

# Telecommunications Alert: FCC Sets Plan for Reform of Non-Rural High-Cost Universal Service Support

4/17/2009

With a Notice of Inquiry (NOI) issued April 8, 2009, the Federal Communications Commission (FCC) laid out plans to finally reform universal service high-cost support for non-rural carriers by April 16, 2010.<sup>1</sup> Comments in response to the NOI are due by May 8, 2009; reply comments are due June 8, 2009.

The FCC's non-rural high-cost support mechanism has twice been remanded by federal courts, most recently in 2005, when the Tenth Circuit invalidated the revised rules adopted in 2003 and ordered the FCC to craft a revision. The universal service high-cost program is intended to ensure that consumers in all parts of the country have access to and pay rates for telecommunications services that are reasonably comparable to the services provided and rates paid by consumers in low-cost urban areas. Non-rural high-cost support is made available to carriers which do not meet the specific definition of a rural carrier,<sup>2</sup> but which nevertheless provide telecommunications services to high-cost areas.

Responding to the 2003 remand, the FCC issued a Notice of Proposed Rulemaking (NPRM) in 2005, asking interested parties to provide suggestions for revision to the high-cost support mechanism. With the new NOI, the FCC is seeking to refresh the record established by the 2005 NPRM and obtain views on several proposed high-cost program reforms submitted by Qwest, Embarq, CostQuest Associates, and utility regulators in Vermont and Maine. Drawing on comments submitted in response to the NOI, the FCC plans to issue a new NPRM by December of this year, and a final order by April 16, 2010.

The FCC's NOI asks for comments on the following specific issues:

- **Definition of "Reasonably Comparable":** The Tenth Circuit, when remanding the high-cost support mechanism, said that the FCC had failed to identify an appropriate measure of "reasonable comparability" between rural and urban rates. The FCC asks whether it should continue to define reasonable comparability in terms of actual rates instead of costs or some other measure.
- **Definition of "Sufficient":** The FCC asks how it should properly weigh various universal service principles in determining the sufficiency of high-cost program support, and whether the FCC should define "affordable rates" as well as reasonably comparable rates. Should the burden on universal service contributors be taken into account in establishing an affordability benchmark?

- **Funding Mechanism:** The FCC asks for suggestions on (a) crafting a support mechanism taking into account all the factors Congress identified in adopting the universal service provisions of the Communications Act, and (b) the relationship between the resolution of funding mechanism issues in this remand proceeding and the more comprehensive universal service reform the FCC has under consideration in other dockets.
- **Qwest Proposal:** In May 2008, Qwest recommended revision of the non-rural high-cost support mechanism to target support to the highest-cost wire centers served by non-rural incumbent local exchange carriers (ILECs) and to reduce the support benchmark to no more than 125% of the national average urban rate.
- **Embarq Proposal:** The Embarq proposal, submitted in September 2008, calls for non-rural high-cost support to be eliminated in favor of a new Broadband and Carrier-of-Last-Resort Support mechanism, with about \$1 billion per year allocated to wire centers based on a measure of household density. Only ILECs and one competitor in each area would be eligible for support and recipients would be required to commit to making broadband available to at least 85% of customers in each wire center.
- **CostQuest Proposal:** CostQuest's November 2008 proposal calls for use of a new cost model based on forward-looking costs, geographic granularity, and consideration of all technology platforms.
- **Vermont and Maine Regulator Proposal:** In March 2006, the Vermont Public Service Board and the Maine Public Utilities Commission jointly submitted a proposal to use "net subscriber cost" as a proxy for rates in calculations of reasonable comparability and support levels. Like Qwest, the two state regulators suggested a benchmark of no more than 125% of the urban rate average.

In a statement accompanying the NOI, Acting FCC Chairman Michael J. Copps suggested that by the time the FCC addresses completion of the final order on non-rural high-cost support it should be able to look for direction from the National Broadband Plan, which will have been completed by then.

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## Endnotes

<sup>1</sup> *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry, FCC 09-28 (rel. Apr. 8, 2009).

<sup>2</sup> The Communications Act defines a rural carrier as a local exchange carrier that (1) does not serve any incorporated place of 10,000 or more; (2) has fewer than 50,000 telephone access lines; (3) provides service in a study area with fewer than 100,000 access lines; or (4) had fewer than 15% of its access lines in communities over 50,000 in 1996. 47 U.S.C. § 153(37).

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*Please contact your Mintz Levin telecommunications attorney, or any attorney listed below, for more information as we continue to follow these developments.*

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