



PUBLIC NOTICE

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DA 02-2976

COMMENT SOUGHT ON THE RECOMMENDED DECISION OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE REGARDING THE NON-RURAL HIGH-COST SUPPORT MECHANISM

PLEADING CYCLE ESTABLISHED

CC Docket No. 96-45

Release Date: November 5, 2002

Comment Date: 21 days from publication in the Federal Register
Reply Comment Date: 35 days from publication in the Federal Register

The Wireline Competition Bureau (Bureau) seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board), released on October 16, 2002,¹ addressing issues from the *Ninth Report and Order* that were remanded by the United States Court of Appeals for the Tenth Circuit.² The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The court remanded the *Ninth Report and Order* to the Commission for further explanation of its decision.³ On February 15, 2002, the Commission issued a Notice of Proposed Rulemaking seeking comment on issues remanded by the court and referring the record collected in the proceeding to the Joint Board for a recommended decision.⁴

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 02J-2 (released Oct. 16, 2002) (*Recommended Decision*).

² *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. 2001).

³ *Qwest*, 258 F.3d 1191, 1201-1205. The court held that the Commission did not provide an adequate explanation for its decision that the non-rural mechanism achieved the statutory principles codified in section 254 of the 1996 Act. Specifically, the court concluded that the Commission failed to: (1) define adequately the key statutory terms “reasonably comparable” and “sufficient”; (2) adequately explain setting the funding benchmark at 135 percent of the national average; (3) provide inducements for state universal service mechanisms; or (4) explain how the funding mechanism will interact with other universal service programs.

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 2999, 3010-11, paras. 25-26 (2002) (*Remand Notice*). The Commission asked the Joint Board

Comment is sought on the Joint Board's recommendations. Specifically, in its *Recommended Decision*, the Joint Board recommended continued use of statewide average costs and a national benchmark of 135 percent to determine non-rural high-cost support, but recommended that the Commission modify the non-rural high-cost support mechanism by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. In particular, the Joint Board recommended that the Commission implement a supplementary rate review, through an expanded annual certification process under section 254(e) of the Act, as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates.⁵ The Joint Board recommended that states be required to certify that the basic service rates in their high-cost areas are reasonably comparable to a national urban rate benchmark or explain why they are not. States would have the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 21 days from publication in the Federal Register, and reply comments 35 days from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁶

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

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, commenters 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). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 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

to make recommendations on how to define "reasonably comparable" and "sufficient", the benchmark, and state inducements.

⁵ *Recommended Decision*, FCC 02J-2, paras. 50-56.

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Katie King, Jennifer Schneider, or Narda Jones, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400, TTY (202) 418-0484.