy should be designed to maintain or increase subscribership – not to transfer wealth from low-cost to high-cost regions,"[59] and would not support any action that would further increase net contributions from this state.

5. ***The Commission must ensure that it continues to collaborate with the Federal-State Joint Board on Universal Service***

When Congress implemented Section 254, it directed the Commission to "institute and refer to a Federal-State Joint Board [on Universal Service]" to make recommendations to implement the universal service provisions of the 1996 Telecommunications Act.[60] The

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[56] The MDTC currently refrains from commenting on the Commission's other 'sufficiency.'

[57] *See Universal Service Monitoring Report – Data Received through August 2009*, CC Docket No. 98-202, at 1-39 (Table 1.12), 3-27 (Table 3.14) (rel. Dec. 2009).

[58] *See Universal Service Monitoring Report – Data Received through June 2007*, CC Docket No. 98-202, at 1-37 (Table 1.12), 3-27 (Table 3.14) (rel. Dec. 2007).

[59] MDTC Comments, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, at n.81 (filed Nov. 26, 2008); MDTE Reply Comments, CC Docket No. 01-92, at 5 (filed July 20, 2005); MDTE Reply Comments, CC Docket Nos. 96-45 and 97-160, at 2 (filed May 29, 1998).

[60] 47 U.S.C. § 254(a).

Commission established this Joint Board in March 1996.[61] Congress required the Commission to not only utilize the Joint Board for creation of the USF but also anticipated that it would utilize the Joint Board for any changes to the universal service mechanisms. For instance, the statute permits the Joint Board to occasionally recommend to the Commission modifications of the services supported by the universal service mechanisms,[62] and imparts authority on the Joint Board and Commission to establish any other principles under Section 254(b) that they "determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter."[63] Since the Joint Board's creation, the Commission has repeatedly sought the Joint Board's recommendations with regard to the USF.[64] Now that the Commission is contemplating interim changes to the non-rural high-cost mechanism and comprehensive universal service reform, the MDTC urges the Commission to continue to ensure its collaboration with the Joint Board.

III. CONCLUSION

In summary, the MDTC tentatively supports the Commission's temporary postponement of reform of the non-rural high-cost mechanism until after the Commission's issuance of the National Broadband Plan and comprehensive universal service reform, as long as the Commission commits to a strict timeline for that reform. In addition, the MDTC tentatively supports expanding the definition of "reasonably comparable" rural and urban rates to include

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[61] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (rel. Mar. 6, 1996).

[62] 47 U.S.C. § 254(c).

[63] 47 U.S.C. § 254(b)(7).

[64] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, FCC 02-41 (rel. Feb. 15, 2002); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, FCC 04-127 (rel. June 8, 2004).

bundled service rates as a part of more comprehensive reform and believes that the Commission should also incorporate an appropriate analysis of costs and types of services provided into that definition. However, the MDTC believes that the Commission needs to address the Tenth Circuit's remand to "pair rates to costs" on the currently supported services as the court directed the Commission to do five years ago.

In preparation for comprehensive reform, the MDTC recommends that the Commission update and mandate data filings from all types of voice and broadband providers, even those not currently eligible for universal service support. As such, the MDTC offers several data collection recommendations to the Commission.

Further, the MDTC offers support to the Commission's determination to balance the statutory principles of reasonable comparability and affordability of rates in areas served by non-rural carriers with affordability of rates in other areas where customers are net contributors. Finally, the MDTC urges the Commission to collaborate further with the Federal-State Joint Board on Universal Service.

The MDTC thanks the Commission for this opportunity to comment.

Respectfully submitted,

_____/s/_____
Geoffrey G. Why
Commissioner