Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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Table of Contents

I. INTRODUCTION 1

II. DEFINITION OF SUFFICIENT 4

Many observe that an assessment of whether universal service support is sufficient to achieve the section 254 principles "requires an integrated review and balancing of the various components of the universal service program." 4

Although high cost fund programs contribute to the affordability of basic telephone service, affordability should not be the high cost fund's primary goal. 6

Consumers bear the burden of the high-cost fund, and, therefore, the Commission should ensure that any high cost fund mechanism is sufficient but not excessive. 9

Reasonably comparable rates need not be identical, and, indeed, the Commission should not seek to establish uniform rates 10

The existing non-rural high cost fund is ample 14

The Commission should adopt separate measures to achieve affordable rates and to ensure reasonably comparable rates. 16

The Commission should reject any proposals that would distribute high cost support at the wire center level 18

III. FUNDING MECHANISM PROPOSALS 24

The Commission should reject those proposals that place undue emphasis on rates. 24

The distinction between rural and non-rural carriers should be phased out gradually 31

There is no evidence that the current level of funding is insufficient, and the Commission should ensure that consumers receive the benefits of the funding that is distributed to carriers. 32

At most one connection per eligible telecommunications carrier should receive support. 34

The non-rural high cost fund should sunset. 34

The Commission should reform universal service funding gradually. 37

IV. CONCLUSION 39

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I. INTRODUCTION.

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") hereby responds to the initial comments submitted in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above referenced proceeding.[1] The issues in this proceeding are complex as is evidenced by the level of disagreement among parties that typically concur (*e.g.,* the regional Bell operating companies ("RBOC")).[2] For example, AT&T suggests that "universal service support has languished rather than advanced" in the ten years since the 1996 Act[3] was passed,[4] and further asserts that the high-cost program "provides insufficient

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[1] / *In the Matter of Federal-State Joint Board on Universal Service*, FCC CC Docket No. 96-45; *High-Cost Universal Service Support*, FCC WC Docket No. 05-337, *Notice of Proposed Rulemaking*, Rel. December 9, 2005 ("NPRM"); *In the Matter of Federal-State Joint Board on Universal Service*, FCC CC Docket No. 96-45; *High-Cost Universal Service Support*, FCC WC Docket No. 05-337, *Order*, Rel. January 26, 2006.

[2] / Presently, AT&T (formerly SBC), BellSouth, Qwest, and Verizon are the remaining four RBOCs. AT&T's petition to acquire BellSouth is pending FCC review. In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, WC Docket No. 06-74.

[3] / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

support to most rural areas."[5] BellSouth, on the other hand, suggests that the high-cost fund is successful and stable and that the Commission "should avoid undoing praiseworthy results in a quest for doctrinaire perfection that the courts have not demanded."[6] BellSouth further observes regarding the non-rural high cost program and the United States Court of Appeals for the Tenth Circuit's (Tenth Circuit or Court) decision in *Qwest Corp. vs. FCC* ("Qwest II"):[7] "the core components of the high-cost funding architecture have withstood challenge."[8]

Based on its review of initial comments, the Ratepayer Advocate reiterates the concerns it raised in initial comments:

- The Ratepayer Advocate urges the Commission to consider carefully the implications for consumers throughout the nation of any decisions that it renders in this proceeding.
- Any non-rural carrier that receives high cost support should be accountable to consumers and required to demonstrate how the high cost subsidy benefits consumers.
- Some variation among rates is inevitable, in part, because public utility commissions render state-specific determinations about the appropriate revenue requirement and price cap mechanisms for incumbent local exchange carriers ("ILEC"), which, in turn, contributes to differences in rate design and rate levels. Therefore, the Commission should not seek to eliminate all variation in its pursuit of "reasonable comparability."
- The Ratepayer Advocate urges the Commission to ensure that broadband is affordable for all

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4 / AT&T, at 6.

5 / *Id.*

6 / BellSouth, at 4.

7 / *Qwest Corp. v. FCC*, 398 F 3d. 1222 (10th Cir. 2005) ("Qwest II").

8 / BellSouth, at 9.

consumers regardless of their geographic location and income.

Furthermore, the Ratepayer Advocate urges the Commission to ensure that the high cost fund does not become an unwarranted and unending revenue windfall for ILECs. The cost of providing basic local exchange service should be considered within the larger context of many significant factors that offset the relatively higher costs of serving rural areas within non-rural carriers' territories, most of which Congress likely did not anticipate when it established its universal service mandates ten years ago. These factors include: the substantial stream of revenues that ILECs generate as a direct result of consumers' near-monopoly reliance on ILECs for a basic link to the public switched network (*e.g.*, revenues from switched access, toll, vertical features, bundled offerings, etc.); billions of dollars of synergies resulting from multiple major mergers in the telecommunications industry; ILECs' supra-competitive earnings from special access services; and the virtual absence of local competition. Together these factors provide compelling evidence that the erosion of non-rural ILECs' implicit support has not occurred, and, therefore, the original rationale for explicit non-rural high cost support does not apply to today's telecommunications market. Accordingly, the Ratepayer Advocate urges the Commission to establish a near-term sunset date for the non-rural high cost fund.

II. DEFINITION OF SUFFICIENT.

Many observe that an assessment of whether universal service support is sufficient to achieve the section 254 principles "requires an integrated review and balancing of the various components of the universal service program."[9]

As discussed in the Ratepayer Advocate's initial comments,[10] the Commission seeks comment on how to balance the seven principles set forth in section 254(b) in crafting universal service programs and policies.[11] AT&T suggests that federal support is currently insufficient to achieve the goals set out by Congress and observes that "it is hard to see how the Commission could defend as 'sufficient' any mechanism that produces rates too high for consumers to pay."[12] However, AT&T does not provide support for its statement that rates are "too high." In initial comments, the Ratepayer Advocate asserted that the Court, at least in part, made conclusions regarding sufficiency based on an incomplete picture of various Universal Service programs that the Commission has developed since the enactment of the 1996 Act, and stressed the importance of viewing the various universal service programs in aggregate, rather than holding up a single program to achieve the many important goals set forth in section 254.[13] Numerous others echo this theme.[14] For example, Qwest states that "high-cost support must be addressed in the larger context of the universal service system."[15] Similarly, the Vermont Public Service Board, Vermont Department of Public Service, and

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9 / Qwest, at 15.

10 / Ratepayer Advocate, at 8-9.

11 / *NPRM*, at para. 8.

12 / AT&T, at 19.

13 / Ratepayer Advocate, at 10.

14 / Qwest, at 15, fn 34; Vermont/Maine, at 2-4; Verizon, at 28; BellSouth, at 19. For example, Verizon observes that "the court looked at this concern [rate comparability] in isolation . . ." Verizon, at 28. On January 6, 2006, MCI, Inc. merged into MCI, LLC, a wholly owned subsidiary of Verizon Communications Inc. Verizon, at 1, note 1.

15 / Qwest, at 40.

Maine Public Utilities Commission (collectively, "Vermont/Maine") state that the Commission "should determine sufficiency by the combined effect of all Section 254 programs."[16]

The Ratepayer Advocate concurs with Vermont/Maine that the Commission's initial priority should be to provide more complete information to the Court about *all* of its universal service programs, and how all the programs together achieve the statutory principles.[17] BellSouth similarly suggests that not all principles in Section 254 need to be addressed by the high-cost fund:

> Section 254(b)(3), however, is the only principle specifically aimed at the preservation and advancement of universal service *in high-cost areas*. The other principles are either general in their terms, or directed to other specific universal service goals (*e.g.*, schools, health care providers and libraries) that make no mention of high-cost areas. To date, the Commission has developed four discrete universal service funds (rural/high-cost, low income, schools and libraries, and rural health care), pursuant to the specific statutory guideposts that Section 254 provides. The Commission has utilized the more general provisions, or "principles," of Section 254 as tools to give shape and contour to those mechanisms. It is certainly logical that the Commission would center its high-cost funding mechanism primarily on the language most relevant to that "principle."[18]

As other commenters observe, the Court did not oblige the Commission to make particular priorities, but rather only to show the Court that it had considered all of the principles, and to explain to the Court why it may weigh some principles over others. CTIA notes that the Court did not make a finding that rural rates were unaffordable, but instead, directed the Commission to address the issue adequately.[19]

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[16] / Vermont Public Service Board, Vermont Department of Public Service, and Maine Public Utilities Commission ("Vermont/Maine"), at 2.

[17] / *Id.*, at 3-4. Vermont/Maine suggest that the court had "little or no information" about other universal service programs on which to base its decision and that the Commission should make findings as to the ways in which each of the principles is addressed by one or more of the universal service programs in its forthcoming decision in this proceeding. *Id.*.

[18] / BellSouth, at 19, emphasis in original.

[19] / CTIA, at 3.

In summary, by more comprehensively describing the diverse federal universal service programs, the Commission can demonstrate to the Court that the Commission's programs and policies fulfill the statutory mandate.

Although high cost fund programs contribute to the affordability of basic telephone service, affordability should not be the high cost fund's primary goal.

AT&T asserts that "[t]here is no empirical evidence whatsoever that any of the Commission's existing universal service mechanisms produce *affordable* rates"[20] and that affordability must be the "centerpiece" of any universal service plan the Commission adopts.[21] AT&T contends that such an approach means that all consumers, regardless of the size of their carrier, will have access to telecommunications services and that this will address the Court's concern that rates were "divorced" from the Commission's analysis of universal service.[22] AT&T contends that affordability is the paramount principle by which the Commission should be guided, and that the Court's ruling directs the Commission to address affordability.[23] AT&T elaborates: "The Commission's mechanism for high-cost support therefore cannot fulfill the statutory mandate if the agency continues to shy away from determining how much consumers can reasonably be expected to spend on telephone service."[24] AT&T proposes that "[a]ffordability can be measured in concrete, objective terms . . . "[25] based on the percentage of income used for telephone expenditures.[26] The drawback to this analysis is that AT&T fails to explain or justify any particular percentage that it considers "affordable" other than to

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20 / AT&T, at 11, emphasis in original.

21 / *Id.*, at 12.

22 / *Id.*

23 / *Id.*, at 14.

24 / *Id.*

25 / *Id.*

indicate that the affordability benchmark would not be based on existing rates, but on "rates that would apply in an area in the absence of implicit subsidies – that is, rates that reflect the actual costs of serving a given community."[27] AT&T fails to demonstrate that such cost-based rates are "affordable."

In its initial comments, the Ratepayer Advocate stated that "[r]easonable comparability advances but does not guarantee affordability."[28] Similarly, Vermont/Maine recommends that the Commission "should also find that high-cost support programs cannot directly address affordability principles and are not the best or most efficient mechanisms to do so."[29] The Ratepayer Advocate reiterates its recommendation from its initial comments:

> The high cost universal service fund is meant to subsidize telecommunications services in areas where the costs of providing such services are particularly high, and, therefore, the HCF promotes affordability. However, the specific goal of affordability should be addressed primarily in federal and state Lifeline and Link up programs.[30]

AT&T fails to show why other USF programs are not the appropriate mechanisms with which to address affordability. Sprint Nextel submits that "technological and competitive advances will increase the reach and reduce the cost of communications to the point that subsidies can be limited to providing support directly to low income households."[31] The Commission should continue to rely on its previous finding that it is "better to address affordability issues unique to low-income consumers through the federal low-income programs specifically designed for this purpose rather

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[26] / *Id.*, at 14-15.

[27] / *Id.*, at 17.

[28] / Ratepayer Advocate, at 10.

[29] / Vermont/Maine, at 5. *See*, *also*, CTIA, at 5.

[30] / Ratepayer Advocate, at 11.

than through the high-cost support programs."[32] Such a finding is still appropriate in light of the Court's decision in *Qwest II*.[33]

BellSouth concludes that the Commission should afford the most weight to the principle of reasonable comparability: "The other remaining principles should carry little or no weight because, by their very nature, they lack any cognizable and reasonable nexus to ensuring access in high-cost areas."[34] BellSouth observes that the Commission need only provide a reason that one principle is weighted over another to satisfy the Court.[35] Although the Ratepayer Advocate recognizes the need for the Commission to demonstrate that it is committed to advancing (as well as preserving) universal service, it is incumbent upon the Commission to quell the Court's concerns that "[i]f rates are too high, the essential telecommunications services encompassed by universal service may indeed prove unavailable."[36] As stated in the Ratepayer Advocate's initial comments, "there is simply no evidence that essential services are unavailable in rural areas" and "the non-rural high cost fund should not be held up in isolation to fulfill entirely the congressional mandate to advance universal service."[37]

The National Association of State Utility Consumer Advocates ("NASUCA") similarly asserts that the affordability principle should be "subsidiary" to the reasonable comparability

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[31] / Sprint Nextel, at 3.

[32] / *NPRM*, at para. 10, citing *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8097, para. 39; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8844-45, para. 124 (1997).

[33] / *NPRM*, at para. 10.

[34] / BellSouth, at 20.

[35] / *Id.*, at 21.

[36] / *Qwest II*, at 1236.

[37] / Ratepayer Advocate, at 14.

principle.[38] NASUCA also reminds the Commission that the Lifeline and Link-up programs address affordability issues for low-income consumers.[39]

The Ratepayer Advocate urges the Commission to reject ILECs' attempts, under the guise of "affordability," to allow a bloated high cost fund to evolve. Ultimately, all consumers bear the cost of high cost support, and, therefore, an excessive high cost fund (purportedly established in the name of affordability) would jeopardize affordable rates.

Consumers bear the burden of the high-cost fund, and, therefore, the Commission should ensure that any high cost fund mechanism is sufficient but not excessive.

As the Commission and the Court hypothesize, there is indeed a danger that universal service fees will affect affordability, particularly for contributors in states that do not receive non-rural high cost support funds.[40] BellSouth contends that the fund's support of access satisfies the affordability principle, and that if the fund grows too large, services will become more expensive.[41] BellSouth also notes, as the Ratepayer Advocate did in initial comments,[42] that the Lifeline and Link-Up programs are "designed to address the special needs of low-income consumers and, thus, may satisfy the Act's affordability objective, at least, for a segment of the nation's consumers."[43] Others raise similar views. Verizon observes that, "[a]s the assessments on consumers grow with the fund, the burden of paying for the fund undermines the very goals the fund seeks to protect."[44] Verizon aptly states: "The increasing cost of universal service obviously tends to offset the benefit to consumers of

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[38] / NASUCA, at 32.

[39] / *Id.*, at 33.

[40] / *NPRM*, at para. 11; *Qwest II*, at 1234, citing *Qwest I*, at 1200; *see also,* Ratepayer Advocate, at 12-13.

[41] / BellSouth, at 22.

[42] / Ratepayer Advocate, at 11.

[43] / BellSouth, at 2.

competitive entry, since it is consumers who must bear the cost of universal service."[45] Similarly, Qwest states that "the overall size of the fund and its impact on the affordability of services which require contribution to the fund must be considered in determining sufficient universal service support for high-cost and rural areas."[46] Qwest appropriately alerts the Commission that an inefficient fund "may ultimately harm the contributors more than it aids the benefactors."[47]

In summary, the Commission should ensure that any non-rural high cost fund is sufficient but not excessive.

Reasonably comparable rates need not be identical, and, indeed, the Commission should not seek to establish uniform rates.

The Ratepayer Advocate stated in initial comments that "[a]lthough the Commission could seek to narrow the gap between urban and rural rates, 'reasonably comparable' rates need not result in an elimination of the gap."[48] Others express similar positions. Verizon states that "the Commission should not attempt to craft a mechanism that eliminates all but the most minor deviations in rates."[49] Consistent with the concern raised by the Ratepayer Advocate about the Commission not usurping state regulators' rate-making authority,[50] Verizon states that "a federalized uniformity requirement for local rates would also render Section 2(b) a nullity. If Congress wanted

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[44] / Verizon, at 1.

[45] / *Id.*, at 7. Verizon also states that "failure to limit the fund by targeting it so that it will just be sufficient, ultimately will negatively impact affordability and the long term sustainability of the fund." *Id.*, at 24.

[46] Qwest, at 12.

[47] / *Id.*, at 17.

[48] / Ratepayer Advocate, at 13. *See*, *also*, general discussion, Ratepayer Advocate, at 13-16.

[49] / Verizon, at 25.

[50] / The Ratepayer Advocate stated, "[a]s the Commission has previously recognized, section 254 "did not affect the proscription in section 2(b) of the Communications Act against Commission regulation of intrastate rates." Ratepayer Advocate, at 35, citing *Order on Remand*, at para. 13, citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421, 424, 446-48 (5th Cir. 1999).

local rate uniformity, is surely could have said so, as it did with long distance rates."[51] NASUCA also discusses states' authority to establish intrastate rates:

> One action that NASUCA's proposal does not require of the states is transforming implicit support into explicit support. The Qwest II court definitively found that such was not required under the 1996 Act, given that the Act explicitly makes explicitness a condition for federal support but not for state support. This principle clearly allows the existence of statewide averaged rates, as seen in many states. The Commission's nonrural high-cost mechanism cannot interfere with these state decisions, and should not create incentives that would cause states to move away from statewide averaged rates.[52]

Others also comment on the inherent difficulty of undertaking rate comparisons. The Wisconsin Public Service Commission ("Wisconsin PSC") submits that despite the state's reliance on the HCF (the Wisconsin PSC provides evidence that over 15% of lines would have local rates in excess of $40 month if not for the support), the "support system should temper the magnitude of those rate differentials, but does not need to eliminate them completely."[53]

The Ratepayer Advocate urges the Commission to explain to the Court that it is inevitable that the Commission rely on determinations that ultimately must be subjective.[54] The Wisconsin PSC, among many, highlights the problems associated with making comparisons between rates, including differences in the services included and calling areas.[55] The annual urban rate survey ranks the $33.58 rates for Milwaukee as one of the highest rates of 95 cities examined by the Bureau of Labor Statistics ("BLS") and much higher than the average urban benchmark, yet the Milwaukee rate

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[51] / Verizon, at 25, citing 47 U.S.C. § 152(b) and 47 U.S.C. § 254(g).

[52] / NASUCA, at 63.

[53] / Wisconsin PSC, at 4.

[54] / *See* Verizon, at 26, referring to the "inherently arbitrary" benchmarks associated with establishing reasonable comparability.

[55] / Wisconsin PSC, at 6, fn 11. Sprint Nextel also expresses concerns regarding the lack of comparability of rates, and observes that low basic rates often correspond with high switched access rates. Sprint Nextel, at 7-8.

includes metro-wide calling. Although many other consumers across the country pay lower *basic* rates, they pay toll charges for the types of calls that the Milwaukee plan includes as part of the unlimited calling plan.[56]

Examples such as this underscore the need for the Commission to analyze carefully data in this proceeding prior to making any conclusions regarding rate comparability. Some commenters provide compelling evidence that rates are indeed reasonably comparable. Verizon, for example, contends that urban and rural rates *already* are comparable. Based on its analyses of various samples of rates, Verizon concluded that "ILEC rates in rural areas are reasonably comparable to (or in many cases lower than) urban ILEC rates, and have been for several years."[57] Furthermore, according to Verizon's analysis, the range of rural rates is reasonably comparable to the range of urban rates, with only one rural rate in the sample outside the range of urban rates.[58] BellSouth's analysis of urban and rural rates concludes that "on average, the nation's rural residents pay $0.89 less than the nation's urban residents. Additionally, the data show that rural rates generally range from below urban rates to slightly above urban rates within states through the United States."[59] In initial comments, the Ratepayer Advocate stated:

> The Court seemed to implicitly approve of the highest urban rate being twice that of the lowest urban rate (*i.e.,* to tolerate significant variability among urban rates) and yet surprisingly found the variability between a theoretical rural rate and the lowest urban rate (*i.e.*, a variance of similar magnitude) unacceptable.[60]

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56 Wisconsin PSC, at 6..

57 / Verizon, Declaration of Patrick Garzillo ("Garzillo Declaration"), at 2. Verizon analyzed various sources of public information, including information in states' rate comparability certifications filed with the Commission.

58 / *Id.*, at 5-7.

59 / BellSouth, at 4.

60 / Ratepayer Advocate, at 31, citing *Qwest II*, at 1237.

Verizon similarly observed that "the statute cannot plausibly be read to require that rural rates be *more* comparable to urban rates than urban rates are to each other."[61] The Court and Congress have not directed the Commission to eliminate all variances among rates and such an approach would burden net contributors to the program.

NASUCA presents the Commission with comprehensive rate information, which includes data for over 11,000 wire centers across the country (as of February 2006). Noting that the Commission failed to review the "universe of rates" when it initially adopted its standard of reasonably comparability, NASUCA contends that with this new data, the Commission could do so now.[62] NASUCA submits that after the Commission conducts its review in this proceeding "it will still find reasonable comparability to be the most important and most effective principle."[63] NASUCA deems reasonable comparability to be "capable of objective review and determination . . . "[64] In addition, NASUCA suggests that rates cannot be compared without addressing local calling areas.[65]

Based on the information and data that commenters such as NASUCA and Verizon submit in this proceeding, the Commission can conclude that urban and rural rates *are* reasonably comparable, and that, therefore, the Commission's non-rural high cost fund is fulfilling the 1996 Act's mandate.

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61 / Verizon, at 29, emphasis in original.

62 / NASUCA, at 2-3. NASUCA does not propose a specific benchmark standard at this time.

63 / *Id.*, at 29.

64 / *Id.*, at 31.

65 / *Id.*, at 49-50.

The existing non-rural high cost fund is ample.

NASUCA provides evidence that contradicts AT&T's claim that the current fund is inadequate. NASUCA notes that only Wyoming has sought additional support through the FCC's supplemental mechanism and concludes: "It would be safe to assume, then, that [the other state commissions] believe their rural rates to be reasonably comparable to urban rates under the current benchmark." NASUCA reasons further that evidence of rate comparability "is borne out by the data compiled for NASUCA."[66]

In discussing its submission of rate data, NASUCA suggests that the Commission use the US Census Bureau definitions of urban and rural and observes that currently, the Commission "looks at only part of the national picture" when determining the current rate benchmark by reference to the 95 urban rates in the BLS Rate Reference Book.[67] However, NASUCA's detailed analysis of a comprehensive sample of urban and rural rates yielded results similar to those resulting from the use of the sample of 95 urban rates from the BLS Rate Reference Book.[68] NASUCA concludes that the NASUCA analysis "shows the relative validity" of the Commission's reliance on the 95 urban rate sample and that "given its simplicity and history the Commission may decide to continue using it."[69]

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[66] / *Id.*, at 5.

[67] / *Id.*, at 20-22.

[68] / *Id.*, at 28. The FCC's 95 urban rate sample results in a weighted average monthly urban residential charge of $24.31 (with a low of $16.05 and high of $34.47). NASUCA's sample results in an average of $23.54 (with a low of $13.26 and a high of $33.64) when "other fees" of $3.97 are included. *Id.*

[69] / *Id.*, at 28.

Furthermore, NASUCA's analysis demonstrates that current rural rates and urban rates *are* similar:

> The rural minimum rate is 23% greater than the urban minimum rate, but the average rural rate is only 7% higher than the average urban rate. Most importantly, the highest rural rate is only 7% higher than the highest urban rate. Further, there are only about 245 wire centers that have current rates greater than two standards deviations above the urban average.[70]

NASUCA's data confirms that, contrary to AT&T's position, more support is not needed. However, despite NASUCA's conclusion that "little beyond the level of support currently awarded is necessary to maintain this level of comparability," NASUCA's analysis also shows that "there does not appear to be any correlation between the level of support received and the degree of comparability."[71]

Addressing the Court's finding regarding the differences between rural rates and urban rates, NASUCA notes that the Court is comparing rural rates to the *lowest* urban rates: "Congress did not, in fact, say that rural rates would be reasonably comparable to the lowest urban rate. Rather, § 254(b) directs that rural rates be reasonably comparable to urban rates generally. The best reflection of the general urban rate is the national weighted average urban rate."[72]

The comments in this proceeding demonstrate that the existing non-rural high cost fund is adequate to achieve reasonable comparability of urban and rural rates.

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[70] / *Id.*, at 41.

[71] / *Id.*, at 42.

[72] / *Id.*, at 46.

The Commission should adopt separate measures to achieve affordable rates and to ensure reasonably comparable rates.

The Ratepayer Advocate reiterates its concern about the national decline in telephone subscribership.[73] The most recent FCC Subscribership Report indicates that the percentage of households subscribing to telephone service was 92.9%, down 1.1% from July 2005.[74]

The Ratepayer Advocate urges the Commission to consider the options that Vermont/Maine set forth for improving telephone penetration and affordability, which include measures such as increasing Lifeline discounts, exempting Lifeline customers from universal service contributions, and analyzing state policies that improve penetration (such as requirements regarding advance notice of disconnection, ability to retain local service despite non-payment of toll bills, etc.).[75]

NASUCA acknowledges that "[t]he FCC has recently taken steps to increase the effectiveness of the Lifeline and Link-up programs that assist low-income consumers, through the joint Commission/NARUC/NASUCA task force" and that "[c]ontinuing these efforts will both preserve and advance universal service."[76] NASUCA's proposals for "advancing" universal service also merit the Commission's consideration and include: "1) investigating the reasons behind the recent apparent general declines in telephone subscribership; 2) increasing efforts to advance subscribership among low-income consumers; and 3) adopting specific measures to enlarge the offering of advanced services in rural areas served by non-rural companies."[77]

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[73] / Ratepayer Advocate, at 16-17.

[74] / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States*, data through November 2005, Released May 2006, at 3. The decrease is statistically significant.

[75] / Vermont/Maine, at 11-12.

[76] / NASUCA, at 91.

[77] / *Id.*, at 10.

The Ratepayer Advocate concurs with AT&T's observation that "[t]o date, the Commission's approaches have largely left consumers out of the analysis"[78] and with AT&T's observation that a $30 phone bill has a different impact on a household earning $30,000 than it does on a household earning $100,000. However, although AT&T's proposal for a fixed affordability percentage may have theoretical merit, the High Cost Fund is not the appropriate mechanism by which to address affordability issues. AT&T asserts that such an affordability-based HCF approach would "ensure that consumers in every community, no matter how expensive to serve, would enjoy supported service where the cost of basic service exceeds a particular percentage of median income."[79] AT&T's proposal, however, both "over-solves" and "under-solves" the problem because low-income households living in wealthy communities would not receive support and wealthy households living in below-average income communities would receive support.[80] Indeed, AT&T notes, "Of course, there are variations within each community as well. Support for consumers with low incomes should continue to be addressed by the Lifeline mechanism and, if appropriate, increased to meet these consumers' needs."[81]

A system that bases high-cost support on individual household income likely would be unworkable.[82] According to Vermont/Maine, the Lifeline and Link-Up programs, and not the high cost fund ("HCF") programs, "are the most effective means to meet the affordability goal."[83] Qwest contends that "affordability is a principle that should be considered for all consumers, not just low-

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[78] / AT&T, at 15-16.

[79] / *Id.*, at 16.

[80] / *See also*, Ratepayer Advocate, at 18-19.

[81] / AT&T, at footnote 39.

[82] / Qwest, at 12; Wisconsin PSC, at 10; CTIA, at 6; Nebraska Public Service Commission, at 13.

income consumers, in providing universal service support."[84]

If the Commission decides to link an income-based requirement to the distribution of high cost support, the Commission should provide households with vouchers to ensure that high cost funds reach consumers (and not providers), so that the Commission can target subsidies efficiently to the intended beneficiaries.

The Commission should reject any proposals that would distribute high cost support at the wire center level.

The Ratepayer Advocate cautions the Commission against adopting the wire center approach that AT&T advocates. AT&T asserts:

> The entire point of the reasonable comparability inquiry is to examine what consumers in rural and high-cost areas actually spend on telephone service and receive for the money relative to what consumers in urban areas actually spend and receive. Combining these very different consumers into a hypothetical 'statewide average' consumer is meaningless and guts the very purpose of section 254(b)(3). The analysis should take place on a much more granular basis, such as a wire center.[85]

AT&T contends that there are readily available data for determining the amount of support for individual wire centers or census block groups.[86] The Ratepayer Advocate opposes a mechanism that would determine carriers' needs based at the wire center level because it is excessively granular. Furthermore, a mechanism that is based at the wire center level would overstate ILECs' costs because it would fail to reflect the significant economies of scale and scope that ILECs have throughout their serving areas.

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[83] / Vermont/Maine, at i. *See*, *also*, NASUCA, at 33.

[84] / Qwest, at 11, note 24.

[85] / AT&T, at 17-18.

[86] / *Id.*, at 18.

Qwest also proposes that the HCF mechanism focus on individual wire centers rather than on state-wide average costs, in part, because according to Qwest, competition in urban areas prevents low-cost urban areas from supporting high-cost areas.[87] The Ratepayer Advocate opposes Qwest's recommendation. By examining the need for HCF support at such a granular level, the Commission would ignore the significant economies of scale and scope that ILECs enjoy, and would unnecessarily create a bloated HCF. By way of example, assume that an ILEC's serving territory consists of six wire centers, and the costs of serving customers in illustrative Wire Centers A through F are $10, $20, $25, $35, $40, and $50. Assume further, for sake of illustration, that the benchmark (that is the value which triggers HCF support) is $30. The average cost to the ILEC of serving customers is $30 in this simplified example (of course, in reality, the weighted average cost would likely be far less since there would be significantly more lines in the low-cost urban areas than in the sparsely populated high cost areas). Based on an assessment of the area-wide cost of serving the ILEC's territory, the ILEC would not receive any HCF.

In sharp contrast, according to Qwest's rationale, the competition in urban wire centers A, B, and C purportedly would erode the carrier's implicit support, and therefore, according to Qwest, the Commission should examine Wire Centers D, E, and F separately. The carrier would then be entitled to HCF support in the amount of $5 (per line) in Wire Center D, $10 (per line), in Wire Center E, and $20 (per line) in Wire Center F. There are several fallacies in Qwest' logic:

- Even if there were competition in the most urban area (Wire Center A), there may not be any competition in the possibly suburban Wire Centers B and C, which means that the carrier would be over-compensated based on the erroneous assumption that the revenues in below-average cost Wire Centers B and C no longer provide implicit support for the cost of serving Wire Centers D, E, and F.

[87] / Qwest, at 30-31

- Competition has been extremely slow to arrive to residential customers, and, therefore, it is unlikely that the carriers' revenues are at risk.

- Competition that is based on the use of Qwest's wholesale facilities continues to yield revenues for Qwest.

- For every wire center that has costs *above* the average cost, there is another wire center that has costs *below* the average cost. Qwest is not proposing to *reduce* the level of any particular carrier's high cost subsidy to reflect the presence of low-cost wire centers.

The Commission should reject Qwest's proposed mechanism because, by over-compensating LECs for the purported erosion of implicit support, it would give ILECs an unjustified windfall at the expense of consumers. Indeed, Qwest concedes that using the latest official Synthesis Model wire center cost output, its proposal would result in a non-rural support fund of approximately $1.9 billion (rather than the existing amount of $291 million).[88] Qwest proposes that the Commission limit the distribution, possibly based on a cap on the existing fund.[89] One practical drawback to Qwest's proposal is that it seems improbable that the Commission would be able to limit the non-rural high cost fund as Qwest proposes. Therefore, were the Commission to adopt Qwest's proposal to examine costs at a wire center level, the Commission would irrevocably cause the HCF to increase by as much as six times.

For the foregoing reasons, the Commission should reject proposals that would distribute high cost support at the wire center level.

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[88] / *Id.*, at 32. Similarly, AT&T predicts that its plan, discussed below, would necessitate a roughly $1.5 billion increase in the non-rural high cost fund. AT&T, at 33.

[89] / Qwest, at 32.

The Commission should expand its assessment of the availability of and demand for broadband services.

In initial comments, the Ratepayer Advocate stated:

- Customers who do not subscribe to broadband services are subsidizing those customers who do subscribe to these advanced services. Unless and until federal and state regulators ensure that advanced services bear a fair share of the costs of the network, those customers who subscribe only to plain old telephone service ("POTS") will be subsidizing advanced services. Unless and until demand for broadband services approximates that for POTS, or LECs offer broadband services at POTS prices, this is an unfair consequence of the misallocation of network costs.[90]

- If, as a nation, we seek to ensure that all segments of society have comparable access to advanced services, the Commission should broaden its investigation beyond the framework of this proceeding, which simply compares rural and urban areas. In this more broadly defined investigation, the Commission should consider not only whether rural areas have broadband access comparable to that of urban areas, but also whether all socioeconomic groups have comparable access. Furthermore, access needs to be examined not only from the perspective of whether consumers have the *option* to subscribe to broadband service (*i.e.,* is the infrastructure deployed to the consumer's neighborhood?), but also whether consumers actually *subscribe to* advanced services. The Commission presently tracks penetration rates for basic telephone service. The Commission similarly should measure and track penetration rates for broadband service.[91]

Other comments raise similar recommendations. The Ratepayer Advocate supports Vermont/Maine's proposal that the Commission, at a minimum, include surveys of the deployment of digital subscriber line ("DSL"), broadband, and fiber-to-the-home.[92] Furthermore, as Vermont/Maine recommends, the Commission "should publish a methodology for surveys of

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[90] / Ratepayer Advocate, at 20, cite omitted.

[91] / *Id.*, at 21, cites omitted, emphasis in original.

[92] / Vermont/Maine, at 15.

advanced service deployment in the states and should encourage state commissions to act as data collection agents."[93]

The Ratepayer Advocate is not persuaded by AT&T's assertion that if USF support is properly allocated "carriers will have the incentives they need to invest in multi-use facilities that can provide advanced service to rural areas." AT&T further contends that "[s]upport that is insufficient to fund affordable rates even for *basic* services clearly stands as a barrier to broadband deployment in high cost areas."[94] Qwest asserts that universal service support to rural and high cost areas is not necessary for the deployment of broadband and other advanced services, and further recommends that the Commission "clarify that universal service high-cost and rural support...not be used to build functionality in a network that is not necessary for supported services."[95]

Sprint Nextel raises concerns about cross subsidization that would occur if the HCF were used by carriers to enter, for example, the broadband market.[96] If the Commission determines that universal service funds should be used to subsidize broadband deployment, such a determination should be explicit, and the funds should be available for the least-cost provider. Such a mechanism would be essential to prevent the anticompetitive consequence of incumbents receiving the subsidy and to ensure that federal subsidies are used efficiently. According to NASUCA, advanced services do not meet 254(c)(1) test for support and thus the Commission cannot provide support at this time.[97] NASUCA, among others, notes that schools and libraries and health care providers already receive

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[93] / *Id.*, at 15.

[94] / AT&T, at 15, emphasis in original.

[95] / Qwest, at 13.

[96] / Sprint/Nextel, at 4.

[97] / NASUCA, at 35.

access to advanced services through other programs.[98]

NASUCA proposes that the Commission adopt policies to bring "the rural networks of non-rural carriers into the 21st authority" by adopting programs that "incent the deployment of broadband service in such rural areas."[99] NASUCA proposes the Network Investment Incentive Plan ("NIIP") which would reduce support if carriers fail to provide access to advanced services.[100] The plan uses a "glide path," reducing the support each year.[101] NASUCA provides evidence that non-rural carriers (as opposed to rural carriers) are failing to deploy advanced services in rural areas.[102]

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98 / *Id.*, at 36. *See also*, Ratepayer Advocate, at 28-29; BellSouth, at 19; CTIA, at 3, fn 5.

99 / NASUCA, at 91.

100 / *Id.*, at 91.

101 / *Id.*, at 92. NASUCA notes that its plan does not favor a particular technology over another (*i.e.*, the technology can be a DSL or fiber to the home). *Id.*

102 / *Id.*, at 92-96.

III. FUNDING MECHANISM PROPOSALS.

Various parties submit specific funding mechanism proposals. The Ratepayer Advocate urges the Commission to examine these mechanisms carefully, and to consider the implications of the various funding proposals on consumers throughout the nation. USF support should not be permitted to become a windfall for ILECs, nor should the mechanism be so complicated as to render its implementation infeasible.

The Commission should reject those proposals that place undue emphasis on rates.

Ultimately, states have the authority to set local rates, and thus variances in rates within and among states are inevitable: state regulators make different decisions with respect to rate design based on various factors discussed at length in the Ratepayer Advocate's initial comments.[103] The Commission should avoid undue reliance on a *rate*-based mechanism to determine the need for support because rates do not necessarily correspond with the *cost* to serve a particular region. Numerous variables influence rates and, therefore, a rate-based funding mechanism would distort the calculation of HCF support.[104] Vermont/Maine aptly observes that "[l]ocal service rates are affected by many local variables unrelated to universal service and therefore are inherently unsuited to measuring comparability."[105] Vermont/Maine raises a concern similar to that raised by the Ratepayer Advocate, that is, that a "rates-based comparability standard, therefore, would force the FCC to provide universal service funding to address rate differences that arise, not merely from cost differences, but also from state policy decisions."[106] Similarly, Vermont/Maine opposes the use of

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[103] / Ratepayer Advocate, at 15.

[104] / *See, Id.*, at 29 - 32.

[105] / Vermont/Maine, at 20. *See*, *also, Id.*, at 24-25.

[106] / *Id.*, at 26.

local rate data to assess comparability "because rates are based on too many differing factors, making comparisons arbitrary."[107] Vermont/Maine, however, recommends the adoption of a "more aggressive comparability standard," and specifically recommends a standard of not more than 125 percent of nationwide average net subscriber cost.[108]

The Ratepayer Advocate concurs with Vermont/Maine that costs "are the most reliable means to determine support, particularly because using rates to calculate support levels can create perverse incentives to game the system."[109] BellSouth suggests that any benchmark must include some type of allowance for variation: "Because of the very nature of what regulated rates represent, they are an unsuitable proxy for determining comparability between or among states."[110] BellSouth further argues that "[a]ny statistically rational benchmark for reasonable comparability must reflect the underlying distribution of values, rather than simply using the mean."[111] This is similar to the Ratepayer Advocate's position outlined in initial comments that if rates are compared, the benchmark should be set above the average and that "any rate benchmark should recognize and accommodate some reasonable degree of divergence among rates throughout the country."[112]

AT&T proposes a plan that includes affordability as its "cornerstone" and funds carriers serving consumers in rural and high-cost areas for the portion of their cost of providing service that exceeds a predetermined affordability benchmark for local telephone service. Among the main elements of AT&T's plan are the following:

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[107] / *Id.*, at ii.

[108] / *Id.*

[109] / *Id.*

[110] / BellSouth, at 14.

[111] / *Id.*

- The cost of providing service would be determined by the current forward-looking model (unless the Commission replaces the model with something more accurate), but costs would be computed on a wire center basis, rather than statewide.[113]

- An affordability index would be developed, based on "the percentage of household income that consumers can reasonably be expected to spend on telephone service."[114]

- The affordability benchmark would be calculated for each area by multiplying the affordability index by the median income of households in the area.[115] AT&T proposed to calculate a benchmark for each wire center.[116]

- Support would be based on the amount by which the cost of service exceeds the affordability benchmark, or, in the alternative, the cost of service exceeds the actual revenues for supported services (in the event revenues exceed the affordability benchmark).[117]

- States would retain authority over rates. If rates are lower than the benchmark and cost of service, state could adopt its own explicit mechanism to make up the difference or defer to the Commission, which would fund difference through assessments on carriers in that state (and, ultimately, consumers).[118]

AT&T acknowledges that its Mechanism for Affordable Rural Communications ("MARC") plan would "necessarily and appropriately increase the overall amount of funding to provide sufficient support" but explains that "these changes would relieve states of some of the burden of universal service funding." AT&T states further that "in addition, we recommend changes that should mitigate the overall increases."[119] Specifically, AT&T estimates that the MARC plan would

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112 / Ratepayer Advocate, at 34.

113 / AT&T, at 23.

114 / *Id.*, at 24.

115 / *Id.*

116 / *Id.*, at 27.

117 / *Id.*, at 24.

118 / *Id.* In this way, AT&T suggests that the plan would "discourage states from attempting to shift to carriers and consumers in other states the burden of maintaining rates below the MARC affordability benchmark, while maintaining state authority over local rates based on state priorities . . ." *Id.*, at 30.

119 / *Id.*, at 24.

"require an increase in the size of the non-rural support mechanism by roughly one and a half billion dollars."[120] The Ratepayer Advocate disagrees with AT&T's assertion that an increase of this magnitude is needed because the current non-rural mechanism is purportedly "grossly inadequate."[121] AT&T has failed to demonstrate that its proposed enormous increase in the HCF is warranted and furthermore has failed to substantiate its claim that this increase would be offset by a reduction in explicit state support and state high cost funds (for those states that have high-cost funds).[122] Also, as discussed earlier in these comments, the Ratepayer Advocate opposes the use of wire centers to assess the need for high cost support. In sum, the Commission should reject AT&T's proposal.

Initial comments address AT&T's previous income-based high-cost fund proposal.[123] Vermont/Maine recommends that the Commission reject AT&T's earlier proposal to base high-cost support on a community's median household income.[124] Vermont/Maine opposes the proposal because it is inefficient and unfair to individual customers.[125] NASUCA also expresses concern regarding AT&T's earlier proposal for an affordability standard, noting that it "would not enhance the affordability of service" nor "preserve nor advance universal service."[126]

In contrast with AT&T's approach, BellSouth proposes a rate-based benchmark ("RBB") to determine eligibility for high cost support, which would include two eligibility tests:

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[120] / *Id.*, at 33.

[121] / *Id.*

[122] / *Id.*, at 34.

[123] / SBC, before it acquired AT&T, proposed an income-based high cost fund in a filing submitted in an earlier phase of this proceeding.

[124] / Vermont/Maine, at 7-8. *See also,* Ratepayer Advocate, at 12.

[125] / Vermont/Maine, at 7-8.

[126] / NASUCA, at 33.

- The comparison of a non-rural carrier's average rural and average urban residential flat rates within the state.[127] BellSouth proposes to define reasonable comparability as a carrier's average rural rate not exceeding 15% above the carrier's average urban rate within the state.[128] BellSouth asserts that its evidence presented in Appendix A to its comments shows that rates are currently reasonably comparable within states.[129]

- Comparison of a non-rural carrier's average rural residential flat rate within a state to a benchmark based on the national residential urban flat rate average plus one standard deviation.[130] BellSouth states that "[t]his serves as both a test of reasonable rate comparability and a benchmark against which costs should be compared to determine funding."[131] BellSouth suggests that this test should be less stringent than first test because of natural differences in rate design between states.[132]

Undermining the validity of BellSouth's proposal, CenturyTel asserts that carriers often charge high local rates in low-cost urban areas, and that targeting support based on rates would "direct significant support to many areas that need it *least*."[133]

NASUCA offers two proposals for reforming the non-rural HCF. Its first proposal includes the use of a benchmark based on the "national urban average per-line revenue," with the revenue computed based on all sources, not just basic service.[134] The costs in all wire centers would be compared to the national urban average revenue, and support would be awarded in wire centers where costs are above a national urban revenue benchmark.[135] NASUCA states that "the

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[127] / BellSouth, at 10-11.

[128] / *Id.*, at 12.

[129] / *Id.*, at 13. BellSouth comments show that there are only three cases in which rural rates are more than 5% above the urban rate. *Id.*

[130] / *Id.*, at 10-11.

[131] / *Id.*, at 13.

[132] / *Id.*

[133] / CenturyTel, at 4, citing *NPRM*, at para. 25. S*ee, also,* Centurytel discussion of this issue at 5.

[134] / NASUCA, at 3. *See generally*, NASUCA, at 65-71.

[135] / *Id.*, at 3-4. NASUCA explains that "[t]hese revenues include those from basic service, the SLC, switched access, vertical features and ADSL service." *Id.*, at 69.

presumption contained in this proposal is that areas with costs that are greater than the urban revenue benchmark will find it impossible to have basic service rates that are reasonably comparable to urban rates in the absence of support."[136] The strength of this proposal is that it appropriately recognizes that customers' basic local exchange service provides the platform for a stream of revenues that ILECs generate. The disadvantage of a revenue-based mechanism is that state public utility commissions, through their unique, state-specific policy setting and rate design, influence the level of any individual carrier's revenue.

The Commission's recent decision to extend the separations freeze continues the over-allocation of costs to intrastate and non-competitive services and the under-allocation of costs to ILECs' competitive and interstate services.[137] This decision underscores the compelling need to assess ILECs' costs comprehensively to ensure that basic services and high cost funds are not subsidizing ILECs' entry into video, data, and other services. If the Commission pursues some variation of NASUCA's proposal to examine revenues, the Commission should consider all revenues that carriers derive as a result of their investment in a common network platform or should allocate away the portion of the network costs that ILECs incur to deploy diverse video, data, and non-traditional telecommunications services.

NASUCA's second proposal determines eligibility based on a comparison of rates, but similar to the current mechanism, makes a support determination based on costs.[138] NASUCA describes the method as "the appropriate method for apportioning support from the federal USF,

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[136] / *Id.*, at 4.

[137] / *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Order and Further Notice of Proposed Rulemaking*, released May 16, 2006.

[138] / NASUCA, at 4.

placing the primary responsibility for ratemaking on the states, while assisting with support for areas in states that have – as a whole – high costs that otherwise would be accounted for in rates."[139]

AT&T's and BellSouth's proposals rely on the continued use of the current non-rural high cost forward-looking model (Synthesis Cost Model).[140] Several comments raise suggestions regarding the Synthesis Model, which the Commission uses to compute carriers' cost of providing local exchange service. Qwest contends that "the mind-numbing complexity of the Synthesis Model makes it difficult even for experienced modelers to understand the Model's results."[141] Qwest recommends that the Commission discontinue use of the Synthesis Model and, instead, rely on a density proxy for cost, using, for example, households per square mile.[142]

NASUCA states that although the Synthesis Model is in "desperate need" of updating and improvement, no alternatives that are superior to the model are readily available.[143] NASUCA suggests several items that should be updated: (1) special and switched access line counts; (2) allocation of special access lines among rate centers; and (3) customer location files.[144] According to NASUCA, the model also should determine national urban average costs instead of national average cost.[145]

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139 / *Id.*, at 4.

140 / BellSouth, at 10; AT&T, at 25, fn. 55.

141 / Qwest, at 36.

142 / *Id.*, at 35-37.

143 / NASUCA, at 63. According to NASUCA, "updating the model must be a high priority." NASUCA, at 72-73. AT&T suggests that while the Synthesis Model is "flawed in several respects" and uses "stale" inputs, "for present purposes, there is no other generally accepted model that could be readily employed, and it goes without saying that the sorely needed overhaul of the overall universal service support mechanism should take precedence over replacement of the underlying cost model." AT&T, at 25, fn. 55.

144 / NASUCA, at 63-64.

145 / *Id.*, at 64.

The distinction between rural and non-rural carriers should be phased out gradually.

Qwest opposes the Commission's reliance on different high cost mechanisms for determining levels of support for rural and non-rural carriers.[146] Qwest further contends that the ability of a rural ILEC to obtain much higher support than does a non-rural ILEC gives the rural carrier an unfair competitive advantage.[147] According to Qwest, the consolidation of the existing mechanism for providing support to high-cost and rural areas would make the distribution of universal service support more efficient and equitable.[148] Qwest contends that "if a rural carrier and non-rural carrier serve wire centers with identical cost characteristics (*e.g.*, roughly the same number of households per square mile) in a state, they should be eligible for the same amount of high-cost support per line in those wire centers."[149] AT&T recommends that the Commission cease distinguishing between rural and non-rural carriers because AT&T, although it serves many rural consumers, receives no funds to do so.[150] AT&T asserts that the large carriers have had to rely on implicit subsidies, which it contends are disappearing.[151] AT&T proposes that "over time" the rural and non-rural high-cost programs should be unified.[152] For the reasons discussed earlier in these comments, under any mechanism, the Commission should examine an ILEC's entire serving area rather than examining a single wire center in isolation.

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146 / Qwest, at 16.

147 / *Id.*, at 17.

148 / *Id.*, at 22.

149 / *Id.*, at 37.

150 / AT&T, at 7.

151 / *Id.*, at 21.

152 / *Id.*, at 32.

There is no evidence that the current level of funding is insufficient, and the Commission should ensure that consumers receive the benefits of the funding that is distributed to carriers.

The Ratepayer Advocate reiterates its position that the Commission should increase carriers' accountability by requiring them to demonstrate that any high cost subsidies they receive are benefiting consumers rather than enhancing companies' profits.[153] In initial comments, the Ratepayer Advocate urged the Commission to establish greater accountability by carriers to customers to ensure that HCF support is linked to rates.[154] Similarly, Vermont/Maine recommends the existence of "a more direct mechanism for Federal support to reduce local rates."[155] Vermont/Maine explains further: "In many cases, Federal support is deposited into a carrier's general fund, and the effect on local rates is not demonstrable, particularly where traditional rate regulation has been relaxed or abandoned by the state legislature or state commission."[156] Based on an analysis of carriers' revenues and high cost support, Verizon demonstrates that in many instances carriers are receiving *too much* high cost support, and that, based on their revenue stream, they could set rates that would be reasonably comparable to urban rates, *without the need for high cost support.*[157] By way of illustration, Verizon states, with reference to a table attached to its comments:[158]

[153] / Ratepayer Advocate, at 39.

[154] / *Id.*, at 37-38.

[155] / Vermont/Maine, at 12.

[156] / *Id.*, at 12.

[157] / Verizon, Garzillo Declaration, at 18-20.

[158] / *Id.*, Attachment E, Chart 2.A.

> Looking at Column G, it appears that the high cost fund is providing enough support to allow BellSouth to charge end user rates that average $25.60 per line per month, which is only slightly above the weighted average for all carriers. … However, with an average of $7.41 in line per month high cost model support, BellSouth is receiving $33.01 per line per month in total revenues. This indicates that, even if the Commission were to remove all high cost model support from BellSouth, and the carrier was able to increase rates to replace the lost revenue, $33.01 is a reasonable proxy for rates that BellSouth would charge customers in Mississippi if it had *no* high-cost model support.[159]

Verizon's analysis underscores the importance of establishing reasonable criteria for determining whether carriers receive support so that the HCF does not unduly burden consumers. Table 1 in the Ratepayer Advocate's initial comments shows that approximately half of non-rural high cost support is distributed to Mississippi (to BellSouth and to other eligible telecommunications carriers ("ETC") whose level of HCF support is based on the ILEC's support). The Ratepayer Advocate echoes Verizon's concern that "[p]roviding too much support to the ILEC provides a snowball effect, encouraging other carriers to seek ETC status in high cost study areas in order to get a share of universal service dollars."[160]

AT&T asserts that "the certification approach the FCC designed to 'induce' state action has had no discernible impact on states' continued reliance on implicit subsidies" and suggests that the FCC should do more to encourage states to adopt explicit support mechanisms.[161] NASUCA also raises concerns about the need for accountability. NASUCA observes that the $730 million in funds are contributed by consumers "without any actual requirement to show that the funds result in

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[159] / *Id.*, at 20, emphasis in original.

[160] / Verizon, at 19. Verizon observes that ten of the thirteen non-ILEC carriers in Mississippi started receiving HCF support within the last two years. *Id.*, at 19.

[161] / AT&T, at 10, cite omitted.

reasonably comparable rates or – conversely – that without the funds rates would longer be reasonably comparable . . . The mechanism must be fixed so that the statutory connection is made."[162] The Ratepayer Advocate urges the Commission to establish greater accountability by carriers to ensure that any universal service subsidy (whether distributed through the rural or the non-rural high cost funds) benefits consumers.

At most one connection per eligible telecommunications carrier should receive support.

The Ratepayer Advocate concurs with Qwest that the Commission should limit high cost support to at most one connection per ETC.[163] Although Qwest's preferred policy is that high cost support be limited to one connection per household, Qwest recognizes the difficulty of administering such a proposal.[164] AT&T proposes that the Commission only fund one competitive ETC ("CETC") in any given area.[165] AT&T suggests that under its proposed MARC plan, "support for most non-incumbent CETCs would be automatically eliminated, in any event, because each carrier's support would depend on the relationship between its costs and the MARC affordability benchmark, which many non-incumbent CETCs exceed in any event."[166]

The non-rural high cost fund should sunset.

Initial comments submitted in this proceeding do not address the fundamental deficiency in the non-rural high cost fund, namely that the fund has no expiration date. Without a provision for sunsetting the non-rural high cost fund, the Commission implicitly endorses a program whereby,

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162 / NASUCA, at 19.

163 / Qwest at iv, 7, 19-20.

164 / *Id.*, at 19-20.

165 / AT&T, at 33.

166 / *Id.*, at footnote 72.

with non-existent accountability, ILECs receive an open-ended subsidy. Moreover, despite changes in technology and the industry, and despite purported competition, the subsidy is *increasing*. The non-rural high cost fund, which was $218,672,103 in 2000, grew by *a third* to $290,851,511, in 2005.[167] Mississippi, which receives approximately half of the non-rural high cost funds, experienced a 43 percent growth in its non-rural high cost support during this same time period.

The lack of a sunset date for the high cost fund is unreasonable and unfair to consumers throughout the nation. In the Ratepayer Advocate's initial comments, it stated, among other things (with reference to a figure and a table that the comments include):

> Figure 1 shows the growth in non-rural high cost funds disbursed to eligible telecommunications carriers ("ETC") since 2000. In the face of purported local competition, and with the deployment of more efficient technology, one would expect local exchange carriers' ("LEC") costs to decline, and, in turn, cause a decline in the need for high cost funds. The increasing trend in non-rural high cost funds, therefore, is troubling for the consumers who shoulder the burden of the high cost fund.
>
> The Ratepayer Advocate urges the Commission to ensure that any high cost fund mechanism, whether for rural carriers or for non-rural carriers, not become an entitlement for carriers. Table 1 shows non-rural HCF disbursements on a state level between 2000 and 2005.[168]

The purported rationale for high cost support (to translate carriers' implicit support into explicit support) no longer justifies this windfall to carriers (and indeed, likely never did justify the support). ILECs' ability to achieve a fair rate of return on their investment in the public switched

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[167] / Federal-State Joint Board Monitoring Reports, December 2005 Monitoring Report, released December 2005, Section 3, Table 3.25, High-Cost Model Support Payments By Non-Rural Study Area, based on Universal Service Administrative Company filings to the FCC. The amounts include only funds distributed through the High-Cost Model Support mechanism and exclude Interstate Access Support and Interstate Common Line Support. The amounts include funds distributed to both ILECs and CETCs.

[168] / Ratepayer Advocate, at 4-5.

network is not at risk.[169] Carriers have merged (or are merging), yielding billions of dollars of synergies. ILECs are enjoying excessive rates of return on special access (for which, with the acquisitions of AT&T and MCI, any prospect of meaningful competition has evaporated, further entrenching ILECs' ability to earn supra-competitive profits on their special access services). Also, in the decade since the enactment of the 1996 Act, RBOCs have obtained the requisite Section 271 authority to provide long distance service, and, have leveraged that authority into enormously successful marketing and sales of bundled services.

The non-rural high cost fund (designed to "protect" ILECs) has become an anachronism, and the FCC should immediately take steps to impose a sunset date for this fund of no later than 2007. Congress, with the 1996 Act, did not foresee that seven regional Bell operating companies would dwindle to three (or that the RBOCs would eliminate GTE and Southern New England Telephone Company as stand-alone ILECs), nor did it envision that the RBOCs would acquire AT&T and MCI, their chief competitors. Congress anticipated robust local competition and, with the universal service provisions, sought to protect RBOCs from the erosion of implicit support in the wake of much-anticipated local competition. Instead RBOCs now have the best of all worlds – they continue to dominate the local market, they have rapidly gained long distance market share, *and* they receive the non-rural high cost fund hand-out. Furthermore, the RBOCs have failed to demonstrate that, without such high cost support, they would be unable to offer service at affordable rates. The Commission should end the present regime whereby consumers' phone bills support a seeming black hole of high cost support.

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[169] / ILECs' investment in video and entertainment entails risk, the risks of these unregulated services are appropriately borne by shareholders.

RBOCs point to new technology as evidence of competition. If, indeed, new technology is becoming the platform for local competition, then any high cost support that the FCC distributes should be used for that new technology. Presently, the monies largely flow to landline incumbents and CETCs. If there are any areas of the nation, served by non-rural carriers, where, absent support, the rates would be prohibitive, boundaries should be drawn and those areas put out for competitive bid to the lowest cost supplier, whether it be broadband over power line, wireless, or VoIP. If the Commission seeks to subsidize services in high-cost areas, those subsidies should at least support new technology so that rural customers of non-rural carriers are not left behind as the nation migrates to a broadband platform. Carriers that receive federal subsidies should deploy broadband throughout their regions. At a minimum, the Commission should consider NASUCA's "Network Investment Incentive Plan" whereby carriers' non-rural high cost support would decrease if they fail to deploy broadband.[170]

The Commission should reform universal service funding gradually.

AT&T urges the Commission to cease "tinkering" around the edges of the high-cost programs and to undertake a "comprehensive reworking" of the programs.[171] In contrast, BellSouth suggests that the Commission "should not – and need not – radically depart from its existing funding methodology for calculating high-cost universal service support for non-rural carriers."[172] The detailed data analysis that has been filed in this proceeding by NASUCA, Verizon, and others

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[170] / NASUCA, at 92.

[171] / AT&T, at 12.

[172] / BellSouth, at 1.

demonstrates that under the existing non-rural high cost fund, urban and rural rates *are* reasonably comparable. By explaining its rationale more completely, and by describing the other important universal service programs, the Commission can amply demonstrate to the Court that statutory mandates are being met. Any changes to the existing non-rural high cost fund should be made carefully, and in the context of the many related proceedings now pending before the Commission.

IV. CONCLUSION.

WHEREFORE the reasons set forth above, the Ratepayer Advocate urges the Commission to reject proposals that would increase the level of funding provided to non-rural carriers. The information submitted in this proceeding demonstrates that urban and rural rates *are* reasonably comparable. Therefore, any increase in funding would unnecessarily jeopardize the affordability of basic telephone service for all customers. Furthermore, the competition that Congress anticipated and that, in large part, served as the rationale for high cost support, has not materialized. Instead, as was likely not anticipated by Congress, ILECs have gained substantial market concentration by reducing seven RBOCs to three (and also eliminating GTE and Southern New England Telephone Company as stand-alone ILECs), aggressively entering the long distance market, and acquiring AT&T and MCI (their erstwhile archrivals). ILECs have failed to demonstrate that competition has eroded their implicit support and have failed to demonstrate that non-rural high cost support is necessary. Therefore, the Commission should establish a sunset date for the non-rural high cost program. Furthermore, the Ratepayer Advocate urges the Commission to expand its efforts to encourage carriers' even-handed deployment of broadband services through all communities, regardless of geography and income.

Respectfully submitted,

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