

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Joint Petition of the Wyoming Public Service)	
Commission and the Wyoming Office of)	
Consumer Advocate for Supplemental Federal)	
Universal Service Funds for Customers of)	
Wyoming’s Non-Rural Incumbent Local)	
Exchange Carrier)	

ORDER ON REMAND AND MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2010

Released: April 16, 2010

By the Commission: Commissioner McDowell approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In 2005, the United States Court of Appeals for the Tenth Circuit remanded the Commission's rules regarding high-cost universal service support to non-rural carriers.¹ The scope of this Order on Remand and Memorandum Opinion and Order is narrow; it responds to the Tenth Circuit's remand. While a number of parties asked us to use this proceeding to consider comprehensive universal service reform,² we intend to consider such reform in separate proceedings.³

2. The Tenth Circuit directed the Commission to address three issues. First, the court held that, in order to demonstrate that the Commission has met its statutory obligation to provide "sufficient" universal service support, the Commission "must articulate a definition of 'sufficient' that appropriately considers the range of principles" that Congress established in section 254(b).⁴ Second, to ensure that the existing support mechanism produces "reasonably comparable" rural and urban rates (as the Communications Act⁵ requires), the Commission "must define the term 'reasonably comparable' in a manner that comports with its concurrent duties to preserve and advance universal service."⁶ Third, the Commission must "craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory obligation to preserve *and* advance universal service."⁷

¹ *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*).

² See, e.g., Mid-Sized LEC FNPRM Comments; ITTA FNPRM Comments.

³ The Commission has stated that the universal service program should be comprehensively reformed to, among other things, emphasize the importance of broadband to the future of the program. See *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para 3 (rel. Mar. 16, 2010) (*Joint Statement on Broadband*). The National Broadband Plan recommends that the Commission phase out the existing high-cost universal service support program, including the current non-rural high-cost universal service support mechanism, as part of a comprehensive plan to modernize and reform universal service. See Federal Communications Commission, *Connecting America: The National Broadband Plan*, Ch. 8 (rel. March 16, 2010) (*National Broadband Plan*). See also *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform Notice*); *High-Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC 6475 (2008) (*Comprehensive Reform FNPRM*).

⁴ *Qwest II*, 398 F.3d at 1234.

⁵ 47 U.S.C. § 151, *et seq.* Section 254, the provision concerning universal service, was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁶ *Qwest II*, 398 F.3d at 1237.

⁷ *Id.*

3. This Order on Remand responds to the court's directive. First, we define "sufficient" under section 254(e) of the Communications Act⁸ as an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program. We conclude that the current non-rural high-cost support mechanism, in conjunction with the Commission's other universal service programs, provides sufficient support to achieve the universal service principles set forth in section 254(b).⁹ Second, we find that rural rates are "reasonably comparable" to urban rates if they fall within a reasonable range of the national average urban rate. We conclude that the current non-rural support mechanism produces rates that preserve and advance universal service. Third, we conclude, on the basis of undisputed empirical evidence in the record, that the current non-rural high-cost support mechanism comports with the requirements of section 254.

4. We further find that it would not serve the public interest to undertake broad reform of the non-rural high-cost support mechanism in this proceeding. The proposals for reform, described below, would substantially increase the size of the universal service fund, and, consequently, the contribution burden shouldered by consumers. Because the current non-rural support mechanism satisfies section 254 of the Act, and because the Commission will soon consider the National Broadband Plan's recommendation to phase out the existing high-cost universal service support program, including the current non-rural high-cost universal service support mechanism, as part of comprehensive universal service reform, we decline to make changes to the non-rural high-cost support mechanism in this proceeding.

5. In a separate Memorandum Opinion and Order, 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 local exchange carrier.¹⁰ Consistent with Commission requirements for requests for additional support under the current non-rural mechanism, the Wyoming petitioners have established that Wyoming's rural rates are not reasonably comparable to urban rates nationwide and that Wyoming has taken all practicable steps to achieve reasonable comparability through state action and existing federal support. Thus, we find that the Wyoming petitioners have demonstrated that supplemental high-cost support is required under the current non-rural high-cost support mechanism to achieve reasonably comparable rates.

II. ORDER ON REMAND

A. Background

6. A major objective of high-cost universal service support always has been to help ensure that consumers have access to telecommunications services in areas where the cost of providing such services would otherwise be prohibitively high.¹¹ In section 254 of the Act, Congress directed the

⁸ 47 U.S.C. § 254(e).

⁹ 47 U.S.C. § 254(b).

¹⁰ See Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-rural Incumbent Local Exchange Carrier, CC Docket No. 96-45 (filed Dec. 21, 2004) (Wyoming Petition).

¹¹ See, e.g., *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Red 21323, 21325-26, para. 5 (1998) (*Fifth Report and Order*) ("Universal service support has increased subscriber levels by ensuring that residents in rural and high cost areas are not prevented from receiving phone service because of prohibitively high

(continued....)

Commission to preserve and advance universal service by ensuring, among other things, that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas.”¹² In addition, section 254(e) provides that federal universal service support “should be explicit and sufficient to achieve the purposes of this section.”¹³

7. Currently, the Commission’s rules provide federal high-cost support to non-rural and rural carriers under different support mechanisms.¹⁴ While rural carriers receive support based on their embedded costs, support to non-rural carriers is based on the forward-looking economic cost of constructing and operating the network, as determined by the Commission’s cost model.¹⁵ Non-rural carriers receive support based on the model’s cost estimates only in states where the statewide average forward-looking cost per line for non-rural carriers exceeds a national cost benchmark, which is set at two standard deviations above the national average cost per line.¹⁶

(Continued from previous page) _____

local telephone rates. As of today, approximately 94 percent of the households in the United States subscribe to telephone service, a subscribership rate that is among the best in the world.”)

¹² 47 U.S.C. § 254(b)(3).

¹³ 47 U.S.C. § 254(e). Similarly, section 254(b)(5) states that there “should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.” 47 U.S.C. § 254(b)(5).

¹⁴ The term “non-rural carriers” refers to incumbent local exchange carriers that do not meet the statutory definition of a rural telephone company. *See* 47 U.S.C. § 153(37). Under section 153(37), rural telephone companies are defined as incumbent carriers that either serve study areas with fewer than 100,000 access lines or meet one of three alternative criteria. *Id.* Thus, “non-rural carriers” are principally defined by study area size. Non-rural carriers serve the majority of access lines nationwide, including lines in rural, insular, and high-cost areas.

¹⁵ The Commission determined that high-cost universal service support should be based on forward-looking economic cost, but that rural carriers’ high-cost support would not be based on forward-looking economic cost until further review. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8888-89 paras. 199, 203 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission finalized the computer model platform and adopted model inputs used to estimate the forward-looking costs of a non-rural carrier’s operations in the *Tenth Report and Order*. *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (1999) (*Tenth Report and Order*), affirmed, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest I*). The model platform refers to the assumptions about the design of the network and network engineering, and fixed characteristics such as soil and terrain used in the computer model. *See Fifth Report and Order*, 13 FCC Rcd at 21324, para. 2.

¹⁶ *See* 47 C.F.R. §54.309(a)(3). The Commission originally set the cost benchmark at 135% above the national average forward-looking cost per line. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20463-64, para. 55 (1999) (*Ninth Report and Order*), remanded, *Qwest I*, 258 F.3d 1191. In *Qwest I*, the court found that the Commission “failed to explain how its 135% benchmark will help achieve the goal of reasonable comparability or sufficiency,” and directed the Commission to “address the relevant data and provide adequate record support and reasoning for whatever level of support it ultimately selects upon remand.” *Qwest I*, 258 F.2d at 1202-03. In the *Order on Remand*, the Commission adopted a two standard deviation benchmark: “Consistent with the court’s directive, standard deviation analysis provides an empirical method, based on relevant data, of identifying states with significantly higher costs than the national average that are likely to have difficulty maintaining comparable rates without federal support.” *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22597, para. 62 (2003) (*Order on Remand*), remanded, *Qwest II*, 398 F.3d 1222. As discussed below, there are numerous reasons why the Commission bases high-cost support on costs, rather than rates. *See infra* paras. 61-64.

8. To induce states to achieve the reasonably comparable rates that are required by the statute, the Commission requires states to review annually their residential local rates in rural areas served by non-rural carriers and certify that those rural rates are reasonably comparable to urban rates nationwide, or explain why they are not.¹⁷ The Commission defined the statutory term “reasonably comparable” in terms of a national *rate* benchmark, which serves as a “safe harbor” in the rate review and certification process.¹⁸ States with rural rates below the benchmark may presume that their rural rates are reasonably comparable to urban rates nationwide without providing additional information; if the rural rates are above the benchmark, states can rebut the presumption that rates are not reasonably comparable by demonstrating that factors other than basic service rates affect the comparability of rates.¹⁹ The national rate benchmark currently is set at two standard deviations above the average urban rate as reported in the most recent annual rate survey published by the Wireline Competition Bureau.²⁰

9. In *Qwest II*, the court held that the Commission relied on an erroneous, or incomplete, construction of section 254 in defining statutory terms and crafting the funding mechanism for non-rural high-cost support.²¹ The court directed the Commission on remand to articulate a definition of “sufficient” that appropriately considers the range of principles set forth in section 254(b) and to define “reasonably comparable” in a manner that comports with the Commission’s statutory obligation to preserve and advance universal service.²² The court found that, “[b]y designating a comparability benchmark at the national urban average plus two standard deviations, the FCC has ensured that significant variance between rural and urban rates will continue unabated.”²³ The court also found that the Commission ignored its obligation to “advance” universal service, “a concept that certainly could include a narrowing of the existing gap between urban and rural rates.”²⁴ Because the non-rural high-cost support mechanism rested on the application of the definition of “reasonably comparable” rates invalidated by the court, the court also deemed the support mechanism invalid.²⁵ 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 a relationship between costs and rates.²⁶

¹⁷ See 47 C.F.R. §54.316. In *Qwest I*, the court required the Commission on remand to develop some mechanism (a “carrot” or a “stick”) to induce adequate state action to preserve and advance universal service. See *Qwest I*, 258 F.3d at 1204. In response to this directive, the Commission in the *Order on Remand* adopted the rule requiring states to certify annually that their rural rates are reasonably comparable to urban rates nationwide. See *Order on Remand*, 18 FCC Rcd at 22601-14, paras. 70-92. In *Qwest II*, the court held that this rate certification process provided an adequate inducement to states to assist in implementing the goals of universal service. See *Qwest II*, 398 F.3d at 1226, 1238.

¹⁸ See 47 C.F.R. §54.316(b); *Order on Remand*, 18 FCC Rcd at 22582-89, 22607-10, paras. 38-48, 80-82.

¹⁹ See *Order on Remand*, 18 FCC Rcd at 22609-10, para. 82.

²⁰ See 47 C.F.R. §54.316(b); Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* (August 2008) (*Reference Book*).

²¹ *Qwest II*, 398 F.3d at 1226.

²² *Id.* at 1237.

²³ *Id.* at 1236.

²⁴ *Id.*

²⁵ *Id.* at 1237.

²⁶ *Id.*

10. In December 2005, the Commission issued a notice of proposed rulemaking seeking comment on issues raised by the Tenth Circuit in *Qwest II*.²⁷ Since the Commission issued the *Remand NPRM*, it has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms for both rural and non-rural carriers.²⁸ In addition, the Commission issued a further notice of proposed rulemaking seeking comment on comprehensive universal service and intercarrier compensation reform on November 5, 2008.²⁹

11. On January 14, 2009, Qwest Corporation, the Maine Public Utilities Commission, the Vermont Public Service Board, and the Wyoming Public Service Commission filed with the Tenth Circuit a petition for a writ of mandamus, asserting that the Commission had unreasonably delayed responding to the *Qwest II* remand.³⁰ Shortly after that petition was filed, the Commission and the petitioners negotiated an agreement under which the Commission would release a notice of inquiry no later than April 8, 2009; issue a further notice of proposed rulemaking no later than December 15, 2009; and release a final order that responds to the court's remand no later than April 16, 2010.³¹ On April 8, 2009, the Commission issued a notice of inquiry to refresh the record regarding the issues raised by the court in this remand proceeding.³² The Commission requested comment on several specific proposals, and sought comment generally on how any changes to the Commission's non-rural high-cost support mechanism should relate to more comprehensive high-cost universal service reform and the Commission's initiatives regarding broadband deployment.³³ Subsequently, on December 15, 2009, the Commission released a further notice of proposed rulemaking that tentatively concluded that the current non-rural high-cost mechanism is an appropriate transitional mechanism for determining high-cost support to non-rural carriers while the Commission considers comprehensive universal service reform consistent with both the Communications Act and the Recovery Act.³⁴

²⁷ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (*Remand NPRM*).

²⁸ 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.

²⁹ *Comprehensive Reform FNPRM*, 24 FCC Rcd 6475.

³⁰ Petition for a Writ of Mandamus, *In re Qwest Corp.*, No. 09-9502 (10th Cir. filed Jan. 14, 2009).

³¹ See Response of Federal Communications Commission to Petition for a Writ of Mandamus, *In re Qwest Corp.*, No. 09-9502 (10th Cir. filed Mar. 6, 2009). In light of the parties' agreement on a timetable for Commission action, the Tenth Circuit denied the mandamus petition as moot. Order, *In re Qwest Corp.*, No. 09-9502 (10th Cir. issued Mar. 20, 2009).

³² *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Inquiry, 24 FCC Rcd 4281 (2009) (*Remand NOI*).

³³ *Id.*

³⁴ See Recovery Act § 6001(k)(2); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, WC Docket No. 05-337, Further Notice of Proposed Rulemaking, FCC 09-112 (rel. Dec. 15, 2009). A list of parties that filed comments in response to the further notice of proposed rulemaking is included in Appendix A.

B. The Evolution of Universal Service

1. Marketplace Developments

12. The communications marketplace has undergone significant changes since the Commission originally adopted the non-rural high-cost support mechanism in 1999.³⁵ At that point in time, none of the Bell Operating Companies (BOCs), which provided local telephone service to the majority of customers served by non-rural carriers, were permitted to offer combined local and interstate long distance services.³⁶ As a result, most customers of non-rural carriers took local service from the incumbent LEC and subscribed to a separate interexchange carrier for long distance service. In the *Order on Remand*, the Commission explicitly defined “reasonable comparability” in terms of the national average urban rate for *local telephone service* provided by incumbent LECs.³⁷

13. When the Commission issued the *Remand NPRM* in 2005, however, it noted that most consumers no longer purchase stand-alone local telephone service, but instead purchase local and long distance service from the same provider.³⁸ In the *Remand NOI*, the Commission further noted that consumers increasingly purchase packages of services that include not only unlimited nationwide calling, but also broadband Internet access and video services.³⁹

14. The record in this proceeding shows that consumers are migrating away from traditional wireline telephone service. Today, for example, the vast majority of subscribers have a wireless phone in addition to a wireline phone – a substantial increase from 1997, when there were only 55 million wireless subscribers.⁴⁰ Between December 2000 and December 2008, the number of wireless subscribers more

³⁵ See, e.g., USTelecom NOI Comments at 5 (“Since the Tenth Circuit case began, the market has changed dramatically. Customers now have new options, such as cable and wireless for obtaining voice services at reasonably comparable rates. These services are generally sold at rates that are set on a nationwide basis. Prepaid wireless plans provide affordable options that were not available a few years ago. Distance is now irrelevant as the vast majority of consumers subscribe to bundled all distance plans.”).

³⁶ Specifically, the BOCs were prohibited from providing in-region interLATA service prior to the Commission’s authorization pursuant to section 271 of the Act. See BOC Authorization to Provide In-region, InterLATA Services Under Sections 271 and 272 at http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/ (last updated Jan. 14, 2010).

³⁷ See *Order on Remand*, 18 FCC Rcd at 22582, para. 38 & n.130.

³⁸ *Remand NPRM*, 20 FCC Rcd at 19741, para. 21 & n.74 (citing J.D. Power and Associates Reports: Three Quarters of Households Now Bundle Local and Long Distance Telephone Service with One Provider, July 14, 2005). The Commission’s most recent local telephone competition report indicates that for 69 percent of residential lines the local carrier is also the presubscribed interstate long distance provider. See Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Competition: Status as of June 30, 2008*, Table 6 (July 2009). The Commission’s data likely understate the percentage of consumers who currently subscribe to bundled local and long distance service because the data do not include all telephone lines provided via voice over Internet protocol (VoIP).

³⁹ *Remand NOI*, 24 FCC Rcd at 4289-90, para. 19.

⁴⁰ See CTIA FNPRM Comments (citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Third Report, 13 FCC Rcd 19,746, app. B, at B-2 (1998)).

than doubled, growing from 109.5 million to 270.3 million, and the wireless penetration rate jumped from 38 percent to 87 percent of the total population.⁴¹

15. Wireless penetration rates have been driven, in part, by wireless deployment. Most of the population – including the rural population – now has access to wireless service offered by one or more different providers in the census block in which they live.⁴² In addition, more than 95 percent of the total population lives in areas with at least three mobile service providers offering competing service, and more than half the total population lives in areas with at least five competing providers offering mobile service.⁴³ Even in rural areas, approximately 98.5 percent of the population has access to mobile services offered by one or more providers.⁴⁴ Furthermore, many mobile wireless service providers now provide services supported by universal service funds and draw a substantial amount of interstate high-cost support – including support from the non-rural mechanism – as eligible telecommunications carriers (ETCs) designated by either a state commission or the Commission. Universal service high-cost support for these competitive ETCs grew from \$17 million in 2001 to \$1.27 billion in 2009.⁴⁵

⁴¹ See Verizon NOI Comments at 18 (citing *Wireless Quick Facts, Year-End Figures*, CTIA – The Wireless Association (December 2008) (comparing December 2000 to December 2008 figures)); see also CTIA FNPRM Comments at 3-4 (estimating that the number of wireless subscribers had grown to 276.6 million as of June 2009).

⁴² *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 08-27, Thirteenth Report, 24 FCC Rcd 6185, 6189, para. 2 (2009) (*Thirteenth CMRS Competition Report*). A census block is the smallest geographic entity for which the Census Bureau tabulates decennial census data. U.S. Census Bureau, *Glossary Of Basic Geographic And Related Terms - Census 2000*, available at <http://www.census.gov/geo/www/tiger/glossary.html#glossary> (last modified Sept. 9, 2005). Many blocks correspond to individual city blocks bounded by streets, but blocks – especially in rural areas – may include many square miles and may have some boundaries that are not streets. The Census Bureau established blocks covering the entire nation for the first time in 1990. Previous censuses back to 1940 had blocks established only for part of the nation. Over 8 million blocks are identified for Census 2000. U.S. Census Bureau, *Introduction to Census 2000 Data Products* (June 2001), at <http://www.census.gov/prod/2001pubs/mso-01icdp.pdf>. The mean size of a census block is .0460 square miles, and its median size is 0.016 square miles with a range of 0.0000001 to 8,081 square miles; its mean population is 34.3 people, while its median population is 8.0 people, with a range of 0 to 23,373 people. FCC analysis based on Census 2000 “Summary File 1 (SF 1),” U.S. Census Bureau, *United States Census 2000*, available at <http://www.census.gov/Press-Release/www/2001/sumfile1.html> (last modified Aug. 8, 2009).

⁴³ *Thirteenth CMRS Competition Report*, 24 FCC Rcd at 6189, para. 2

⁴⁴ *Id.*, 24 FCC Rcd at 6189, 6239, paras. 2, 104.

⁴⁵ Universal Service Administrative Company, Annual Report 2009 at 42, available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2009.pdf (USAC Annual Report 2009). See also *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, para. 6 (2008) (*Interim Cap Order*), affirmed, *Rural Cellular Assn. v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) (*Rural Cellular Assn.*). The majority of competitive ETCs are mobile wireless service providers, and the vast majority of competitive ETC support goes to wireless competitive ETCs. *Id.*, n.61. In May 2008, the Commission adopted an order that imposed an interim, emergency cap on competitive ETC high-cost support disbursements “to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund.” *Id.*, para. 5. In addition, the Commission conditioned certain merger decisions on voluntary commitments by Sprint Nextel and Verizon Wireless to phase out their high-cost universal service support in equal 20 percent increments over a period of five years. *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section*

(continued....)

16. Consumers in urban and rural areas have flocked to wireless phone service due to improved wireless coverage and better pricing.⁴⁶ Nationwide mobile wireless service providers offer unlimited national flat-rate calling plans, and even many smaller operators offer some version of a national rate pricing plan.⁴⁷ By the first half of 2009, the percentage of all households that had “cut the cord,” and subscribe exclusively to wireless service, rose to an all-time high of more than 22.7 percent – i.e., more than one in five households.⁴⁸

17. In addition to wireless service, more and more customers have the option to purchase voice service from competing broadband-based VoIP providers. Such services are offered by facilities-based providers, such as cable operators, as well as providers of “over-the-top” VoIP services that utilize a broadband connection provided by a separate, facilities-based provider.⁴⁹ Like mobile wireless service providers, many VoIP providers offer competitive monthly rates under nationwide pricing plans.⁵⁰ While these services are not yet as pervasive as traditional wireline or wireless services, the Commission has recognized that “[i]nterconnected VoIP service subscribers represent an important and rapidly growing part of the U.S. voice service market, and interconnected VoIP services are becoming increasingly competitive with other forms of local telephone service.”⁵¹

2. Telephone Subscribership Rates and Consumer Expenditure Data

18. Since the Commission established the universal service program in 1996, subscribership penetration rates have remained at consistently high levels. In 1996, 93.9 percent of households had phone service.⁵² Fourteen years later, the Commission’s most recent report on telephone subscribership, (Continued from previous page) _____

310(b)(4) of the Communications Act, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17529-32, paras. 192-97 (2008); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17611-12, paras. 106-08 (2008).

⁴⁶ *Thirteenth CMRS Competition Report*, 24 FCC Rcd at 6294, para. 230 (“It appears that customers are switching to wireless from wireline because of wireless’s relatively low cost and widespread availability. As discussed in past Reports, a number of analysts have argued that wireless service is competitive or cheaper than wireline, particularly if one is making a long-distance call or when traveling.”).

⁴⁷ *Id.*, 24 FCC Rcd at 6199, 6243-44, 6246, paras. 14, 111-12, 118. The four service providers that are considered “nationwide”, Verizon Wireless, AT&T, T-Mobile and Sprint Nextel, offer facilities-based service in at least some portion of the western, mid-western, and eastern United States. *Id.*, 24 FCC Rcd at 6199, para 14. These four nationwide mobile wireless service providers offer nationwide calling plans for an average effective rate of \$0.05 to \$0.10 per minute, in addition to unlimited nationwide calling plans. *See* Verizon NOI Comments at 17.

⁴⁸ CTIA FNPRM Comments at 4 (citing United States Centers for Disease Control and Prevention, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2009” (rel. Dec. 16, 2009)).

⁴⁹ NCTA NOI Comments at 6 (explaining that cable operators now provide voice service to more than 20 million households, typically at rates that are lower than the rates offered by the incumbent LEC).

⁵⁰ *Id.* (explaining that Vonage offers “unlimited local and long distance calling plans starting at \$9.95 per month for three months, and \$24.99 per month thereafter”).

⁵¹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9705, para. 26 (2008).

⁵² Industry Analysis and Technology Division, Wireline Competition Bureau, *Telephone Subscribership in the United States*, Table 1 (February 2010) (Telephone Subscribership Report).

released in February 2010, found that the telephone subscribership penetration rate in the United States in 2009 had increased to 95.7 percent – the highest reported penetration rate since the Census Bureau began collecting such data in November 1983.⁵³ This represents a statistically significant increase of 0.5 percent from the 95.2 percent penetration rate reported for 2008.⁵⁴ An alternative measure of telephone penetration shows that the telephone penetration rate has risen from 96.9 percent in 2001 to 98.2 percent in 2008.⁵⁵ Thus, even as consumers have dropped traditional wireline telephone service, overall subscribership to telephone service continues to increase.

19. Furthermore, average consumer expenditures on telephone service as a percentage of total household expenditures have remained relatively stable over time – at approximately two percent – even though consumers purchase more different types of telephone services than they did decades ago.⁵⁶ Data from the Bureau of Labor Statistics (BLS) indicate that consumers spent 1.94 percent of their household expenditures on telephone service in 1980 and 2.23 percent in 2008.⁵⁷ Moreover, consumers are buying more telephone services than they did in 1980. An alternative measure of consumer expenditures shows that telephone service as a percentage of all goods and services accounted for 1.6 percent of consumer expenditures in both 1980 and 2005.⁵⁸ Further, consumers now pay only slightly more for both wireline and wireless services than they paid for wireline service alone in 1980. In 1980, there was no wireless service, and in 1984 there were only 92,000 wireless subscribers.⁵⁹ Today, by contrast, an estimated 270 million Americans are wireless subscribers.⁶⁰ Indeed, by 2008, 49 percent of consumer expenditures on telephone service were allocated to wireline (local and long distance) service while 51 percent were allocated to wireless service.⁶¹ In addition, while consumer expenditure percentages have remained stable, the Consumer Price Index (CPI) for all items has consistently been higher than the CPI for

⁵³ *Id.* at 23. The Commission's subscribership statistics are based on the Current Population Survey (CPS) conducted by the Census Bureau. The survey is intended to be neutral as to whether the household has wireline or wireless phones. *See id.* at 2, n.4.

⁵⁴ *See id.* at 3 (concerning the statistical significance of changes in annual averages) and 22-23 (showing the annual averages for the United States for 2008 and 2009).

⁵⁵ 2009 Universal Service Monitoring Report (data through July 2009), Federal-State Staff for the Federal-State Joint Board on Universal Service, Table 6.4 (Dec. 31, 2008) (2009 Monitoring Report), http://www.fcc.gov/wcb/tapd/universal_service/USFmonitor.html. This figure is based on occupied households with telephone service, regardless of technology.

⁵⁶ *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, 3-1; 3-3, Table 3-1 (August 2008) (*2008 Trends*) (“About 2% of all consumer expenditures are devoted to telephone service. This percentage has remained virtually unchanged over the past twenty years, despite major changes in the telephone industry and in telephone usage.”).

⁵⁷ BLS publishes data from its Consumer Expenditure Survey showing how much consumers spend on telephone service and other household expenditures. *See* <http://www.bls.gov/cex>. BLS data for telephone service currently includes: residential/payphone service (which includes local service, features, payphone expenditures, and long distance); wireless service; pager service; and phone cards. In 1980, there was no wireless service, so the earlier data reflects primarily local and long distance service.

⁵⁸ *See 2008 Trends*, 3-5, Table 3.3. These percentages are based on data from the Bureau of Economic Analysis (BEA), National Economic Accounts. Telephone service as a percentage of all goods and services was at its highest, 1.9 percent of consumer expenditures, from 1997 through 2000. *See id.*

⁵⁹ *See 2008 Trends*, 11-1, 11-4, Chart 11.1.

⁶⁰ *See supra* para. 14.

⁶¹ *See 2008 Trends*, 3-5, Table 3.3.

telephone service for the past two decades.⁶² In fact, while the CPI for all items increased 2.5 percent between 1996 and 2006, the CPI for telephone service decreased by 0.3 percent.⁶³

3. Growth in the Universal Service Fund

20. The universal service fund provides federal support for several universal service programs, subsidizing telecommunications services purchased by consumers in high-cost areas, low-income consumers, rural health care providers, and schools and libraries.⁶⁴ The amount of universal service support disbursed has grown dramatically in recent years in response to programmatic and marketplace changes. In 2001, universal service disbursements totaled \$5.35 billion.⁶⁵ By 2009, universal service disbursements totaled \$7.26 billion annually.⁶⁶ High-cost support disbursements represent the majority of universal service expenditures, and are the primary driver of growth in overall universal service disbursements.⁶⁷ From 2001 to 2009, high-cost support disbursements grew substantially, from about \$2.6 billion to about \$4.3 billion, an increase of \$1.7 billion, or about 65 percent.⁶⁸ Much of this growth in high-cost support was attributable to the removal of implicit subsidies from interstate access charges, which traditionally helped reduce rates for basic local telephone service, and the inclusion of these amounts in two new explicit universal service mechanisms: Interstate Access Support (IAS) and Interstate Common Line Support (ICLS).⁶⁹ Until recently, high-cost support was one of only two types of universal service support that was not subject to an annual cap.⁷⁰ In May 2008, the Commission found it

⁶² See *2008 Trends*, 12-1, 12-3, Chart 12.1.

⁶³ *Id.* at 12-3, Table 12.1.

⁶⁴ The rural health care and schools and libraries mechanisms support certain non-telecommunications services. See 47 CFR § 54.503 (schools and libraries), 47 CFR §§ 54.601(c), and 54.621 (rural health care).

⁶⁵ Universal Service Administrative Company, Annual Report 2001 at 32, available at <http://www.usac.org/about/governance/annual%2Dreports/2001/default.html> (USAC Annual Report 2001).

⁶⁶ USAC Annual Report 2009 at 39.

⁶⁷ Disbursements were allocated among the various universal service programs in the following proportions in 2009: 59.2 percent for high-cost support; 25.9 percent for schools and libraries support; 14.1 percent for low-income support; and 0.8 percent for rural health care support. *Id.*

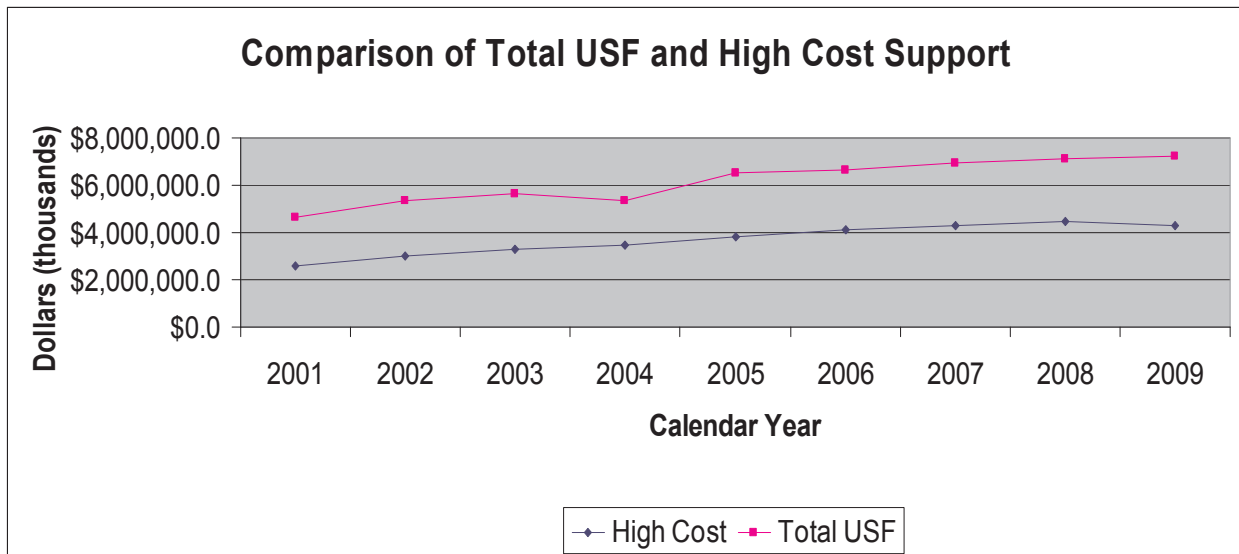
⁶⁸ USAC Annual Report 2001 at 33; USAC Annual Report 2009 at 40. See also *Interim Cap Order*, 23 FCC Rcd 8834.

⁶⁹ See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 16 FCC Rcd 19613 (2001) (*MAG Plan Order*), recon. pending. In 2008, incumbent LEC ETCs and competitive ETCs received \$585 million of IAS and \$1.62 billion of ICLS. 2009 Universal Service Monitoring Report, Table 3.1.

⁷⁰ The schools and libraries universal service funding mechanism (the E-rate program) is capped at \$2.25 billion per funding year, and the rural health care support mechanism is capped at \$400 million per funding year. See 47 C.F.R. §§ 54.507(a), 54.623. The low-income support mechanism is not capped, and continues to grow, but grew by less than \$240 million between 2001 and 2008. See 2009 Monitoring Report, Table 2.2. Although high-cost support is not subject to an overall cap, portions of the high-cost support mechanism, are subject to a cap or target. 47 C.F.R. §

(continued....)

necessary to impose an interim, emergency cap on competitive ETC high-cost support disbursements, “to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund.”⁷¹



21. As the amount of universal service support disbursed has increased, so has the quarterly universal service contribution factor, which results in higher universal service contribution assessments and higher phone bills for end-user customers.⁷² The contribution factor has more than doubled in the past 10 years. In the second quarter of 2001, the contribution factor was approximately 6.9 percent of interstate and international, end-user telecommunications revenues.⁷³ Now, in the second quarter of 2010, the current contribution factor has climbed to 15.3 percent – an all-time high – due to the increased demand for universal service support and a declining pool of interstate telecommunications revenues against which to assess contributions.⁷⁴ As a result, many consumers of interstate telecommunications

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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).

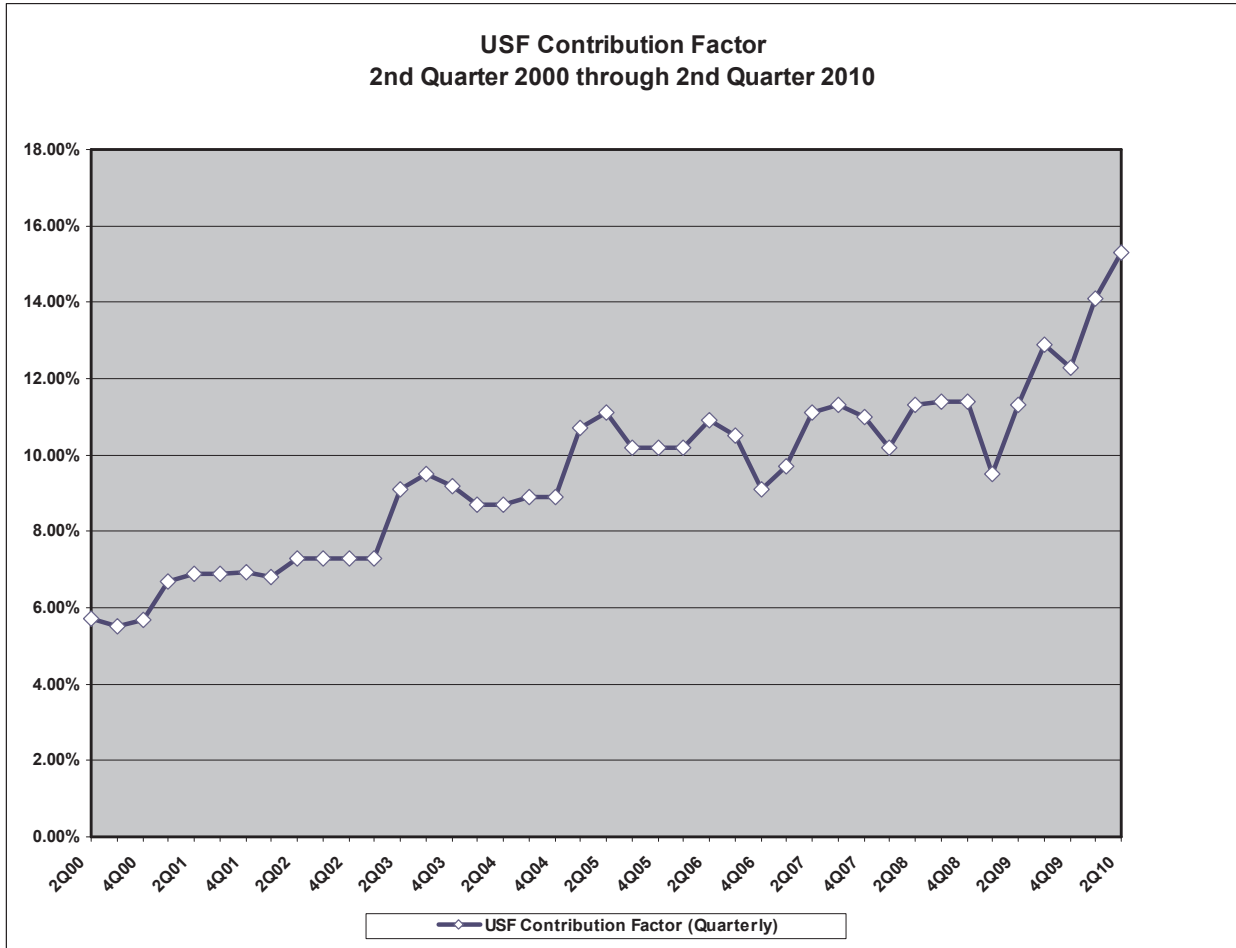
⁷¹ *Interim Cap Order*, 23 FCC Rcd at 8837, para. 5.

⁷² Support for the universal service fund derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. See 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those contribution assessments through to their end-user customers. See 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors’ contribution base revenues.

⁷³ See *Proposed Second Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 5358 (Comm. Carr. Bur. 2001).

⁷⁴ *Proposed Second Quarter 2010 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 10-427 (OMD rel. Mar. 12, 2010). Because the Commission took no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of the Public Notice, they were deemed approved by the Commission. See 47 C.F.R. § 54.709(a)(3).

services are paying a surcharge of over 15 percent on the interstate portion of their monthly bill. This figure likely underestimates the total universal service burden imposed on consumers, however, because more than 20 states have established their own universal service funds, in addition to the federal universal service fund.⁷⁵ For example, to support the Texas universal service fund, which includes a high-cost program and a low-income program, Texas currently imposes a 3.4 percent surcharge on intrastate telecommunication services receipts.⁷⁶ Similarly, Colorado currently imposes a 2.2 percent fee to support the Colorado high-cost support mechanism.⁷⁷



⁷⁵ See Peter Bluhm, Phyllis Bernt, PhD, and Jing Liu, *State High-Cost Funds: Purposes, Design and Evaluation*, National Regulatory Research Institute (Jan. 15, 2010) (finding that 21 states have established high-cost universal service funds).

⁷⁶ Texas Universal Service Fund (TUSF) at <http://www.puc.state.tx.us/ocp/telephone/telefacts/USF.PDF> (last visited Mar. 1, 2010).

⁷⁷ About the Colorado Public Utilities Commission Telecommunications Universal Service Fund – High-Cost Support Mechanism at <http://www.dora.state.co.us/PUC/telecom/hcsm/AboutHCSM.htm> (last visited Mar. 1, 2010); 4 CCR 723-2-2846(c) (“The HCSM rate element shall be applied to the retail revenues of each provider’s end user and shall appear as a line item on the monthly bill of each such end user except that providers falling within the de minimis exemption of subparagraph (b)(I)(B) shall not apply the HCSM rate element nor collect such contribution from their end users.”).

22. All of the developments discussed above – the growth of a vibrantly competitive telecommunications marketplace; the unprecedented levels of telephone subscribership; the stability of consumer expenditures on telephone service over the last three decades; and the dramatic increase in federal universal service funding – inform our analysis of whether the non-rural mechanism, as currently structured, comports with section 254 of the Act. Taking all of these factors into account, we conclude, for the reasons set forth below, that it does.

C. The Current Non-Rural Mechanism Comports With Section 254

23. On remand, the Tenth Circuit directed the Commission to address three issues. First, the court held that the Commission “must articulate a definition of ‘sufficient’ that appropriately considers the range of principles in the text of the statute.”⁷⁸ Second, the Commission “must define the term ‘reasonably comparable’ in a manner that comports with its concurrent duties to preserve and advance universal service.”⁷⁹ And finally, the court directed the Commission “to utilize its unique expertise to craft a support mechanism taking into account all of the factors that Congress identified in drafting the Act and its statutory obligation to preserve *and* advance universal service.”⁸⁰ With respect to this last mandate, the court stated that “the FCC must fully support its final decision on the basis of the record before it.”⁸¹ We address each of these issues in turn. After careful analysis and review of the record, we conclude that the non-rural support mechanism, as currently structured, comports with the requirements of section 254 of the Act.

1. “Sufficient”

a. An Assessment of Whether Support Is “Sufficient” Must Take Into Account the Entire Universal Service Fund

24. Section 254(e) of the Act provides that federal universal service support “should be explicit and *sufficient* to achieve the purposes of [section 254].”⁸² In the context of determining high-cost support for non-rural carriers, the Commission previously defined “sufficient” as “enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers.”⁸³ In *Qwest II*, the Tenth Circuit held that the Commission did not adequately demonstrate how its non-rural universal service support mechanism was “sufficient” within the meaning of section 254(e).⁸⁴ The court noted that “reasonable comparability” was just one of several principles that Congress directed the Commission to consider when crafting policies to preserve and advance universal service.⁸⁵ The court was “troubled by the Commission’s seeming suggestion that other principles, including affordability, do not underlie federal non-rural support mechanisms.”⁸⁶ “On

⁷⁸ *Qwest II*, 398 F.3d at 1234.

⁷⁹ *Id.*

⁸⁰ *Id.* at 1237.

⁸¹ *Id.*

⁸² 47 U.S.C. § 254(e) (emphasis added).

⁸³ *Order on Remand*, 18 FCC Rcd at 22578, para. 30.

⁸⁴ *Qwest II*, 398 F.3d at 1237.

⁸⁵ *Id.* at 1234 (citing 47 U.S.C. § 254(b)).

⁸⁶ *Id.*

remand,” the court concluded, “the FCC must articulate a definition of ‘sufficient’ that appropriately considers the range of principles identified in the text of the statute.”⁸⁷

25. Congress, in section 254(b) of the Act, set forth a number of principles for the Commission to consider when implementing the universal service policy. These principles include: (1) “[q]uality service should be available at just, reasonable, and affordable rates”; (2) “access to advanced telecommunications and information services should be provided in all regions of the Nation”; (3) “low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications services and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged . . . in urban areas”; (4) “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service”; (5) “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service”; and (6) “[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services.”⁸⁸ In addition, section 254(b) permits the Joint Board and the Commission to adopt “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.”⁸⁹

26. The Commission developed four universal service support programs to implement all of the statutory requirements set forth in section 254 of the Act. While the principles in section 254(b), collectively informed and guided the Commission’s decisions, each support program necessarily addresses some of the principles more directly than others. For example, the Commission implemented an E-rate program and a rural health care mechanism to provide support for schools, libraries, and rural health care providers, as set forth in section 254(b)(6).⁹⁰ The Commission expanded the Lifeline and Link-up programs to assist low-income consumers and help ensure affordable rates, as set forth in section 254(b)(3).⁹¹ While the Commission kept the larger statutory goals in mind as it developed the four support programs, it did not attempt to fully address each universal service principle in section 254(b) through each support mechanism. Nor is there any indication that Congress intended each principle to be fully addressed by each separate support mechanism. The Commission believes that any determination about whether the Commission has adequately implemented section 254 must look at the cumulative effect of the four support programs, acting together.

27. The non-rural high-cost support mechanism thus is just one segment of the Commission’s comprehensive scheme to preserve and advance universal service.⁹² The “sufficiency” of the non-rural

⁸⁷ *Id.*

⁸⁸ 47 U.S.C. § 254(b).

⁸⁹ 47 U.S.C. § 254(b)(7). Based on the Joint Board’s recommendation, the Commission established “competitive neutrality” as an additional principle upon which to base policies for the preservation and advancement of universal service. See *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03, paras. 46-53.

⁹⁰ 47 U.S.C. § 254(b)(6). The Fifth Circuit rejected a challenge to the Commission’s schools and libraries program and parts of the rural health care program. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 440-46 (5th Cir. 1999) (*TOPUC*).

⁹¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 8952-9133, paras. 326-685.

⁹² Moreover, even in the context of high-cost universal service support, the non-rural fund is but one of several mechanisms that provide universal service support to rural, insular, and other high-cost areas. See Verizon NOI Comments at 5 (describing other high-cost universal service support mechanisms, which include federal high-cost

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high-cost mechanism to achieve its purpose cannot fairly be judged in isolation.⁹³ The four universal service programs work in tandem to accomplish the principles set forth in section 254(b). For instance, while the basic purpose of high-cost support is to ensure that telephone service is not prohibitively expensive for consumers in rural, insular, and high-cost areas, some consumers in those areas will still need additional assistance due to their low household income. Low-income support, provided through the Lifeline and Link-up programs, supplements high-cost support in those circumstances to remove the additional affordability barriers faced by economically disadvantaged individuals living in rural and other high-cost areas. A fair assessment of whether the Commission has reasonably implemented the section 254 principles, and whether support is “sufficient” for purposes of section 254(e), must therefore encompass the entirety of universal service support programs.⁹⁴ This approach to assessing “sufficiency” is consistent with the Tenth Circuit’s analysis in *Qwest I*. The court there recognized that it could not satisfactorily perform the “task of reviewing the sufficiency of the FCC’s actions” without knowing “the full extent of federal support for universal service.”⁹⁵

28. Moreover, whether the Commission has satisfied the goal of “sufficiency,” as required by section 254(e), must be evaluated in the larger context of section 254. The various objectives of section 254 impose practical limits on the fund as a whole. If the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable.⁹⁶ This issue is not theoretical. With the contribution factor above 15 percent, the Commission has to balance the principles of section 254(b) to ensure that support is sufficient but does not impose an excessive burden on *all* ratepayers. For the reasons discussed herein, we conclude that in designing its non-rural high-cost mechanism, the Commission must balance the statutory principles of reasonable comparability and affordability, taking into account both affordability of rates in high-cost areas served by non-rural carriers and affordability of rates in other areas where customers are net contributors to universal service funding.

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support for rural carriers; federal access charge replacement support (IAS for price-cap carriers and ICLS for rate-of-return carriers); and supplemental state universal service programs).

⁹³ Verizon NOI Comments at 1 (“The non-rural fund is not designed to achieve all of Congress’ universal service objectives in the Act. There are many different universal service programs that, by design, work together.”); *see also id.* at 5-8 (describing how the full panoply of federal and state universal service support programs achieve the Act’s universal service objectives).

⁹⁴ Verizon NOI Comments at 1 (explaining that “the non-rural fund rules are but one part of the [Commission’s] much larger program that, overall, must be ‘sufficient’ to contribute to the ‘preservation and advancement’ of universal service, and must promote service at rates that are ‘reasonably comparable’ between urban and rural areas.”); *see also* Verizon FNPRM Comments at 4-5; NASUCA NOI Comments at 34-43; NASUCA FNPRM Comments at 6-8; CTIA FNPRM Comments at 7; NJ Rate Counsel FNPRM Comments at 9, 11; USA Coalition FNPRM Reply Comments at 3; Vermont/Maine NOI Comments at 19-20 (stating that the Commission does not need to satisfy all the section 254(b) principles through the high-cost program).

⁹⁵ *Qwest I*, 258 F.3d at 1205.

⁹⁶ Verizon NOI Reply Comments at 2 (“Unrestrained growth in the high cost fund imperils both the affordability and sustainability of all universal service programs – programs that consumers pay for through charges on their bills.”); NCTA FNPRM Comments at 4 (“[U]nchecked growth in the size of the fund, and the corresponding burden on consumers, is directly contrary to the goal of making affordable services available to all consumers.”); AT&T FNPRM Comments at 7 (“[A]t some point, increasing the size of the fund, and thus the contribution burden on subscribers in urban areas, will implicate both affordability and sufficiency of support.”); NASUCA NOI Comments at 43; Comcast FNPRM Comments at 2, 3.

29. Several courts, including the Tenth Circuit, have recognized that over-subsidizing universal service programs can actually undermine the statutory principles set forth in section 254(b). The Tenth Circuit acknowledged that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1).”⁹⁷ The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) recently found, when it upheld the Commission’s interim cap on high-cost support disbursements to competitive ETCs’ support, that the concept of “sufficiency” can reasonably encompass “not just affordability for those benefited, but fairness for those burdened.”⁹⁸ The D.C. Circuit explained that, in assessing whether universal service subsidies are excessive, the Commission “must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.”⁹⁹ Further, in *Alenco Communications, Inc. v. FCC*, the Fifth Circuit found that “[t]he agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”¹⁰⁰ We thus conclude that a proper balancing inquiry must take into account our generally applicable responsibility to be a prudent guardian of the public’s resources.¹⁰¹

30. In light of all these considerations, we respond to the Tenth Circuit’s remand by defining “sufficient” as an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program. Unlike the Commission’s prior definition, which the court stated “ignore[d] all but one principle in [section] 254(b),”¹⁰² this definition is “tied explicitly to all the principles underlying the universal service program.”¹⁰³ It also “expressly incorporates the principle of ‘affordability’ by ensuring that universal service [support] levels are ‘sufficient’ without growing so large as to be unsustainable and without rendering the rates for supported services ‘unaffordable.’”¹⁰⁴ Having considered the principles set forth in section 254(b) and the Commission’s interpretation and application of those principles, we now turn to applying those principles to the non-rural high-cost support mechanism.

⁹⁷ *Qwest II*, 398 F.3d at 1234 (citing *Qwest I*, 258 F.3d at 1200).

⁹⁸ *Rural Cellular Assn*, 588 F.3d 1095; see also CTIA FNPRM Comments at 8 (agreeing with the Commission that “it is also necessary to find a balance between ‘reasonable comparability’ and ‘affordability’ by taking into account the affordability of rates in areas where customers are net contributors.”); MDTC FNPRM Comments at 16 (explaining that “universal service policy should be designed to maintain or increase subscribership – not to transfer wealth from low-cost to high-cost regions”).

⁹⁹ *Rural Cellular Assn*, 588 F.3d at 1102.

¹⁰⁰ 201 F.3d 608, 620-21 (5th Cir. 2000) (affirming transitional rules that capped support for rural incumbent LEC high-cost loops and corporate operation expenses). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318 (1997); *Errata*, 13 FCC Rcd 2372 (1998)

¹⁰¹ Verizon NOI Comments at 9-10 (“The principle of ‘sufficient’ support also includes a concurrent prohibition against excessive funding in order to protect consumers, who pay for universal service through charges on their bills.”).

¹⁰² *Qwest II*, 398 F.3d at 1234.

¹⁰³ Verizon NOI Comments at 10.

¹⁰⁴ *Id.* at 10-11; see also CTIA FNPRM Comments at 11-12 (“The high-cost support mechanism should be measured as ‘sufficient’ if it is adequate, but no larger than necessary, to satisfy the goals of the Act. A sufficient mechanism would permit customers in rural and high-cost areas to receive comparable services at comparable rates, without overburdening the customers who ultimately support universal service.”).

b. The Commission’s Universal Service Programs Provide “Sufficient” Support

31. We find that the non-rural high-cost support mechanism, acting in conjunction with the Commission’s other universal service programs, provides sufficient support to achieve the universal service principles set forth in section 254(b) of the Act. These programs have produced almost ubiquitous access to telecommunications services and very high telephone subscribership rates.¹⁰⁵ The Commission’s most recent report on telephone subscribership, released in February 2010, found that, as of November 2009, the telephone subscribership penetration rate in the United States was 95.7 percent – the highest reported penetration rate since the Census Bureau began collecting such data in November 1983.¹⁰⁶ The fact that subscribership has increased indicates that the Commission is preserving and *advancing* universal service.

32. In particular, the current telephone subscribership penetration rate is strong evidence that our universal service programs provide support that is sufficient to ensure that rates are affordable, as required by section 254(b)(1).¹⁰⁷ This finding is buttressed by data showing that average consumer expenditures on telephone service as a percentage of household expenditures have been relatively stable over time – approximately 2 percent – even while the amount of telephone service consumers are purchasing has increased.¹⁰⁸ Moreover, rural consumers and urban consumers spent a comparable percentage of their household expenditures on telephone service.¹⁰⁹ We agree with Qwest that “the current level of telephone subscribership suggests that universal service subsidies *as a whole* are enabling *affordable* rates” We disagree, however, that the Commission is required to “present[] data . . . to demonstrate that non-rural high-cost support” by itself “is actually contributing to affordable rates” in order to satisfy the court.¹¹⁰ As we explained above, the Commission cannot – and is not required to – evaluate the non-rural high-cost fund in isolation. Sufficient support that satisfies the universal service principles of section 254(b) – including affordable rates – can only reasonably be achieved through the

¹⁰⁵ See Verizon NOI Comments at 8 (explaining that high telephone subscribership rates demonstrate that the Commission’s universal service programs, working together, have achieved the universal service objectives in the Act).

¹⁰⁶ Telephone Subscribership Report, Table 2.

¹⁰⁷ A number of commenters agree that high telephone subscribership rates provide evidence that rates are affordable. See, e.g., AT&T NOI Reply Comments at 23; NCTA NOI Comments at 6; CTIA NOI Comments at 7. Qwest believes that “sufficient high-cost support should include enough support to enable rates in high-cost areas to remain affordable for most customers.” Qwest FNPRM Comments at 8. We agree. As set forth herein, record evidence demonstrates that the current system produces affordable rates that pass Qwest’s proposed “affordability” test. Qwest, by contrast, has provided no empirical data supporting its unsubstantiated assertion that rural rates charged by non-rural carriers are not affordable for most customers. To the contrary, in its comments responding to the *Remand NOI*, Qwest stated: “High penetration rates throughout the country suggest that current rates are affordable so further efforts to ensure affordability of rural rates within the framework of the high-cost program seem unnecessary at this time.” Qwest NOI Comments at 15.

¹⁰⁸ See *supra* para. 19.

¹⁰⁹ *Id.* Urban consumers spent approximately 2.2 percent of their household income on telephone service, and rural consumers spent approximately 2.5 percent. See Bureau of Labor Statistics, Consumer Expenditure Survey, Table 51, Housing tenure and type of area: Shares of average annual expenditures and sources of income (2008), <http://www.bls.gov/cex/2008/share/tenure.pdf>. (BLS, CES Table 51). At least some (if not all) of this differential is explained by the fact that consumers with higher incomes spend a smaller percentage of total household expenditures on telephone service, and average income is higher in urban areas than in rural areas. *Id.*

¹¹⁰ Qwest Comments at 16; see also AT&T Comments at 17.

totality of the Commission's universal service programs, not by the non-rural high-cost mechanism standing alone.¹¹¹ Indeed, we believe that the public interest would not be well-served if we attempted to determine sufficiency by considering a single support mechanism in a vacuum, while ignoring the support provided by the other support mechanisms.

33. Significantly, the court in *Qwest II* did not find that non-rural high-cost support was insufficient to achieve the statutory principles in section 254(b). Rather, it held that the Commission failed to consider all of those principles in its analysis of whether support is, in fact, sufficient. We have now considered those principles and adopted a definition of "sufficient" that is tied explicitly to all of those principles.¹¹² We further find, based on record evidence, that the Commission's universal service programs, including the non-rural high-cost support mechanism, provide "sufficient" support. Given the unprecedented level of telephone subscribership, the increased utilization of service, and the steady share of consumer expenditures, we conclude that current subsidy levels are at least sufficient to ensure reasonably comparable and affordable rates that have resulted in widespread access to telephone service. Contrary to the assertion of some parties, we did not "start[] with a premise that in fixing the non-rural high-cost support fund [the Commission] must not increase the size of the [universal service fund]."¹¹³ Instead, after reviewing the data, we have concluded that it is not necessary to expand funding for the non-rural mechanism to ensure that support is "sufficient."¹¹⁴

34. While some commenters assert that the non-rural high-cost support mechanism, as currently structured, provides insufficient support, none has made any effort to demonstrate that its current support is actually insufficient.¹¹⁵ In particular, we are not persuaded that incumbent LEC line

¹¹¹ For the same reason, we reject the argument made by some commenters that statewide telephone subscribership penetration rates cannot demonstrate whether the non-rural mechanism produces support that is sufficient to ensure affordable rates in rural areas. See *Qwest Comments* at 16-17; *RCA Comments* at 15, 16; *USA Coalition Comments* at 6, 7. Like *Qwest*, these commenters myopically focus on whether the non-rural mechanism, standing alone, produces affordable rural rates, when the proper scope of inquiry is whether the Commission's universal service programs, in the aggregate, produce affordable rural rates. Other universal service programs (e.g., Lifeline and Link-up) also lower barriers to affordability for consumers in rural areas, so a rural telephone subscribership penetration rate could not be attributed solely to the sufficiency (or insufficiency) of non-rural high-cost support. See para. 27. Likewise, rural rates would be influenced significantly by rural high-cost support mechanisms and access charge replacement mechanisms, such as IAS and ICLS. It is therefore reasonable for the Commission to measure the sufficiency of support by examining whether its universal service programs, as a whole, have increased telephone subscribership penetration rates both nationally and by state.

¹¹² See *supra* paras. 25-30. As noted above, we define "sufficient" as an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program. See *supra* para 30.

¹¹³ *Qwest Comments* at 6; see also *Rural State Comments* at 23, 25; *AT&T Comments* at 11.

¹¹⁴ We further reject *Qwest's* contention that we have improperly "elevat[ed] the size of the fund above the statutory universal service principles, ... destroy[ing] [our] ability to appropriately define sufficient support." *Qwest Comments* at 7. According to *Qwest*, the Commission should give the size of the universal service fund little or no consideration when balancing the principles in section 254(b), "because none of those principles ... addresses the size of the fund in any manner." *Id.* Like the D.C. Circuit, however, we find it "hard to imagine how the Commission could achieve the overall goal of § 254 – the 'preservation and advancement of universal service' 47 U.S.C. § 254(b) – if the USF is 'sufficient' for purposes of § 254(b)(5) yet so large it actually makes telecommunications services less 'affordable,' in contravention of § 254(b)(1)." *Rural Cellular Assn*, 588 F.3d at 1103.

¹¹⁵ *Rural State FNPRM Comments* at 5-6; *Qwest FNPRM Comments* at 1; *AT&T FNPRM Comments* at 6, 12; *ITTA FNPRM Comments* at 1-2.

losses due to competitive entry in urban areas have resulted in diminished service for consumers in rural areas.¹¹⁶ No commenter has presented evidence that customers will be left without service absent an increase in federal high-cost support for non-rural carriers.¹¹⁷ A similar lack of evidence caused the D.C. Circuit to reject a challenge to the interim cap the Commission imposed on high-cost support disbursements to competitive ETCs.¹¹⁸ The court in that case found that petitioners produced “no cost data showing they would, in fact, have to leave customers without service as a result of the cap” and therefore gave the court “no valid reason to believe the principle of ‘sufficiency’” would be “violated by the cap.”¹¹⁹ Likewise, in *Alenco*, the Fifth Circuit held that a single provider’s reduced rate of return “does not establish that the cap [on certain incumbent LEC high-cost support mechanisms] fails to provide sufficient service” to customers.¹²⁰ We therefore reject the argument that competition has rendered non-rural high-cost support insufficient.

35. Qwest and AT&T complain that they receive less high-cost support than other providers, including rural incumbent LECs.¹²¹ But it does not follow that Qwest and AT&T receive insufficient support simply because they receive less support than other providers.¹²² Compared to non-rural carriers, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit from economies of scale and scope to the same extent as non-rural carriers.¹²³

36. Commenters alleging that non-rural high-cost support is insufficient also ignore the millions of dollars of growth in disbursements under this mechanism. For example, when the Tenth Circuit issued *Qwest II* in 2005, carriers received \$292 million annually in federal universal service support from the non-rural mechanism.¹²⁴ In 2009, carriers received \$331 million in federal universal

¹¹⁶ Qwest FNPRM Comments at 19; Rural State FNPRM Comments at 19; Mid-Sized LEC FNPRM Comments at 3; ITTA FNPRM Comments at 6; USTelecom FNPRM Comments at 3-4.

¹¹⁷ In addition, those commenters claiming that their support is inadequate due to “rapidly decreasing implicit subsidies” have failed to quantify the amount of those lost subsidies, or to describe the impact that the loss has had on rural rates for the supported telephone services. Qwest FNPRM Comments at 8; *see also* AT&T FNPRM Comments at 12. We agree with NASUCA that “if competition has eliminated the implicit support used by non-rural carriers, which causes a need for increases in the non-rural carriers’ rural rates, then that is an issue for the respective state commissions.” NASUCA NOI Comments at 48. Only “[i]f subsequent rate increases result in rural rates that are not reasonably comparable to national urban rates” would the Commission be required to increase federal high-cost support. *Id.* No commenter claiming that support under the current non-rural mechanism is insufficient due to the loss of implicit subsidies has given any indication that it has applied to any state commission to increase rural rates.

¹¹⁸ *Rural Cellular Assn*, 588 F.3d at 1103.

¹¹⁹ *Id.* at 1104.

¹²⁰ *Alenco*, 201 F.3d at 621.

¹²¹ AT&T FNPRM Comments at 6 (complaining that “although it serves approximately one-quarter of rural switched access lines, AT&T receives high-cost model support in only three of its 22 ILEC states”), *id.* at 16; Qwest FNPRM Comments at 8 (complaining that “rural carriers receive more than five times the amount of high-cost support that non-rural carriers receive for providing a similar amount of comparable high-cost lines.”), *id.* at 9 (blaming the growth in the high-cost fund on support provided to competitive ETCs).

¹²² In particular, we note that AT&T receives a significant amount of high-cost support from the non-rural mechanism: over \$100 million in 2009. 2009 Monitoring Report, Table 3.5.

¹²³ *Order on Remand*, 18 FCC Rcd. at 22573, para. 25.

¹²⁴ 2005 Monitoring Report.

service support from the non-rural mechanism.¹²⁵ While most of that increase is attributable to support paid to non-incumbent LECs, the majority of which are wireless competitive ETCs, those carriers also provide supported services within each state's boundaries and therefore advance the principles set forth in section 254(b) of the Act. As the Fifth Circuit recognized, "[t]he purpose of universal service is to benefit the customer, not the carrier," so "[s]ufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy."¹²⁶ Accordingly, we disagree with the Rural States' argument that the non-rural mechanism provides insufficient support in the face of record evidence showing increases in both total non-rural high-cost support and overall telephone subscribership since the Commission adopted the *Remand Order* in 2003.¹²⁷

37. The Maine, Vermont, and Montana state commissions have also made allegations about problems related to service quality and service availability.¹²⁸ At the outset, we note that states (not the Commission) are primarily responsible for ensuring service quality and service availability through their regulation of intrastate services and administration of carrier-of-last-resort obligations.¹²⁹ In any event, we find these claims unpersuasive. First, the state commissions have not provided substantial empirical evidence that service quality is worse in areas where non-rural LECs receive high-cost support, relative to either areas where rural LECs receive support, or areas that do not receive any high-cost support. Second, with regard to service availability, they have failed to "systematically analyze[] the effect of" non-rural support on the availability of services, including broadband, and instead "provide[d] only anecdotal evidence of the possible effect of" non-rural high-cost support "on particular deployments."¹³⁰ Third, the state commissions have not demonstrated that more support would in fact improve service quality or service availability, nor have they quantified, in a verifiable manner, what level of support would ensure adequate service quality and service availability. Without such evidence, the Commission would be subject to the same criticisms raised in *Qwest II* if it were to modify the non-rural support mechanism in response to the state commission proposals.

¹²⁵ 2009 Monitoring Report.

¹²⁶ *Alenco*, 201 F.3d at 621.

¹²⁷ The Commission's most recent telephone subscribership report shows that in 2009, telephone penetration was 97.6 percent in Maine and 98.1 percent in Vermont – well above the national average of 95.7 percent for the year. Telephone Subscribership Report, Table 2. Indeed, Vermont had the fifth highest telephone subscribership rate in the nation for the year. The fact that these states have some of the highest telephone subscribership rates in the United States undercuts the argument that their current level of non-rural high-cost support is insufficient.

¹²⁸ Rural States FNPRM Comments at 5.

¹²⁹ See *Remand Order*, 18 FCC Rcd at 22588, para. 47; see also NASUCA NOI Comments at 40 (explaining that "primary responsibility" for service quality "lies with the states, which have a multitude of standards by which to judge service quality," and that "there are real limitations on the Commission's authority in this area."); *TOPUC*, 183 F.3d at 418 (noting "the states' historical role in ensuring service quality standards for local service"). We find no evidence in the record that state commissions are failing to fulfill their responsibility to regulate the quality and availability of supported telecommunications services.

¹³⁰ See *Interim Cap Order*, 23 FCC Rcd at 8845 (rejecting a similar argument that an interim cap on competitive ETC high-cost support would result in insufficient support that would hinder broadband deployment). In fact, both Maine and Vermont concede that diminished service quality and service availability in those states were the result of investment decisions by Verizon, the former non-rural incumbent LEC in those states, and not insufficient non-rural high-cost support. See Rural State FNPRM Comments at 5 ("In Maine and Vermont, Verizon reduced its net investment, allowing its existing plant to age and become more highly depreciated, even as it made large capital investments elsewhere in wireless services and high-capacity fiber based services in more urban states."); see also *id.* at 8 ("Before Verizon sold its Maine network to FairPoint, Verizon offered several high-capacity services in southern New England that it did not offer in Maine.").

38. The D.C. Circuit held, and we agree, that the Commission has an obligation to “strike an appropriate balance between the interests of widely dispersed customers with small stakes and a concentrated interest group seeking to increase its already large stake” in the fund.¹³¹ Several parties have proposed reforms to the non-rural high cost support mechanism. Our analysis of these proposals finds that each would significantly increase the size of the fund, the quarterly universal service contribution factor, and the amount that end users ultimately pay. Moreover, advocates of these proposals have failed to demonstrate how consumers living in rural areas would be harmed absent the proposed increase in funding. Qwest projects that its proposal, if adopted, would increase the size of the non-rural high-cost mechanism from \$322 million to approximately \$1.2 billion,¹³² a four-fold increase that would cause the contribution factor to surge to 17.1 percent.¹³³ Although the Rural States assert, without support, that “[n]o option currently under consideration in this proceeding seems likely to produce a significant increase in the contribution rate,”¹³⁴ we estimate that the Rural States’ proposal would increase the universal service fund by \$2.725 billion (or more than nine times the total current amount of non-rural high-cost support).¹³⁵ If enacted today, this proposal would cause the contribution factor to leap from 15.3 percent to 21.0 percent – hardly a modest increase from a consumer’s perspective. If adopted, consumers throughout the nation would be asked to fund this massive expansion of the non-rural high-cost mechanism through an even larger universal service surcharge on their monthly telephone bill, making telecommunications services less affordable. Given our finding that the non-rural high-cost mechanism already provides sufficient support, and in the absence of any contrary empirical evidence that we need to augment that support to ensure sufficient funding, we decline to add to the already heavy universal service contribution burden placed on consumers.

39. We recognize that some commenters requesting an increase in non-rural high-cost support seek to mitigate the impact of their proposals on consumers by asking the Commission to reduce universal service funding elsewhere. Most of these recommendations involve eliminating high-cost support for certain providers¹³⁶ or adopting other regulatory reforms that are unrelated to the non-rural

¹³¹ *Rural Cellular Assn*, 588 F.3d at 1102.

¹³² *Remand NOI*, 24 FCC Rcd at 4284-84, para. 9. Qwest argues that the Commission could limit the increase in non-rural high-cost support by targeting increased support to medium-sized incumbent LECs, which it defines as non-rural carriers with fewer than 25 million access lines nationwide. *Id.* All non-rural carriers except AT&T and Verizon would fall under this threshold. *Id.* Qwest justifies their exclusion on the grounds that problems related to the loss of implicit subsidies and inadequate universal service support are most acute for non-rural incumbent LECs that lack the size, scale, and scope of AT&T and Verizon. *See* Proposal for Implementing the Tenth Circuit’s Remand in Qwest II (Qwest Proposal) at 4-5, 26-27 (attached to Letter from R. Steven Davis, Senior Vice President -- Federal Relations, and Shirley Bloomfield, Senior Vice President -- Public Policy, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337 (filed May 5, 2008)). We find this proposal arbitrary and capricious on its face and directly contrary to Qwest’s own position that the Commission should base non-rural high-cost support on wire center costs, not statewide average costs, because competition is eroding the incumbent LECs’ ability to cross-subsidize. *See* Qwest Comments at 19.

¹³³ Even AT&T, which also seeks an increase in non-rural high-cost support, agrees that the “Commission should not quadruple the size of the existing mechanism in this interim phase” by adopting the Qwest proposal. *See* AT&T FNPRM Comments at 12; *see also* Vermont/Maine NOI Comments at 22-23 (asserting that Qwest’s proposal is too costly).

¹³⁴ Rural States FNPRM Comments at 25.

¹³⁵ *See* Appendix B.

¹³⁶ *See, e.g.*, Qwest FNPRM Comments at 9-10 (proposing to eliminate IAS and ICLS for competitive ETCs, as well as the identical support rule); AT&T FNPRM Comments at 10, 13 (proposing that the Commission eliminate implicit subsidies in intrastate access charges and reform the universal service contribution methodology); Mid-

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high-cost mechanism.¹³⁷ At the outset, we reiterate that the non-rural mechanism, as currently structured, provides sufficient support, so we are not obligated to undertake any of the reforms proposed by commenters – all of which would expand the size of the universal service fund. But even if that were not the case, we note that all of the proposed methods to offset the resulting increase fall outside the narrow scope of this proceeding, which is limited to responding to the issues raised by the Tenth Circuit in *Qwest II*. Moreover, no party has demonstrated how reducing funding for other programs or providers would advance, and not frustrate, the universal service objectives set forth in section 254 of the Act.¹³⁸ If anything, the parties’ attempt to lessen the significant financial impact of their alternative proposals highlights the inherent tension between the principles of sufficiency and affordability. It also underscores the reasonableness of the Commission’s view that the non-rural high-cost support mechanism can only be evaluated properly in the context of all the universal service programs.

40. We further conclude that the Commission’s non-rural high-cost support mechanism is consistent with the statutory principle that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”¹³⁹ We continue to believe that the Commission’s cost-based formula provides a specific and predictable methodology for determining when non-rural carriers qualify for high-cost support.

2. “Reasonably Comparable”

a. Urban and Rural Rates Are Reasonably Comparable

41. Section 254(b)(3) provides that: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁴⁰ In 2003, the Commission determined that rural rates were “reasonably comparable” if they fell within two standard deviations of the national average urban rate contained in the Wireline Competition Bureau’s annual rate survey. The record in this proceeding contains evidence that our current non-rural high-cost mechanism, which incorporates this definition of “reasonably comparable,” has in fact produced rural rates that are reasonably comparable to urban rates.

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Sized LEC FNPRM Comments at 7 (proposing to eliminate IAS for competitive ETCs); ITTA FNPRM Comments at 5, 7, 9 (proposing to eliminate IAS for competitive ETCs, eliminate identical support for competitive ETCs, and limit high-cost support to a single competitive ETC in a wire center); RCA FNPRM Comments at 11-12 (proposing to make high-cost support fully portable and base all incumbent LEC high-cost support on forward-looking costs rather than embedded costs).

¹³⁷ Qwest FNPRM Comments at 10 (proposing that the Commission reform the contribution methodology and resolve issues related to universal service contributions for new services).

¹³⁸ Indeed, some commenters argue that these proposals, if implemented, would actually undermine the Commission’s ability to achieve the universal service objectives set forth in section 254 of the Act. *See, e.g.*, GCI FNPRM Comments at 6, 10 (explaining that limiting support for competitive ETCs would frustrate the deployment of new infrastructure that could provide universal service in remote areas of Alaska); RCA FNPRM Comments at 9-10 (arguing that restricting support for competitive ETCs would be inconsistent with the principle of competitive neutrality); USA Coalition FNPRM Reply Comments at 8-9 (same).

¹³⁹ 47 U.S.C. § 254(b)(5).

¹⁴⁰ 47 U.S.C. § 254(b)(3).

42. Contrary to the assertion of some commenters, the Tenth Circuit did not find that the non-rural high-cost support mechanism failed to produce reasonably comparable rates. Rather, the court's fundamental criticism in *Qwest II* was that the Commission failed to provide empirical evidence that its non-rural high-cost support mechanism has produced reasonably comparable rates. The court indicated that it "would be inclined to affirm" the existing non-rural high-cost support mechanism if the Commission could present "empirical findings" demonstrating that the mechanism "indeed resulted in reasonably comparable rates."¹⁴¹ We can now make that showing on the basis of unrefuted empirical evidence in the record.

43. The only comprehensive rate data in the record support the Commission's conclusion that rates for traditional wireline telephone service are reasonably comparable across rural and urban areas.¹⁴² The data show that average rates are similar in urban and rural areas,¹⁴³ and that the standard deviation of the rates is similar between rural and urban areas.¹⁴⁴ Specifically, the data show that urban and rural rates often are the same. To the extent there are differences, however, the data show that urban rates within most states tend to be higher.¹⁴⁵ In addition, because the range of rates and standard deviation of the rates

¹⁴¹ *Qwest II*, 398 F.3d at 1237.

¹⁴² Verizon NOI Comments at 12-22; NASUCA NOI Comments at 13-16 (presenting rate data from more than 11,000 non-rural wire centers, which showed that there was not much difference between urban and rural rates); see also USTelecom Comments at 5 (asserting that "[r]ates for voice service are already reasonably comparable" because "[s]tates have certified to that effect for several years" and "the record confirms that rural rates are comparable to urban rates."); AT&T NOI Reply Comments at 23 n.83 ("Verizon's data show that there is no systemic issue with the reasonable comparability of urban and rural rates"). Vermont and Maine attack the declaration of Patrick Garzillo, which Verizon submitted in response to the 2005 *Remand NPRM*. See Vermont/Maine NOI Reply Comments at 6-9; see also Wyoming PSC NOI Reply Comments at 6 (same). Vermont and Maine complain that Garzillo's survey focused only on rural rates charged by rural carriers, and did not include any non-rural carriers' rates. Verizon supplemented the record with the declaration of Alan Buzacott, which surveyed tariffed rural and urban rates charged by non-rural carriers in all 50 states. See Verizon NOI Comments, Exhibit 2 (Declaration of Alan Buzacott). No party seriously contests the data submitted with the Buzacott declaration, which showed that urban and rural rates were generally comparable. And no party has challenged the rate data submitted by NASUCA, which also confirms that rural and urban rates are reasonably comparable. Maine submitted a declaration asserting that the comparison of tariffed rates in the Buzacott declaration "fail[s] to prove comparability for the reasons set forth" in comments submitted by the Maine Commission and the Maine Public Advocate. Reply Declaration on Behalf of Joel Shifman, Maine Public Utilities Commission, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed June 8, 2009) (Shifman Reply Declaration) (citing Vermont/Maine NOI Comments at 14-17, and Maine Public Advocate NOI Comments at 28-30). Those comments do not question the accuracy of the rate data on which the Buzacott declaration relies. They simply argue that the Commission should measure reasonable comparability by comparing costs rather than rates. However, the Tenth Circuit made clear that it would not uphold a cost-based funding mechanism without evidence that the mechanism "resulted in reasonably comparable rates." *Qwest II*, 398 F.3d at 1237 (emphasis added). The rate data submitted by Verizon and NASUCA show that the current non-rural high-cost support mechanism has yielded reasonably comparable rural and urban rates.

¹⁴³ The average is a measure of the central tendency of the data.

¹⁴⁴ The standard deviation is a measure of dispersion. The sample standard deviation is the square root of the sample variance. The sample variance is calculated as the sum of the squared deviations of the individual observations in the sample of data from the sample average divided by the total number of observations in the sample minus one. In a normal distribution, about 68% of the observations lie within one standard deviation above and below the average and about 95% of the observations lie within two standard deviations above and below the average.

¹⁴⁵ See Verizon NOI Comments, Exhibit 2 (Declaration of Alan Buzacott) at para. 6. This empirical evidence is consistent with observations in the record that rates in rural areas often are set below rates in urban areas, pursuant to
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are similar in rural and urban areas, the difference among urban rates is similar to the difference between urban and rural rates.¹⁴⁶

44. Data filed by NASUCA in response to the 2005 *Remand NPRM* demonstrate that rural and urban rates are reasonably comparable. NASUCA submitted data on rates (as of February 2006) in 11,252 wire centers nationwide that are served by non-rural carriers, ranging from zero percent urban to 100 percent urban.¹⁴⁷ NASUCA explains that its data set provides rates for approximately 93 percent of the U.S. population.¹⁴⁸ As illustrated in NASUCA's chart below, the average price of flat-rate residential service (plus the subscriber line charge and federal universal service charge) does not vary greatly as a function of the degree of urbanization.¹⁴⁹ For example, the average price in areas where 100 percent of the population lives in rural areas, \$21.00, is only about seven percent higher than the average price in areas where 100 percent of the population lives in urban areas, \$19.57. In fact, NASUCA found that there is no statistically significant difference in average price as a function of the percent of the population living in urban areas.¹⁵⁰

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state regulation, under "value of service" pricing schemes. *E.g.*, AT&T NOI Comments at 32 n.58. As AT&T explained, the value of local telephone service is purportedly lower for rural subscribers because rural areas have lower population densities than urban areas, and thus subscribers in those areas can connect to fewer subscribers in the local calling area. *Id.*

¹⁴⁶ NASUCA NOI Comments at 30.

¹⁴⁷ *See* NASUCA Remand NPRM Comments at 2. NASUCA defined "urban" based on the following Census Bureau definition: "Urban - All territory, population and housing units in urban areas, which include urbanized areas and urban clusters. 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." *Id.* at 22.

¹⁴⁸ NASUCA Remand NPRM Comments at App. C1, 1.

¹⁴⁹ NASUCA calculated weighted averages by weighting the rates in each wire center by the percentage of the population that resided in the wire center. *Id.*

¹⁵⁰ That is, the hypothesis that the averages (also referred to as the means) for the various population classifications are equal cannot be rejected at a 95 percent level of confidence. For the 80-100 percent urban classification, for example, the lower and the upper values for a 95 percent confidence interval are \$11.83 and \$26.97, respectively. The average for each population classification lies within this range. In fact, the average for each population classification lies within a 95 percent confidence interval for any of the population classifications. *See* Letter from Dr. David Gabel to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 at 2 (filed Mar. 16, 2010) (Gabel *Ex Parte* Letter).

Percent of the population living in urban areas	Number of Wire Centers	Average price of flat-rate residential service + SLC + FUSF	Standard deviation	Minimum	Maximum	Average Population	Total Population	Percent of population ¹⁵¹
0	1,808	21.00	3.79	11.43	31.82	2,611	4,721,471	1.8%
0-20%	3,979	20.81	3.76	11.43	31.82	3,332	13,259,982	5.1%
20-40%	545	20.47	3.56	11.91	30.86	10,295	5,610,606	2.1%
40-60%	1057	20.42	3.72	10.99	31.82	12,291	12,991,492	5.0%
60-80%	1,393	20.34	3.71	12.54	30.86	16,876	23,507,836	9.0%
80-100%	4,278	19.40	3.86	9.29	30.86	48,134	205,915,241	78.8%
100%	1092	19.57	4.20	9.29	29.64	58,861	64,275,873	24.6%
Sample avg. (0-100%)	11,252	19.63	3.85	9.29	31.82	23,221	261,285,167	

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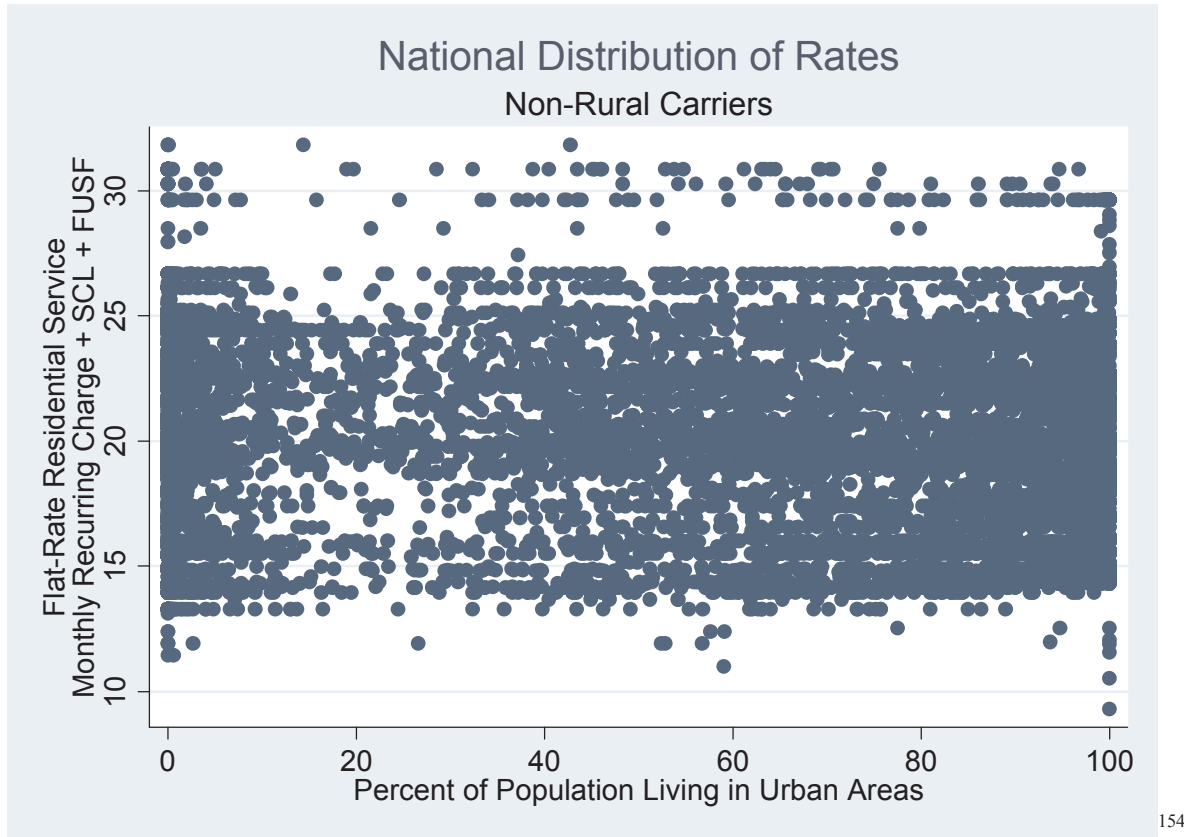
45. NASUCA's chart also shows the range and standard deviation of rates in both rural and urban areas.¹⁵³ The range of prices is similar between rural and urban areas. For example, the lowest and the highest prices in areas where 100 percent of the population lives in rural areas are \$11.43, and \$31.82, respectively, while the lowest and the highest prices in areas where 100 percent of the population lives in urban areas are \$9.29 and \$29.64. In addition, the standard deviation (the square root of the variance) of the prices is similar between rural and urban areas. For example, the standard deviation of the prices in areas where 100 percent of the population lives in rural areas is \$3.79, while the standard deviation of the prices where 100 percent of the population lives in urban areas is \$4.20. The difference between these two standard deviations is only \$.41.

¹⁵¹ The 0 and 100% urban row values are included in the 0-20% and 80-100% rows, respectively.

¹⁵² NASUCA Remand NPRM Comments at App. C1.

¹⁵³ NASUCA's standard deviations are weighted standard deviations that reflect the population in each wire center. See Gabel *Ex Parte* Letter at 2-3.

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



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.¹⁵⁵ In 42 of the 50 states, the average

¹⁵⁴ NASUCA Remand NPRM Comments at 40 & App. C1.

¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹ 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 that is higher than the rate in the urban exchanges.¹⁶⁰

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.¹⁶¹ 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.¹⁶² A comparison of rural rates to the lowest urban rate would be heavily influenced by a particular state's rate policies.¹⁶³ For this reason, the general consensus in the record – even among those parties that ask the Commission

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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.

¹⁵⁶ 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.

¹⁵⁷ *See id.* at para. 5.

¹⁵⁸ *See id.* at para. 6.

¹⁵⁹ *See id.* at para. 7.

¹⁶⁰ *See id.* at para. 7.

¹⁶¹ *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%").

¹⁶² *Order on Remand*, 18 FCC Rcd at 22586, para. 44.

¹⁶³ *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.”¹⁶⁴

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.¹⁶⁵ 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.¹⁶⁶ 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.

¹⁶⁴ 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.

¹⁶⁵ See Wyoming Petition.

¹⁶⁶ 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.”¹⁶⁷ 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.”¹⁶⁸ 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.”¹⁶⁹

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.¹⁷⁰ 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.”¹⁷¹ 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

¹⁶⁷ 47 U.S.C. § 254(b) (emphasis added).

¹⁶⁸ *Qwest II*, 398 F.3d at 1236.

¹⁶⁹ *Id.* at 1237.

¹⁷⁰ 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.

¹⁷¹ *Id.* at 1236.

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

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.¹⁷³ 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.¹⁷⁴ The rates for these nationwide “all distance” services do not typically vary between urban and rural areas.¹⁷⁵ 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.¹⁷⁶

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

¹⁷² 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.

¹⁷³ 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.

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

¹⁷⁵ 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”).

¹⁷⁶ *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.”).

¹⁷⁷ *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.¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹ 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."¹⁸² 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.¹⁸³ "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

¹⁷⁸ Rural States FNPRM Comments at 7-9.

¹⁷⁹ 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 Red 11244, 11321-23, paras. 197-201 (2001).

¹⁸⁰ 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).

¹⁸¹ *Qwest II*, 398 F.3d at 1237.

¹⁸² *Id.*

¹⁸³ *Id.*

obligation to preserve and advance universal service.”¹⁸⁴ 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.”¹⁸⁵ 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.”¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸ 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.¹⁸⁹ None of the commenters seriously suggested that the Commission adopt a “rate-based” approach.

¹⁸⁴ *Id.*

¹⁸⁵ Verizon NOI Reply Comments at 5; *see also* NASUCA NOI Comments at 37.

¹⁸⁶ *Qwest II*, 398 F.3d at 1237.

¹⁸⁷ *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.”).

¹⁸⁸ 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.”).

¹⁸⁹ *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; MDTF 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.¹⁹⁰ 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.¹⁹¹ Similarly, in the case of regulated monopolies, regulators have traditionally set prices such that revenues will cover total regulated costs, including a normal return.¹⁹² 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.¹⁹³

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."¹⁹⁴ 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.¹⁹⁵ 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.

¹⁹⁰ 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.

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

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

¹⁹³ 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.

¹⁹⁴ *Qwest I*, 258 F.3d at 1204.

¹⁹⁵ 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.¹⁹⁶ Virtually all commenters that addressed this issue argued that the model should be updated.¹⁹⁷ 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.”¹⁹⁸ 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,¹⁹⁹ 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.²⁰⁰ 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.²⁰¹ 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.²⁰² 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

¹⁹⁶ *Remand NOI*, 24 FCC Rcd at 4291-92, para. 24.

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

¹⁹⁸ *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).

¹⁹⁹ *Remand NOI*, 24 FCC Rcd at 4286-87, para. 12.

²⁰⁰ See National Broadband Plan at Chapter 8.

²⁰¹ *Remand NOI*, 24 FCC Rcd at 4292, para. 25.

²⁰² 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.²⁰³ 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.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ Finally, we note that the Tenth Circuit rejected the notion "that the use of statewide and national averages is necessarily inconsistent with [section] 254."²⁰⁸ 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

²⁰³ See, e.g., Comcast FNPRM Comments at 3-4.

²⁰⁴ 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.

²⁰⁵ 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).

²⁰⁶ 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.").

²⁰⁷ See *supra* para. 66.

²⁰⁸ *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.²⁰⁹

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.²¹⁰ 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.”²¹¹ 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.²¹² 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.²¹³ 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.²¹⁴ 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

²⁰⁹ 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.

²¹⁰ Qwest FNPRM Comments at 18; Rural States FNPRM Comments at 31-32.

²¹¹ 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.

²¹² 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.

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

²¹⁴ *Qwest II*, 398 F.3d at 1237.

actually reduce the alleged gap between rural and urban rates.²¹⁵ 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.²¹⁶

(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.²¹⁷ There is strong support in the record, however, for the continued use of an average urban rate.²¹⁸ Even those parties that ask the

²¹⁵ 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.

²¹⁶ 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).

²¹⁷ 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%").

²¹⁸ 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.²¹⁹ 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,²²⁰ a rate benchmark that measures divergence from the lowest urban rate could be too heavily influenced by a particular state’s rate policies.²²¹ By contrast, measuring divergence from the national average urban rate more accurately captures the variability of rate policies among the states.²²²

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.²²³ Qwest, for example, merely describes an increase in the disparity between rural rates and the *lowest* urban rate.²²⁴ As discussed above, this comparison is misleading because the *average* urban rate is the appropriate point of comparison for purposes of determining “reasonable comparability.”²²⁵ The Rural States note that the difference between rural rates and the average urban rate has fluctuated from 34 percent to 43 percent.²²⁶ However, urban rates also vary compared to the average urban rate.²²⁷ 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.²²⁸ 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

²¹⁹ 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).

²²⁰ See *supra* paras. 44, 46.

²²¹ *Order on Remand*, 18 FCC Rcd at 22586, para. 44.

²²² *Id.*

²²³ 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).

²²⁴ Qwest Comments at 13.

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

²²⁶ Rural State FNPRM Comments at 15.

²²⁷ See *supra* paras. 44, 46.

²²⁸ 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.²²⁹

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.²³⁰ 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."²³¹ 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.²³² 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.²³³

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

²²⁹ 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).

²³⁰ 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.

²³¹ *Qwest I*, 258 F.3d at 1201.

²³² 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 (6th Cir. 2008) (recognizing that "administrative lines need not be drawn with mathematical precision") (internal quotation marks omitted).

²³³ 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.²³⁴ Commenters support the continued use of our rate certification process.²³⁵

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,²³⁶ no party submitted data upon which the Commission could make such a comparison.²³⁷ 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.²³⁸ 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.²³⁹ Many commenters argued that the Commission should use this remand proceeding to begin transitioning high-cost funding

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

²³⁵ See, e.g., NASUCA FNPRM Comments at 10; Rural State FNPRM Comments at 6.

²³⁶ 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.

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

²³⁸ 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.

²³⁹ *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.²⁴⁰

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.²⁴¹ 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.²⁴²

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,²⁴³ and delivered to Congress the

²⁴⁰ 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.”).

²⁴¹ 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.

²⁴² 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).

²⁴³ 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.²⁴⁴ 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.²⁴⁵ 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.²⁴⁶ The National Broadband Plan acknowledges, however, that the existing high-cost universal service program is not designed to fund broadband services.²⁴⁷ 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.²⁴⁸

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.²⁴⁹ Any substantial increases in non-rural high-cost support

²⁴⁴ *National Broadband Plan* at Chapter 8.

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

²⁴⁶ *Id.* at 140-42.

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

²⁴⁸ *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).

²⁴⁹ 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.²⁵⁰ Indeed, the Commission has long used cost controls – including caps – as a means of limiting the growth of its universal service program.²⁵¹ 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.²⁵² The Commission may “act[] to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated.”²⁵³ 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.²⁵⁴ 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).”).

²⁵⁰ See *supra* paras. 28-29.

²⁵¹ 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).

²⁵² 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.

²⁵³ *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).

²⁵⁴ 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.²⁵⁵

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).

²⁵⁵ 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.²⁵⁶ 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.²⁵⁷ 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.²⁵⁸ 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.²⁵⁹ 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.²⁶⁰

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.²⁶¹ 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.²⁶² 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

²⁵⁶ See Wyoming Petition.

²⁵⁷ 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.*

²⁵⁸ 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).

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

²⁶⁰ *Id.* at 22614, para. 93.

²⁶¹ 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).

²⁶² 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 \$34.16.²⁶³ 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.²⁶⁴ In addition, Qwest has de-averaged cost-based residential rates, so the rural residential rates in areas served by Qwest are “truly” high-cost.²⁶⁵ 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*.²⁶⁶ 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).²⁶⁷

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.²⁶⁸ Based on the updated data, the Wyoming Commission requests \$3,119,249 to make rural residential rates comparable to the nationwide urban rate benchmark.²⁶⁹

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*.²⁷⁰ 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

²⁶³ See Wyoming 2004 Certification at 2.

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

²⁶⁵ Wyoming Petition at 5; Wyoming 2004 Certification at 2.

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

²⁶⁷ See Wyoming Petition at 10.

²⁶⁸ 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).

²⁶⁹ 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*.

²⁷⁰ 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.²⁷¹ As we acknowledged in the *Order on Remand*, “Wyoming has rebalanced its residential and business rates, while other states have not rebalanced rates.”²⁷² Wyoming requires cost-based pricing for all retail telecommunications services in Wyoming and prohibits cross subsidies and implicit subsidies.²⁷³ Moreover, Qwest has de-averaged cost-based residential rates.²⁷⁴ Finally, Wyoming has implemented an explicit subsidy support program – the Wyoming Universal Service Fund.²⁷⁵

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.²⁷⁶ 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.²⁷⁷ 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,²⁷⁸ 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.²⁷⁹ 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.²⁸⁰

²⁷¹ Wyoming Petition at 5; Wyoming 2004 Certification at 2.

²⁷² *Order on Remand*, 18 FCC Rcd at 22628, para. 120.

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

²⁷⁴ Wyoming Petition at 5; Wyoming 2004 Certification at 2.

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

²⁷⁶ NASUCA Wyoming Petition Comments at 8.

²⁷⁷ 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.

²⁷⁸ See Wyoming OCA Wyoming Petition Reply Comments at 8.

²⁷⁹ See NASUCA Wyoming Petition Comments at 7, n. 26.

²⁸⁰ 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 2010.²⁸¹ 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.²⁸² 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.²⁸³ 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.²⁸⁴ 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.²⁸⁵

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

²⁸² 47 C.F.R. § 54.316(d).

²⁸³ See *Order on Remand*, 18 FCC Rcd at 22626, para. 114.

²⁸⁴ 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").

²⁸⁵ 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

(continued....)

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 1995.²⁸⁶ 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 2002.²⁸⁷

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 Act²⁸⁸ 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.

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

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

²⁸⁸ *See* 5 U.S.C. § 801(a)(1)(A).

97. IT IS FURTHER 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, the Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-rural Incumbent Local Exchange Carrier, filed December 21, 2004, IS GRANTED to the extent described herein.

98. IT IS FURTHER ORDERED that this Order on Remand and Memorandum Opinion and Order shall be effective 30 days after publication in the Federal Register, pursuant to 5 U.S.C. § 553(d)(3) and section 1.427(b) of the Commission's rules, 47 C.F.R. § 1.427(b).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Remand NPRM Comments

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Inc. Erratum	AT&T
BellSouth Corporation Erratum	BellSouth
CenturyTel, Inc.	CenturyTel
CTIA – The Wireless Association	CTIA
Dobson Cellular Systems, Inc.	Dobson
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Hawaiian Telecom, Inc.	HT
Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom	Iowa Telecom
Iowa Utilities Board	IUB
Massachusetts Department of Telecommunications and Energy	MDTE
Middle Atlantic Regulatory Commission and State Commissioners of the MACRUC States	MACRUC Members
Minority Media and Telecommunications Council Communications Workers of America Hispanic Technology and Telecommunications Partnership Hispanics in Information Technology and Communications League of United Latin American Citizens National Association of Hispanic Publications National Puerto Rican Coalition Office of Communication of the United Church of Christ, Inc. Union De Trabajadores De Comunicaciones	
National Association of State Utility Consumer Advocates	NASUCA
Nebraska Public Service Commission	Nebraska PSC
Nebraska Rural Independent Companies	Nebraska Companies
Oregon Telecommunications Association and The Washington Independent Telephone Association	OTA WITA
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Public Service Commission of Wisconsin	PSCW
Puerto Rico Telephone Company, Inc.	PRT
Qwest Communications International Inc.	Qwest
Regulatory Commission of Alaska	

Commenter**Abbreviation**

Rural Independent Competitive Alliance	RICA
Sandwich Isles	
TelAlaska	
Yukon Telephone	
Adak Telephone Utility	
Bristol Bay Telephone Cooperative	
Copper Valley Telephone Cooperative	
Cordova Telephone Cooperative	
OTZ Telephone cooperative	
Summit Telephone Company	
United Utilities	STYu, et. Al
Sprint Nextel Corporation	Sprint Nextel
Verizon telephone companies	Verizon
Vermont Public Service Board	VtPSB
Vermont Department of Public Service	VtDPS
Maine Public Utilities	MPUC
Washington Utilities and Transportation Commission	WUTC
Western Telecommunications Alliance	WTA
Wyoming Office of Consumer Advocate	Wyoming OCA
Wyoming Public Service Commission	Wyoming PSC

Remand NPRM Reply Comments

<u>Commenter</u>	<u>Abbreviation</u>
AdHoc Telecommunications Users Committee Errata of the AdHoc	AdHoc
Alltel Communications Inc.	Alltel
AT&T Inc.	AT&T
BellSouth Corporation	BellSouth
Cameron Telephone Company, LLC	Cameron
Colorado Public Utilities Commission	COPUC
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Florida Public Service Commission	Florida PSC
Massachusetts Department of Telecommunications and Energy	MDTE
Minority Media and Telecommunications Council	
Communications workers of America	
Hispanic Technology and Telecommunications Partnership	
Hispanics in Information Technology and Communications	
League of United Latin American Citizens	
National Association of Hispanic Publications	
National Puerto Rican Coalition	
Office of Communication of the United Church of Christ, Inc.	
Union De Trabajadores De Comunicaciones	MMTC
Montana Public Service Commission	Montana PSC
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Companies	Nebraska Companies
New Jersey Division of the Ratepayer Advocate	Ratepayer Advocate
Public Service Commission of Wisconsin	PSCW
Puerto Rico Telephone Company, Inc.	PRT
Qwest Communications International Inc.	Qwest
South Dakota Telecommunications Association	SDTA
State of Hawaii	State
Telecommunications Regulatory Board of Puerto Rico	Board
Texas Office of Public Utility Counsel	Texas OPC
VerizonVerizon	
Vermont Public Service Board	VtPSB
Vermont Department of Public Service	VtDPS
Maine Public Utilities Commission	MPUC
	(collectively Vermont/Maine)

NOI Comments

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
CTIA – The Wireless Association	CTIA
Embarq	Embarq
General Communication, Inc.	GCI
Independent Telephone & Telecommunications Alliance	ITTA
Iowa Telecommunications Services, Inc.	Iowa Telecom
Maine Office of the Public Advocate	OPA
National Association of State Utility Consumer Advocates NASUCA's Appendices	NASUCA
National Cable & Telecommunications Association	NCTA
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Assn.	NTCA
Organization for the Promotion & Advancement of Small Telecommunications Companies	OPASTCO
Eastern Rural Telecom Association	ERTA
Western Telecommunications Alliance	WTA
Nebraska Public Service Commission	NPSC
New Jersey Board of Public Utilities	Board
New Jersey Division of Rate Counsel	Rate Counsel
Ohio Public Utilities Commission	Ohio Commission
Qwest Communications International Inc.	Qwest
Rural Cellular Association	RCA
Time Warner Cable Inc.	TWC
Universal Service for America Coalition	USA Coalition
United States Telecom Association	USTA
Verizon and Verizon Wireless	Verizon and Verizon Wireless
Vermont Public Service Board and Maine Public Utilities Commission	VtPSB MePUC (collectively, Vermont/Maine)
Windstream Communications, Inc.	Windstream
Wyoming Public Service Commission	WyPSC

NOI Reply Comments

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
CenturyTel, Inc.	CenturyTel
Comcast Corporation	Comcast
Embarq Embarq	
Hawaiian Telcom, Inc.	HTI
Independent Telephone & Telecommunications Alliance	ITTA
Maine Office of the Public Advocate	OPA
Maine Public Utilities Commission	Maine PUC
Mississippi Cable Telecommunications Association	MTCA
Montana Public Service Commission	MTPSC
National Association of State Utility Consumer Advocates	NASUCA
New Mexico Public Regulation Commission	NMPRC
Qwest Communications International Inc.	Qwest
Regulatory Commission of Alaska	RCA
Southern Communications Services, Inc. d/b/a SouthernLINC Wireless	SouthernLINC Wireless
Universal Service for America Coalition	USA Coalition
Verizon and Verizon Wireless	
Vermont Public Service Board and Maine Public Utilities Commission	VtPSB MePUC (collectively, Vermont/Maine)
Wyoming Public Service Commission	WyPSC

FNPRM Comments

Commenter**Abbreviation**

AT&T, Inc.	AT&T
CenturyLink, Consolidated Communications, Frontier Communications, Iowa Telecom and Windstream Communications	Mid-sized LEC
Comcast Corporation	Comcast
CTIA – The Wireless Association	CTIA
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Independent Telephone & Telecommunications Alliance	ITTA
Maine Public Utilities Commission, et al.	Rural States
Massachusetts Department of Telecommunications and Cable	MDTC
National Association of State Utility Consumer Advocates	NASUCA
National Cable & Telecommunications Association	NCTA
New Jersey Division of Rate Counsel	Rate Counsel
Qwest Communications International, Inc.	Qwest
Rural Cellular Association	RCA
Sprint Nextel Corporation	Sprint
United States Telecom Association	USTelecom
Universal Service for America Coalition	USA Coalition
Verizon and Verizon Wireless	Verizon
Wyoming Public Service Commission	WyPSC

FNPRM Comments**Commenter**

Hawaiian Telcom, Inc.
National Association of State Utility Consumer Advocates
Qwest Communications International Inc.
Universal Service for America Coalition
Rural Cellular Association
Wyoming Public Service Commission

Abbreviation

HTI
NASUCA
Qwest
USA Coalition
RCA
WyPSC

APPENDIX B

Staff Analysis of the Rural States' Proposal

Introduction

The Rural States propose that, by April 16, 2010, the Commission reduce the cost benchmark and increase support to non-rural carriers.¹ Specifically, the Rural States propose that the Commission rerun the Hybrid Cost Proxy Model (HCPM) with current switched line counts to determine cost based on updated data, and set the cost benchmark at 125% of the cost of service in Washington, DC (as a proxy for urban cost).²

Analysis

Staff analyzed the Rural States' Proposal, and calculated the cost and impact on the contribution factor. Staff incorporated most of the Rural States' methodology into the calculation, with one modification: staff did not rerun the HCPM. This modification is expected to have little impact on the magnitude of the aggregate results, although a particular state might expect to receive a little more or less support under a new HCPM run. The reason for not rerunning the HCPM and the impact on aggregate results is explained below.

Methodology

High Cost Model (HCM) support is computed in 3 steps. The first step is to compute the forward-looking cost of the telecommunications network. These costs are calculated at the wire-center level and then averaged to generate a statewide average cost per line. The second step is to select a cost benchmark. The third step is to generate a support amount per line (equal to the difference between the statewide average cost per line and the cost benchmark) and multiply that by the number of incumbent local exchange carrier and competitive local exchange carrier lines within the state.

For the first step, the Proposal suggests rerunning the HCPM with more recent data. Staff did not rerun the HCPM using more recent line counts because staff does not have customer locations for those lines. Without the corresponding customer location data, the HCPM would distort the cost of the forward-looking telecommunications network.³ Therefore, staff used the state "cost per line" (CPL) generated from the 2003 run of the HCPM, which is the last time that the HCPM was run. Staff estimates that rerunning the HCPM using more current customer locations would not change this estimate dramatically.

¹ Rural States FNPRM Comments at 19-36.

² *Id.* at iv, 6, 19-36.

³ A distortion is caused by not knowing the true location of growth. Customer growth occurs in all states in a combination of in-growth and out-growth. In-growth is growth within the existing telecommunications network. An example of in-growth is a new house on an existing city block. Out-growth is growth outside of the existing network. An example of out-growth is a new housing development in a rural area, where new streets and new telecommunications structure (poles, conduit) must be constructed. To accommodate in-growth, existing capacity links are expanded, or there may be usable capacity already in place. To accommodate out-growth, capacity links must be added, and most likely some additional capacity must be inventoried within the links for future growth. Out-growth usually is more costly than in-growth. States will have a combination of in growth and outgrowth, which varies by state. Without an updated customer location database, the HCPM would have to assume that all growth is in-growth, which would distort the estimated costs.

For the second step, the Proposal suggests computing a CPL benchmark equal to 1.25 times the CPL in the District of Columbia. Support amounts would be based on a new “urban” benchmark (\$18.65) instead of the current benchmark (\$28.13). If a state’s CPL falls above the new “urban” benchmark, it would receive support under the Proposal. This new “urban” benchmark is incorporated into the analysis.

For the third step, the Proposal suggests using new line counts, which staff has done. If a state CPL exceeds the new “urban” benchmark, the difference is multiplied by the latest 2009 line counts, which were obtained from the Universal Service Administrative Company.⁴

Results

The results are shown in the following table:

Analysis of Rural State's Proposal

1. All Lines	<u>ILEC</u>	<u>CETC</u>	<u>Total</u>
2003 HCPM Workbook Lines	159,884,489	0	159,884,489
	not	not	
2004 HCM Projection Lines	disaggregated	disaggregated	160,006,690
2009 HCM Lines	105,685,624	5,244,259	110,929,883
2. Current Non-Rural Support Mechanism (10 Supported States)			
2003 HCPM Workbook Supported Lines	10,126,493	0	10,126,493
2009 HCM Supported Lines	6,159,919	5,181,930	11,341,849
2009 HCM Dollars	\$168,986,665	\$161,597,932	\$330,584,597
3. Rural States’ Proposal (49 Supported Jurisdictions)			
Supported Lines	84,856,074	5,244,259	90,100,333
Dollars	\$2,894,510,401	\$161,597,932	\$3,056,108,333
4. Proposal compared to Current Non-Rural Support Mechanism			
Added Lines	78,696,155	62,329	78,758,484
Added Dollars	\$2,725,523,736	\$0	\$2,725,523,736

Section 1 displays the line counts for all HCM eligible lines that could possibly receive support. Total HCM lines have decreased from 2003 to 2009.

Section 2 shows that HCM lines and dollars in the ten currently supported states. The HCM line counts for competitive eligible telecommunications carriers (competitive ETCs) increased from 2003 to 2009. Incumbent local exchange carrier (incumbent LEC) line counts decreased over the same period. In 2009, HCM dollars are almost evenly split between incumbent LECs and competitive ETCs.

⁴ Data provided to FCC under Memorandum of Understanding, 2009.12.01 - High Cost Disbursements - MOU Attc C Reports 1-6.xls.

Section 3 shows the effect of the Proposal. The number of supported jurisdictions increases from 10 to 49. Under current Commission rules, universal service support for competitive ETCs is capped by state.⁵ This cap exists for the sum of all forms of high-cost support. Under the Proposal, some competitive ETCs would qualify for additional HCM support. However, under current FCC rules, all the competitive ETCs operating in the state would have their support (for other high-cost support mechanisms) reduced to maintain total competitive ETC support below the state cap. For this reason, the analysis of the impact on the quarterly contribution factor assumes that competitive ETC HCM support is capped. In reality, there would be additional HCM support for some competitive ETCs and a corresponding reduction in support for other competitive ETCs from other mechanisms. The combined effect on the contribution factor is almost the same as assuming capped competitive ETC HCM support.

Section 4 shows the difference between the Proposal and the current non-rural high-cost support mechanism.

Under the Proposal, the HCM support in 2009 would increase from a baseline of \$330.6 M to a new level of \$3,056.1 M, which represents an increase of \$2,725.5 M (or more than nine times the total current amount of HCM support). The number of jurisdictions receiving support would increase from 10 to 49 (only 3 jurisdictions – California, DC, and New Jersey – would not receive support).

This \$2,725.5 M increase in HCM support would increase the contribution factor for 2Q2010 from 15.3 percent to 21.0 percent.

⁵ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*), affirmed, *Rural Cellular Assn. v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) (*Rural Cellular Assn.*).

APPENDIX C

Staff Analysis of NASUCA’s Rate Data

NASUCA Data Descriptive Statistics by State and Location

State	Rural (<=10% Urban)				Urban (>=90% Urban)				Difference (Rural - Urban)		
	Wire Centers	Mean	Median	Variance	Wire Centers	Mean	Median	Variance	Mean	Median	Variance
AK	2	19.20	19.20	0.00	8	19.20	19.20	0.00	0.00	0.00	0.00
AL	116	23.33	23.53	0.74	26	23.26	23.45	0.16	0.07	0.08	0.58
AR	53	19.49	19.28	0.38	14	22.48	22.63	0.29	-2.99	-3.35	0.09
AZ	27	19.03	19.03	0.00	58	19.03	19.03	0.00	0.00	0.00	0.00
CA	193	19.05	16.79	16.05	553	17.97	15.51	15.43	1.08	1.28	0.62
CO	54	22.03	22.03	0.00	54	22.03	22.03	0.00	0.00	0.00	0.00
CT	13	17.29	16.83	0.77	68	19.82	20.35	1.33	-2.53	-3.52	-0.56
DC					24	17.02	17.02	0.00			
DE	4	18.70	18.70	0.00	9	18.63	18.70	0.05	0.07	0.00	-0.05
FL	27	16.67	16.55	0.65	202	17.96	18.06	0.37	-1.29	-1.51	0.28
GA	38	22.51	22.35	5.48	62	24.25	24.60	0.59	-1.74	-2.25	4.89
HI	11	19.68	20.25	0.76	61	21.28	21.55	0.44	-1.60	-1.30	0.32
IA	44	16.56	15.99	0.58	24	17.57	17.93	0.23	-1.01	-1.94	0.35
ID	24	24.27	24.47	0.99	9	24.47	24.47	0.00	-0.20	0.00	0.99
IL	253	24.11	24.41	1.79	8	24.41	24.41	0.00	-0.30	0.00	1.79
IN	172	19.69	19.39	9.53	77	19.58	18.24	8.85	0.11	1.15	0.68
KS	81	21.46	21.43	0.10	31	21.87	21.76	0.15	-0.41	-0.33	-0.05
KY	119	20.57	19.92	3.79	29	23.72	23.76	3.52	-3.15	-3.84	0.27
LA	75	18.95	18.66	0.20	48	19.73	19.79	0.06	-0.78	-1.13	0.14
MA	33	23.87	23.87	0.00	139	23.87	23.87	0.00	0.00	0.00	0.00
MD	47	21.62	21.55	0.05	92	22.57	22.75	0.17	-0.95	-1.20	-0.12
ME	85	26.10	26.10	0.00	4	26.10	26.10	0.00	0.00	0.00	0.00
MI	223	22.59	25.11	7.17	127	21.34	21.04	0.95	1.25	4.07	6.22
MN	41	19.37	19.37	0.00	58	20.12	20.17	0.04	-0.75	-0.80	-0.04
MO	145	14.65	14.81	3.16	75	16.96	17.05	2.30	-2.31	-2.24	0.86
MS	104	23.44	23.00	1.12	10	26.05	26.16	0.05	-2.61	-3.16	1.07
MT	42	23.88	23.88	0.00	5	23.88	23.88	0.00	0.00	0.00	0.00
NC	54	21.50	21.31	2.15	48	21.40	21.70	2.08	0.10	-0.39	0.07
ND	14	24.72	24.72	0.00	3	24.72	24.72	0.00	0.00	0.00	0.00
NE	147	23.28	23.00	0.35	20	24.17	24.85	0.81	-0.89	-1.85	-0.46
NH	65	20.53	20.27	1.00	10	22.32	22.71	0.38	-1.79	-2.44	0.62
NJ	2	14.00	14.00	0.25	162	14.73	14.85	0.08	-0.73	-0.85	0.17
NM	13	20.65	20.65	0.00	15	20.65	20.65	0.00	0.00	0.00	0.00
NV	20	16.43	16.53	0.19	28	15.41	14.57	0.97	1.02	1.96	-0.78
NY	168	25.28	26.66	13.39	170	26.29	26.66	20.13	-1.01	0.00	-6.74
OH	207	21.72	21.62	0.74	145	22.67	22.50	0.39	-0.95	-0.88	0.35
OK	93	17.02	16.55	1.91	35	19.79	20.12	0.68	-2.77	-3.57	1.23
OR	40	19.76	19.63	0.03	33	19.83	19.95	0.02	-0.07	-0.32	0.01
PA	97	17.52	17.38	1.94	161	18.99	18.63	0.89	-1.47	-1.25	1.05
RI	4	22.47	21.96	2.18	18	24.79	25.73	4.11	-2.32	-3.77	-1.93
SC	43	20.87	21.50	3.96	28	22.84	22.55	0.18	-1.97	-1.05	3.78
SD	16	22.20	22.82	3.13	5	25.22	25.32	0.05	-3.02	-2.50	3.08
TN	63	16.62	15.77	3.71	41	19.41	19.49	0.02	-2.79	-3.72	3.69
TX	253	14.14	14.14	0.08	305	15.44	15.13	0.72	-1.30	-0.99	-0.64
UT	9	14.97	14.97	0.00	34	14.97	14.97	0.00	0.00	0.00	0.00
VA	129	19.90	19.67	1.81	99	21.42	21.73	0.47	-1.52	-2.06	1.34
VT	57	30.85	30.85	0.00	2	30.85	30.85	0.00	0.00	0.00	0.00
WA	66	15.77	14.29	4.75	81	17.50	18.94	4.66	-1.73	-4.65	0.09
WI	84	23.90	24.85	7.62	57	16.13	15.98	1.38	7.77	8.87	6.24
WV	57	22.15	22.15	0.00	4	22.15	22.15	0.00	0.00	0.00	0.00
WY	11	30.25	30.25	0.00	3	30.25	30.25	0.00	0.00	0.00	0.00

Count of States wherein Rural < Urban 30 28 10
 Count of States wherein Rural > Urban 8 6 28
 Count of States wherein Rural = Urban 12 16 12

NASUCA Data Descriptive Statistics by State and Location

State	Rural (0% Urban)				Urban (100% Urban)				Difference (Rural - Urban)		
	Wire Centers	Mean	Median	Variance	Wire Centers	Mean	Median	Variance	Mean	Median	Variance
AK	1	19.20	19.20		3	19.20	19.20	0.00	0.00	0.00	
AL	73	23.31	23.53	0.63	6	23.12	23.45	0.27	0.19	0.08	0.36
AR	33	19.40	19.28	0.16	1	22.63	22.63		-3.23	-3.35	
AZ	9	19.03	19.03	0.00	18	19.03	19.03	0.00	0.00	0.00	0.00
CA	82	19.32	16.79	16.50	181	18.04	15.51	16.02	1.28	1.28	0.48
CO	34	22.03	22.03	0.00	9	22.03	22.03	0.00	0.00	0.00	0.00
CT	6	17.00	16.83	0.17	22	19.97	20.83	1.17	-2.97	-4.00	-1.00
DC					24	17.02	17.02	0.00			
DE					2	18.70	18.70	0.00			
FL	7	16.27	16.55	0.62	99	18.20	18.26	0.13	-1.93	-1.71	0.49
GA	14	22.87	22.35	5.63	26	24.60	24.60	0.00	-1.73	-2.25	5.63
HI	4	19.54	19.95	1.13	9	21.55	21.55	0.00	-2.01	-1.60	1.13
IA	37	16.51	15.99	0.55							
ID	16	24.17	24.47	1.49							
IL	151	24.08	24.41	2.00							
IN	90	19.45	19.39	9.81	16	19.44	18.24	8.25	0.01	1.15	1.56
KS	69	21.38	21.43	0.02	7	22.23	22.23	0.00	-0.85	-0.80	0.02
KY	65	20.36	19.92	2.49	8	24.88	25.55	1.78	-4.52	-5.63	0.71
LA	51	18.93	18.66	0.20	12	19.79	19.79	0.00	-0.86	-1.13	0.20
MA	14	23.87	23.87	0.00	45	23.87	23.87	0.00	0.00	0.00	0.00
MD	23	21.60	21.55	0.06	37	22.66	22.75	0.10	-1.06	-1.20	-0.04
ME	61	26.10	26.10	0.00							
MI	140	22.38	21.13	7.37	55	21.37	21.53	0.05	1.01	-0.40	7.32
MN	29	19.37	19.37	0.00	32	20.17	20.17	0.00	-0.80	-0.80	0.00
MO	93	14.75	14.85	3.04	33	17.08	17.05	0.75	-2.33	-2.20	2.29
MS	62	23.20	22.83	0.82	1	26.16	26.16		-2.96	-3.33	
MT	28	23.88	23.88	0.00							
NC	22	21.99	22.67	2.15	5	21.72	21.70	0.00	0.27	0.97	2.15
ND	11	24.72	24.72	0.00							
NE	130	23.26	23.00	0.32	4	24.85	24.85	0.00	-1.59	-1.85	0.32
NH	33	20.21	20.27	0.95							
NJ					74	14.90	14.85	0.05			
NM	6	20.65	20.65	0.00	1	20.65	20.65		0.00	0.00	
NV	14	16.39	16.53	0.27	5	14.57	14.57	0.00	1.82	1.96	0.27
NY	75	24.44	25.21	13.18	87	25.91	26.66	26.02	-1.47	-1.45	-12.84
OH	116	21.51	21.62	0.68	53	22.78	22.50	0.42	-1.27	-0.88	0.26
OK	73	17.09	16.55	2.23	9	20.12	20.12	0.00	-3.03	-3.57	2.23
OR	26	19.74	19.63	0.02	6	19.90	19.95	0.02	-0.16	-0.32	0.00
PA	36	17.58	17.69	2.06	68	19.61	19.93	0.45	-2.03	-2.24	1.61
RI	1	21.32	21.32		4	26.01	26.01	0.10	-4.69	-4.69	
SC	18	21.12	21.80	5.60	3	22.85	22.55	0.26	-1.73	-0.75	5.34
SD	16	22.20	22.82	3.13							
TN	33	16.27	15.77	3.19	12	19.46	19.49	0.01	-3.19	-3.72	3.18
TX	120	14.11	14.14	0.03	91	15.93	16.18	0.62	-1.82	-2.04	-0.59
UT	3	14.97	14.97	0.00	2	14.97	14.97	0.00	0.00	0.00	0.00
VA	76	19.80	19.67	1.80	50	21.59	21.73	0.17	-1.79	-2.06	1.63
VT	36	30.85	30.85	0.00							
WA	39	15.72	14.29	4.72	27	17.90	18.94	3.87	-2.18	-4.65	0.85
WI	52	24.85	24.85	0.00	20	15.98	15.98	0.00	8.87	8.87	0.00
WV	28	22.15	22.15	0.00							
WY	9	30.25	30.25	0.00							

Count of States wherein Rural < Urban	24	25	4
Count of States wherein Rural > Urban	7	6	21
Count of States wherein Rural = Urban	6	6	7

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; WC Docket No. 05-337, CC Docket No. 96-45

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and has improved their quality of life, the system is in dire need of comprehensive reform. It has been my position that reform of the Universal Service system must accomplish five basic objectives. The Commission must:

- (1) contain the growth of the Fund;
- (2) in a limited and fiscally sound manner, explore the possibility of broadening the base of contributors;
- (3) reduce the contribution burden;
- (4) ensure competitive neutrality; and
- (5) eliminate waste, fraud and other abuses of the system.

The Commission must achieve these objectives instead of adding to the growth of the fund.

I am, however, concerned that part of the order results in additional universal service funds being disbursed to Wyoming. Such concern stems from my overall belief that the Commission's primary focus must be on containing the size of the fund. At the same time, I understand the equities and unique circumstances relating to Wyoming, as set forth in this order. Furthermore, I understand that Wyoming is the only state that has shown that its rural residential rates are not comparable to the nationwide urban rate benchmark and has taken all reasonably possible steps to achieve reasonable comparability through state action and existing federal support. For these reasons, I concur with the Wyoming section (III) of the order.

In the meantime, I will continue to call for the Commission to undertake meaningful and comprehensive reform.