

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  
QWEST COMMUNICATIONS INTERNATIONAL INC.**

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February 12, 2010

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Qwest Communications International Inc. (Qwest) submits these reply comments in response to the Federal Communications Commission's (Commission) *Further Notice of Proposed Rulemaking (FNPRM)* released on December 15, 2009 in the above-referenced dockets.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Several commenters recognize the thin legal ice on which the Commission is attempting to tread. If the Commission adopts its tentative conclusions it will fail to satisfy its legal obligations both to the federal judiciary and the U.S. Congress. The Commission must change course and substantively modify the non-rural high-cost support mechanism to enable a solid, effective path to comprehensive universal service reform under its National Broadband Plan.

Contrary to the Tenth Circuit's directives in *Qwest II*, the Commission's tentative conclusions fail to adequately define "sufficient" or "reasonably comparable" and do not justify sustaining the current non-rural high-cost distribution mechanism. The existing program fails to ensure sufficient support and reasonably comparable rates and services for high-cost areas such that the Commission can only comply with its remand and statutory obligations through

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<sup>1</sup> *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, FCC 09-112, Further Notice of Proposed Rulemaking, WC Docket No. 05-337 and CC Docket No. 96-45, rel. Dec. 15, 2009.

substantive reform of the program. Implementing appropriate substantive reforms now -- including re-targeting support to high-cost wire centers and implementing fixed-percentage-based benchmarks -- should be a beneficial, not harmful, step toward transitioning high-cost support to include broadband under the National Broadband Plan. The Commission can adopt and immediately implement Qwest's proposal or a modified version of that proposal without additional proceedings to determine costs or targeting and it can quickly make adjustments to provide support at the sub-wire center level if there is a facilities-based unsubsidized competitor in the core area of the wire center.

**II. THE COMMISSION'S TENTATIVE CONCLUSIONS DO NOT SATISFACTORILY DEFINE "SUFFICIENT" OR "REASONABLY COMPARABLE" AND DO NOT JUSTIFY SUSTAINING THE CURRENT NON-RURAL HIGH-COST DISTRIBUTION MECHANISM.**

As Qwest argued in its opening comments, the Commission cannot appropriately define "sufficient" support if it starts from the prerequisite that there can be no increase to the non-rural high-cost fund. Comcast and Verizon support the Commission's tentative conclusion that any modifications to the non-rural high-cost support program to address the Tenth Circuit's remand directives should not increase significantly the amount of high-cost support for non-rural carriers.<sup>2</sup> Commenters supporting this view point to the explosive growth of the high-cost fund and the significant increase in the USF contribution factor.<sup>3</sup> This argument incorrectly implies that unaddressed shortcomings in the Commission's universal service rules can excuse the agency's legal obligation to comply with the Tenth Circuit's order. It is evident that significant changes to the USF are needed to reduce the size of the fund, more equitably and broadly distribute fund contribution obligations, and ultimately support broadband deployment in high-

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<sup>2</sup> Comcast at 2; Verizon at 2-3.

<sup>3</sup> Comcast at 2; Verizon at 3.

cost areas. But, those problems must be addressed directly, and cannot trump the Commission's legal obligation to implement a valid high-cost program for non-rural carriers.

Sufficient high-cost support for non-rural carriers must ensure affordable and reasonably comparable rates and services in rural, insular and high-cost areas. In the *FNPRM*, the Commission does not offer any definition of "reasonably comparable" so as to satisfy its remand obligation to provide a definition that comports with its duty to advance universal service. Instead, the Commission proposes that currently high telephone subscriber penetration rates demonstrate that current rural rates are affordable and reasonably comparable and that current high-cost support to non-rural carriers is sufficient.<sup>4</sup> Commenters including Qwest have noted that the Commission's reliance on subscriber penetration rates as demonstrating that rural rates are reasonably comparable to urban rates is incorrect.<sup>5</sup> Nor does the level of telephone subscriber penetration provide any insight into whether rural *services* are reasonably comparable to services provided in urban areas.<sup>6</sup> As such, the high level of telephone subscribership by itself does not demonstrate that rural rates and services are reasonably comparable to rates and services provided in urban areas. In turn, high telephone subscriber penetration fails to demonstrate that

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<sup>4</sup> *FNPRM* ¶ 34.

<sup>5</sup> *See, e.g.*, RCA at 15; Qwest at 16-17. Further, the telephone subscribership report itself is based on state-wide statistics. There are no results for non-rural company serving areas separate from rural company serving areas or general urban/rural breakout. Consequently, the statistics do not provide the detail that would indicate whether penetration rates in rural areas are similar to penetration rates in urban areas.

<sup>6</sup> Nor is the issue of reasonably comparable services a minor one. As the Maine PUC, *et al.*, commenters have noted, service availability and comparability is a serious concern in states with significant high-cost areas. Maine PUC, *et al.*, at 8.

non-rural high-cost support is *sufficient* to ensure the reasonable comparability of those rates and services.<sup>7</sup>

The Commission must adequately explain how any definition of reasonably comparable that it adopts advances universal service. Further, the Commission must address the failure of the current non-rural high-cost program to ensure reasonably comparable rates for consumers in rural, high-cost and insular areas “in *all* regions of the Nation.”<sup>8</sup> The Commission cannot justify this failure of the current program through explanation. It must take substantive action to modify the program to accomplish reasonably comparable rural rates throughout the Nation.

Commenters that support the Commission maintaining the existing mechanism apparently do not find problematic the current lack of sufficient support or reasonably comparable rates. Even supporters of the *FNPRM* have acknowledged that the Commission has failed to ensure reasonably comparable rates using the existing non-rural high cost support mechanism.<sup>9</sup> And, contrary to Verizon’s comments, the Commission cannot assert that the existing mechanism has accomplished reasonably comparable rates when it is on notice that at least two states -- Vermont and Wyoming -- do not and consistently have not had reasonably comparable rates.<sup>10</sup> The statute says that “[c]onsumers in *all* regions of the Nation” should have

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<sup>7</sup> See also USA Coalition at 6-7 (noting that national telephone penetration statistics fail to demonstrate that support to rural, insular and high-cost areas ensures affordable services or the availability of services that are reasonably comparable to those in urban areas).

<sup>8</sup> See 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>9</sup> See NASUCA at 8 and n.27 (noting that NASUCA’s data on the rural rates of non-rural carriers reveals that not all such rates are reasonably comparable to urban rates under the current mechanism).

<sup>10</sup> See Maine PUC, *et al.*, at 16; Wyoming PSC at 18. In examining the data and arguments that Verizon presented in its Tenth Circuit Remand *NOI* comments on this issue, one sees that Verizon also recognized that Wyoming’s rural rates were not reasonably comparable to its urban rates, but dismissed this situation based on Wyoming’s “unique rate structure.” Verizon *NOI* comments, CC Docket No. 96-45 and WC Docket No. 05-337, filed May 8, 2009 at 15-16.

access to services and rates that are reasonably comparable to those in urban areas.<sup>11</sup> Reasonably comparable rates in *most* regions of the Nation do not accomplish this principle. The Commission's failure to act where Wyoming has consistently certified that rates are not reasonably comparable and has petitioned the Commission for more federal support, discredits any argument that the non-rural high cost support program meets the statutory obligation to ensure reasonably comparable rates.

### **III. SUBSTANTIVELY REFORMING THE NON-RURAL HIGH-COST SUPPORT PROGRAM NOW WILL AID, NOT HARM, FUTURE NATIONAL BROADBAND PLAN UNIVERSAL SERVICE REFORM.**

To comply with its statutory and remand obligations, the Commission must make substantive changes to the non-rural high-cost program now. It should not invoke comprehensive USF reform and broadband reform to delay addressing the Tenth Circuit's directives in a meaningful manner.<sup>12</sup> Verizon argues that because the Commission has indicated that it intends to move high-cost support away from legacy voice services and toward broadband, 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."<sup>13</sup> This statement is problematic for at least two reasons. First is the assumption that any modification to the non-rural high cost program here would only be "for a short time." This is far from certain. In 1998, the Commission issued safe harbor percentages for wireless carriers to use to allocate interstate and

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Ironically, it is primarily the truly cost-based nature of Wyoming's rural rates that cause the rural rates to be significantly higher than the more urban rates in Wyoming. The one instance in which there is empirical data of high costs causing high rates is dismissed as an anomaly instead of being recognized for the true state that it reveals: when all implicit subsidies are removed, the non-rural high cost program does not provide sufficient support to ensure reasonably comparable rates.

<sup>11</sup> 47 U.S.C. § 254(b)(3).

<sup>12</sup> Accord, ITTA at 8.

<sup>13</sup> Verizon at 2.

intrastate revenues for USF contribution purposes until the Commission issued final allocation rules for wireless carriers.<sup>14</sup> Since then the Commission has twice adjusted the “interim” wireless safe harbor, most recently in 2006,<sup>15</sup> but has yet to issue final allocation rules for wireless carriers, more than eleven years later. In the same Order in which the Commission adjusted the “interim” wireless safe harbor in 2006, it also took the “interim” step of establishing USF contributions for interconnected VoIP providers while the Commission examined more “fundamental reform.” That was over three and a half years ago. Also, in 2001, the Commission adopted a modified embedded cost-support mechanism for rural carriers for a five-year period beginning on July 1, 2001 and ending June 30, 2006 with the intention of completing a review of the rules relating to the rural high-cost support mechanism before the end of the five-year period.<sup>16</sup> In 2006, the Commission, having not yet completed its intended review, extended the interim rules to be effective until the Commission adopted new high-cost support rules for rural carriers. Those interim rules have now been in effect for almost nine years. Additionally, proposals for comprehensive universal service reform even if issued quickly under the NBP will

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<sup>14</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998).

<sup>15</sup> See *In the Matter of Universal Service Methodology Contribution; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

<sup>16</sup> See *In the Matter of Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Order, 21 FCC Rcd 5514 (2006).

take time to adopt and implement and will likely have significant transition periods.<sup>17</sup> Given the Commission's history with "interim" solutions and the significant universal service reforms likely to be proposed under the NBP, it is unrealistic to assume that an "interim" non-rural high cost support mechanism would only be in place for a "short time." Second, it seems premature to assume that the Commission will terminate all universal service support for narrowband voice services and focus solely on sustaining and advancing broadband service, especially in the near term.<sup>18</sup> Consequently, the Commission should now correct the manner in which it distributes high-cost support for non-rural carriers as a logical step in overall reform of the USF.

As ITTA, US Telecom, and others have commented, re-targeting support to high-cost wire centers is and will remain a more rational distribution of high-cost support than current state-wide averaging in today's more competitive marketplace.<sup>19</sup> It is thus an effective way to advance universal service in response to the Tenth Circuit's concerns, and it also should be a useful step in transitioning high-cost support to include broadband services. The NBP is not a reason to wait to reform the high-cost mechanism, instead it is a reason to push forward with fixing this mechanism now for the benefit of establishing a more rational distribution methodology for future high-cost universal service support.<sup>20</sup>

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<sup>17</sup> See *CenturyLink, et al.*, at 6; AT&T at 12.

<sup>18</sup> See also *CenturyLink, et al.*, at 7-8 (noting that entirely shifting existing non-rural high-cost support to broadband services would be unwise as it would inhibit carriers' ability to meet carrier of last resort obligations and could undermine private sector broadband investment).

<sup>19</sup> See ITTA at 6-7; US Telecom at 3-5; *CenturyLink, et al.*, at 3.

<sup>20</sup> See *CenturyLink, et al.*, at 4 (noting that re-targeting non-rural high-cost support more granularly would focus support on the areas that will also need broadband support to achieve ubiquitous deployment); *Maine PUC, et al.*, at 23 (stating that "[s]ince incumbent carriers are likely to use many of the same facilities to deliver broadband that they now use to deliver voice service, solving the current problems would likely make the transition to broadband support easier, not harder.") But, Qwest does not agree with the view of *CenturyLink* and its fellow commenters that this proceeding is the right place to move to high-cost support for broadband

Nor is the NBP a reason to eliminate non-rural high cost support. As long as there are lines where costs to provide telecommunications services over those lines exceed an affordable rate that is reasonably comparable to urban rates, and there is no facilities-based competitor providing unsubsidized substitutable service to consumers served by those lines, there will be a need for high-cost universal service support. The New Jersey Division of Rate Counsel (NJ Rate Counsel) wholly fails to recognize the reality of maintaining plant in high-cost areas, and that the cost of providing broadband in many of the high-cost areas that now have voice services, may be prohibitively expensive for years to come, even with the prospect of federal support for broadband deployment to unserved areas. In turn, the NJ Rate Counsel's comments that non-rural high-cost support for voice services should not be increased, but instead eliminated,<sup>21</sup> are out-of-touch with reality and lose sight of the critical obligation to *preserve* universal service.

#### **IV. THE COMMISSION MUST RE-TARGET SUPPORT TO HIGH-COST WIRE CENTERS AND IMPLEMENT FIXED-PERCENTAGE-BASED BENCHMARKS NOW.**

The Commission needs to move forward with implementing a valid non-rural high-cost support program, and Qwest continues to encourage the Commission to adopt Qwest's proposal.<sup>22</sup> Several commenters advocate that the Commission must take steps to enable the fund to provide "sufficient" support.<sup>23</sup> Those approaches will likely result in increasing the size

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deployment. Addressing universal service support for broadband in this proceeding is beyond the scope of the Tenth Circuit's remand and significantly complicates the clear issues presented in the remand.

<sup>21</sup> See NJ Rate Counsel at 6-7.

<sup>22</sup> Qwest May 5, 2008 *ex parte*, CC Docket No. 96-45, WC Docket No. 05-337, and the attached *Proposal for Implementing the Tenth Circuit's Remand in Qwest II*, as modified by Comments of Qwest Communications International Inc., WC Docket No. 05-337, CC Docket No. 96-45, filed May 8, 2009 at 12-13.

<sup>23</sup> See, e.g., AT&T at 6-9; ITTA at 5.

of the non-rural high-cost support fund to some extent. But, the Commission must implement material modifications now because the non-rural high-cost program support has been insufficient for too many years, remains insufficient, and will continue to be insufficient for several more years if substantive changes are not made.

Qwest offers a solution that provides for targeted funding to the wire center or a portion of the wire center without an unsubsidized competitor. The Commission can use the existing high-cost model to target the funding to the wire center and adjust the benchmark such that the fund provides sufficient additional support. Qwest continues to believe that the cost benchmark should be 125% of the national average urban rate, but the Commission could conclude after a proper balancing of the section 254(b) principles that a higher benchmark would still enable sufficient support. The rate benchmark should be a comparison within each state where rural rates should be not more than 125% of the statewide average urban rate to be reasonably comparable.<sup>24</sup> At a minimum, the Commission should eliminate use of statewide average costs and re-target support to high-cost wire centers, and the Commission should eliminate use of the standard-deviations-based cost and rate benchmarks and implement fixed-percentage-based benchmarks.

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<sup>24</sup> The Commission has the flexibility to define these benchmarks to enable sufficient support and ensure affordable and reasonably comparable services and rates in rural areas, so long as the Commission establishes these benchmarks after a proper consideration and balancing of the section 254(b) principles and its obligations to preserve and advance universal service. Within the comments, there is support for shifting the current cost and rate benchmarks from the 2.0 standard deviation benchmarks to fixed-percentage benchmarks that would reduce the range of non-supported costs and the range of reasonably comparable rates that are permitted under the current approach. *See, e.g.*, RCA at 19 (proposing adoption of a reasonably comparable rate benchmark of 125% of the national average urban rate); Maine PUC, *et al.*, at 14-15 & 18 (discussing the design flaws in the current two-standard-deviations-based benchmark and proposing a comparability benchmark at 125% of the average urban rate); Wyoming PSC at 14 (proposing 125% funding benchmark for very sparsely populated areas); *see also* AT&T at 7 (proposing use of a rate comparability factor).

AT&T has offered a substantive interim approach, but its proposal has significant policy and implementation drawbacks. From the policy side, the AT&T proposal removes the existing flexibility that state commissions and non-rural ETCs have to utilize support in a manner that meets the individual state's universal service needs. AT&T states that non-rural USF should only be used to lower intrastate access charges.<sup>25</sup> If the Commission adopted this policy, the Wyoming PSC could not target support as bill credits against the local service rate to ensure reasonably comparable rural rates, nor could the West Virginia Commission work with Verizon to target capital projects that meet the universal service needs of West Virginia residents. Additionally, the AT&T proposal also would reduce the ability of ETCs to expand broadband plant because USF revenues would be offset with access reductions. Though AT&T states non-rural support should not hinder non-rural carriers' ability to deploy broadband, implementation of the AT&T proposal will hinder the ability of non-rural carriers to deploy these services.

Any interim plan adopted is likely to last several years until comprehensive reform takes place. AT&T's plan would require the Commission to develop new targeting procedures and new methods of calculating costs in high cost areas. Any new mechanism will take years of proceedings to develop. But, if the Commission adopts a version of the Qwest plan, it can immediately implement such a plan without protracted dockets to determine costs or targeting. The Commission needs only to establish a new benchmark and use the existing high-cost model to target support to the wire center. Adjustments can easily be made if support needs to be targeted at the sub-wire center level if there is an unsubsidized competitor in the core area of the wire center.

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<sup>25</sup> AT&T at 8.

## V. CONCLUSION

It has been five years since the Tenth Circuit ordered that the Commission address the flaws in the non-rural high-cost support mechanism. Since then the Commission has failed to address the issue. Now when the Commission has agreed to address the issue by a specific date, it claims that it “will have insufficient time, between release of the National Broadband Plan in February and our deadline for responding to the court in April, to implement reforms to the high-cost universal service mechanisms consistent with the overall recommendations in the National Broadband Plan.”<sup>26</sup> This timing problem has been created only by the Commission’s failure to act in a responsible and responsive manner.<sup>27</sup> The Commission has a legal obligation to remedy the non-rural high cost support mechanism by April 16, 2010. It needs to satisfy that legal obligation and it needs to issue its National Broadband Plan which reportedly will include suggested comprehensive universal service reforms. There is no reason it cannot and should not do both.<sup>28</sup>

At the end of the day, if the Commission adopts its tentative conclusions, all it will have done is provide more excuses for ignoring the Tenth Circuit’s directives on implementing a valid non-rural high-cost support program. In doing so, the Commission will continue to deny reasonably comparable services at affordable and reasonably comparable rates to consumers in high-cost areas served by non-rural carriers. It is Qwest’s sincere hope that this Commission will not adopt its ill-founded tentative conclusions and instead institute substantive modifications to accomplish a valid non-rural high-cost support mechanism, and re-establish a solid footing for

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<sup>26</sup> *FNPRM* ¶ 12.

<sup>27</sup> *See* Maine PUC, *et al.*, at 2.

<sup>28</sup> *See id.* at 21 (noting that while “NBP elements may impact the high-cost mechanism later, the Commission must comply with *Qwest II* now.”)

advancing universal access to current and future supported services in high-cost areas throughout the nation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**  
**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed  
with the FCC via its Electronic Comment Filing System in WC Docket No. 05-337 and CC  
Docket No. 96-45; 2) served via email on Ms. Katie King at [Katie.King@fcc.gov](mailto:Katie.King@fcc.gov); and 3) served  
via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at  
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/s/ Richard Grozier

February 12, 2010