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

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

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Abernathy issuing a statement.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek 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 Corp. v. FCC* (*Qwest II*).[1] Specifically, we seek comment on how to reasonably define the statutory terms "sufficient" and "reasonably comparable" in light of the court's holding in *Qwest II*.[2] The court directed the Commission on remand to articulate a definition of "sufficient" that appropriately considers the range of principles in section 254 of the Act and to define "reasonably comparable" in a manner that comports with its duty to preserve *and* advance universal service.[3] We also seek comment on the support mechanism for non-rural carriers, which the *Qwest II* court invalidated due to the Commission's reliance on an inadequate interpretation of statutory principles and failure to explain how a cost-based mechanism would address problems with rates.[4] Finally, we seek comment on a proposal by Puerto Rico Telephone Company, Inc. (PRTC) that the Commission adopt a non-rural insular mechanism.[5] PRTC sought clarification and/or reconsideration of the *Order on Remand* and requests, among other things, that it receive support based on its embedded costs.[6] Because granting PRTC's request would require amendment of the Commission's rules,[7] we will treat PRTC's Petition as a petition for rulemaking.

II. BACKGROUND

A. The 1996 Act

2. The Telecommunications Act of 1996 Act codified the historical commitment of the Commission and state regulators to promote universal service by ensuring that consumers in all regions of the nation have access to affordable, quality telecommunications services.[8] In section 254 of the Act, Congress directed the Commission, after consultation with the Federal-State Joint Board on Universal

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[1] 47 U.S.C. § 254(b); *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

[2] *See id.* at 1233.

[3] *Id.* at 1237.

[4] 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 this definition, rural telephone companies are 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. Rural incumbent carriers serve fewer than twelve percent of lines nationwide, and their operations tend to be focused in high-cost areas. *See* USAC Quarterly Administrative Filing 2006, First Quarter (1Q) Appendices, HC05, filed November 2, 2005, at http://www.universalservice.org/overview/filings. "Non-rural support" refers to high-cost universal service support for non-rural carriers.

[5] Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (filed Jan. 14, 2004) (PRTC Petition); *see also* Puerto Rico Telephone Company White Paper: Proposed Interim Insular Mechanism, CC Docket No. 96-45 (filed May 6, 2005) (PRTC White Paper).

[6] *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 (2003) (*Order on Remand*), *remanded, Qwest II*, 398 F.3d 1222; PRTC Petition at 21-22.

[7] *See* PRTC White Paper, App. A.

[8] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

Service (Joint Board), to establish specific, predictable, and sufficient support mechanisms to preserve and advance universal service.[9] In addition, in section 254(b), Congress provided a list of principles upon which the Commission must base policies for the preservation and advancement of universal service.[10] Among other things, section 254(b) provides that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas."[11] In addition, section 254(e) provides that federal universal service support "should be explicit and sufficient to achieve the purposes of this section."[12]

B. Ninth Report and Order

3. In the *Ninth Report and Order*, the Commission established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs.[13] The non-rural mechanism determines the amount of federal high-cost support to be provided to non-rural carriers by comparing the statewide average non-rural, forward-looking cost per line to a nationwide cost benchmark that was set at 135 percent of the national average cost per line.[14] Federal support is provided to non-rural carriers in states with costs that exceed the benchmark. In the companion *Tenth Report and Order*, 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, which are then used to determine support under the mechanism adopted in the *Ninth Report and Order*.[15]

C. Qwest I

4. In *Qwest I*, the Tenth Circuit remanded the *Ninth Report and Order* to the Commission for further consideration.[16] On remand, the court directed the Commission to define more precisely the statutory terms "sufficient" and "reasonably comparable" and then to assess whether the non-rural mechanism will be sufficient to achieve the statutory principle of making rural and urban rates

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[9] 47 U.S.C. § 254. *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092 (1996).

[10] 47 U.S.C. § 254(b)(1)-(7).

[11] 47 U.S.C. § 254(b)(3).

[12] 47 U.S.C. § 254(e).

[13] *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 (1999) (*Ninth Report and Order*), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) (*Qwest I*), *Order on Remand*, 18 FCC Rcd 22559 (2003), *remanded*, *Qwest II*, 398 F.3d 1222.

[14] The court in *Qwest I* found that the Commission failed to explain how its 135 percent nationwide cost benchmark will help achieve the goal of reasonable comparability or sufficiency. *Qwest I*, 258 F.3d at 1202-03. In the *Order on Remand*, the Commission adopted a cost benchmark of two standard deviations above the national average cost. *See Order on Remand*, 18 FCC Rcd at 22589, para. 49.

[15] *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 I*, 258 F.3d 1191. The model platform refers to the computer model's assumptions about the design of the network and network engineering, and fixed characteristics such as soil and terrain. *See 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 Rcd 21323 (1998).

[16] The court affirmed *Tenth Report and Order*, which Qwest also had challenged. *See Qwest I*, 258 F.2d at 1206-07.

reasonably comparable.[17] In addition, the court found that the Commission failed to explain how its 135 percent nationwide cost benchmark will help achieve the goal of reasonable comparability or sufficiency.[18] The court directed the Commission on remand "to develop mechanisms to induce adequate state action" to preserve and advance universal service.[19] Finally, because the non-rural mechanism concerns only one piece of universal service reform, the court stated that it could not properly assess whether the total level of federal support for universal service was sufficient and indicated the Commission would have the opportunity on remand to explain further its complete plan for supporting universal service.[20]

D. Order on Remand

5. In response to the court and the recommendations of the Joint Board,[21] the Commission modified the high-cost universal service support mechanism for non-rural carriers and adopted a rate review and expanded certification process to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.[22] The *Order on Remand* adopted in large part the Joint Board's recommendations, with certain modifications. In particular, the Commission defined the statutory terms "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,"[23] and defined "reasonably comparable" in terms of a national urban residential rate benchmark.[24] The Commission also set a national urban rate benchmark at two standard deviations above the average urban residential rate in an annual Wireline Competition Bureau (Bureau) rate survey,[25] and sought comment on specific issues related to the rate review.[26] In addition, the Commission modified the 135 percent cost benchmark by adopting a cost benchmark based on two standard deviations above the national average cost.[27]

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[17] *Id.* at 1202.

[18] *Id.* at 1202-03.

[19] *Id.* at 1204. ("[T]he FCC may not simply assume that the states will act on their own to preserve and advance universal service. It remains obligated to create some inducement—a 'carrot' or a 'stick,' for example, or simply a binding cooperative agreement with the states—for the states to assist in implementing the goals of universal service.").

[20] *Id.* at 1205.

[21] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716 (2002) (*Recommended Decision*); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 2999 (2002) (*Remand Notice*).

[22] *See generally Order on Remand*, 18 FCC Rcd 22559.

[23] *Id.* at 22578, para. 30; *see also id.* at 22581, para. 36.

[24] *Id.* at 22578, para. 30, 22584-85, paras. 40-42.

[25] *Id.* at 22607-10, paras. 80-82; *see also id.* at 22584-85, paras. 40-42.

[26] The *Further Notice of Proposed Rulemaking* sought comment on specific issues that relate to the rate review and expanded certification process recommended by the Joint Board. In particular, the *Further Notice* sought comment on how to address state requests for further federal action, and whether additional targeted federal support should be made available for high-cost wire centers as an inducement for states to replace implicit support in local rates with explicit state support. *Id.* at 22623-33, paras. 108-132.

[27] *Id.* at 22589, para. 49, 22593-601, paras. 55-69

E. Qwest II

6. On February 23, 2005, the Tenth Circuit remanded the *Order on Remand* to the Commission.[28] The court held that the Commission failed to reasonably define the terms "sufficient" and "reasonably comparable."[29] The court directed the Commission on remand to articulate a definition of "sufficient" that appropriately considers the range of principles in section 254 of the Act and to define "reasonably comparable" in a manner that comports with its duty to preserve and advance universal service.[30] Because the non-rural, high-cost support mechanism rests on the application of the definition of "reasonably comparable" rates that was invalidated by the court, the court also deemed the support mechanism invalid.[31] The court also 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 the costs and the rates in the record.[32] 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 obligation to preserve *and* advance universal service."[33] The court upheld the Commission's determination that section 254 of the Act does not require the states to replace existing implicit subsidies with explicit universal service support mechanisms.[34] In addition, the court also affirmed that portion of the *Order on Remand* requiring states to certify annually that rural rates within their boundaries are reasonably comparable, or if they are not, to present an action plan to the Commission.[35]

III. ISSUES FOR COMMENT

7. We seek comment on a number of issues that will enable the Commission to craft a non-rural high-cost support mechanism consistent with the court's decision and the statute. Specifically, we seek comment on: (1) how the Commission should define the statutory term "sufficient" to take into account all the principles enumerated in section 254(b); (2) how the Commission should define "reasonably comparable" under section 254(b)(3), consistent with its concurrent duties to preserve and advance universal service; (3) how, in light of the interpretation of the key statutory terms, the Commission should modify the high-cost funding mechanism for non-rural carriers; and (4) whether the Commission should adopt a non-rural insular mechanism.

A. Definition of "Sufficient"

8. In *Qwest II*, the court directed the Commission to demonstrate that it has appropriately considered all principles in section 254(b) of the Act in defining the term "sufficient."[36] In the *Order on*

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[28] *Qwest II*, 398 F.3d 1222.

[29] *Id.* at 1233.

[30] *Id.* at 1237.

[31] *Id.*

[32] *Id.*

[33] *Id.* (emphasis in original).

[34] *See id.* at 1232-33.

[35] The court found that the rate review and certification process established by the Commission adequately responded to the court's direction to establish adequate state inducements. *Id.* at 1238.

[36] *Id.* at 1234. The court agreed with the petitioners that argued that the Commission's definition of sufficient is impermissible because it ignores all but one principle enumerated in section 254(b). While the court observed that the Commission may exercise its discretion to balance the principles against one another when they conflict, it found (continued....)

Remand, the Commission defined "sufficient," for purposes of the statutory principle in section 254(b)(3) as applied to the non-rural mechanism, 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.[37] The court found this definition inadequate.[38] We seek comment on how the Commission should balance all seven principles in section 254(b) of the Act in defining the term "sufficient" for purposes of the non-rural high-cost support mechanism. While the court directed the Commission to consider all the section 254(b) principles in addition to reasonable comparability in section 254(b)(3), the court recognized that the Commission could give greater weight to one principle over another. We seek comment on whether any of the section 254(b) principles conflict with one another and, if so, how to balance the principles to resolve such conflict. Should the Commission give greater weight to any particular principle? If so, how would the Commission justify such an approach? We seek comment on how the Commission should weigh each principle in relationship to the purposes of the non-rural high-cost mechanism, and discuss each principle in turn below.

9. Section 254(b)(1) provides that "[q]uality services should be available at just, reasonable, and affordable rates."[39] Although the Commission did not explicitly discuss how the non-rural mechanism helps to keep rates affordable in the *Order on Remand*, it has explained in the past that "[a] major objective of universal service is to help ensure affordable access to telecommunications services to consumers living in areas where the cost of providing such services would otherwise be prohibitively high."[40] We seek comment on whether ensuring that rates in rural areas are reasonably comparable to rates in urban areas also ensures that those rates are affordable.

10. We also seek comment on whether we should define the phrase "affordable rates." In the *Order on Remand*, the Commission declined to adopt an affordability benchmark for local telephone service, proposed by SBC, based on the median household income of a particular geographic area.[41] Although the court did not address this issue specifically, it was "troubled by the Commission's seeming suggestion that other principles, including affordability, do not underlie the federal non-rural support mechanisms."[42] We seek comment on whether we should reconsider SBC's proposal or any other proposals for defining affordability in relationship to income. Alternatively, should the Commission

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that the Commission failed to demonstrate why reasonable comparability conflicts with or outweighs the principle of affordability, or any other principle. *Id.*

[37] *Order on Remand*, 18 FCC Rcd at 22578, para. 30, 22581, para. 36.

[38] *Qwest II*, 398 F.3d at 1234.

[39] 47 U.S.C. § 254(b)(1).

[40] *Remand Notice*, 17 FCC Rcd at 3001, para. 3; *see also Ninth Report and Order*, 14 FCC Rcd at 20439, para. 12.

[41] *Order on Remand*, 18 FCC Rcd at 22586-87, para. 45. SBC proposed that the Commission establish an affordability benchmark based on the average household income of a particular geographic area, e.g., a county. The proposed funding mechanism would provide support for geographic areas where the forward-looking cost of providing service exceeds the affordability benchmark. SBC views affordability as an end user's ability to bear the cost of service relative to household income. Bureau of Labor Statistics data indicated that a typical household spends 2.1 percent of its annual income on telephone-related expenses, but only 1.2 percent is associated with local telephone service. SBC argues that the Commission should compare local telephone service expenses to other categories of household expenses. The average household spends 3.2 percent on energy expenses, 3.1 percent on gasoline and motor oil, 5.1 percent on food away from home, and 1.5 percent on television, radios, and sound equipment. *See* SBC Comments, CC Docket No. 96-45, at 12-15 (filed April 10, 2002).

[42] *Qwest II*, 398 F.3d at 1234.

create eligibility requirements based on household income for non-rural high-cost support? In previously rejecting proposals to require that states implement such eligibility requirements in conjunction with non-rural high-cost support, the Commission found that "section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates."[43] We seek comment on whether defining affordability in terms of individual household income would be consistent with section 254(b)(3). We also seek comment from state commissions about implementation issues that would arise if the Commission were to adopt any of these approaches to determining affordability. The Commission previously determined that it was better to address affordability issues unique to low-income consumers through the federal low-income programs specifically designed for this purpose rather than through the high-cost support programs.[44] Is this conclusion still appropriate in light of *Qwest II*?

11. In addition, we seek comment on whether we should consider the burden on universal service contributors when determining whether rates are affordable. In the *Order on Remand*, the Commission found that the principle of sufficiency means that non-rural high-cost support should be "only as large as necessary" to meet the statutory goal.[45] While the court was not troubled by this language in the abstract, because excessive subsidization arguably may affect the affordability of telecommunications services for unsubsidized users, the court found that the Commission had failed to take into account the full range of principles by defining sufficiency only in terms of reasonable comparability.[46] Would it be more appropriate to ground the idea that the amount of support should only be as large as necessary in the principle of affordability?[47] We also seek comment on whether the Commission should define any of the other terms in section 254(b)(1) for purposes of determining whether non-rural high-cost support is sufficient. For example, the Commission and the Joint Board previously have interpreted the term "quality services" in this section to mean quality of service.[48] We seek comment on both this prior interpretation and whether the Commission should consider quality of service in determining whether non-rural high-cost support is sufficient.[49]

12. Section 254(b)(2) provides that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation."[50] Although advanced

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[43] *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 (1999) (*Seventh Report and Order*); *see also Order on Remand*, 18 FCC Rcd at 22586-87, para. 45.

[44] *See Seventh Report and Order*, 14 FCC Rcd at 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) (*Universal Service First Report and Order*) (subsequent history omitted).

[45] *See Order on Remand*, 18 FCC Rcd at 22578, para. 30.

[46] *Qwest II*, 398 F.3d at 1234.

[47] *See id.*

[48] *See Universal Service First Report and Order*, 12 FCC Rcd at 8830-34, paras. 97-102.

[49] In the *Order on Remand*, the Commission rejected the National Association of State Utility Consumer Advocates' argument that we should consider service quality issues, as well as comparability of rates and costs. Although the Commission agreed that service quality is an important goal, it determined that states are in the best position to address service quality issues and will have ample opportunity to do so in the rate review and expanded certification process. *See Order on Remand*, 18 FCC Rcd at 22588, para. 47.

[50] 47 U.S.C. § 254(b)(2).

telecommunications and information services currently are not supported by the non-rural high-cost mechanism, the public switched telephone network is not a single-use network, and modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. The Commission has found that the use of high-cost support to invest in infrastructure capable of providing access to advanced services is not inconsistent with the requirement in section 254(e) that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[51] To what extent should the Commission consider whether non-rural high-cost support is sufficient to enable carriers to upgrade networks in their high-cost areas so that the networks are capable of providing access to advanced services?

13. Section 254(b)(3) provides that "[c]onsumers in all regions of 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."[52] Although we seek comment below on the definition of reasonably comparable rates,[53] we seek comment here on whether we should consider other aspects of this principle in determining whether non-rural high-cost support is sufficient. For example, should the Commission consider whether the telecommunications and information services provided in rural areas are reasonably comparable to those services provided in urban areas?

14. Section 254(b)(4) provides that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."[54] We note that the Commission is considering modifications to its current universal service contribution methodology.[55] A critical component of that inquiry is determining whether any proposed change meets section 254(d)'s requirement that providers of "interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis. . . ."[56] We seek comment on the extent to which the Commission should consider whether all providers' contributions are "equitable and nondiscriminatory" in considering whether non-rural high-cost support is sufficient. We seek comment on whether and why the Commission should apply a different interpretation to the term "equitable and nondiscriminatory," as contained in section 254(b)(4), than it applies with respect to that term as used in

[51] 47 U.S.C. § 254(e); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11342, para. 200 (2001).

[52] 47 U.S.C. § 254(b)(3).

[53] *See infra* part III.B.

[54] 47 U.S.C. § 254(b)(4).

[55] *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

[56] 47 U.S.C. § 254(d).

section 254(d). We also note that the statute uses the same terms in section 254(f), which concerns the permissive authority of states to require telecommunications carriers that provide intrastate telecommunications services to contribute, in a manner determined by the state, to state universal service mechanisms.[57] In *Qwest II*, the court rejected petitioners' argument that implicit state subsidies may force some carriers to bear a disproportionate and inequitable share of the burden in supporting their own high-cost consumers.[58] Agreeing with the Commission that section 254(f) merely imposes an obligation on carriers within a state to contribute if the state establishes universal service programs, the court said that "it does not impose a requirement of parity with respect to internal functioning and the distribution of funds between and among carriers."[59] Although the court was interpreting "equitable and nondiscriminatory" in section 254(f), does the court's statement shed any light on how these terms should be interpreted in section 254(b)(4)?

15. Section 254(b)(5) provides that "[t]here should be specific, predictable, and sufficient Federal and state mechanisms to preserve and advance universal service."[60] In determining whether non-rural high-cost support is sufficient, to what extent should the Commission also determine whether such support is specific and predictable? How should the terms specific and predictable be defined or interpreted?[61] We also seek comment on whether the Commission should determine how each section 254(b) principle advances universal service in light of the court's direction that the Commission define reasonably comparable consistent with its duties to preserve *and* advance universal service.[62]

16. Section 254(b)(6) provides that "[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h)."[63] We note that the Commission has established separate programs to meet this goal. To what extent should the Commission consider whether non-rural high-cost support helps enable schools, libraries, and health care providers to have access to advanced telecommunications services?

17. Section 254(b)(7) provides that the Joint Board and the Commission may base their policies on additional principles that "are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with [the 1996 Act]."[64] Pursuant to this section and 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

[57] 47 U.S.C. § 254(f). Section 254(f) provides, in relevant part, that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service."

[58] *Qwest II*, 398 F.3d at 1233.

[59] *Id.*; 47 U.S.C. § 254(f).

[60] 47 U.S.C. § 254(b)(5).

[61] We note in this regard that, in *Qwest II*, the court determined that petitioners could not read into the terms "specific, predictable and sufficient" a statutory mandate requiring states to transition from implicit to explicit support mechanisms. *Qwest II*, 398 F.3d at 1232.

[62] *See id.* at 1237; *infra* part III.B.

[63] 47 U.S.C. § 254(b)(6).

[64] 47 U.S.C. § 254(b)(7).

service.[65] In determining whether non-rural high-cost support is sufficient, to what extent should the Commission determine that such support is competitively neutral? How does the Commission's prior determination that non-rural high-cost support is portable affect this analysis?[66]

B. Definition of "Reasonable Comparability"

18. In *Qwest II*, the court directed the Commission to define the term "reasonably comparable" in a manner that comports with its concurrent duties to preserve and advance universal service.[67] In the *Order on Remand*, the Commission concluded that that the range of variability of urban rates is an appropriate measure of what should be considered reasonably comparable rural and urban rates, and defined reasonably comparable in terms of a national urban rate benchmark.[68] The court rejected this analysis, finding that "the Commission erred in premising its consideration of the term 'preserve' on the disparity of rates existing in 1996 while 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."[69] We seek comment on how the Commission should define reasonably comparable rates in order to preserve and advance universal service. In *Qwest II*, the court was concerned that the variance between rural and urban rates was significant.[70] Upon what rate data should the Commission rely to assess the extent of the existing variance between rural and urban rates?[71] Should the Commission gather additional rate data? If so, how and where should the Commission obtain such data? We invite commenters, including state commissions, to submit rate data, suggest sources of such data, and propose methods of collecting and analyzing the data.

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[65] *See Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47. The Commission defined the competitive neutrality principle as follows:

> Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

[66] *See, e.g.*, *Ninth Report and Order*, 14 FCC Rcd at 20479, para. 89.

[67] *Qwest II*, 398 F.3d at 1237.

[68] *Order on Remand*, 18 FCC Rcd at 22578, para. 30, 22583, para. 39. For purposes of assessing the sufficiency of the non-rural high-cost mechanism, rates in rural areas are presumed to be reasonably comparable to urban rates if they deviate no further than two standard deviations above the national average urban rate in the Bureau's annual rate survey. *Id.* at 22582, para. 38.

[69] *Qwest II*, 398 F.3d at 1236.

[70] The court calls the variance significant, which implies that the existing gap between urban and rural rates is generally as wide as the gap between the lowest urban rate ($15.65 in 2002) and the rate comparability benchmark ($32.28 in 2002), but this range is based on a survey of urban rates only. *Id.* at 1236-37 ("Under the 2002 data, rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%.").

[71] The rural rate data in the record from a General Accountability Office (GAO) Report indicated that, in most states, rural rates were the same as or lower than urban rates in the same state. In most states, rates for residential customers of the largest local exchange carriers are geographically averaged, either throughout the company's service territory, in broad geographic areas, or in areas with similar geographic size and number of access lines. In states where non-rural carriers have multiple geographic areas over which rates are averaged, more than half reported using value-of-service pricing to establish relative rates for different geographic areas, which results in lower rates in rural, less populous areas relative to rates in urban areas. *See Order on Remand*, 18 FCC Rcd at 22571 n.55, 22658-71, App. C. GAO was known as the General Accounting Office when the report was released.

19. We seek comment on whether the Commission should compare rural and urban rates within each state instead of, or in addition to, comparing rural rates in all states to a national urban rate benchmark. Would a state-specific urban rate benchmark provide states more flexibility in designing state rates? For example, while some states may want to keep local rates in rural areas very low, customers in such states may have very small calling areas and, consequently, make more toll calls. Other states may want rural customers to have very large calling areas so they do not have to make as many intrastate toll calls, but that may require higher local rates to offset the revenues the carrier would lose from toll calls. If rural rates in the second group of states were no higher than urban rates in the state, should they be considered to be reasonably comparable even though they may be higher than the rural rates in the first group of states? We seek comment, including comment form state commissions, on how the Commission would determine state-specific rate comparability benchmarks and how those benchmarks should relate to any national urban rate benchmark.

20. We seek comment on whether the Commission should continue to compare rural rates in all states to a single national urban rate benchmark. If so, which urban rates should the Commission use to establish the benchmark? How should the Commission interpret the *Qwest II* court's rejection of the Commission's reliance on the range of urban rates? Should the Commission seek to narrow the range of urban rates? Should the Commission compare rural rates to a national average urban rate, rather than some benchmark above the average?[72] If the Commission uses a single national urban rate benchmark, should the Commission compare rural rates to the lowest urban rate? If the Commission uses the lowest urban rate as a benchmark, what would be the range of reasonably comparable rates? For example, should the Commission require that rural rates in all states be no more than ten percent, or perhaps twenty-five percent, above the lowest urban rate in the Bureau's annual rate survey ($15.65 in 2002)?[73] We seek comment on how the Commission would justify any particular percentage above a benchmark.

21. We seek comment on whether the Commission should continue defining reasonably comparable rates in terms of local rates only. Most consumers do not purchase only local service, but purchase bundles of telecommunications services from one or more providers.[74] Moreover, it may be that most rural consumers, who typically have smaller calling areas than urban consumers, purchase more long distance services than urban consumers. We seek comment on whether the Commission should consider a broader range of rates in determining whether rates are reasonably comparable. We also seek comment on whether comparing rates for packages of services would simplify the task of establishing a comparability benchmark. For example, if we were to compare what average consumers pay for a package of services that includes long distance services, we may not need to adjust local rates to account for differences in calling scopes between rural and urban areas.

22. We also seek comment on whether defining reasonably comparable rural and urban rates in terms of consumers' total telephone bills would be more consistent with our obligation to preserve and advance universal service than focusing only on local rates. As discussed above, the principles in section 254(b) provide that consumers in all regions of the nation should have access to telecommunications and

[72] *Qwest II*, 398 F.3d at 1237 ("Even if such rural rates are compared against the national urban average, we fail to see how they could be deemed reasonably comparable . . . .").

[73] The court seemed to reject the use of the national average urban rate, which was 149% above the lowest urban rate in 2002, as a benchmark. *See id.*

[74] *See, e.g.*, J.D. Power and Associates Reports: Three-Quarters of Households Now Bundle Local and Long Distance Telephone Service with One Provider, July 13, 2005, available at http://www.jdpa.com/news/releases/pressrelease.asp?ID=2005091 (retrieved December 9, 2005).

information services, including advanced services and interexchange services.[75] The telecommunications marketplace has changed considerably since the Commission adopted the non-rural mechanism in 1999. Consumers increasingly are purchasing packages of services that include unlimited local, regional toll, and long distance calling. If such packages were unavailable to consumers in rural areas, would their rates be reasonably comparable if they had very low local rates, but per-minute toll and long distance charges that exceeded the price of the flat-rate package? How does a consumer's ability to access the Internet via a local call or broadband connection affect our analysis? We invite commenters recommending that the Commission consider packages of services in determining reasonably comparable rates to submit rate data, as well as to propose methods of analyzing such data.

C. Funding Mechanisms

23. In this section we seek comment on the non-rural high-cost support mechanism. The *Qwest II* court found that the current mechanism must be invalidated because the mechanism rested on the application of a definition of "reasonably comparable" rates that the court also invalidated.[76] The court remanded this issue, directing the Commission to "craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and [the Commission's] statutory obligation to preserve and advance universal service."[77] We seek comment regarding how the non-rural support mechanism achieves the Act's goals and statutory principles, with specific emphasis on the concerns raised by the court in *Qwest II*. In light of the *Qwest II* court's direction that the Commission provide stronger evidence that its universal service support mechanisms achieve the Act's rate-related goals, we seek comment regarding a rate-based universal service support mechanism.[78] Would a rate-based support mechanism better address the statutory principles discussed above? Would it be easier to show an empirical relationship between a rate-based support mechanism and rates, as the *Qwest II* court instructs?

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[75] *See supra* para. 13.

[76] *Qwest II*, 398 F.3d at 1237.

[77] *Id.*

[78] In *Qwest I*, the court indicated that it would be inclined to affirm the Commission's cost-based universal service mechanism if the Commission demonstrated that it resulted in reasonably comparable rates. *Qwest I*, 258 F.3d at 1202-03; *see also Qwest II*, 398 F.3d at 1237. In response, the Commission noted that, 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. *Order on Remand*, 18 FCC Rcd at 22572-73, para. 23 (citing *Second Recommended Decision*, 13 FCC Rcd at 24754, para. 19; *Ninth Report and Order*, 14 FCC Rcd at 20453-54, paras. 36-38; *Recommended Decision*, 17 FCC Rcd at 20724-26, paras. 17-21). The Commission noted that because states may base rates on a variety of factors, comparing only rates would not be a fair and equitable way to apportion federal support. Specifically, the Commission stated, "[b]ecause the underlying purpose of rates is to recover the cost of providing service, comparing costs provides a more accurate and consistent measure of what rate differences would be in any given state, given identical state rate policies." *Id.* The Commission also noted that "[s]tates with high costs would have higher rates in the aggregate than those in other states, were it not for federal support." *Id.* The Commission further justified the cost-based non-rural support mechanism by concluding that it had been successful in achieving reasonably comparable rates. *Id.* at 22572-73 para. 23, 22593-601 paras. 55-69. In *Qwest II*, the court stated that it had "expected the Commission to return to [it] with empirical findings supporting this conclusion [that the cost-based mechanism resulted in reasonably comparable rates]," but found such support lacking in the *Order on Remand*. *Qwest II*, 398 F.3d at 1237 (stating that the "FCC based the two standard deviations *cost* benchmark on a finding that *rates* were reasonably comparable, without empirically demonstrating a relationship between the costs and rates surveyed in this context") (emphasis in original).

24. *Rate-Based Support Mechanism.* We seek comment regarding how a rate-based support mechanism would be designed. What data would be necessary to administer a rate-based mechanism? Should the data be collected from the state ratemaking authority or from carriers? Would support simply be provided to areas which experience rates in excess of a nationwide benchmark? If so, how would the Commission set that benchmark? What elements should be included in the rate mechanism? Should the mechanism address residential and business rates, or only residential rates? Should the mechanism support only the basic rate elements, or should it include other mandatory fees and taxes? In areas where the basic calling plans rely heavily on message units, how would the rate mechanism compare those to the benchmark? As discussed above, consumers increasingly purchase their basic local service as part of a bundle of services, including long distance.[79] How, if at all, should a rate-based mechanism account for bundled services?

25. We note that there are urban and suburban areas that have rates that would likely exceed any rate benchmark that the Commission would set.[80] Should the rate mechanism have some means of excluding these areas, or should the mechanism fund all areas with high rates, including those with low costs for providing service? Conversely, many high-cost rural areas currently have lower rates that would likely not trigger support under a rate benchmark.[81] Should the rate-based mechanism provide support to these areas? To the extent that these areas currently have low rates because they receive support under the high-cost mechanism, should there be a phase-out of high-cost support in conjunction with the introduction of a rate-based mechanism?

26. If the Commission adopted a rate-based support mechanism, is it likely that states would change their ratemaking policies? What are the likely consequences of a rate-based support mechanism on state ratemaking? Would a rate-based support mechanism have the effect of promoting rational rate-rebalancing? Would it be necessary for the Commission to adopt constraints to ensure that states do not set rates with the purpose of maximizing federal universal service support? How would the Commission do so, and does it have the authority to do so under the Act? Also, would a rate-based support mechanism work if a state were to deregulate its retail rates? What effect would a rate-based support mechanism have on the size of the universal service fund?

27. *Cost-Based Support Mechanism.* How does the current mechanism address the statutory principles discussed above? Can the current cost-based support mechanism be used to achieve the Act's rate-related goals? How are costs related to rates? Can the current cost-based support be shown empirically to reduce rates, as directed by the court in *Qwest II*? What data would be necessary to make such a demonstration and from what sources would such data be available? If the current non-rural support mechanism cannot be shown, empirically, to reduce rates, can another cost-based mechanism be shown to reduce rates? If not, can any cost-based mechanism address the concerns expressed by the court in *Qwest II*? How would a cost-based mechanism have to be designed to address the court's concerns? Would a support mechanism based on embedded costs, study area or wire center average

[79] *See supra* paras. 21-22.

[80] *Order on Remand*, 18 FCC Rcd at 22659-70, App. C: Adjusted GAO Rate Data (showing rates in several urban areas near or exceeding the reasonable comparability benchmark of the nationwide average urban rate plus two standard deviations that the *Qwest II* court rejected); *see also* Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, Table 1.3 (May 2005) (showing urban areas with rates near or exceeding the 2005 nationwide urban rate benchmark of $34.21).

[81] *Order on Remand*, 18 FCC Rcd at 22659-70, App. C (showing rates in many rural areas below the nationwide average urban rate).

costs, or a different distributive mechanism better achieve the Act's goals? We seek comment regarding whether the adoption of additional measures that tie cost-based support to rates would better enable a cost-based mechanism to address the court's concerns.[82]

28. *Other Support Mechanisms.* We seek comment generally regarding whether there are any universal service support mechanisms other than cost- or rate-based mechanisms (e.g., revenue-based) that would address the court's concerns.[83] We ask that commenters describe any proposed plan in detail and explain exactly how the proposal would better address the Act's goals than other universal service support mechanisms. Commenters should place specific emphasis on how any plan could be shown empirically to address the Act's rate-related goals.

29. We specifically ask commenters to address the universal service aspects of the comprehensive plan proposed by the National Association of Regulatory Utility Commissioners (NARUC) Task Force in the Intercarrier Compensation proceeding.[84] In sum, the NARUC Task Force plan proposes combining the support contained in all of the federal high-cost support mechanisms and giving the states discretion, within guidelines set by the Commission, to determine how the support should be distributed among carriers serving the state.

D. Puerto Rico Telephone Company's Request for an Insular-Specific Support Mechanism

30. In its Petition and in subsequent filings, PRTC requests high-cost universal service support through a non-rural insular support mechanism.[85] Specifically, PRTC requests that, pending the Commission's comprehensive review of its high-cost support program, the Commission adopt, on an interim basis, a non-rural insular mechanism based on embedded costs.[86] PRTC states that this interim

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[82] For example, would a requirement that any universal service funds received by a carrier be displayed on an end user's bill as a credit serve to tie cost-based support to rates in a way that would satisfy the court?

[83] Although the Commission, in the *Universal Service First Report and Order*, determined that support should be based on the difference between the forward-looking economic cost of providing service and a nationwide revenue benchmark, it later reconsidered and, in the *Seventh Report and Order*, rejected the use of a revenue benchmark. *See Universal Service First Report and Order*, 12 FCC Rcd at 8819-24 paras. 257-67; *Seventh Report and Order*, 14 FCC Rcd at 8107-08, paras. 61-62.

[84] Letter from Robert B. Nelson, Michigan Public Service Commission, and Elliott G. Smith, Iowa Utilities Board, to Chairman Kevin Martin, Federal Communications Commission, CC Docket No. 01-92, App. C (filed May 18, 2005).

[85] PRTC Petition, *supra* note 5. The PRTC Petition seeks clarification or reconsideration of the part of the *Order on Remand* that denied a prior PRTC request for insular funding. *See also* Letter from Nancy Victory, Counsel for Puerto Rico Telephone Corp., to Jeffrey Carlisle, FCC, dated Nov. 4, 2004 (PRTC Letter); PRTC White Paper, *supra* note 5. In the *Universal Service First Report and Order*, the Commission determined that non-rural carriers would receive support based on forward-looking economic costs, adopted a definition of rural carriers that excluded PRTC, and declined to adopt a separate support mechanism for carriers serving insular areas. *See Universal Service First Report and Order,* 12 FCC Rcd at 8889, 8943-44, and 8997-9001, paras. 203, 310, and 414-23. The Commission has also rejected previous requests from PRTC that the Commission treat non-rural carriers serving insular areas as rural carriers for purposes of calculating and distributing high-cost support. *See Universal Service First Report and Order,* 12 FCC Rcd at 8946, para. 315; *Order on Remand,* 18 FCC Rcd at 22637-38, paras. 139-40; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 19 FCC Rcd 23824, 23831-32, para. 20 (2004).

[86] PRTC Petition at 21-22. We note that PRTC also requests the Commission to reexamine the high-cost model (model) to address its impact on Puerto Rico and its ability of the to accurately identify Puerto Rico's costs. *Id.* at 14-19. Because the creation of a non-rural insular support mechanism as proposed by PRTC may render PRTC's request to reexamine the model unnecessary, we will defer consideration of this PRTC request at this time.

mechanism should be "patterned after, but distinct from," the existing mechanism for rural telephone companies.[87] Thus, PRTC proposes that the Commission adopt a non-rural insular mechanism based on actual costs, calculated using Part 36 of the Commission's rules.[88]

31. PRTC claims that high-cost support to Puerto Rico is essential for maintaining and expanding affordable telephone service in Puerto Rico.[89] According to PRTC, the penetration rate in Puerto Rico has increased from 25 percent in the 1970s to over 70 percent in 1996.[90] PRTC claims, however, that since its high-cost funding began to be reduced in 2001 pursuant to Commission action,[91] Puerto Rico's previously growing penetration rate has fallen back to below 70 percent.[92] PRTC asserts that its low penetration rate is a result of the high cost of providing service in Puerto Rico.[93] In its Petition, PRTC explains that the need to have equipment and supplies shipped to the island increases infrastructure costs and requires that PRTC maintain a larger inventory of supplies and repair parts than would normally be necessary.[94] PRTC also argues that it has other challenges which further complicate operations and increase costs including water-based erosion, unpredictable terrain, and operating in the Caribbean, which frequently faces hurricanes and tropical storms.[95] PRTC contends that the cost of providing service in Puerto Rico is further increased as a result of providing service to Puerto Rico's sparsely populated mountainous region in its rural interior.[96] For example, PRTC claims that the cost per local loop to install wireline service in these areas ranges from $5,000 to more than $15,000.[97]

32. PRTC argues that section 254(b)(3) of the Act requires the Commission to address the unique needs of insular areas.[98] Section 254(b)(3) of the Act directs the Commission and the states to devise methods to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas."[99] In its White Paper, PRTC argues that the reference to "insular" in the statute was specifically added to

[87] PRTC White Paper at 28.

[88] PRTC Petition at 22. Because granting PRTC's request would require amendment of the Commission's rules, we will treat PRTC's Petition as a petition for rulemaking and consider it as part of this proceeding.

[89] PRTC Letter at 1.

[90] *Id.* at 1-2.

[91] *See infra* n. 108.

[92] PRTC Letter at 1-2. As of July 2005, the penetration rate for U.S. households was 94 percent. *See* Telephone Subscribership in the United States, Industry Analysis and Technology Division, Wireline Competition Bureau (rel. November 7, 2005).

[93] *See* PRTC Letter at 1-2.

[94] PRTC Petition at 6.

[95] *Id.* at 7.

[96] *Id.*

[97] According to PRTC, the costs of line extensions to these remote areas far exceed the low-income support available. *Id.* This amount does not include support that would be available to competitive eligible telecommunications carriers.

[98] PRTC Petition at 8. *See also* PRTC White Paper at 12-13.

[99] 47 U.S.C. § 254(b)(3).

recognize the unique concerns of these areas.[100] In the *Unserved Areas NPRM*, which was initiated to examine areas with low penetration rates, the Commission tentatively concluded that Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands are properly included in the definition of insular areas.[101] To date, the Commission has released an order addressing only the tribal lands issues raised in the *Unserved Areas NPRM*. In that order, the Commission stated that it would continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in rural and insular areas.[102] The Commission has yet to establish a universal service mechanism for insular areas.

33. We tentatively conclude that section 254(b) provides the Commission with the authority to establish a new interim support mechanism for non-rural insular areas based on embedded costs. We seek comment on this tentative conclusion. We agree with PRTC that, through section 254(b), Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.[103] We believe that the low penetration rates in Puerto Rico demonstrate that this goal is not being met and that the Commission could be doing more to help the residents of Puerto Rico. Because of the unique challenges in providing telephone service in Puerto Rico, we believe that a special support mechanism, in combination with the Commission's low-income program, will help to combat the problem of low subscribership in Puerto Rico. The evidence provided by PRTC supports a finding that there appears to be a correlation between the recent decline in Puerto Rico's subcribership rates and the reduction of Puerto Rico's high-cost support. Although we tentatively conclude that an interim insular mechanism is the appropriate measure to help reverse this trend, we seek comment on this tentative conclusion in particular and on the impact of high-cost support on subscribership rates in general. We also seek comment on how previous Commission decisions affect our tentative conclusion that we should establish a new interim support mechanism for non-rural insular areas based on embedded costs.

34. We believe that our tentative conclusion to adopt a non-rural insular mechanism is appropriate because, as PRTC has explained, newly available universal service funds will enable PRTC to construct new network and loop infrastructure to unserved areas, update its existing facilities, improve quality of service, maintain affordable rates, and educate and solicit potential first-time telephone customers.[104] Moreover, we tentatively conclude that adopting a non-rural insular mechanism would have a limited impact on the universal service fund because this mechanism would only affect carriers operating in the Commonwealth of Puerto Rico if we adopt the Commission's proposed definition of "insular areas."[105] There would be no need for a rural insular mechanism because all rural insular

[100] PRTC White Paper at 12 (citation omitted).

[101] *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21233-34 (1999) (*Unserved Areas NPRM*).

[102] *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45,Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12215, para. 11 (2000).

[103] *See* 47 U.S.C. §§ 254(b)(1), (b)(3).

[104] PRTC Letter at 3-5.

[105] *See supra* at para. 38. *See also* PRTC White Paper at 29.

carriers already receive rural high cost support. PRTC is the only incumbent carrier serving a high-cost insular area that is not currently classified as a rural carrier under the rural high-cost loop mechanism. Further, while we agree with PRTC that the impact would be limited because the total cost of the new mechanism would be less than one percent of the total fund, we invite comment on the impact the adoption of a non-rural insular mechanism would have on the universal service fund.[106]

35. Appended to its White Paper, PRTC proposes rules establishing an insular mechanism based on embedded costs.[107] We seek comment on these proposed rules and invite commenters to propose other rules that may be necessary to provide for a non-rural mechanism for insular areas. To the extent that commenters propose different rules or would propose modifications to PRTC's proposed rules, we ask that such commenters provide explanations for their proposals. We also invite commenters to compare and contrast the proposed insular mechanism with the mechanism currently in place for rural carriers.

36. We seek comment on whether or how the support already received by PRTC affects our tentative conclusion to adopt a non-rural insular mechanism.[108] We also seek comment on how a non-rural insular mechanism in general would work in conjunction with the Commission's existing high-cost mechanisms. For example, high-cost loop support for rural carriers is subject to an indexed cap. Should high-cost loop support provided under a non-rural insular mechanism be subject to the same or similar cap? If the same cap is used for both mechanisms, should the cap be adjusted or should the high-cost loop support fund be rebased to account for the additional support provided to PRTC?

37. We note that under PRTC's proposed rules for the interim insular mechanism, federal high-cost funding would be available for those non-rural insular study areas in which the average unseparated cost per loop exceeds 115 percent of the national average loop cost.[109] PRTC proposes that the national average loop cost would be calculated pursuant to section 36.622(a) of the Commission's rules.[110] Section 36.622(a) states that the national average is equal to the sum of the loop costs for each

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[106] According to PRTC, the non-rural insular mechanism would restore approximately $40 million in annual funding. *Id.* This amount does not include support that would be available to competitive eligible telecommunications carriers.

[107] *See* PRTC White Paper, App. A.

[108] Puerto Rico currently does not receive any forward-looking, high-cost model support but, as a rate-of-return carrier, PRTC is eligible to receive high-cost, interstate common line support (ICLS). According to USAC's most recent estimate, PRTC will receive approximately $55 million in ICLS in 2005. *See* USAC Quarterly Administrative Filing 2006, First Quarter (1Q) Appendices, HC09, filed November 2, 2005, at http://www.universalservice.org/overview/filings. PRTC serves almost 1.2 million lines. *Id.* In 1999, PRTC received a total of approximately $133 million in high cost universal service support, comprised of $44 million in high-cost loop support, and $89 million in long term support (LTS). *See* Industry Analysis and Technology Division, Wireline Competition Bureau, Universal Service Monitoring Report, Tables 3.22, 3.25 (Oct. 2004). PRTC received "hold-harmless" high-cost loop support in 2000 through 2003. PRTC also received LTS in 2000 though June 2004. LTS was merged with ICLS July 1, 2004. With the consolidation of LTS into ICLS, no carriers received interim hold-harmless LTS support after the second quarter of 2004. We also note that PRTC is permitted to assess the subscriber line charge (SLC), which is a flat-rated charge imposed on end users to recover the interstate-allocated portion of local loop costs. This charge is also referred to as the end user common line (EUCL) charge. *See* 47 C.F.R. § 69.152. The residential and single-line business SLC is currently capped at $6.50 per line. *See* 47 C.F.R. § 69.152(d)(1)(i).

[109] PRTC White Paper at 28.

[110] PRTC White Paper, App. A. *See also* 47 C.F.R. § 36.622(a).

study area in the country (as calculated pursuant to section 36.621(a)) divided by the sum of the working loops reported for each study area in the country.[111] For rural incumbent LECs, however, section 36.622(a) provides that the national average unseparated loop cost is frozen at $240 per loop.[112] Considering that section 36.622(a) provides for a separate national average loop cost for rural carriers, we seek comment on PRTC's proposal which would calculate the national average loop cost pursuant to section 36.622(a). If a non-rural insular mechanism is created, would there be any reason to use the national average loop cost that is used for rural incumbent LECs, which is frozen at $240 per loop? Also, if the Commission adopts its tentative conclusion and creates an interim non-rural insular mechanism, should it impose any conditions on the disbursement of these funds (*e.g.*, require PRTC to submit and implement build-out plans to address unserved areas of the island)? In addition, to what extent should the Commission consider steps taken by the Telecommunications Regulatory Board of Puerto Rico to achieve rate comparability as required by the *Order on Remand*?[113]

38. Finally, if we adopt the tentative conclusion herein, we will need a definition of "insular areas." In the *Unserved Areas NPRM,* the Commission proposed defining "insular areas" as "islands that are territories or commonwealths of the United States," and sought comment on whether the definition of insular areas should exclude sovereign nations that are not subject to the laws of the United States.[114] The Commission tentatively concluded that Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands are properly included in the definition of insular areas.[115] We seek to refresh the record initially established in the *Unserved Areas NPRM*, and seek comment on the definition of "insular areas" proposed in that proceeding.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in the Appendix. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the

[111] 47 C.F.R. § 36.622(a). The National Exchange Carrier Association (NECA) is responsible for calculating the national average unseparated loop cost per working loop. *Id.*

[112] *Id.*

[113] *See Order on Remand*, 18 FCC Rcd at 22613-14, paras. 89-92. We note that in 2004, the Telecommunications Regulatory Board of Puerto Rico failed to file a required certification stating whether its rural rates were reasonably comparable to the urban national average. *See* 47 C.F.R. § 54.316.

[114] *Unserved Areas NPRM*, 14 FCC Rcd at 21233-34. This proposed definition would exclude the Freely Associated States, including the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau from the definition of "insular area." The Freely Associated States are sovereign nations that are associated with the United States through terms of a Compact of Free Association.

[115] *Id.* at 21234. Carriers serving American Samoa, Guam, CNMI, and the U.S. Virgin Islands currently receive support based on embedded costs under the rural high-cost mechanisms and would not be affected by the tentative conclusion proposed herein. *Id.*

Chief Counsel for Advocacy of the Small Business Administration.[116] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[117]

B. Paperwork Reduction Act Analysis

40. This Notice of Proposed Rulemaking does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Ex Parte Presentations

41. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[118] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[119] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[120]

D. Comment Filing Procedures

42. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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[116] *See* 5 U.S.C. § 603(a).

[117] *Id.*

[118] 47 C.F.R. §§ 1.1200-1.1216.

[119] 47 C.F.R. § 1.1206(b)(2).

[120] 47 C.F.R. § 1.1206(b).

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

43. In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; website: www.bcpiweb.com; phone: 1-800-378-3160;

(2) Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: sheryl.todd@fcc.gov.

44. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

45. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or theodore.burmeister@fcc.gov, or Katie King, Special Counsel, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, e-mail: katie.king@fcc.gov.

V. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

47. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

1. Need for, and Objectives of, the Proposed Rules

2. The Telecommunications Act of 1996 requires that the Commission establish rules to "preserve and advance" universal service.[4] This NPRM addresses several issues related to universal service support for non-rural carriers. Seeking, and receiving, comment on these issues is a necessary step toward the adoption of rules that meet the 1996 Act's requirements.

3. First, we address issues remanded by the United States Court of Appeals for the Tenth Circuit for the second time.[5] Specifically, we contemplate rules regarding how the Commission should define the statutory term "sufficient" to take into account all the principles enumerated in the statute. Further, we further address how the Commission should define "reasonably comparable" in the context of section 254(e)(3)'s requirement that consumers in all regions of the nation should have access to telecommunications and information services that are "reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[6] We also contemplate whether, in light of the interpretation of the key statutory terms, the Commission should modify the high-cost funding mechanism for non-rural carriers by adopting a rate-based support mechanism, by adjusting the current cost-based support mechanism, or if some other mechanism would better meet the statutory requirements of the Act.

4. Second, we address a proposal by Puerto Rico Telephone Company, Inc. (PRTC) that the Commission create a support mechanism for non-rural carriers serving insular areas.[7] Currently, non-

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[1] *See* 5 U.S.C. § 601-612, has been modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). References to section 254 in the NPRM refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act. 47 U.S.C. § 254; *see also* 47 U.S.C. § 214(e).

[5] *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

[6] 47 U.S.C. § 254(e)(3).

[7] Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (filed Jan. 14, 2004); *see also* Puerto Rico Telephone Company White Paper: Proposed Interim Insular Mechanism, CC Docket No. 96-45 (filed May 6, 2005). Non-rural carriers are carriers that do not meet the (continued....)

rural carriers receive support based on forward-looking economic costs, as estimated by the High-Cost Model. PRTC proposes that non-rural carriers serving insular areas receive support based on their embedded (i.e., historical) costs, as rural carriers do currently.

2. Legal Basis

5. The legal basis for the NPRM is contained in sections 1, 4, 201 through 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 214, 254, 303(r), and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[10] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[11]

7. The Commission has determined that the group of small entities directly affected by the rules adopted in this NPRM are eligible telecommunications carriers (ETCs) providing service in areas served by non-rural carriers. Within the category of ETCs we find competitive local exchange carriers (CLECs), which are all wired telecommunications carriers, and wireless carriers. Further descriptions of these entities are provided below.

8. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[12] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[13] Of this total, 2,201 firms had employment of 999 or fewer

(Continued from previous page)
definition of "rural telephone company." 47 C.F.R. § 51.5. Rural carriers tend to be significantly smaller than non-rural carriers.

[8] 5 U.S.C. § 604(a)(3).

[9] 5 U.S.C. § 601(6).

[10] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[11] 15 U.S.C. § 632.

[12] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[13] U.S. Census Bureau, 1997 Economics Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110.

employees, and an additional 24 firms had employment of 1,000 or more.[14] Thus, under this size standard, the great majority of firms can be considered small.

9. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[15] According to Commission data,[16] 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[17] In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[18] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

10. *Cellular and Other Wireless Telecommunications Carriers.*[19] The SBA has developed a small size standard for Cellular and Other Wireless Telecommunications Carriers which consists of all such companies having 1,500 or fewer employees. According to the Commission's most recent data,[20] 1,761 companies reported that they were engaged in the provision of wireless service. Of these, 1,761 companies, and estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees.[21] Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

11. *Eligible Telecommunications Carriers (ETCs) that Provide Service in Areas Serviced by Non-Rural Carriers.* Neither the SBA nor the Commission has developed a definition of small entities specifically applicable to ETCs. ETC designation allows a carrier to receive universal service support in accordance with section 254 of the Act. An entity is designated as an ETC by a state commission or, if there is no state jurisdiction, by the Commission upon meeting the requirements of section 214(e) of the Act. Any entity offering services supported by federal universal service mechanisms that uses its own facilities or a combination of its own facilities and resale of another carrier's services and advertises such

[14] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[15] 13 C.F.R. § 121.201, NAICS code 517110.

[16] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002).

[17] *Id.*

[18] *Id.*

[19] 13 C.F.R. § 121.201, NAICS code 517212.

[20] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002).

[21] *Id.*

charges and rates can seek designation as an ETC.[22] ETCs are competitive carriers that are not dominant in the field. The group of ETCs providing service in areas served by non-rural carriers is composed of mostly CLECs and wireless carriers. We have indicated above that, pursuant to SBA standards, ETCs are CLECs or wireless carriers. In addition, we note that the only ETCs affected by this Order are those that provide service in areas served by non-rural carriers. If we had no further information concerning the specific ETCs affected by this rulemaking, we would estimate that numerous ETCs, which are either CLECs or wireless service providers that provide service in areas served by non-rural carriers, are small businesses that may be affected by the rules adopted herein.

12. At this time, however, the Commission is aware of approximately 30 ETCs providing service in areas served by non-rural carriers. We have determined that at least 9 of these ETCs are subsidiaries of public companies – not independently owned and operated – and, therefore, not small businesses under the Small Business Act.[23] We do not have data specifying whether the remaining ETCs, or other ETCs not accounted for, are independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 20 or fewer small entities that may be affected directly by the proposed rules herein adopted.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The NPRM does not propose specific reporting, recordkeeping, or other compliance requirements at this time. The NPRM does, however, ask whether additional rate data should be collected for the purpose of defining the statutory term, "reasonably comparable."[24] The NPRM also considers the collection of data to administer a rate-based support mechanism, in the event that the Commission adopts one.[25] A universal service support mechanism for non-rural insular carriers, if adopted, may require reporting, recordkeeping or other compliance requirements.[26]

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.[27]

15. In this NPRM, we seek comment on issues related to universal service support for non-rural carriers. We note that many, if not all, non-rural carriers are not small entities. To the extent that

[22] 47 C.F.R. § 54.201

[23] 15 U.S.C. § 632.

[24] *See supra* para. 18.

[25] *See supra* para. 24.

[26] *See supra* paras. 30-38.

[27] *See* 5 U.S.C. § 603(c).

there may, in fact, exist a non-rural carrier that is a small entity, or any rule that may be adopted by the Commission related to these issue could affect some other small entity, we have considered and will consider alternatives to minimize significant economic impact on small entities.

16. We seek comment regarding several issues related to the high-cost support mechanism for non-rural carriers that have been remanded by the United States Court of Appeals for the Tenth Circuit for the second time.[28] We seek comment regarding the meaning of the statutory terms "sufficient" and "reasonably comparable." Because we anticipate that the Commission will define these terms in a manner conducive to creating a viable non-rural support mechanism, we conclude that defining these statutory terms will not have a significant economic impact on small entities. We also seek comment regarding how a universal service support mechanism for non-rural carriers should be designed, consistent with the statutory terms. We conclude that adopting a new high-cost support mechanism for non-rural carriers, including particularly a rate-based support mechanism, or retaining a modified version of the current mechanism, based on forward-looking economic cost estimates, will not create a significant economic impact on small entities. In the event, however, that a commenter proposes rules that may create a significant economic impact on a small entity, we seek comment on steps to be taken or possible alternatives that would minimize the economic impact.

17. We also tentatively conclude that the Commission should adopt PRTC's proposed interim support mechanism for non-rural carriers serving insular areas.[29] Pursuant to this proposal, non-rural carriers serving insular areas would receive universal service support based on their embedded costs rather than forward-looking economic cost estimates. Currently, PRTC is the only non-rural carrier serving an insular area, and it is not a small entity. CETCs (which receive support based on the incumbent's level of support) serving in PRTC's service territory would receive additional support, but would not have any other significant economic impact. Other alternatives to be considered include retaining the current rules, under which non-rural carriers serving insular areas receive support pursuant to the same mechanism as all other non-rural carriers.

6. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

18. None.

[28] *See Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

[29] Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (filed Jan. 14, 2004); *see also* Puerto Rico Telephone Company White Paper: Proposed Interim Insular Mechanism, CC Docket No. 96-45 (filed May 6, 2005).

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service and High-Cost Universal Service Support.

Just over two years ago, the Commission issued its *Order on Remand* in this docket, responding to the Tenth Circuit's 2001 rejection of the Commission's high-cost support mechanism for large, "non-rural" carriers. At the time, I commented that we had brought the issue to closure, and had addressed the court's concerns.

Earlier this year, we learned that the Tenth Circuit disagreed, when it again remanded our decision. When a court overturns an agency rule, the regulator's role is not to second-guess, but simply to try again. So, while I supported the rules that gave rise to the court's most recent remand, I also fully support this Notice of Proposed Rulemaking.

I am also pleased to vote for the Notice's tentative conclusion that the Act authorizes the creation of a new mechanism designed to support large carriers serving insular areas such as Puerto Rico. The evidence before us suggests that such carriers face unique challenges that might not be reflected by existing cost models, and that subscribership in the areas they serve is now *falling*. We cannot know where the record compiled in this docket ultimately will lead the Commission, but facts such as these demonstrate that it is time to consider bolder action to meet the needs of insular areas.

Finally, I am gratified that this Notice expressly seeks comment from the states regarding these very important issues. The Federal-State Joint Board on Universal Service, which I have been proud to chair since 2001, has worked diligently to aid us in implementing the Act's provisions, and I have great respect for the expertise and perspective that my state commission colleagues have brought to this subject. In responding to the Tenth Circuit's decision, I urge the Commission to pay careful attention to their views.

This proceeding offers the Commission the opportunity to provide clarity and finality to an industry that sorely needs both. The task ahead is difficult, but the rewards of success will be well worth the effort. I wish the Commission the best of luck in resolving this set of very difficult issues once and for all.