

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

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

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Executive Summary

Non-rural carriers include mostly large, publicly traded companies with hard-wired access to national and international capital markets that do not depend on universal service support for a significant portion of their revenue streams. Rural carriers have fewer options for access to capital, with relatively higher infrastructure costs on a per customer basis, creating the need for a “sufficient” source of universal service funding.

Without the reasonable prospect of an opportunity to recover infrastructure costs, investment will not continue to be deployed in many sparsely populated and high-cost to serve areas. A sufficient and predictable universal service support program is vital to providing the incentives needed to encourage investment in rural, high-cost areas. This has been the case for the last forty years of the modern telecom era.

In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle. The arbitrary nature of recent proposals such as those proposed by NCTA could severely retard investment in rural areas as lenders will not provide capital, and carriers will be unwilling to assume the degree of uncertainty that would result from shifting funding to non-rural areas arbitrarily. Capping the funding will not promote the deployment of broadband infrastructure in rural areas.

What the Commission may ultimately determine is sufficient and reasonably comparable for non-rural carriers will not be sufficient for many rural carriers. This should not be a problem so long as this Commission recognizes the FCC’s long-standing history of differentiating between sizes of carriers in order to provide equitable solutions to regulatory challenges.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, access charge reform, and strategic planning for communications carriers in rural America. The purpose of these comments is to respond to the Further Notice of Proposed Rulemaking (FNPRM) released by the Commission on December 15, 2009 in the above-captioned dockets.

In this FNPRM, the Commission seeks comment on issues raised by Section 254(b) of the Communications Act of 1934, as amended (the Act) and the United States Court of Appeals for the Tenth Circuit's (Tenth Circuit) decision in *Qwest II*.¹ We are pleased to respond to the Commission's request for comments, and focus our comments to the issues which are relevant to rural carriers. While we recognize that the *Qwest II* decision addressed only the non-rural high-cost support mechanism and that concomitantly this proceeding is focused to non-rural issues, we do not believe that this Commission will develop a non-rural standard and then ignore such a precedent if and when similar issues are raised for rural carriers.

These comments focus on sufficiency issues and the reasonably comparable standard from the perspective of rural carriers. We concur with the Commission's statement at paragraph 1 of the FNPRM that: "*It will not be feasible for the Commission to consider, evaluate, and implement these universal service recommendations between February 17, 2010, and April 16, 2010, the date by which the Commission committed to respond to the Tenth Circuit's remand. We tentatively conclude, therefore, that the*

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

Commission should not attempt wholesale reform of the non-rural high-cost mechanism at this time.” This approach is consistent with recent statements from Commissioner Baker, when she accurately portrayed the challenges policy makers face in dealing with the thorny issue of universal service reform in her recent statement (November 23, 2009) airing on C-Span’s “The Communicators” in observing that: *“it’s impractical to think that we’re going to solve universal service within the plan”* and referencing the twin issues of universal service and intercarrier compensation as a *“decade-old problem”* that may hold the key to enabling successful broadband deployment.

SUFFICIENCY

The current statutory provisions refer to “sufficiency” in section 254(b) (5) and section 254(e)². We submit that the Congressional intent of such directives was to ensure that adequate capital and concomitant infrastructure are available for rural carriers to serve rural customers.

SUFFICIENCY INVOLVES THE ABILITY OF RURAL CARRIERS TO ATTRACT CAPITAL

Non-rural carriers include mostly large, publicly traded companies with hard-wired access to national and international capital markets³ that do not depend on universal service support for a significant portion of their revenue streams.

² Section 254(b)(5) requires that there be “specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service” while section 254(e) states that any such support “should be explicit and sufficient to achieve the purposes of this section.”

³As we noted in our 2006 filing in this matter, and still relevant today, we find it interesting that in the March 6, 2006, PowerPoint presentation that AT&T and Bell South used to describe their intended merger to Wall Street analysts (Substantial Synergy Opportunities, Strengthened Growth Platforms in Wireless, Business, and Integrated Services), there was no reference in the 39 slides to universal service support.

On the other hand, rural carriers have fewer options for access to capital. This fact, coupled with the relatively higher infrastructure costs on a per customer basis, create the need for a “sufficient” source of universal service funding.

SUFFICIENCY ALSO REQUIRES THAT RURAL CARRIERS POSSESS THE ABILITY TO CONTINUE TO DEPLOY THE REQUISITE INFRASTRUCTURE

The “job” is not complete. With all due respect, there is still work to be done in rural America to maintain even one option for some isolated customers.

While rural costs are still different, there must be a way for rural carriers to recover rural costs. Without the reasonable prospect of an opportunity to recover infrastructure costs, investment will not continue to be deployed in many sparsely populated and high-cost-to-serve areas.

In the 2006 Notice on this non-rural issue at paragraph 29, the Commission requested comments on the block grant proposal offered by the National Association of Regulatory Utility Commissioners (NARUC) via its State Allocation Mechanism proposal. We previously placed in the record our concerns on this issue in an ex parte meeting on July 20, 2005⁴. If the Commission is reconsidering such a block grant

⁴ Ex parte by GVNW Consulting filed July 21, 2005 in CC Docket No. 01-92 and CC Docket No. 96-45, meeting with Commissioner Ray Baum, Phil Nyegaard and Andy Margeson: The current block grant proposal offered by the NARUC in its Version 7 proposal raises several important issues. [We have modified references to earlier annual periods* as the sufficiency concerns are still valid in current years.]

Predictability. First and foremost, Section 254 mandates that universal service support be “specific, predictable, and sufficient.” Implementing a block grant approach to distributing federal universal service funding allows state commissions with such a large degree of discretion so as to render the achievement of the “predictable” tenet impossible.

Sufficiency. Similarly, the metric of “sufficiency” may well not be achieved. In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue **throughout the investment cycle**. The arbitrary nature of even a well-intended block grant program could severely retard investment in rural areas as lenders will not provide capital, and carriers will

approach in either this proceeding or in the National Broadband Plan, we reiterate our concerns as we respectfully submit that such concerns remain valid today in 2010.

REASONABLY COMPARABLE

The “reasonably comparable” standard is found in the language of Section 254(b)(3) that states: *“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 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.”*

THE DEFINITION OF “REASONABLY COMPARABLE” MUST MEET THE NEEDS OF RURAL CARRIERS

Rural and non-rural carriers differ significantly in study area size, as well as cost characteristics. The Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers. This was demonstrated empirically in the Rural Task

be unwilling to assume the degree of uncertainty that would result from block grant funding decisions. Capping the funding at [*any annual] level will not promote the deployment of broadband infrastructure in rural areas.

Administration. There are examples of block grant administration that could be problematic if replicated in distributing monies that would otherwise be used for rural infrastructure deployment. For example, in Alaska there were programs related to mothers and children that spent nearly 25% of its funds on administration before any monies reach the intended recipients. State legislatures may be tempted to use support funds to meet operating budgets for state utility commissions.

Jurisdiction. The block grant issue is further complicated with the challenges that would be placed on state regulators in states where the PUC has no or limited authority over certain carriers. In these cases, a conflict would arise between the properly enacted state statutes and the state commission’s desire to review certain operating company data that prior to the implementation of a block grant program would not have been subject to state commission review.

Force's White Paper 2⁵, and this research was corroborated in NECA's *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002. **This empirical data has yet to be refuted**, and is still relevant in any universal service policy debate.

THE COMMISSION MUST MAINTAIN ADEQUATE FUNDING MECHANISMS IN ORDER TO MAINTAIN COMPARABLE RATES

The overarching principle that the Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a **full** recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is an interstate cost recovery approach (four separate mechanisms) for rural carriers⁶.

Sparse population creates a different business case. While some may suggest that shifting costs to end-user customers in the form of a Subscriber Line Charge (SLC) or some analogous scheme is the direction that policy should take, the denominator in this rate equation simply is not sufficient for many rural carriers. In fact, some entire sparsely populated *states* do not have enough citizens to absorb the impact of proposals such as bill and keep in the intercarrier compensation debate⁷.

⁵ "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

⁶ See, for example, OPASTCO's Universal Service in Rural America: A Congressional Mandate at Risk, January 2003, page viii: "High-cost universal service support is not a subsidy program for end-user customers. It is a cost recovery program designed to promote infrastructure investment in areas where it would not otherwise be feasible for carriers to provide quality services at rates that are affordable and reasonably comparable to urban areas."

⁷ Public policy makers must come to grips with the fact that the population density of the eastern United States is not representative of large portions of our country's geography and concomitant population dispersion.

THE PUBLIC INTEREST IS SERVED WHEN UNIVERSAL SERVICE SUPPORT IS PROVIDED TO RURAL AREAS

What the Commission may ultimately determine is sufficient and reasonably comparable for non-rural carriers may not be sufficient for many rural carriers. This should not be a problem so long as this Commission recognizes the FCC's long-standing history of differentiating between sizes of carriers in order to provide equitable solutions to regulatory challenges.

Over the last three plus decades, this Commission has wisely provided different accounting standards based on carrier size in Part 32, has required different levels of reporting based on carrier size pursuant to Part 64, and has provided for different rules for large and small carriers in the separations and jurisdictional allocation rules that are provided in Part 36. Once again, we believe the Commission is called upon to recognize that rural is indeed different.

With respect to paragraph 27 in the FNPRM, the differences between non-rural and rural operating circumstances create a situation in which a universal service mechanism that is based on forward-looking costs and/or statewide average costs is not appropriate for rural carriers. This was the conclusion reached by the Rural Task Force – that such an approach is not an appropriate public policy approach for rural carriers⁸. This conclusion remains valid through the April 16, 2010 “deadline” and beyond.

⁸ “The evidentiary record ... clearly supports a conclusion that a ‘one-size-fits-all’ national universal service policy is unlikely to be successful in fulfilling the national universal service principles...” 16 FCC Rcd 6165, 6177 (2000)

GVNW Consulting, Inc.
Comments in CCD No. 96-45 and WCD No. 05-337
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Respectfully submitted

Via ECFS on 1/28/10

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