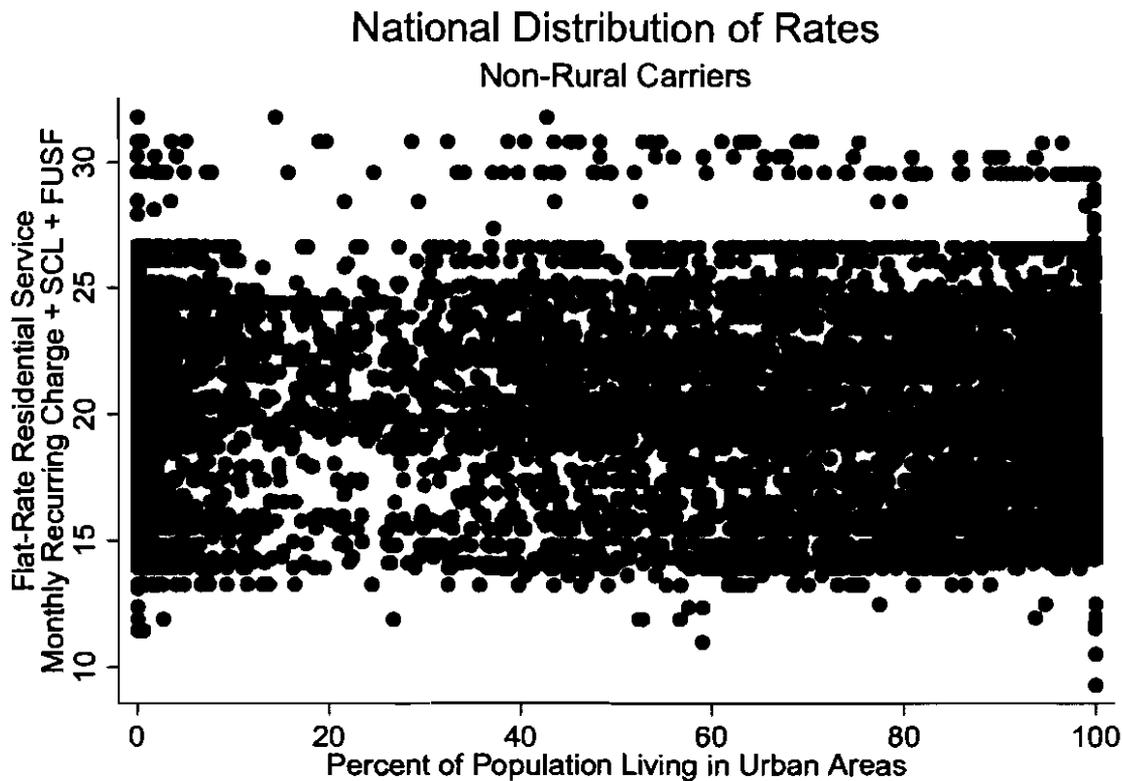


46. Moreover, as illustrated by NASUCA's graph below, the range of rates does not vary greatly as a function of urbanization.



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Given these descriptive statistics and the distribution of the rates, differences among urban rates are similar to differences among urban and rural rates.

47. Our own state-by-state review of NASUCA's data revealed that rural wire centers generally had lower rates than urban wire centers, holding the state constant.<sup>155</sup> In 42 of the 50 states, the average

<sup>154</sup> NASUCA Remand NPRM Comments at 40 & App. C1.

<sup>155</sup> Staff compared urban and rural rates by state using NASUCA's data, as corrected in NASUCA's Remand NPRM Reply Comments. *See* App. C; *see also* NASUCA Remand NPRM Reply Comments at Attach. 2. Staff classified wire centers as urban if the population was at least 90 percent urban and rural if the population was no more than 10 percent urban, based on NASUCA's definition of "urban." *See* NASUCA Remand NPRM Comments at App. C1 (defining "urban"). Specifically, the "percent urban" of each wire center was determined by overlaying census block boundaries and wire center boundaries, then using the associated block-level census data on the population of the block in urban areas to determine the overall "urbanness" of the wire center. *See id.* According to the Census Bureau, an urban area "generally consists of a large central place and adjacent densely settled census blocks that together have a total population of at least 2,500 for urban clusters, or at least 50,000 for urbanized areas. Urban classification cuts across other hierarchies and can be in metropolitan or non-metropolitan areas." *See id.* We note that if wire centers were classified as urban only if the population was 100 percent urban, then in 30 of the 37 states containing both urban and rural wire centers, the average rate in rural wire centers was less than or equal to the average rate in urban wire centers. The average of the difference between the mean urban rate and the mean non-urban rate within a state was about \$1. Also, in 31 of the 37 states, the median rate in rural wire centers was less than

(continued...)

rate in rural wire centers was less than or equal to the average rate in urban wire centers. The average of the difference between the mean urban rate and the mean non-urban rate within a state was about \$0.71. Also, in 44 of the 50 states, the median rate in rural wire centers was less than or equal to the median rate in urban wire centers. The average of the difference between the median urban rate and the median non-urban rate within a state was about \$0.79.

48. Data filed by Verizon in response to the 2009 *Remand NOI* confirms NASUCA's findings and our conclusion that rural and urban rates are reasonably comparable. Verizon submitted a declaration by Alan Buzacott, which contains a survey and analysis of tariffed rural and urban rates (in effect as of May 2009) charged by non-rural carriers in all 50 states, plus the District of Columbia and Puerto Rico.<sup>156</sup> The Buzacott declaration finds that in 18 states and the District of Columbia, the largest non-rural carrier offers basic residential local exchange service at the same rate in all exchanges throughout the state.<sup>157</sup> For example, Qwest offers a single rate of \$14.88 in all exchanges throughout the state of Colorado. In states where a non-rural carrier does charge different basic residential local exchange rates within the state, the Buzacott declaration finds that rates in urban areas tend to be higher than rates in rural areas.<sup>158</sup> Specifically, in 52 of the 53 study areas where a non-rural carrier's basic tariffed residential local exchange rates vary between exchanges in the study area, the basic tariffed residential local exchange rate is highest in the most populated areas within a state.<sup>159</sup> Even when a mandatory extended area service (EAS) increment is included in the rate, only a handful of rural exchanges in 3 of the 53 study areas have a combined rate than that is higher than the rate in the urban exchanges.<sup>160</sup>

49. In *Qwest II*, the Tenth Circuit focused on the disparity between rural rates and the lowest urban rate, and noted that a rural rate could be 100 percent more than the lowest urban rate.<sup>161</sup> Such an anomaly can be explained by the variability of rate policies among the states and does not undermine our conclusion that rural and urban rates are reasonable comparable. Because states exercise considerable discretion in setting rural and urban rates, there is considerable variation among states.<sup>162</sup> A comparison of rural rates to the lowest urban rate would be heavily influenced by a particular state's rate policies.<sup>163</sup> For this reason, the general consensus in the record – even among those parties that ask the Commission

(Continued from previous page) \_\_\_\_\_

or equal to the median rate in urban wire centers. The average of the difference between the median urban rate and the median non-urban rate within a state was about \$1.14. For each state, the unweighted mean and median were calculated separately across the groups of urban and rural wire centers, rounded to the nearest cent, then differenced.

<sup>156</sup> Verizon NOI Comments, Exhibit 2 (Declaration of Alan Buzacott). Verizon defined a "rural area" as "any nonmetropolitan statistical area (MSA) county or county-equivalent, as defined by the Office of Management and Budget." *Id.* at 2.

<sup>157</sup> *See id.* at para. 5.

<sup>158</sup> *See id.* at para. 6.

<sup>159</sup> *See id.* at para. 7.

<sup>160</sup> *See id.* at para. 7.

<sup>161</sup> *See Qwest II*, 398 F.3d at 1237 ("rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%").

<sup>162</sup> *Order on Remand*, 18 FCC Rcd at 22586, para. 44.

<sup>163</sup> *Id.* Urban rates also vary compared to the lowest urban rate. *See supra* paras. 44-46.

to adjust the rate benchmark – is that the average urban rate – and not the lowest urban rate – is the appropriate point of comparison for purposes of determining “reasonable comparability.”<sup>164</sup>

**b. Where a State Demonstrates That Rates Are Not Reasonably Comparable and That Further Federal Action is Required, We Will Provide Appropriate Relief**

50. Only one state – Wyoming – has demonstrated that its rural rates are not reasonably comparable to nationwide urban rates and requested relief based on that demonstration. In light of Wyoming’s unique circumstances, in section III, below, we grant, with modifications, the joint petition filed by the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for supplemental high-cost universal service support for rural residential customers of Qwest, Wyoming’s non-rural incumbent LEC.<sup>165</sup> As explained below, we find that the Wyoming petitioners have demonstrated that supplemental high-cost support is warranted to achieve reasonably comparable rates under the current non-rural high-cost support mechanism.

51. We see no reason to revise our non-rural high-cost support mechanism just to address Wyoming’s unique needs. Rather, we believe that unique situations like Wyoming’s can best be addressed on an individualized, case-by-case basis.<sup>166</sup> In the future, if any other state presents us with documentation that unique circumstances prevent the achievement of reasonably comparable rates in that state, we can provide appropriate relief, just as we have done in the case of Wyoming.

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<sup>164</sup> See Vermont/Maine NOI Comments at 5 (proposing a comparability benchmark at 125% of the average urban rate); RCA NOI Comments at 19 (proposing a comparability benchmark at 125% of the national average urban rate); Qwest FNPRM Comments at 20 (proposing a comparability benchmark at 125% of the statewide urban average rate for similar services within a state). Indeed, the general consensus on this issue is that the average urban rate offers the optimal baseline for comparison. See, e.g., NASUCA NOI Comments at 17 (“There is no basis for using the lowest urban rate as any kind of benchmark. Congress required the USF to ensure that rural rates generally be reasonably comparable to urban rates generally, not to any specific urban rate, much less the lowest urban rate.”); *id.* at 27 (“There was no indication that Congress intended the comparison to be to the lowest urban rates; if so, there would be support for a multitude of rural customers without any support for urban customers who pay the same – or higher – rates.”); Verizon FNPRM Comments at 7 (“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.”); CTIA FNPRM Comments at 8 (“CTIA agrees with the Commission’s observation that the statute does not require the Commission to make rural rates comparable to the ‘lowest urban rates,’” given that “incumbent LEC rates in rural areas are often lower than incumbent LEC rates in urban areas.”); USTelecom FNPRM Comments at 5 (“Section 254(b)(3) requires only that rural and 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.”); MDTC FNPRM Comments at 8; AT&T FNPRM Comments at 7.

<sup>165</sup> See Wyoming Petition.

<sup>166</sup> See NASUCA FNPRM Reply Comments at 8-9 (recommending that the FCC “respond to Wyoming’s petition” for supplemental funding “to address Wyoming’s situation” rather than “changing the fundamental mechanism so that Wyoming’s needs can be met”).

**c. Because Rural Rates Are Reasonably Comparable to Urban Rates, They Have Advanced Universal Service, Evidenced by An Overall Increase in Telephone Subscribership**

52. When the Tenth Circuit remanded the Commission's definition of "reasonably comparable" in *Qwest II*, the court expressed concern that the definition did not take into account the Commission's statutory duty to advance universal service. The court noted that section 254(b) referred to "policies for the preservation *and advancement* of universal service."<sup>167</sup> The court reasoned that the Commission, by adopting a definition of "reasonably comparable" that preserved existing rate disparities, was "ignoring its concurrent obligation to advance universal service, a concept that certainly could include a narrowing of the existing gap between urban and rural rates."<sup>168</sup> The court directed the Commission on remand to "define the term 'reasonably comparable' in a manner that comports with its concurrent duties to preserve and advance universal service."<sup>169</sup>

53. On remand, we adopt a new definition of "reasonably comparable." We find that rural rates are "reasonably comparable" to urban rates under section 254(b)(3) if they fall within a reasonable range of the national average urban rate. In our judgment, our existing rate benchmark ensures that rural rates will fall within a reasonable range (*i.e.*, two standard deviations) of the national average urban rate. The record in this proceeding demonstrates that rates within this range have generally resulted in an increase in overall telephone subscribership, thereby "advancing" the most fundamental goal of universal service.<sup>170</sup> We further conclude that the non-rural support mechanism, as currently configured, produces rates that meet the requirements of section 254(b)(3). This conclusion is supported by our demonstration above that the rural and urban rates are, in fact, reasonably comparable and by evidence of an increase in telephone subscribership penetration rates nationwide.

54. In *Qwest II*, the Tenth Circuit seemed concerned that, unless the Commission took action to reduce the existing variance in rates between rural and urban areas, rural rates would be too high to ensure universal access to basic service. "Rates cannot be divorced from a consideration of universal service," the court said, "nor can the variance between rates paid in rural and urban areas. If rates are too high, the essential telecommunications services encompassed by universal service may indeed prove unavailable."<sup>171</sup> The fact that telephone subscribership penetration rates have increased since Congress enacted section 254 demonstrates that rates are not too high under the Commission's universal service program; indeed, the essential telecommunications services encompassed by universal service have become more available than ever before, with telephone subscribership rates recently reaching an all-time high. The overall increase in the telephone subscribership penetration rates since the enactment of our

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<sup>167</sup> 47 U.S.C. § 254(b) (emphasis added).

<sup>168</sup> *Qwest II*, 398 F.3d at 1236.

<sup>169</sup> *Id.* at 1237.

<sup>170</sup> The statute does not impose a particular definition of "advancement" of universal service and thus the Commission has substantial discretion to interpret this obligation. We believe that advancement can occur in a variety of ways, including (but not limited to) increasing subscription rates, increasing use of telecommunications services, or increased access to different types of services. As set forth herein, the Commission's current universal service support mechanisms have advanced universal service in all of these ways.

<sup>171</sup> *Id.* at 1236.

universal service policies in 1996 demonstrates that the Commission has satisfied its duty to advance universal service.<sup>172</sup>

55. We further find that the development of new telecommunications technologies has furthered the universal service principles in the Act, particularly reasonable comparability. New services are increasingly replacing traditional wireline telephone service, and universal service funding, primarily high-cost support, has helped subsidize their deployment.<sup>173</sup> Consumers now enjoy a variety of competitive options for all-distance voice services – including services provided by mobile wireless service providers, large cable operators, and over-the-top VoIP providers.<sup>174</sup> The rates for these nationwide “all distance” services do not typically vary between urban and rural areas.<sup>175</sup> This provides the Commission even greater assurance that telecommunications services will be available in rural areas at rates that are reasonably comparable to rates in urban areas, even as customers migrate from traditional wireline voice service.<sup>176</sup>

56. The Tenth Circuit directed the Commission on remand to define “reasonably comparable” in a manner that both preserves and advances universal service.<sup>177</sup> Since the *Remand Order*, telephone

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<sup>172</sup> We reject the notion espoused by some parties that the Tenth Circuit construed the statutory duty to “advance” universal service to require the Commission to increase non-rural high-cost support. To be sure, the court described the Commission’s “obligation to advance universal service” as “a concept that certainly *could* include a narrowing of the existing gap between urban and rural rates.” *Qwest II*, 398 F.3d at 1236 (emphasis added). But the court did not say that the advancement of universal service necessarily *would* require a reduction in existing rate variances (or, for that matter, an increase in non-rural high-cost funding). The court faulted our previous definition of “reasonably comparable” because we made no effort to show how our definition was related to our statutory duty to advance universal service. Our new definition of “reasonably comparable” cures this deficiency (by considering whether rates that fall within this range advance universal service) and thereby satisfies the court’s mandate.

<sup>173</sup> The Commission’s telephone subscribership data considers access to telecommunications service, regardless of whether access is provided by traditional or new technologies. Telephone Subscribership Report at 2.

<sup>174</sup> Indeed, more than one in five American consumers now receives basic voice telephony exclusively from a wireless carrier. CTIA FNPRM Comments at 4.

<sup>175</sup> NCTA NOI Comments at 8-9 (competitors “typically charge the same rates for voice service without regard to whether they are operating in rural or urban areas.”); Verizon NOI Comments at 16-19; USTelecom NOI Comments at 5; Time Warner Cable NOI Comments at 10 (noting that “the widespread entry of competitors like [Time Warner Cable] offering any-distance calling plans has resulted in the availability of rates that do not vary with geography”); CTIA NOI Comments at 9 (“CTIA is unaware of any significant difference between urban and rural rates for wireless services”).

<sup>176</sup> See, e.g., NCTA NOI Comments at 8-9 (“In most areas of the country, including most rural areas, consumers have multiple options for all-distance voice services from a variety of companies, including LECs, wireless carriers, and cable operators. For example, large cable operators such as Comcast, Time Warner Cable and Cox typically charge the same rates for voice service without regard to whether they are operating in rural or urban areas. In areas served by these companies, there can be no doubt that rural rates and urban rates are comparable.”); NJ Rate Counsel NOI Comments at 7 (noting that mobile wireless service providers offer “nationwide” plans, and, therefore, offer inherently “reasonably comparable” rates in rural and urban areas, and that VoIP-based services similarly are typically offered at rates that do not distinguish between rural and urban areas); Verizon NOI Comments at 16-17 (“Wireless carriers and VoIP providers, in particular, offer competing voice services (usually in bundles of access and usage) in virtually all parts of the country utilizing national pricing plans, thereby ensuring reasonable comparability between urban and rural rates.”); USTelecom NOI Comments at 5 (“It cannot be denied that these actual bundled rates are representative of urban rates and therefore any rural rates falling within the identified zone of urban rates should be considered reasonably comparable.”).

<sup>177</sup> *Qwest II*, 398 F.3d at 1236-37.

subscriber penetration rates have increased, consumer expenditures on telephone service have remained stable, and, as a result of increased broadband and wireless deployment, consumers can now choose among multiple universal service providers, not just traditional wireline telephone companies. We conclude that these marketplace developments demonstrate that the non-rural mechanism results in reasonably comparable rates that have advanced universal service.

57. We disagree with the Rural States' argument that our current mechanism does not do enough to ensure the availability of reasonably comparable "non-dial-tone" or "advanced" services in rural areas.<sup>178</sup> As an initial matter, neither the Rural States nor any other commenter has systematically analyzed the effect of the current non-rural mechanism on the deployment of such services, so we have no data upon which to assess their claims. Moreover, to date, the Commission has designated only basic local telephone service as eligible for universal service support.<sup>179</sup> Our analysis of whether the current non-rural high-cost support mechanism achieves the principle of reasonable comparability must therefore focus on the service that the mechanism was designed to fund, i.e., basic local telephone service.<sup>180</sup> The record in this proceeding shows that basic telephone service of reasonably comparable quality is available in rural and urban areas at reasonably comparable rates.

### 3. The Non-Rural High-Cost Support Mechanism

58. In *Qwest II*, the court deemed the non-rural high-cost support mechanism invalid because it rested on the application of the definition of "reasonably comparable" rates invalidated by the court.<sup>181</sup> While the court acknowledged that it "would be inclined to affirm the FCC's cost-based funding mechanism if it indeed resulted in reasonably comparable rates," it found that the Commission had failed to provide "empirical findings supporting this conclusion."<sup>182</sup> The court further noted that the Commission based the two standard deviations *cost* benchmark on a finding that *rates* were reasonably comparable, without empirically demonstrating in the record a relationship between costs and rates.<sup>183</sup> "On remand," the court directed the Commission to "utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory

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<sup>178</sup> Rural States FNPRM Comments at 7-9.

<sup>179</sup> See 47 C.F.R. § 54.101. Pursuant to this rule, the following services or functionalities shall be supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. *Id.* We recognize that the non-rural high-cost support mechanism does subsidize some wireless and broadband facilities, but only to the extent such facilities are "mixed-use" facilities that also provide basic local telephone service. *Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45 CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice Of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11321-23, paras. 197-201 (2001).

<sup>180</sup> See *infra* para. 65 (explaining that the non-rural high-cost support mechanism, as currently structured, estimates the costs of a narrowband, circuit-switched network that provides plain old telephone service, not wireless and broadband services).

<sup>181</sup> *Qwest II*, 398 F.3d at 1237.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

obligation to preserve and advance universal service.”<sup>184</sup> Below we explain and support the decision to utilize variations in cost to determine the level of high-cost support for non-rural carriers.

59. We agree with Verizon that “the Tenth Circuit did not have a problem with use of the [non-rural mechanism] – it merely wanted evidence of results.”<sup>185</sup> The court in *Qwest II* emphasized that regardless of what the Commission ultimately decided about its non-rural high-cost support mechanism on remand, “the FCC must fully support its final decision on the basis of the record before it.”<sup>186</sup> The record in this proceeding contains precisely the sort of evidence that the court previously found lacking. Unrefuted empirical evidence in the record shows that wireline telephone rates are reasonably comparable in urban and rural areas, and where there is a discrepancy, rural rates tend to be lower.<sup>187</sup> Rates are also affordable, as demonstrated by the fact that telephone subscribership penetration rates have increased while average consumer expenditures on telephone service have remained stable. This same evidence confirms that the non-rural high-cost support mechanism, working in conjunction with the Commission’s other universal service programs, provides sufficient support. The record also shows that the non-rural mechanism has both preserved *and* advanced the universal service objectives in section 254(b) of the Act, as demonstrated by increasing subscription rates and increasing access to different types of services.

60. Consequently, we conclude that no further action is required of the Commission to comply with the Tenth Circuit’s *Qwest II* decision, and we decline to adopt the handful of proposals to “reform” the non-rural mechanism.<sup>188</sup> The Commission previously rejected several of these proposals in the *Remand Order*, and we do so again here.

#### a. Cost-Based Support Mechanism

61. We find that it is appropriate to distribute universal service support in high-cost areas based on estimated forward-looking economic cost rather than on retail rates, because costs are a major factor affecting retail rates. There is overwhelming support in the record for the continued use of a non-rural support mechanism based on costs, even though there is disagreement over the design of the cost-based mechanism.<sup>189</sup> None of the commenters seriously suggested that the Commission adopt a “rate-based” approach.

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<sup>184</sup> *Id.*

<sup>185</sup> Verizon NOI Reply Comments at 5; *see also* NASUCA NOI Comments at 37.

<sup>186</sup> *Qwest II*, 398 F.3d at 1237.

<sup>187</sup> *See* NASUCA FNPRM Reply Comments at 22 (“Especially given the data on rates presented by NASUCA and Verizon ..., it does not appear that any of the proposals made in comments necessarily would bring us closer to ... a non-rural high-cost fund that meets the statutory requirements. In that context, the FCC’s decision to continue the current program pending major realignments in the National Broadband Plan makes sense.”).

<sup>188</sup> NASUCA NOI Comments at 45 (“[B]ased on the record ... there need not be increases in non-rural support in order to produce non-rural carrier rates that are reasonably comparable to urban rates,” so “[a]ny proposed mechanism that will increase the fund must be looked at with extreme skepticism.”).

<sup>189</sup> *See, e.g.*, *Qwest* FNPRM Comments at 18 (“It is ultimately where costs are high that support is needed to maintain quality services at affordable and reasonably comparable rates for the long term. Where rates are regulated to be artificially low relative to costs, it would be unwise and potentially contrary to universal service goals to interpret that no support is necessary.”); Rural States FNPRM Comments at 26; NASUCA NOI Comments at 21-24; MDTA FNPRM Comments at 7-8; CTIA NOI Comments at 15-17; Alaska NOI Reply Comments at 7-9.

62. There are numerous factors demonstrating that basing a support mechanism on costs represents a reasonable proxy to ensure that rural rates remain reasonably comparable.<sup>190</sup> Economists have long recognized the close relationship between costs and rates. Basic principles of economics demonstrate that, in perfectly competitive markets, competition will drive prices to long-run average total cost.<sup>191</sup> Similarly, in the case of regulated monopolies, regulators have traditionally set prices such that revenues will cover total regulated costs, including a normal return.<sup>192</sup> Given this close relationship between costs and prices, it follows that, if costs rise, so should prices. In addition, because the states retain jurisdiction over intrastate rates, the Joint Board and the Commission always have looked at cost differences, not rate differences, in determining high-cost support. We believe that costs are a necessary component in setting the level of regulated rates because the underlying purpose of rates is to recover, at a minimum, the cost of providing services. States with high costs would have higher rates in the aggregate than other states would, were it not for federal support.<sup>193</sup>

63. In contrast, it makes little sense to base support on current retail rates, which are the result of the interplay of underlying costs and other factors that are unrelated to whether an area is high-cost. Retail rates in many states remain regulated, and state regulators differ in their treatment of regulated carriers' recovery of their intrastate regulated costs. For example, some states still require carriers to charge business customers higher rates to create implicit subsidies for residential customers, while other regulators have eliminated such implicit subsidies in the face of increasing competition for business customers. Similarly, state regulators vary in the extent to which they have rebalanced rates by reducing intrastate access charges and increasing local rates. In addition, some states have ceased regulating local retail rates. Moreover, basing support on retail rates would create perverse incentives for state commissions and carriers to the extent that rate levels dictate the amount of federal universal service support available in a state. State commissions or carriers would have an incentive to set local rates well above cost simply to increase their states' carriers' federal universal service support. A rate-based approach could thus undermine our ability to comply with the court's prior mandate that we develop mechanisms to induce the states "to assist in implementing the goals of universal service."<sup>194</sup> Similarly, where states have deregulated retail rates, carriers facing competition may have an incentive to raise certain local rates to increase their support rather than to cut rates to meet competition.

64. Finally, we note that the Tenth Circuit did not reject the concept of non-rural support based on costs, rather than rates, so long as the non-rural mechanism produced the desired results.<sup>195</sup> Since we have unrefuted empirical evidence demonstrating that rates are reasonably comparable, we find that *Qwest II* presents no obstacle to the use of a cost-based approach.

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<sup>190</sup> See, e.g., *Ninth Report and Order*, 14 FCC Rcd at 20453-54, paras. 36-38; *Order on Remand*, 18 FCC Rcd at 22572-73, para. 23.

<sup>191</sup> See, e.g., R. PRESTON MCAFEE, INTRODUCTION TO ECONOMIC ANALYSIS 4-100 (2006), available at <http://www.introecon.com>.

<sup>192</sup> See, e.g., Alfred E. Kahn, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS, 25-26 (1970).

<sup>193</sup> See, e.g., *Ninth Report and Order*, 14 FCC Rcd at 20453-54, paras. 36-38; *Order on Remand*, 18 FCC Rcd at 22572-73, para. 23.

<sup>194</sup> *Qwest I*, 258 F.3d at 1204.

<sup>195</sup> See *Qwest II*, 398 F.3d at 1237 ("we would be inclined to affirm the FCC's cost-based funding mechanism if it indeed resulted in reasonably comparable rates").

**b. Forward-Looking Cost Model****(i) Cost Model Inputs**

65. In the *Remand NOI*, the Commission acknowledged that many of the inputs in the forward-looking economic cost model have not been updated since they were adopted a decade ago, and sought comment on the extent to which the Commission should continue to use its model in determining high-cost support without updating, changing, or replacing the model.<sup>196</sup> Virtually all commenters that addressed this issue argued that the model should be updated.<sup>197</sup> We agree that the model should be updated or replaced if a forward-looking cost model continues to be used to compute non-rural high-cost support for the long term. Not only are the model inputs out-of-date, but the technology assumed by the model no longer reflects “the least-cost, most-efficient, and reasonable technology for providing the supported services that is currently being deployed.”<sup>198</sup> The Commission’s cost model essentially estimates the costs of a narrowband, circuit-switched network that provides plain old telephone service (POTS), whereas today’s most efficient providers are constructing fixed or mobile networks that are capable of providing broadband as well as voice services.

66. Much progress has been made in developing computer cost models that estimate the cost of constructing a broadband network, such as the CostQuest model,<sup>199</sup> and we note that staff has developed an economic model to estimate the financial implications (costs and revenues) associated with providing broadband to areas presently unserved by adequate broadband speed and capacity for purposes of the National Broadband Plan.<sup>200</sup> Nevertheless, we are unable to evaluate adequately any alternative cost model or to develop a new cost model in time to meet our commitment to respond to the Tenth Circuit’s *Qwest II* remand. As the Commission noted in the *Remand NOI*, the Commission’s current model was developed over a multi-year period involving dozens of public workshops, and it would take a similar period to evaluate or develop a new cost model and to establish new input values.<sup>201</sup> Rather than attempt to update a model that estimates the cost of a legacy, circuit-switched, voice-only network, we intend to focus our efforts going forward on developing a forward-looking cost model to estimate the cost of providing broadband over a modern multi-service network, consistent with the recommendations in the National Broadband Plan.<sup>202</sup> Accordingly, we conclude that we should continue to use the existing model to estimate non-rural high-cost support on an interim basis, pending the development of an updated and

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<sup>196</sup> *Remand NOI*, 24 FCC Rcd at 4291-92, para. 24.

<sup>197</sup> See, e.g., Maine Public Advocate NOI Comments at 20-25; RCA NOI Comments at 30; Vermont/Maine NOI Comments at 9-12.

<sup>198</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8913, para. 250 (setting forth the Commission’s criteria for forward-looking economic cost determinations for purposes of federal universal service support calculations).

<sup>199</sup> *Remand NOI*, 24 FCC Rcd at 4286-87, para. 12.

<sup>200</sup> See National Broadband Plan at Chapter 8.

<sup>201</sup> *Remand NOI*, 24 FCC Rcd at 4292, para. 25.

<sup>202</sup> See, e.g., AT&T NOI Comments at 35 n.65 (“If the Commission anticipates that the reformed non-rural high-cost support mechanism will only be used for a relatively brief period of time (*i.e.*, until the transition to the Broadband Incentive Fund is complete), it may be prudent to continue using its existing cost model.”); *National Broadband Plan* at 143 (recommending that support for broadband should be based on what is necessary to induce a private firm to serve an area,” and that “[s]upport should be based on the net gap (*i.e.*, forward looking costs less revenues”).

more advanced model that will determine high-cost support for broadband.<sup>203</sup> We expect to initiate a proceeding to seek comment on such a model in the second quarter of 2010.

(ii) **Cost Benchmark**

67. We also conclude that we should continue to determine non-rural high-cost support by comparing the statewide average cost of non-rural carriers to a nationwide cost benchmark set at two standard deviations above the national average cost per line. As discussed above, we have found that the non-rural high-cost support mechanism comports with the principles of section 254(b). Thus, we conclude that we are not obligated to modify our current mechanism to base support on average wire center costs per line.<sup>204</sup> Some of those proposing a shift to wire center costs, such as Qwest, would set thresholds in a manner that would result in a significant increase in the size of the fund.<sup>205</sup> We find that it would not be in the public interest to impose such a heavy financial burden on consumers nationwide when no party has documented any need for such a dramatic expansion of universal service funding. Record evidence shows that the current non-rural mechanism has produced affordable and reasonably comparable rural rates, and no party has provided any substantial evidence to the contrary.<sup>206</sup> In addition, the Commission's existing model estimates the costs of a narrowband, circuit-switched network that essentially provides only POTS, rather than the costs of the multi-service networks that providers are deploying today. If the Commission were to decide to calculate support on the basis of the per-line costs for a narrower geographic area, such as wire centers, we find that the Commission should do so based on an updated model that incorporates the least-cost, most efficient technologies currently being deployed.<sup>207</sup> Finally, we note that the Tenth Circuit rejected the notion "that the use of statewide and national averages is necessarily inconsistent with [section] 254."<sup>208</sup> While we believe that there may be merit to an approach that distributes high-cost support on a more disaggregated basis rather than on statewide average costs, we do not believe that it would be prudent to change this aspect of the mechanism without addressing other aspects. Nor do we believe that we are required to adopt this approach to satisfy the *Qwest II* remand, or that it would serve the public interest to do so at this time. Accordingly, we conclude

<sup>203</sup> See, e.g., Comcast FNPRM Comments at 3-4.

<sup>204</sup> See Qwest FNPRM Comments at 18-19; AT&T FNPRM Comments at 6; Mid-Sized LEC FNPRM Comments at 3-4; ITTA FNPRM Comments at 5-6; USTelecom FNPRM Comments at 4-5.

<sup>205</sup> See *Remand NOI*, 24 FCC Rcd at 4284-85, para. 9 (describing Qwest's proposal, which it estimates would increase non-rural high-cost support by \$1.2 billion).

<sup>206</sup> See, e.g., Comcast FNPRM Comments at 4 (supporting the continued use of statewide average costs for non-rural high-cost support because "[s]imply changing the methodology to base support on average wire center costs per line without other fundamental modifications to the current plan likely would substantially increase the size of the fund."); NJ Rate Counsel FNPRM Comments at 10 ("The use of wire centers as the foundation for computing support would cause high-cost subsidies to increase significantly and ... unnecessarily. Claims that current high-cost support is too low are unsubstantiated and should be dismissed.").

<sup>207</sup> See *supra* para. 66.

<sup>208</sup> *Qwest I*, 258 F.3d at 1202 n.9. In *Qwest I*, petitioners Qwest and SBC argued that support should be based on a comparison of wire center costs, rather than a comparison of statewide average costs. Although the court rejected the Commission's justification for the 135% national average cost benchmark, the court noted that if the Commission's cost benchmark "actually produced urban and rural rates that were reasonably comparable, ... we likely would uphold the mechanism." *Id.* at 1202.

that, until the Commission adopts an updated cost model, non-rural high-cost support should continue to be based on statewide average costs.<sup>209</sup>

68. We also reject proposals to compare statewide average cost to an *urban* average cost (instead of the *national* average cost) to determine non-rural high-cost support.<sup>210</sup> The Commission previously found that comparing statewide average cost to a national average cost “reflects the appropriate division of federal and state responsibility for determining high-cost support for non rural carriers.”<sup>211</sup> We maintain that view. Using *urban* average cost instead of *national* average cost, while maintaining the two standard deviation benchmark, would increase federal support substantially.<sup>212</sup> As noted, this increase would burden all ratepayers, without evidence that such an increase is necessary to fulfill our statutory obligations. *Qwest II* did not condemn statewide and national averaging, and we find that our continued use of national average cost produces results that comport with section 254.

69. We further decline to adopt a lower cost benchmark. As set forth above, the only comprehensive rate data in the record shows that there is little difference between urban and rural rates. No party has demonstrated how a different *cost* benchmark would affect the variance between urban and rural *rates*, much less produce rates that are reasonably comparable. The Rural States argue that the Commission must lower the cost benchmark from two standard deviations to 125 percent of average urban cost to satisfy the Tenth Circuit.<sup>213</sup> This benchmark suffers from the same defect the court identified in *Qwest II*: there is no empirical evidence in the record that a 125 percent cost benchmark would produce more comparable rates.<sup>214</sup> While the Commission could provide more universal service funding to non-rural carriers by arbitrarily lowering the cost benchmark to 125 percent, no party that supports such a change has analyzed the extent to which the resulting increase in high-cost support would

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<sup>209</sup> In support of its proposal to base non-rural high-cost support on wire center costs, Qwest points out that several of the wire centers it serves receive no federal funding – even though they have costs well above the cost benchmark – because they are in states whose average costs fall below the cost benchmark. Qwest FNPRM Comments at 18-19. But Qwest provides no data concerning the *rates* in those particular wire centers. In particular, Qwest offers no evidence that rates in those wire centers are not reasonably comparable to national urban rates. Contrary to Qwest’s assertion that it does not receive sufficient support, the record contains empirical evidence that rural rates are reasonably comparable to urban rates throughout Qwest’s service area, except in Wyoming. See Verizon NOI Comments, Exhibit 2 (Declaration of Alan Buzacott). Qwest has made no effort to dispute this evidence.

<sup>210</sup> Qwest FNPRM Comments at 18; Rural States FNPRM Comments at 31-32.

<sup>211</sup> In the *Order on Remand*, the Commission explained that “[s]tatewide averaging effectively enables the state to support its high-cost wire centers with funds from its low-cost wire centers though implicit or explicit support mechanisms, rather than unnecessarily shifting funds from other states.” 18 FCC Rcd at 22573, para 24. In *Qwest I*, the court rejected the argument that the Commission alone must support the full costs of universal service, and said that it saw “nothing in [section] 254 requiring the FCC broadly to replace implicit support previously provided by the states with explicit federal support.” *Qwest I*, 258 F.3d at 1203, 1204. In *Qwest II*, the court rejected the argument that section 254 requires the states to replace implicit subsidies with explicit subsidies, and found that the Commission had not acted unlawfully by failing to ensure that the states transition to an explicit subsidy system. *Qwest II*, 398 F.3d at 1232-33.

<sup>212</sup> When the Commission rejected the use of average urban cost in the 2003 *Order on Remand*, it estimated that average urban cost would increase federal non-rural high-cost support from approximately \$214 million to an estimated \$1.7 billion annually. 18 FCC Rcd at 22577, para. 28.

<sup>213</sup> Rural State FNPRM Comments at 35; see also RCA FNPRM Comments at 6-7 (supporting this proposal).

<sup>214</sup> *Qwest II*, 398 F.3d at 1237.

actually reduce the alleged gap between rural and urban rates.<sup>215</sup> Instead, the Rural States' proposal would increase the size of the universal service fund without the benefit of empirical evidence that the non-rural high-cost support mechanism would produce reasonably comparable rates. In fact, there is a risk that the Rural States' proposal would reduce *both* urban and rural rates in a recipient state, not the variance between the two, which could needlessly increase the financial burden imposed on consumers that live in states that are net contributors to the universal service fund. The bottom line is that the Commission has no assurance that increased non-rural high-cost support would produce lower rural rates, rather than be used for other purposes, because the use of that support will depend on 50 different state policies, none of which have been described in the record. We therefore decline to adjust the cost benchmark because we lack the empirical data to justify such an adjustment, and because the record shows that the existing cost benchmark already provides support that yields reasonably comparable and affordable rates.<sup>216</sup>

### (iii) Rate Benchmark

70. Finally, we conclude that we should retain a comparability standard based on a national rate benchmark set at two standard deviations above the average urban rate. In *Qwest II*, the Tenth Circuit focused on the disparity between rural rates and the lowest urban rate.<sup>217</sup> There is strong support in the record, however, for the continued use of an average urban rate.<sup>218</sup> Even those parties that ask the

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<sup>215</sup> The Rural States argue that the current benchmark, which is set at two standard deviations above national average cost, is arbitrary because it is based on an inherently flawed design that produces insufficient non-rural high-cost support. See Rural State FNPRM Comments at 28-30. The Commission previously rejected this argument in the *Order on Remand*, and we do so again here on the same grounds. See *Order on Remand*, 18 FCC Rcd at 22596-22600, paras. 62-67. Indeed, if any benchmark is arbitrary, it is the 125% benchmark proposed by the Rural States. Moreover, the Rural States have failed to demonstrate an empirical connection between costs and rates using their proposed lower benchmark.

<sup>216</sup> Some of the Rural States' own submissions effectively concede that rural rates are currently affordable and reasonably comparable to urban rates. See, e.g., Shifman Reply Declaration at 2 ("the monthly rate is the same" in Portland, Maine (a low-cost urban area) and the Forks exchange in Maine (a high-cost rural area); likewise, "rates are identical" in Charleston, West Virginia (a low-cost urban area) and the Brandywine exchange in that state (a high-cost rural area)); Vermont/Maine NOI Comments at 16 (the decline of investment in Maine and Vermont "has left plant that is heavily depreciated, which tends to lower rates" for telephone service).

<sup>217</sup> See *Qwest II*, 398 F.3d at 1237 ("rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%").

<sup>218</sup> See, e.g., NASUCA NOI Comments at 17 ("There is no basis for using the lowest urban rate as any kind of benchmark. Congress required the USF to ensure that rural rates generally be reasonably comparable to urban rates generally, not to any specific urban rate, much less the lowest urban rate."); *id.* at 27 ("There was no indication that Congress intended the comparison to be to the lowest urban rates; if so, there would be support for a multitude of rural customers without any support for urban customers who pay the same – or higher – rates."); Verizon FNPRM Comments at 7 ("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."); CTIA FNPRM Comments at 8 ("CTIA agrees with the Commission's observation that the statute does not require the Commission to make rural rates comparable to the 'lowest urban rates,' given that 'incumbent LEC rates in rural areas are often lower than incumbent LEC rates in urban areas.'"); USTelecom FNPRM Comments at 5 ("Section 254(b)(3) requires only that rural and 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."); MDTC FNPRM Comments at 8; AT&T FNPRM Comments at 7.

Commission to adjust the rate benchmark support the use of an average urban rate – and not the lowest urban rate – as the point of comparison.<sup>219</sup> The general consensus on this issue reflects the common sense conclusion that the average urban rate offers the most reasonable baseline for comparison. Because urban rates themselves vary greatly,<sup>220</sup> a rate benchmark that measures divergence from the lowest urban rate could be too heavily influenced by a particular state’s rate policies.<sup>221</sup> By contrast, measuring divergence from the national average urban rate more accurately captures the variability of rate policies among the states.<sup>222</sup>

71. We decline to adopt a new, lower rate benchmark in order to “narrow” the unsubstantiated “gap” between rural and urban rates. Proposals to adjust the rate benchmark presuppose the existence of a rate gap without offering any empirical evidence to demonstrate that such a rate gap exists.<sup>223</sup> Qwest, for example, merely describes an increase in the disparity between rural rates and the *lowest* urban rate.<sup>224</sup> As discussed above, this comparison is misleading because the *average* urban rate is the appropriate point of comparison for purposes of determining “reasonable comparability.”<sup>225</sup> The Rural States note that the difference between rural rates and the average urban rate has fluctuated from 34 percent to 43 percent.<sup>226</sup> However, urban rates also vary compared to the average urban rate.<sup>227</sup> And most of that fluctuation is explained by the fact that the range of *urban rates* widened because the highest urban rate increased; rural rates, by contrast, have remained stable over the last few years.<sup>228</sup> In any event, even under the arbitrary rate benchmark proposed by the Rural States (*i.e.*, 125 percent of the average urban rate), rural rates would still be 25 percent greater than the average urban rate, a difference that is not dramatically dissimilar to the 34-43 percent difference that results under the Commission’s current mechanism. In the end, we see no reason to modify the current rate benchmark because rate data in the record establishes

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<sup>219</sup> See Vermont/Maine NOI Comments at 5 (proposing a comparability benchmark at 125% of the average urban rate); RCA NOI Comments at 19 (proposing a comparability benchmark at 125% of the national average urban rate); Qwest FNPRM Comments at 20 (proposing a comparability benchmark at 125% of the statewide urban average rate for similar services within a state).

<sup>220</sup> See *supra* paras. 44, 46.

<sup>221</sup> *Order on Remand*, 18 FCC Rcd at 22586, para. 44.

<sup>222</sup> *Id.*

<sup>223</sup> See Vermont/Maine NOI Comments at 5 (proposing a comparability benchmark at 125% of the average urban rate); RCA NOI Comments at 19 (proposing a comparability benchmark at 125% of the national average urban rate); Qwest FNPRM Comments at 20 (proposing a comparability benchmark at 125% of the statewide urban average rate for similar services within a state); see also AT&T FNPRM Comments at 7, 8-9 (proposing a comparability factor lower than two standard deviations, to be determined by the Commission).

<sup>224</sup> Qwest Comments at 13.

<sup>225</sup> See NASUCA FNPRM Reply Comments at 14. Indeed, Qwest itself advocates the use of an average rate comparison. See Qwest FNPRM Comments at 20.

<sup>226</sup> Rural State FNPRM Comments at 15.

<sup>227</sup> See *supra* paras. 44, 46.

<sup>228</sup> See NASUCA FNPRM Reply Comments at 11. Moreover, even if the variance between urban and rural rates has increased slightly since the *Order on Remand*, those urban and rural rates still fall within a reasonable range of comparability, as demonstrated by the record high telephone subscribership penetration rate.

that rural and urban rates today are reasonably comparable, either when compared nationally or within a state.<sup>229</sup>

72. Moreover, as with their proposal to lower the cost benchmark, the Rural States' proposal to lower the rate benchmark would not answer the questions posed by the Tenth Circuit on remand; it would simply increase non-rural high-cost support without guaranteeing any change in the rates paid by consumers in rural areas.<sup>230</sup> We note that the court already rejected this approach, holding that section 254(b) "calls for reasonable comparability between rural and urban rates," which cannot be satisfied "simply [by] substitut[ing] different standards."<sup>231</sup> Given the inherent imprecision of the statutory phrase "reasonably comparable," the task of defining "reasonably comparable" rates is a line-drawing exercise that falls within the unique expertise of the Commission.<sup>232</sup> The line the Commission drew in this case, *i.e.*, two standard deviations above the average urban rate, is entitled to deference because it falls within a reasonable range, as confirmed by the high telephone subscribership rates and the overall advancement of universal service goals while the non-rural high-cost mechanism has been in effect. No commenter proposing a different rate benchmark has made a comparable evidentiary showing.<sup>233</sup>

### c. Rate Comparability Review and Certification Process

73. We conclude that we should continue requiring the states to review annually their residential local rates in rural areas served by non-rural carriers and certify that their rural rates are

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<sup>229</sup> See *supra* paras. 44-48. While several commenters claim that rural and urban rates are not reasonably comparable under the current mechanism, these assertions lack any factual support. See, e.g., Qwest Comments at 4-5. Only Verizon and NASUCA gathered the rate data necessary for the Commission to respond fully to the court. See Verizon NOI Comments at 12-22; NASUCA NOI Comments at 13-16. That data shows that rates today are reasonably comparable across rural and urban areas; where there are any differences, urban rates tend to be higher. See Verizon NOI Comments, Exhibit 2 (Declaration of Alan Buzacott); see also Comments of AT&T, WC Docket No. 05-337, CC Docket No. 96-45, at 32 n.58 (filed May 8, 2009) (AT&T NOI Comments) ("the reality is that rates in rural and high-cost areas are, in most cases, below those in urban areas" due to "value of service" pricing schemes).

<sup>230</sup> We disagree with the Rural States that the current rate benchmark is inherently flawed because it is set at two standard deviations above the average urban rate, rather than a fixed percentage above the average urban rate. See Rural State Comments at 14. The Commission previously rejected that argument in the *Order on Remand*, and for the same reasons discussed therein, we do so again here. See *Order on Remand*, 18 FCC Rcd at 22584, para. 41.

<sup>231</sup> *Qwest I*, 258 F.3d at 1201.

<sup>232</sup> In this context, "[t]he relevant question is whether the agency's numbers are within a zone of reasonableness, not whether its numbers are precisely right." *WorldCom, Inc. v. FCC*, 238 F.3d 449, 461-62 (D.C. Cir. 2001) (internal quotation marks omitted); see also *Covad Comm. Co. v. FCC*, 450 F.3d 528, 541 (D.C. Cir. 2006) (explaining that courts are "generally unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn ... are patently unreasonable, having no relationship to the underlying regulatory problem") (internal quotation marks omitted); *Alliance for Community Media v. FCC*, 529 F.3d 763, 780 (6<sup>th</sup> Cir. 2008) (recognizing that "administrative lines need not be drawn with mathematical precision") (internal quotation marks omitted).

<sup>233</sup> AT&T proposes that the Commission use a combination of an "urban rate" with a comparability factor, which AT&T says could be 1.2. AT&T FNPRM Comments at 7. AT&T's proposal is intended to give the Commission broad discretion; but due to its vagueness, this proposal does not comport with the Tenth Circuit's insistence on an "empirical" connection between rates and costs.

reasonably comparable to urban rates nationwide, or explain why they are not.<sup>234</sup> Commenters support the continued use of our rate certification process.<sup>235</sup>

74. Currently, the Commission defines reasonably comparable rates in terms of incumbent LEC rates only. In the *Remand NPRM*, we sought comment on whether the Commission should define “reasonably comparable” rural and urban rates in terms of rates for bundled telecommunications services. Given the changes in consumer buying patterns, the competitive marketplace, and the variety of pricing plans offered by carriers today, we asked whether stand-alone local telephone rates were the most accurate measure of whether rural and urban consumers have access to reasonably comparable telecommunications services at reasonably comparable rates. We invited commenters to submit data on the rates and availability of bundled service offerings, identify sources of such data, and propose methods of analyzing such data.

75. While there was support for this approach in the abstract,<sup>236</sup> no party submitted data upon which the Commission could make such a comparison.<sup>237</sup> Given the scant evidentiary record on this issue, we decline at this time to define “reasonably comparable” rural and urban rates in terms of the rates for bundled services.

#### **D. Comprehensive Reform and the National Broadband Plan**

76. The Commission has previously recognized the need for review and possible comprehensive reform of its universal service program, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural.<sup>238</sup> Since the Commission originally adopted the non-rural high-cost support mechanism in 1999, the telecommunications marketplace has undergone significant changes. As discussed above, while in 1996 the majority of consumers subscribed to separate local and long distance providers, today the majority of consumers subscribe to local/long distance bundles offered by a single provider. In addition, the vast majority of subscribers have wireless phones as well as wireline phones, and an increasing percentage of consumers are dropping their wireline phones in favor of wireless or broadband-based VoIP phone services. Finally, an increasing percentage of carriers are converting their networks from circuit-switched to Internet protocol (IP) technology.

77. Against this backdrop, the Commission in the *Remand NOI* sought comment on the relationship between the Commission’s resolution of the narrow issues raised in this remand proceeding; comprehensive reform of the high-cost universal service support system; and our independent obligation under the Recovery Act to develop a comprehensive National Broadband Plan.<sup>239</sup> Many commenters argued that the Commission should use this remand proceeding to begin transitioning high-cost funding

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<sup>234</sup> See 47 C.F.R. § 54.316; *Order on Remand*, 18 FCC Rcd at 22601-14, paras. 70-92.

<sup>235</sup> See, e.g., NASUCA FNPRM Comments at 10; Rural State FNPRM Comments at 6.

<sup>236</sup> See, e.g., MDTC FNPRM Comments at 7-8; Qwest FNPRM Comments at 11-12, RCA FNPRM Comments at 21; USA Coalition FNPRM Reply Comments at 6.

<sup>237</sup> Only Verizon and NASUCA submitted nationwide rate data. See *supra* para. 43. Those submissions only included incumbent LEC rates, however.

<sup>238</sup> See *Identical Support Rule Notice*, 23 FCC Rcd 1467; *Reverse Auctions Notice*, 23 FCC Rcd 1495; *Joint Board Comprehensive Reform Notice*, 23 FCC Rcd 1531 (2008); *Comprehensive Reform FNPRM*, 24 FCC 6475.

<sup>239</sup> *Remand NOI*, 24 FCC Rcd at 4290-93, paras. 21-28.

from support for voice services to support for broadband in light of the changes in technology and the marketplace.<sup>240</sup>

78. On the same day that the Commission issued the *Remand NOI*, it began the process of developing a National Broadband Plan that seeks “to ensure that all people of the United States have access to broadband capability,” as required by the Recovery Act.<sup>241</sup> Since then, the Commission staff has undertaken an intensive and data-driven effort to develop a plan to ensure that our country has a broadband infrastructure appropriate to the challenges and opportunities of the 21st century. The Commission conducted 36 workshops and released 31 public notices to obtain public input on the various facets of the Recovery Act as they relate to the National Broadband Plan. Several of the public notices sought comments on different aspects of the universal service programs, and one specifically invited comment on transitioning the current universal service high-cost support mechanism to support advanced broadband deployment.<sup>242</sup>

79. On March 16, 2010, the Commission adopted a Joint Statement on Broadband, which sets forth the overarching vision and goals for U.S. broadband policy,<sup>243</sup> and delivered to Congress the

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<sup>240</sup> See, e.g., AT&T NOI Comments at 3-4 (arguing that ensuring the continued relevance of the Commission’s universal service program “requires the transition of all high-cost funding from the legacy POTS [plain old telephone service] business model to support for business models that are viable in the hyper-connected digital world in which growing numbers of us live, thereby not only preserving but also *advancing* universal service as required by Congress and the Tenth Circuit. As part of this transition, the Commission must move toward a support mechanism that is narrowly targeted to rural and other high-cost areas, and that prepares for the end of the POTS model.”); CTIA NOI Comments at ii (“The existing universal service system, with its emphasis on legacy wireline voice technology, is in danger of becoming more of a hindrance than a help if it is not modernized soon. Reform of the universal service system should be integrated with rural and national broadband planning, and should focus on the deployment of mobile broadband services, which have the ability to bring the benefits of broadband not only to the home but to the person.”); NCTA NOI Comments at 4-5 (“In addition to the obvious need to fix the existing mechanisms, there also is an emerging consensus that these mechanisms should transition from voice-focused to broadband-focused. While the broadband marketplace generally is working to meet the needs of consumers, government support, including subsidies, may be needed to promote both the deployment of networks in unserved areas and the adoption of services by underserved populations.”).

<sup>241</sup> See Recovery Act § 6001(k)(2); *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342 (2009) (*National Broadband Plan NOI*); see also *FCC Launches Development of National Broadband Plan*, News Release, April 8, 2009.

<sup>242</sup> See, e.g., *Comment Sought on the Role of Universal Service and Intercarrier Compensation in the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, 24 FCC Rcd 13757 (Wireline Comp. Bur. 2009); *Comment Sought on Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment*, GN Docket Nos. 09-47, 09-51, 09-137, CC Docket No. 02-6, WC Docket No. 05-195, Public Notice, 24 FCC Rcd 13560 (Wireline Comp. Bur. 2009); *Comment Sought on Health Care Delivery Elements of the National Broadband Plan*, GN Docket Nos. 09-47, 09-51, 09-137, CC Docket No. 02-6, Public Notice, 24 FCC Rcd 13728 (Wireline Comp. Bur. 2009); *Comment Sought on Contribution of Federal, State, Tribal, and Local Government to Broadband*, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, 24 FCC Rcd 12110 (Wireline Comp. Bur. 2009).

<sup>243</sup> The Joint Statement on Broadband includes a recommendation that universal service should be comprehensively reformed. *Joint Statement on Broadband*, para. 3 (“The nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”)

National Broadband Plan, which contains specific recommendations for universal service reform.<sup>244</sup> According to the National Broadband Plan, filling the gaps in the nation's broadband network will require financial support from federal, state, and local governments.<sup>245</sup> The National Broadband Plan identifies the federal universal service fund – and the high-cost universal service program in particular – as a key source of federal support.<sup>246</sup> The National Broadband Plan acknowledges, however, that the existing high-cost universal service program is not designed to fund broadband services.<sup>247</sup> Therefore, the National Broadband Plan recommends a comprehensive reform program to shift the high-cost universal service program from primarily supporting voice communications to supporting broadband platforms that enable many applications, including voice.<sup>248</sup>

80. In light of these recommendations, we conclude that fundamental reform limited to only the non-rural high-cost support mechanism should not be undertaken at this time. Now that the Commission has released the National Broadband Plan, we are in a better position to determine how to reform the high-cost support mechanism consistent with our broadband policies. In response to the mandamus petition in the Tenth Circuit, the Commission committed to issue an order responding to the court's remand by April 16, 2010. We have had insufficient time, between release of the National Broadband Plan in March and our deadline for responding to the court, to implement reforms to the high-cost universal service mechanisms consistent with the overall recommendations in the National Broadband Plan. While we believe we have fully addressed the remand, as discussed above, we anticipate that our efforts to revise and improve high-cost support will be advanced further through proceedings that follow from the National Broadband Plan. The Commission will soon release a notice of proposed rulemaking that sets the stage for comprehensive reform of the high-cost universal service mechanism as recommended in the Joint Statement on Broadband and the National Broadband Plan.

81. We also decline to adopt proposed interim changes to the non-rural high-cost support mechanism that would increase significantly the amount of support non-rural carriers would receive. Instead, we will maintain the current non-rural high-cost support mechanism on a transitional basis until comprehensive universal service reform is adopted. As set forth above, the Commission has a substantial interest in limiting the size of the universal service fund to preserve the affordability of telecommunications services for consumers.<sup>249</sup> Any substantial increases in non-rural high-cost support

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<sup>244</sup> *National Broadband Plan* at Chapter 8.

<sup>245</sup> *Id.* at 138 (“Closing the broadband availability gap requires financial support from federal, state and local governments.”).

<sup>246</sup> *Id.* at 140-42.

<sup>247</sup> *Id.* at 143 (“The current High-Cost program is not designed to universalize broadband.”)

<sup>248</sup> *Id.* at 143 (“Closing the broadband availability gap requires comprehensive reform of the USF High-Cost program. . . . The federal government should, over time, end all financial support for networks that only provide ‘Plain Old Telephone Service’ (POTS) and should provide financial support, where necessary and in an economically efficient manner, for broadband platforms that enable many applications, including voice.”); *see also id.* at 144-51 (describing the transition).

<sup>249</sup> Several commenters agree that the Commission should not increase non-rural high-cost support pending implementation of the universal service provisions of the National Broadband Plan. *See, e.g.,* Verizon FNPRM Comments at 3 (“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.”); CTIA FNPRM Comments at 2 (“Adding support to the existing mechanisms would only increase the already considerable burden on contributors and complicate the transition to a broadband-focused fund.”); NCTA FNPRM Comments at 6 (“Only after stabilizing the existing high-cost mechanisms” by imposing a cap on total high-cost support “should [the Commission] explore new funding for broadband deployment and adoption.”); Sprint

(continued....)

disbursements would increase the contribution factor above its current level of 15.3 percent of interstate revenues, thereby increasing the size of universal service contribution assessments, which are ultimately paid by consumers. The Commission's authority to take measures to limit the size of the universal service fund is well established.<sup>250</sup> Indeed, the Commission has long used cost controls – including caps – as a means of limiting the growth of its universal service program.<sup>251</sup> We find that maintaining non-rural high-cost support at existing levels pending comprehensive universal service reform quite reasonably follows this long-standing agency practice.

82. Moreover, if carriers were to receive significant additional high-cost support on an interim basis as a result of this proceeding, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband, if called for in future proceedings.<sup>252</sup> The Commission may “act[] to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated.”<sup>253</sup> In fact, on several occasions, the Commission has exercised that authority to maintain existing rules on a transitional basis to ensure the sustainability of the universal service program pending comprehensive reform of a larger regulatory framework.<sup>254</sup> We conclude that it would not be prudent to

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FNPRM Comments at 2 (agreeing that “the Commission should avoid implementing any rule changes which would increase high-cost support to non-rural incumbent LECs for legacy voice services” because “the Commission’s resources are best spent on focusing on ways to *decrease* such high-cost support and encourage the transition to broadband deployment.”); NJ Rate Counsel FNPRM Comments at 7 (arguing that the Commission should eliminate non-rural high-cost support and use the funds to subsidize broadband deployment in unserved and underserved areas). Even AT&T, which generally argues for an increase in non-rural support, agrees that “with a contribution factor in excess of 14 percent, the Commission cannot jumpstart its universal service [National Broadband Plan] initiatives with an infusion of additional dollars.” See AT&T FNPRM Comments at 12-13 (explaining that “every \$100 million increase per quarter in the size of the USF causes a 5.4 percent increase to the contribution factor. Doubling ... the first quarter 2010 funding demand (from \$2.106 billion to \$4.212 billion) would result in a staggering 33 percent contribution factor, which plainly would violate the affordability principle in section 254(b).”).

<sup>250</sup> See *supra* paras. 28-29.

<sup>251</sup> See, e.g., 47 C.F.R. § 54.507(a) (capping funding for the schools and libraries program); 47 C.F.R. § 54.623 (capping funding for the rural health care program); 47 C.F.R. § 54.305(e) (capping safety valve support for individual rural carriers, as well as the total amount of safety valve support for all rural carriers); 47 C.F.R. § 36.621(a)(4)(ii)(D) (capping rural high-cost loop support on an indexed basis); *Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Order on Remand, 18 FCC Rcd 14976, para. 14 (2003) (targeting IAS to \$650 million per year).

<sup>252</sup> The National Broadband Plan recommends phasing out support under the existing high-cost universal service mechanisms as it redirects that support to fund broadband deployment in an effort to minimize the contribution burden. *National Broadband Plan* at 143, 144-151. Increasing the size of the universal service fund as a result of this proceeding would be inconsistent with this approach.

<sup>253</sup> *MCI v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984) (upholding an interim freeze on the Subscriber Plant Factor, which separated costs between the intrastate and interstate jurisdictions); see also *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 409-10 (D.C. Cir. 2002) (upholding the interim assignment of Internet service provider-related costs to the intrastate jurisdiction pending comprehensive reform of interstate access charges).

<sup>254</sup> See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, 15 FCC Rcd 1760 (1999), and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) (enacting a temporary rule that imposed use restrictions on certain transport facilities to avoid disrupting the implicit universal service subsidies embedded in access charges), *affirmed*, *CompTel v. FCC*, 309 F.3d 8, 14-15 (D.C. Cir. 2002); *Universal Service First Report and Order*, 12 FCC Rcd 8776; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, Report and Order, 13 FCC

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increase the overall amount of non-rural high-cost support significantly above current levels at this time.<sup>255</sup>

83. We wish to emphasize, however, that even if the Commission had no plans to reform existing high-cost universal service support programs in an effort to achieve the objectives set forth in the National Broadband Plan, we would still make no changes in the non-rural high-cost mechanism. As we explained above, record evidence demonstrates that funding under the current mechanism is sufficient to achieve reasonably comparable rates and to advance the universal service principles set forth in section 254(b), including the principles of reasonable comparability and affordability. It also has both preserved and advanced universal service. Therefore, we see no need to alter the non-rural high-cost support mechanism at this time. The Commission's decision to pursue fundamental universal service reform to promote greater broadband deployment, as required by the Recovery Act, provides a separate and independent ground for keeping the existing non-rural high-cost support mechanism in place. Under the circumstances, we believe that it is entirely reasonable to maintain the status quo on a transitional basis until the Commission is ready to implement its new universal service support program for the deployment of networks capable of providing voice and broadband service.

### III. MEMORANDUM OPINION AND ORDER: WYOMING PETITION FOR SUPPLEMENTAL HIGH-COST UNIVERSAL SERVICE SUPPORT

84. We grant, with modifications, the joint petition filed by the Wyoming Public Service Commission (Wyoming Commission) and the Wyoming Office of Consumer Advocate (Wyoming OCA) (collectively, the Wyoming Petitioners) for supplemental high-cost universal service support for rural

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Rcd 5318 (1997); *Errata*, 13 FCC Rcd 2372 (1998) (enacting transitional rules that capped support for rural incumbent LEC high-cost loops and corporate operation expenses), *affirmed*, *Alenco*, 201 F.3d at 620-21; *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) (enacting interim access charge rules and refusing to immediately remove all implicit subsidies from access charges to preserve universal service), *affirmed*, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 537-39, 549-50 (8th Cir. 1998); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 19392 (1996) (temporarily allowing incumbent LECs to recover certain access charges to preserve universal service), *affirmed*, *CompTel v. FCC*, 117 F.3d 1068, 1074 (8th Cir. 1997).

<sup>255</sup> Some commenters argue that the Commission could still advance the goal of broadband deployment by revising its non-rural high-cost support mechanism to provide more funding now while the Commission also develops a broadband support mechanism. They maintain that additional non-rural high-cost funding could promote the construction of facilities that could be used to provide broadband service. See AT&T Comments at 10-11; Rural State FNPRM Comments at 23; Qwest FNPRM Reply Comments at 7. In our judgment, however, devoting more funding to the existing non-rural high-cost support mechanism is not the most efficient way to promote the universal deployment of broadband services. Because only voice service is a "supported service" under the current mechanism, carriers receiving high-cost support are not required to provide any households in their service area with some minimal level of broadband service, much less provide such service to all households. Indeed, Qwest has made clear that it would oppose any attempt to condition receipt of high-cost support on broadband deployment commitments under the current high-cost mechanism. Qwest NOI Comments at 9. In addition, the current high-cost mechanism only supports certain components of a network, such as local loops and switching equipment – but not other components necessary for broadband, such as middle mile infrastructure that transports voice and data traffic to an Internet point of presence. As a result, the amount of support provided under the current high-cost mechanism may not be appropriately sized for the provision of broadband services in high-cost areas. See *National Broadband Plan* at 141. In light of these considerations, we find that it is appropriate to maintain current levels of non-rural high-cost support for legacy voice services at this time.

residential customers of Qwest, Wyoming's non-rural incumbent LEC.<sup>256</sup> We find that the Wyoming Petitioners have demonstrated that supplemental high-cost support is warranted in the rural areas served by Qwest to achieve reasonably comparable rates.

#### A. Background

85. In the *Order on Remand*, the Commission adopted an expanded certification process in which each state is required to provide to the Commission information regarding the comparability of residential rates in its rural areas served by non-rural incumbent LECs to urban rates nationwide.<sup>257</sup> Section 54.316(b) of the Commission's rules specifies that a state may presume that residential rates in rural areas served by non-rural incumbent LECs are reasonably comparable to urban rates nationwide if the rates are below the nationwide urban rate benchmark.<sup>258</sup> Also in the *Order on Remand*, the Commission permitted states to request further federal action based on a showing that federal and state action together are not sufficient to achieve reasonable comparability of basic service rates in rural, high-cost areas served by non-rural carriers within the state when compared to urban rates nationwide.<sup>259</sup> Such request must include a demonstration that the state's rural rates are not reasonably comparable to urban rates nationwide and that the state has taken all reasonably possible steps to achieve reasonable comparability through state action and existing federal support.<sup>260</sup>

86. In 2004, Wyoming filed a residential rate comparability certification for Wyoming's non-rural incumbent LEC serving rural areas and concluded that the residential rates paid by Qwest's rural Wyoming customers are not reasonably comparable to the nationwide urban rate benchmark.<sup>261</sup> At the same time, Wyoming filed a petition requesting that the Commission authorize additional high-cost support funds to assist in lowering the rates paid by Qwest's rural Wyoming customers closer to the threshold of urban rate comparability.<sup>262</sup> The Wyoming Commission states that rural residential customers served by Qwest pay a monthly rate of \$42.28, or 124 percent of the nationwide urban rate

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<sup>256</sup> See Wyoming Petition.

<sup>257</sup> See *Order on Remand*, 18 FCC Rcd at 22613, paras. 89-92. Each state is required to review annually the residential rates in rural areas of the state served by non-rural carriers and compare such rates to urban rates nationwide, and to certify to the Commission and the universal service administrator (the Universal Service Administrative Company (USAC)) as to whether the rates are reasonably comparable. 47 C.F.R. § 54.316. If a state certifies that the rates are not reasonably comparable, it must explain why the rates are not reasonably comparable and explain what action it intends to take to achieve rate comparability. *Id.*

<sup>258</sup> The nationwide urban rate benchmark is the average urban rate plus two standard deviations as shown in the most recent annual *Reference Book*. 47 C.F.R. § 54.316(b).

<sup>259</sup> See *Order on Remand*, 18 FCC Rcd at 22614, paras. 93-94.

<sup>260</sup> *Id.* at 22614, para. 93.

<sup>261</sup> See Letter from Steve Furtney, Wyoming Public Service Commission, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed Sept. 30, 2004) (Wyoming 2004 Certification).

<sup>262</sup> See Wyoming Petition at 10. On February 14, 2005, the Wireline Competition Bureau released a public notice seeking comment on the Wyoming Petition. See *Wireline Competition Bureau Seeks Comment on the Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Non-Rural Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 3571 (Wireline Comp. Bur. 2005). Comments were filed jointly by the Maine Public Utilities, the Montana Public Service Commission, and the Vermont Public Service Board (collectively, the State Coalition) and by the National Association of State Utility Consumer Advocates (NASUCA). Reply Comments were filed by the Wyoming OCA.

benchmark of \$34.16.<sup>263</sup> The Wyoming Commission further states that it has taken all reasonably possible steps to achieve reasonable comparability by requiring cost-based pricing for all retail telecommunications services in Wyoming, prohibiting cross subsidies and implicit subsidies, and establishing an explicit subsidy support program – the Wyoming Universal Service Fund.<sup>264</sup> In addition, Qwest has de-averaged cost-based residential rates, so the rural residential rates in areas served by Qwest are “truly” high-cost.<sup>265</sup> Therefore, the Wyoming Petitioners request an additional \$8.12 per-line in universal service high-cost support, which is equivalent to 100 percent of the difference between the \$42.28 monthly amount billed to customers in Qwest’s three disaggregated rural zones and the Commission’s nationwide urban rate benchmark of \$34.16 as published in the Commission’s *Reference Book*.<sup>266</sup> The Wyoming Petitioners report that there are 48,532 affected customers; thus, the additional requested support is \$4,728,958 annually (48,532 x \$8.12 x 12).<sup>267</sup>

87. On March 5, 2010, the Wyoming Commission updated the 2004 rural residential rate review included in the Wyoming Petition to reflect recent line counts, local rates, surcharges, taxes, and federal and state universal service credits.<sup>268</sup> Based on the updated data, the Wyoming Commission requests \$3,119,249 to make rural residential rates comparable to the nationwide urban rate benchmark.<sup>269</sup>

## B. Discussion

88. We find that the Wyoming Petitioners have demonstrated that supplemental universal service high-cost support is warranted at this time in Wyoming’s rural areas served by Qwest, the non-rural incumbent LEC. The Wyoming Petitioners have met the requirements in section 54.316 of the Commission’s rules by demonstrating that such rural residential rates are not comparable to the nationwide urban rate benchmark. Specifically, the Wyoming Commission reviewed and compared the residential rates in rural areas served by Qwest to the nationwide urban rate benchmark, certified to the Commission and to USAC that such rates are not reasonably comparable because they are 124 percent of the nationwide urban rate benchmark, explained why such rates are not comparable, and stated that it intended to request further federal action to achieve rate comparability as set forth in the *Order on Remand*.<sup>270</sup> We also find that the Wyoming Petitioners’ request for supplemental high-cost universal service support is consistent with the requirements in the *Order on Remand* for requests for further federal action to achieve rate comparability. The Wyoming Petitioners demonstrated that Wyoming’s rural rates

<sup>263</sup> See Wyoming 2004 Certification at 2.

<sup>264</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2; W.S. § 37-15-402, 403, 501.

<sup>265</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2.

<sup>266</sup> See Wyoming Petition at 10; *Reference Book* at I-4 (rel. July 1, 2004).

<sup>267</sup> See Wyoming Petition at 10.

<sup>268</sup> See Letter from Christopher Petrie, Wyoming Public Service Commission, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed March 5, 2010) (Wyoming 2010 Update).

<sup>269</sup> The nationwide urban benchmark is \$36.52. See Wyoming 2010 Update at 2. We note that the nationwide urban benchmark published on page I-4 of the most recent 2008 *Reference Book* is in error. The correct most recent nationwide urban benchmark is on Table 1.13 of the 2008 *Reference Book*.

<sup>270</sup> See Wyoming 2004 Certification at 2-3. We note that the Wyoming Commission certified each year subsequent to the Wyoming 2004 Certification that residential rates in rural areas served by Qwest continue to exceed the urban rate benchmark. See e.g. Letter from Alan B. Miner *et al*, Wyoming Public Service Commission, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed Sept. 18, 2009) (Wyoming 2009 Certification).

are not reasonably comparable to urban rates nationwide and that Wyoming has taken all reasonably possible steps to achieve reasonable comparability through state action and existing federal support.<sup>271</sup> As we acknowledged in the *Order on Remand*, “Wyoming has rebalanced its residential and business rates, while other states have not rebalanced rates.”<sup>272</sup> Wyoming requires cost-based pricing for all retail telecommunications services in Wyoming and prohibits cross subsidies and implicit subsidies.<sup>273</sup> Moreover, Qwest has de-averaged cost-based residential rates.<sup>274</sup> Finally, Wyoming has implemented an explicit subsidy support program – the Wyoming Universal Service Fund.<sup>275</sup>

89. Based on the record, however, we modify the Wyoming Petitioners’ proposed calculation of supplemental high-cost support. Specifically, we agree with NASUCA’s recommendation that any supplemental universal service high-cost support should cover 76 percent of the difference between the rural local rates and the comparability benchmark, and not 100 percent of the difference.<sup>276</sup> We find that funding 76 percent of the difference between Qwest’s rural customers’ rates (including mandatory surcharges) and the nationwide urban rate benchmark is reasonable because it is consistent with the percentage of support provided using the Commission’s forward-looking cost model for non-rural incumbent LECs.<sup>277</sup> Funding 76 percent of the difference strikes a reasonable balance between federal and state responsibilities of facilitating affordable local rates. Further, we are concerned that funding 100 percent of the difference could provide inappropriate incentives to increase rates or surcharges in order to shift such costs to the federal universal service fund. Although we acknowledge that Qwest’s Wyoming subscribers may continue to pay high local service rates,<sup>278</sup> we must balance the need for additional support in Wyoming against the already heavy universal service contribution burden placed on consumers nationwide. We disagree, however, with NASUCA’s recommendation that the Wyoming general sales tax should not be included in the rate comparability calculation.<sup>279</sup> We find that the Wyoming sales tax should be included in the calculation because the nationwide urban rate benchmark, resulting from a rate survey of 95 sample cites, instructed survey respondents to include such sales taxes.<sup>280</sup>

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<sup>271</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2.

<sup>272</sup> *Order on Remand*, 18 FCC Rcd at 22628, para. 120.

<sup>273</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2; W.S. § 37-15-402-403.

<sup>274</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2.

<sup>275</sup> Wyoming Petition at 5; Wyoming 2004 Certification at 2; W.S. § 37-15-501.

<sup>276</sup> NASUCA Wyoming Petition Comments at 8.

<sup>277</sup> The non-rural high-cost support mechanism provides support for 76 percent of statewide average costs that are above the national benchmark. The mechanism calculates support based on 75 percent of forward-looking loop costs and 85 percent of forward-looking port costs, as well as 100 percent of all other forward-looking costs determined by the cost model. The percentage of forward-looking costs that the intrastate portion of each of the items represents is equivalent to 76 percent of total forward-looking costs. *See Ninth Report and Order*, 14 FCC Rcd at 20467, para. 63.

<sup>278</sup> *See Wyoming OCA Wyoming Petition Reply Comments* at 8.

<sup>279</sup> *See NASUCA Wyoming Petition Comments* at 7, n. 26.

<sup>280</sup> *See 2008 Reference Book*, Appendix: Residential Rate Review (rel. Aug. 28, 2008).

90. Accordingly, we authorize and direct USAC to provide \$2,370,629 in additional annualized universal service high-cost support to Qwest in Wyoming beginning in the third quarter of 2010.<sup>281</sup> One-twelfth of this amount shall be paid each month through December 2010.

91. To remain eligible for supplemental high-cost support going forward, beginning with the Wyoming Commission's next rate comparability certification due October 1, 2010, and each October 1 thereafter, the Wyoming Commission shall provide the Commission and USAC with updated line counts and other rate data consistent with and in the same format as the Wyoming 2010 Update.<sup>282</sup> Such data shall be used by the Commission and USAC to verify the additional high-cost support, if any, that is necessary to maintain rural rates in Qwest's service territory at reasonably comparable levels with the nationwide urban benchmark. USAC is required to notify the Wireline Competition Bureau by letter of any concerns regarding future submissions from the Wyoming Commission. Each year after the receipt of the Wyoming Commission's rate comparability certification, any revised supplemental support shall take effect the following January.

### C. Procedures for State Requests for Further Federal Action

92. In the *Order on Remand*, the Commission sought comment on how to treat state requests for further federal action to achieve reasonable comparability of basic service rates, including: 1) the timing of state requests for further federal action; 2) the showing that a state should be required to make in order to demonstrate a need for further federal action; and 3) the types of further federal action that may be provided to requesting states if the Commission determines that further federal action is necessary in a particular instance, including possible methods of calculating any additional targeted federal support.<sup>283</sup> We decline to adopt such procedures at this time. Unique situations like Wyoming's can best be addressed on an individualized, case-by-case basis.<sup>284</sup> Moreover, we expect to undertake comprehensive reform of the universal service high-cost mechanisms in proceedings that follow from the Joint Statement on Broadband and the National Broadband Plan. In the meantime, if any other state demonstrates, consistent with section 54.316 of our rules and the *Order on Remand*, that unique circumstances prevent the achievement of reasonably comparable rates in that state, we are prepared to provide appropriate relief, as we have done in the case of Wyoming.<sup>285</sup>

<sup>281</sup> See *supra* para. 87. Seventy-six percent of \$3,119,249 is \$2,370,629.

<sup>282</sup> 47 C.F.R. § 54.316(d).

<sup>283</sup> See *Order on Remand*, 18 FCC Rcd at 22626, para. 114.

<sup>284</sup> See NASUCA FNPRM Reply Comments at 8-9 (recommending that the Commission "respond to Wyoming's petition" for supplemental funding "to address Wyoming's situation" rather than "changing the fundamental mechanism so that Wyoming's needs can be met").

<sup>285</sup> Vermont asserts that it has "repeatedly certified that rural rates" in Vermont "are not comparable" to national urban rates, and that the Commission has done nothing in response. Rural State FNPRM Comments at 16. Unlike Wyoming, however, Vermont has never proffered any empirical evidence showing that its rural rates are not reasonably comparable to urban rates. Instead, Vermont has simply and repeatedly contended that rural rates in Vermont "are not reasonably comparable" because the non-rural carrier serving the state "receives insufficient federal support from the Commission." See, e.g., Letter from James Volz, Chairman, Vermont Public Service Board, to Marlene Dortch, Secretary, FCC, and Karen Majcher, USAC, CC Docket Nos. 96-45 and 00-256, at 5 (Sept. 29, 2009); Letter from James Volz, Chairman, Vermont Public Service Board, to Marlene Dortch, Secretary, FCC, and Karen Majcher, USAC, CC Docket Nos. 96-45 and 00-256, at 5 (Sept. 30, 2008); Letter from James Volz, Chairman, Vermont Public Service Board, to Marlene Dortch, Secretary, FCC, and Karen Majcher, USAC, CC Docket Nos. 96-45 and 00-256, at 5 (Sept. 28, 2007); Letter from James Volz, Chairman, Vermont Public Service

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#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Analysis

93. This Order on Remand and Memorandum Opinion and Order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995.<sup>286</sup> In addition, therefore, it does not contain any new, modified, or proposed “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.<sup>287</sup>

##### B. Final Regulatory Flexibility Act Certification

94. As we are adopting no rules in this Order on Remand and Memorandum Opinion and Order, no regulatory flexibility analysis is required.

##### C. Congressional Review Act

95. The Commission will not send a copy of this Order on Remand and Memorandum Opinion and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act<sup>288</sup> because no rules are being adopted.

#### V. ORDERING CLAUSES

96. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this Order on Remand and Memorandum Opinion and Order IS ADOPTED.

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Board, to Marlene Dortch, Secretary, FCC, and Karen Majcher, USAC, CC Docket Nos. 96-45 and 00-256, at 5 (Sept. 29, 2006). In each of these certification letters, Vermont has essentially reiterated one of the arguments it makes here – *i.e.*, that the rate benchmark should be set no higher than 125 percent of the national average urban rate. Such assertions do not demonstrate that additional federal high-cost support is warranted in Vermont.

<sup>286</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

<sup>287</sup> Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

<sup>288</sup> See 5 U.S.C. § 801(a)(1)(A).