

## SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

*Re: Federal State Joint Board on Universal Service, CC Docket No. 96-45  
(rel. Oct. 15, 2002)*

I applaud the Joint Board's recommended decision that responds to issues raised by the remand of the Commission's non-rural mechanism by the Tenth Circuit in *Qwest Corp. v. FCC*.<sup>1</sup> Today's recommended decision responds to the court in several important respects. First, the Commission provides a more rigorous analysis of the cost data in the record to establish the cost-based benchmark that triggers support for non-rural carriers. Utilizing cluster and standard deviation analyses, the Joint Board concludes that a benchmark set at 135% of national average cost is the appropriate trigger for federal support. This conclusion is consistent with the results of a recent General Accounting Office study that concluded that current rural and urban rates were not appreciably different under our existing universal service support structure.<sup>2</sup> As a result, I do not believe that the case has been made for radically altering the benchmark. The underlying data and the ultimate apparent success of our existing structure counsel a more consistent approach.

Although some have been critical of this data, there is nothing in the record that recommends a different result. Moreover, basing the benchmark on an urban average cost would not alone alter the level of support, but it would create a false sense of urgency around requiring higher levels of support — a conclusion unsupported by the statistical data or the GAO study. Our goal is to provide federal support based on costs that permit states to set urban and rural rates that are reasonably comparable. Granting support to high-cost states so that their net costs more closely resemble the national average is designed to allow them to set rates close to the national average. In turn, this process should result in urban and rural rates that are reasonably comparable. In contrast, a national urban average (a number inherently lower than the national average) would use federal support to drive costs down to the lower-than-average urban level without any evidence that affordability concerns warrant such a step. Our paramount goal in this proceeding is to ensure reasonably comparable rates — not to provide federal support to reduce the overall rate structure. Indeed, establishing a massive subsidy to drive rates down not only is unsupported by existing data on affordability but also would threaten to undermine our ability to provide support to other universal service programs that also have significant needs.

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<sup>1</sup> 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

<sup>2</sup> United States General Accounting Office, Telecommunications: Federal and State Universal Service Programs and Challenges to Funding (GAO-02-187, Feb. 4, 2002) (GAO Report). I also agree with the Recommended Decision that, because of the substantial differences in rate structures among states, it would not be feasible to base the support mechanism on rates alone (as opposed to costs) even if the rate survey identified greater disparities. Moreover, if states could obtain additional universal service support for carriers merely by manipulating their rate structures, I believe that would invite abuse and ultimately frustrate the objectives set forth in the statute.

Second, the Joint Board has responded to the court's charge to create a state inducement mechanism to ensure that the rates actually paid by consumers are reasonably comparable. By requiring states to provide a certification and data about the comparability of urban and rural rates, the Commission ensures that ultimate rates as engineered by the state regulators reflect the same equity as the cost analysis and support provided at the federal level. In the event that state action and federal cost-based support prove insufficient, we have also created a mechanism for states to make individualized showings that modification of the cost benchmark or additional tailored support is warranted.

All members of the Joint Board worked extremely hard to develop this process to ensure the continued success of the universal service support mechanism for non-rural carriers. We are all deeply committed to this goal. I look forward to working with my colleagues at the FCC and the Commission's staff to review these recommendations and promptly implement a non-rural support mechanism consistent with the Tenth Circuit's directives.