List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 1, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing "Asbestos Dump, Millington, NJ" from the table.

[FR Doc. 2010–10849 Filed 5–10–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–337, CC Docket No. 96–45; FCC 10–56]

High-Cost Universal Service Support, Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) defines "sufficient" under section 254(e) of the Communications Act as an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program. The Commission finds that rural rates are "reasonably comparable" to urban rates if they fall within a reasonable range of the national average urban rate. The Commission concludes, on the basis of undisputed empirical evidence in the record, that the current non-rural high-cost support mechanism comports with the requirements of section 254. The Commission also grants, with modifications, the joint petition filed by the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for supplemental high-cost universal service support for rural residential customers of Qwest, Wyoming's non-rural incumbent local exchange carrier.

DATES: Effective June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7491 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Remand and Memorandum Opinion and Order (Order) in WC Docket No. 05–337, CC Docket No. 96–45, FCC 10–56, adopted April 16, 2010, and released April 16, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

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).

I. Order on Remand

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

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

1. "Sufficient"

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

2. Section 254(e) of the Act provides that Federal universal service support "should be explicit and *sufficient* to achieve the purposes of [section 254]." In the context of determining high-cost support for non-rural carriers, the Commission previously defined "sufficient" as "enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers." In *Qwest II,* the Tenth Circuit held that the Commission did not adequately demonstrate how its non-rural universal service support mechanism was "sufficient" within the meaning of section 254(e). The court noted that "reasonable comparability" was just one of several principles that Congress directed the Commission to consider when crafting policies to preserve and advance universal service. The court was "troubled by the Commission's seeming suggestion that other principles, including affordability, do not underlie Federal non-rural support mechanisms." "On remand," the court concluded, "the FCC must articulate a definition of 'sufficient' that appropriately considers the range of principles identified in the text of the statute."

3. Congress, in section 254(b) of the Act, set forth a number of principles for the Commission to consider when implementing the universal service policy. These principles include: (1) "[q]uality service should be available at just, reasonable, and affordable rates"; (2) "access to advanced telecommunications and information services should be provided in all regions of the Nation"; (3) "low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications services and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged * * * in urban areas"; (4) "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service"; (5) "[t]here should be specific, predictable and sufficient Federal and State mechanisms to

preserve and advance universal service"; and (6) "[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services." In addition, section 254(b) permits the Joint Board and the Commission to adopt "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act."

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

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

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

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

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

b. The Commission's Universal Service Programs Provide "Sufficient" Support

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

such data in November 1983. The fact that subscribership has increased indicates that the Commission is preserving and *advancing* universal service.

10. In particular, the current telephone subscribership penetration rate is strong evidence that our universal service programs provide support that is sufficient to ensure that rates are affordable, as required by section 254(b)(1). This finding is buttressed by data showing that average consumer expenditures on telephone service as a percentage of household expenditures have been relatively stable over time—approximately 2 percent—even while the amount of telephone service consumers are purchasing has increased. Moreover, rural consumers and urban consumers spent a comparable percentage of their household expenditures on telephone service. We agree with Qwest that "the current level of telephone subscribership suggests that universal service subsidies *as a whole* are enabling *affordable* rates * * *." We disagree, however, that the Commission is required to "present[] data * * * to demonstrate that non-rural high-cost support" by itself "is actually contributing to affordable rates" in order to satisfy the court. As we explained above, the Commission cannot—and is not required to—evaluate the non-rural high-cost fund in isolation. Sufficient support that satisfies the universal service principles of section 254(b)—including affordable rates—can only reasonably be achieved through the totality of the Commission's universal service programs, not by the non-rural high-cost mechanism standing alone. Indeed, we believe that the public interest would not be well-served if we attempted to determine sufficiency by considering a single support mechanism in a vacuum, while ignoring the support provided by the other support mechanisms.

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

12. While some commenters assert that the non-rural high-cost support mechanism, as currently structured, provides insufficient support, none has made any effort to demonstrate that its current support is actually insufficient. In particular, we are not persuaded that incumbent LEC line losses due to competitive entry in urban areas have resulted in diminished service for consumers in rural areas. No commenter has presented evidence that customers will be left without service absent an increase in Federal high-cost support for non-rural carriers. A similar lack of evidence caused the D.C. Circuit to reject a challenge to the interim cap the Commission imposed on high-cost support disbursements to competitive ETCs. The court in that case found that petitioners produced "no cost data showing they would, in fact, have to leave customers without service as a result of the cap" and therefore gave the court "no valid reason to believe the principle of 'sufficiency'" would be "violated by the cap." Likewise, in *Alenco,* the Fifth Circuit held that a single provider's reduced rate of return "does not establish that the cap [on certain incumbent LEC high-cost support mechanisms] fails to provide sufficient service" to customers. We therefore reject the argument that competition has rendered non-rural high-cost support insufficient.

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

14. Commenters alleging that non-rural high-cost support is insufficient also ignore the millions of dollars of growth in disbursements under this mechanism. For example, when the Tenth Circuit issued *Qwest II* in 2005, carriers received $292 million annually in Federal universal service support from the non-rural mechanism. In 2009, carriers received $331 million in Federal universal service support from the non-rural mechanism. While most of that increase is attributable to support paid to non-incumbent LECs, the majority of which are wireless competitive ETCs, those carriers also provide supported services within each State's boundaries and therefore advance the principles set forth in section 254(b) of the Act. As the Fifth Circuit recognized, "[t]he purpose of universal service is to benefit the customer, not the carrier," so "'[s]ufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy." Accordingly, we disagree with the Rural States' argument that the non-rural mechanism provides insufficient support in the face of record evidence showing increases in both total non-rural high-cost support and overall telephone subscribership since the Commission adopted the *Remand Order* in 2003.

15. The Maine, Vermont, and Montana State commissions have also made allegations about problems related to service quality and service availability. At the outset, we note that States (not the Commission) are primarily responsible for ensuring service quality and service availability through their regulation of intrastate services and administration of carrier-of-last-resort obligations. In any event, we find these claims unpersuasive. First, the State commissions have not provided substantial empirical evidence that service quality is worse in areas where non-rural LECs receive high-cost support, relative to either areas where rural LECs receive support, or areas that do not receive any high-cost support. Second, with regard to service availability, they have failed to "systematically analyze[] the effect of" non-rural support on the availability of services, including broadband, and instead "provide[d] only anecdotal evidence of the possible effect of" non-rural high-cost support "on particular deployments." Third, the State commissions have not demonstrated that more support would in fact improve service quality or service availability, nor have they quantified, in a verifiable manner, what level of support would ensure adequate service

quality and service availability. Without such evidence, the Commission would be subject to the same criticisms raised in *Qwest II* if it were to modify the non-rural support mechanism in response to the State commission proposals.

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

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

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

2. "Reasonably Comparable"

a. Urban and Rural Rates Are Reasonably Comparable

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

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

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

22. Data filed by NASUCA in response to the 2005 *Remand NPRM, 71 FR 1721, January 11, 2006,* demonstrate that rural and urban rates are reasonably comparable. NASUCA submitted data on rates (as of February 2006) in 11,252 wire centers nationwide that are served by non-rural carriers, ranging from zero percent urban to 100 percent urban. The average price of flat-rate residential service (plus the subscriber line charge and Federal universal service charge) does not vary greatly as a function of the degree of urbanization. In fact, NASUCA found that there is no statistically significant difference in average price as a function of the percent of the population living in urban areas. In addition, the range of prices is similar between rural and urban areas.

Moreover, the standard deviation of the prices is similar between rural and urban areas.

23. Our own State-by-State review of NASUCA's data revealed that rural wire centers generally had lower rates than urban wire centers, holding the State constant. In 42 of the 50 States, the average rate in rural wire centers was less than or equal to the average rate in urban wire centers.

24. Data filed by Verizon in response to the 2009 *Remand NOI* confirms NASUCA's findings and our conclusion that rural and urban rates are reasonably comparable. Verizon submitted a declaration by Alan Buzacott, which contains a survey and analysis of tariffed rural and urban rates (in effect as of May 2009) charged by non-rural carriers in all 50 States, plus the District of Columbia and Puerto Rico. The Buzacott declaration finds that in 18 States and the District of Columbia, the largest non-rural carrier offers basic residential local exchange service at the same rate in all exchanges throughout the State. In States where a non-rural carrier does charge different basic residential local exchange rates within the State, the Buzacott declaration finds that rates in urban areas tend to be higher than rates in rural areas.

25. In *Qwest II,* the Tenth Circuit focused on the disparity between rural rates and the lowest urban rate, and noted that a rural rate could be 100 percent more than the lowest urban rate. Such an anomaly can be explained by the variability of rate policies among the States and does not undermine our conclusion that rural and urban rates are reasonable comparable. Because States exercise considerable discretion in setting rural and urban rates, there is considerable variation among States. A comparison of rural rates to the lowest urban rate would be heavily influenced by a particular State's rate policies. For this reason, the general consensus in the record—even among those parties that ask the Commission to adjust the rate benchmark—is that the average urban rate—and not the lowest urban rate—is the appropriate point of comparison for purposes of determining "reasonable comparability."

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

26. Only one State—Wyoming—has demonstrated that its rural rates are not reasonably comparable to nationwide urban rates and requested relief based on that demonstration. In light of Wyoming's unique circumstances, in section III, below, we grant, with modifications, the joint petition filed by the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for supplemental high-cost universal service support for rural residential customers of Qwest, Wyoming's non-rural incumbent LEC.

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

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

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

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

30. In *Qwest II,* the Tenth Circuit seemed concerned that, unless the Commission took action to reduce the existing variance in rates between rural and urban areas, rural rates would be too high to ensure universal access to basic service. "Rates cannot be divorced from a consideration of universal service," the court said, "nor can the variance between rates paid in rural and urban areas. If rates are too high, the essential telecommunications services encompassed by universal service may indeed prove unavailable." The fact that telephone subscribership penetration rates have increased since Congress enacted section 254 demonstrates that rates are not too high under the Commission's universal service program; indeed, the essential telecommunications services encompassed by universal service have become more available than ever before, with telephone subscribership rates recently reaching an all-time high. The overall increase in the telephone subscribership penetration rates since the enactment of our universal service policies in 1996 demonstrates that the Commission has satisfied its duty to advance universal service.

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

32. The Tenth Circuit directed the Commission on remand to define "reasonably comparable" in a manner that both preserves and advances universal service. Since the *Remand*

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

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

3. The Non-Rural High-Cost Support Mechanism

34. In *Qwest II,* the court deemed the non-rural high-cost support mechanism invalid because it rested on the application of the definition of "reasonably comparable" rates invalidated by the court. While the court acknowledged that it "would be inclined to affirm the FCC's cost-based funding mechanism if it indeed resulted in reasonably comparable rates," it found that the Commission had failed to provide "empirical findings supporting this conclusion." The court further noted that the Commission based the two standard deviations *cost* benchmark on a finding that *rates* were reasonably comparable, without empirically demonstrating in the record a relationship between costs and rates. "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." Below we explain and support the decision to utilize variations in cost to determine the level of high-cost support for non-rural carriers.

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

36. Consequently, we conclude that no further action is required of the Commission to comply with the Tenth Circuit's *Qwest II* decision, and we decline to adopt the handful of proposals to "reform" the non-rural mechanism. The Commission previously rejected several of these proposals in the *Remand Order,* and we do so again here.

a. Cost-Based Support Mechanism

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

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

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

where States have deregulated retail rates, carriers facing competition may have an incentive to raise certain local rates to increase their support rather than to cut rates to meet competition.

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

b. Forward-Looking Cost Model

(i) Cost Model Inputs

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

42. Much progress has been made in developing computer cost models that estimate the cost of constructing a broadband network, such as the CostQuest model, and we note that staff has developed an economic model to estimate the financial implications (costs and revenues) associated with providing broadband to areas presently unserved by adequate broadband speed and capacity for purposes of the National Broadband Plan. Nevertheless, we are unable to evaluate adequately any alternative cost model or to develop a new cost model in time to meet our commitment to respond to the Tenth Circuit's *Qwest II* remand. As the Commission noted in the *Remand NOI,* the Commission's current model was developed over a multi-year period involving dozens of public workshops, and it would take a similar period to evaluate or develop a new cost model and to establish new input values. Rather than attempt to update a model that estimates the cost of a legacy, circuit-switched, voice-only network, we intend to focus our efforts going forward on developing a forward-looking cost model to estimate the cost of providing broadband over a modern multi-service network, consistent with the recommendations in the National Broadband Plan. Accordingly, we conclude that we should continue to use the existing model to estimate non-rural high-cost support on an interim basis, pending the development of an updated and more advanced model that will determine high-cost support for broadband. We expect to initiate a proceeding to seek comment on such a model in the second quarter of 2010.

(ii) Cost Benchmark

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

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

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

benchmark to 125 percent, no party that supports such a change has analyzed the extent to which the resulting increase in high-cost support would actually reduce the alleged gap between rural and urban rates. Instead, the Rural States' proposal would increase the size of the universal service fund without the benefit of empirical evidence that the non-rural high-cost support mechanism would produce reasonably comparable rates. In fact, there is a risk that the Rural States' proposal would reduce *both* urban and rural rates in a recipient State, not the variance between the two, which could needlessly increase the financial burden imposed on consumers that live in States that are net contributors to the universal service fund. The bottom line is that the Commission has no assurance that increased non-rural high-cost support would produce lower rural rates, rather than be used for other purposes, because the use of that support will depend on 50 different State policies, none of which have been described in the record. We therefore decline to adjust the cost benchmark because we lack the empirical data to justify such an adjustment, and because the record shows that the existing cost benchmark already provides support that yields reasonably comparable and affordable rates.

(iii) Rate Benchmark

46. Finally, we conclude that we should retain a comparability standard based on a national rate benchmark set at two standard deviations above the average urban rate. In *Qwest II,* the Tenth Circuit focused on the disparity between rural rates and the lowest urban rate. There is strong support in the record, however, for the continued use of an average urban rate. Even those parties that ask the Commission to adjust the rate benchmark support the use of an average urban rate—and not the lowest urban rate—as the point of comparison. The general consensus on this issue reflects the common sense conclusion that the average urban rate offers the most reasonable baseline for comparison. Because urban rates themselves vary greatly, a rate benchmark that measures divergence from the lowest urban rate could be too heavily influenced by a particular State's rate policies. By contrast, measuring divergence from the national average urban rate more accurately captures the variability of rate policies among the States.

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

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

c. Rate Comparability Review and Certification Process

49. We conclude that we should continue requiring the States to review annually their residential local rates in rural areas served by non-rural carriers and certify that their rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. Commenters support the continued use of our rate certification process.

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

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

B. Comprehensive Reform and the National Broadband Plan

52. The Commission has previously recognized the need for review and possible comprehensive reform of its universal service program, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural. Since the Commission originally adopted the non-rural high-cost support mechanism in 1999, the telecommunications marketplace has undergone significant changes. As discussed above, while in 1996 the majority of consumers subscribed to separate local and long distance providers, today the majority of consumers subscribe to local/long distance bundles offered by a single provider. In addition, the vast majority of subscribers have wireless phones as

well as wireline phones, and an increasing percentage of consumers are dropping their wireline phones in favor of wireless or broadband-based VoIP phone services. Finally, an increasing percentage of carriers are converting their networks from circuit-switched to Internet protocol (IP) technology.

53. Against this backdrop, the Commission in the *Remand NOI* sought comment on the relationship between the Commission's resolution of the narrow issues raised in this remand proceeding; comprehensive reform of the high-cost universal service support system; and our independent obligation under the Recovery Act to develop a comprehensive National Broadband Plan. Many commenters argued that the Commission should use this remand proceeding to begin transitioning high-cost funding from support for voice services to support for broadband in light of the changes in technology and the marketplace.

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

55. On March 16, 2010, the Commission adopted a Joint Statement on Broadband, which sets forth the overarching vision and goals for U.S. broadband policy, and delivered to Congress the National Broadband Plan, which contains specific recommendations for universal service reform. According to the National Broadband Plan, filling the gaps in the nation's broadband network will require financial support from Federal, State, and local governments. The National Broadband Plan identifies the Federal universal service fund—and the high-cost universal service program in particular—as a key source of Federal support. The National Broadband Plan acknowledges, however, that the existing high-cost universal service program is not designed to fund broadband services. Therefore, the National Broadband Plan recommends a comprehensive reform program to shift the high-cost universal service program from primarily supporting voice communications to supporting broadband platforms that enable many applications, including voice.

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

57. We also decline to adopt proposed interim changes to the non-rural high-cost support mechanism that would increase significantly the amount of support non-rural carriers would receive. Instead, we will maintain the current non-rural high-cost support mechanism on a transitional basis until comprehensive universal service reform is adopted. As set forth above, the Commission has a substantial interest in limiting the size of the universal service fund to preserve the affordability of telecommunications services for consumers. Any substantial increases in non-rural high-cost support disbursements would increase the contribution factor above its current level of 15.3 percent of interstate revenues, thereby increasing the size of universal service contribution assessments, which are ultimately paid by consumers. The Commission's authority to take measures to limit the size of the universal service fund is well established. Indeed, the Commission has long used cost controls—including caps—as a means of limiting the growth of its universal service program. We find that maintaining non-rural high-cost support at existing levels pending comprehensive universal service reform quite reasonably follows this long-standing agency practice.

58. Moreover, if carriers were to receive significant additional high-cost support on an interim basis as a result of this proceeding, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband, if called for in future proceedings. The Commission may "act[] to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated." In fact, on several occasions, the Commission has exercised that authority to maintain existing rules on a transitional basis to ensure the sustainability of the universal service program pending comprehensive reform of a larger regulatory framework. We conclude that it would not be prudent to increase the overall amount of non-rural high-cost support significantly above current levels at this time.

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

II. Memorandum Opinion and Order: Wyoming Petition for Supplemental High-Cost Universal Service Support

A. Discussion

60. We find that the Wyoming Petitioners have demonstrated that supplemental universal service high-cost support is warranted at this time in Wyoming's rural areas served by Qwest, the non-rural incumbent LEC. The Wyoming Petitioners have met the requirements in section 54.316 of the Commission's rules by demonstrating that such rural residential rates are not comparable to the nationwide urban rate benchmark. Specifically, the Wyoming Commission reviewed and compared the residential rates in rural areas served by Qwest to the nationwide urban rate benchmark, certified to the Commission and to USAC that such rates are not reasonably comparable because they are 124 percent of the nationwide urban rate benchmark, explained why such rates are not comparable, and stated that it intended to request further Federal action to achieve rate comparability as set forth in the *Order on Remand.* We also find that the Wyoming Petitioners' request for supplemental high-cost universal service support is consistent with the requirements in the *Order on Remand* for requests for further Federal action to achieve rate comparability. The Wyoming Petitioners demonstrated that Wyoming's rural rates are not reasonably comparable to urban rates nationwide and that Wyoming has taken all reasonably possible steps to achieve reasonable comparability through State action and existing Federal support. As we acknowledged in the *Order on Remand,* "Wyoming has rebalanced its residential and business rates, while other States have not rebalanced rates." Wyoming requires cost-based pricing for all retail telecommunications services in Wyoming and prohibits cross subsidies and implicit subsidies. Moreover, Qwest has de-averaged cost-based residential rates. Finally, Wyoming has implemented an explicit subsidy support program—the Wyoming Universal Service Fund.

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

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

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

B. Procedures for State Requests for Further Federal Action

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

III. Procedural Matters

A. Paperwork Reduction Analysis

65. This Order on Remand and Memorandum Opinion and Order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

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

C. Congressional Review Act

67. The Commission will not send a copy of this Order on Remand and Memorandum Opinion and Order in a

report to Congress and the Government Accountability Office pursuant to the Congressional Review Act because no rules are being adopted.

IV. Ordering Clauses

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

69. It is further ordered that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 214, 220, and 254, the Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-rural Incumbent Local Exchange Carrier, filed December 21, 2004, IS granted to the extent described herein.

70. It is further ordered that this Order on Remand and Memorandum Opinion and Order shall be effective 30 days after publication in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3) and section 1.427(b) of the Commission's rules, 47 CFR 1.427(b).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–11153 Filed 5–10–10; 8:45 am]

BILLING CODE 6712–01–P