

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the matter of the Federal-State Joint Board on
Universal Service Seeking Comment on the Merits
of Using Auctions to Determine High-Cost
Universal Service Support

WC Docket No. 05-337
CC Docket No. 96-45

COMMENTS OF THE SISKIYOU TELEPHONE COMPANY (NECA #2339)

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I. INTRODUCTION

Pursuant to the procedural schedule established by the Federal Communications Commission (“FCC”), The Siskiyou Telephone Company (“Siskiyou”) hereby submits these comments on the merits of using auctions to determine high-cost universal service support. The comments will attempt to demonstrate conclusively that auctions should not be used to determine high-cost universal service support.

II. OVERALL APPROPRIATENESS OF AUCTIONS

The FCC seeks comments on the overarching concept of using auctions to determine universal service support, and whether lessons can be learned from academic literature or elsewhere about the overall appropriateness of auctions for this purpose.

A. Organizations get the behavior they reward

It is a well-established axiom taught in MBA programs across America that organizations get the behavior they reward. For example, when Siskiyou’s chairman instituted a program to incent its customer service representatives (“CSRs”) to sell custom calling features, he insisted that each CSR be rewarded according to her individual performance. Custom calling feature sales skyrocketed, but morale plummeted as the competition for sales became downright vicious. One of the less-aggressive CSRs asked if the program could be terminated, but sales of custom calling features were too high to abandon the program entirely. When the chairman asked for a solution to the problem, it was pointed out that he was rewarding cut-throat competition and a total lack of teamwork, which is what he got. The solution was to pool the incentive commissions and divide equally among the 4 CSRs. This solution maintained the incentive to sell custom calling features, since a “win” for one was a “win” for all. No longer did CSRs transfer customers wishing to disconnect service to another CSR to pick up a call that might lead to a custom calling feature sale. Teamwork was restored, customer service improved and custom calling service sales remained high.

If the FCC uses reverse auctions to determine high-cost universal service support, it too will get the behavior it rewards. The winner of the FCC’s reverse universal service auction will be that bidder who submits the lowest bid, all other factors being roughly equal. With fewer universal service dollars to work with, the winning carrier will be forced to cut back its network modernization and maintenance programs. The more competition there is at auction, the more drastic these cutbacks will be.

The FCC needs to ask itself if this is the behavior it is seeking. Small rural ETCs (Eligible Telecommunications Carriers) have so far been at the forefront of the movement to deploy broadband across their sparsely-populated serving areas. Broadband has allowed the small rural ETCs to offer IP (Internet Protocol) -based services to their subscribers such as IP-Television (IPTV). Now we are informed that IMS (IP Multimedia Subsystems) is the future of telecommunications, and the sophistication and complexity of an IMS network will severely challenge the best and brightest of us to make this vision a reality.

The FCC needs to be fully aware that our rural ETC customers are making it very clear to us that they both want and need these advanced services. In the remote mountainous territory that Siskiyou serves (where one of our exchanges has no commercial power), internet access is more a necessity than a convenience. Our customers are very well informed (thanks, in part, to the internet) and they know what the urbanites are paying for such services. Even with universal support, we find it impossible to match up with city rates for some features when we have 4,800 customers spread over 2,256 square miles.

With the universal support system we have today, we are making good progress at building the fiber-based broadband network of the future. Our territory is too mountainous and steep for wireless broadband to work in 4 of our 7 exchanges. If we had to settle for reduced universal support (or no universal support because we lost at auction), our future would look very bleak if we had a future at all. The FCC needs to decide what kind of a telecommunications network remote rural Americans are entitled to. If they are entitled to the same features (at roughly the same prices) as urban and suburban Americans, the inevitable reduction in universal support that auctions would bring to rural America is contraindicated.

B. The future can be slow to arrive in rural America

In the FCC's *Universal Service First Report and Order*, the Commission noted that "it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future."^[1]

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8950-8951, para. 324 (1977) (*Universal Service First Report and Order*).

Not much has changed in the rural, insular and high cost areas of America since that statement was written, at least in the way that the rural ETCs interface with the universal service program.

What has changed is now wireless carriers and CLECS (Competitive Local Exchange Carriers) are being classified as ETCs and are allowed to draw universal service funds. The CLEC universal service support levels have grown exponentially from \$11 million during 4Q 2001 to over \$1 billion during 2Q 2006. The dramatic increase in the High Cost Program portion of the USF (Universal Service Fund) is no doubt the impetus for the renewed FCC focus on auctions. What we see very little of in the trade press is the fact that the amount of High Cost Program USF support used by small rural ETCs is growing very slowly, roughly in line with inflation. If there is a USF problem that needs fixing, the rural ETCs did not cause it.

The FCC's 1997 statement quoted above is still appropriate to the small rural ETCs in 2006. If the FCC feels compelled to take an axe to the universal service program, it should at least spare the industry segment that is not responsible for the explosive growth in universal service claims.

III. LEGAL ISSUES AND FRAMEWORK

The FCC seeks comment on whether and how a competitive bidding proposal would serve to preserve and advance universal service and remain consistent with the important statutory goals of service comparability and rate comparability.

A. The Communications Act of 1934, as amended (the Act) is our guide

The Act, in section 254(b)(5), directs the establishment of specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service. Section 254(b)(1) states that rates for quality services shall be just, reasonable, and affordable. Section 254(b)(3) states that, through universal service, consumers in all parts of the country should have access to reasonably comparable services at reasonably comparable rates. Finally, Section 254(e) states that universal service support be "sufficient" to achieve the universal goals of the Act.

B. The universal service auction proposal places several directives of the Act at risk

[2] "Mastering Managed Competition" course binder, tab 3, slide 24 by GVNW Consulting, Tualatin, Oregon, 2006.

1. Predictable Support

Under the auction proposal before us, predictable support comes into immediate jeopardy. First, there is no guarantee that the rural ETC will be the low bidder and be allowed to continue receiving universal service support. Those rural ETCs who obtained cellular spectrum via the initial FCC lottery process have experienced first-hand how the largest wireless carriers in America (the “Bigs”) can engage in a variety of predatory practices to force small carriers who occupy desired territory to sell out. It would be an extremely simple matter for a Big to underbid literally every rural ETC in America to obtain their universal service support with the promise that the Big would provide universal service wirelessly. Of course the Big wouldn’t serve the highest-cost or difficult-to-cover areas of each exchange, but this wouldn’t be discovered until their 10 year contract was up for renewal, and the now-defunct rural ETC was a distant memory.

To make matters worse, there is no guarantee that even if the rural ETC is the low bidder, that the auction will not award the universal service support to another bidder based upon some criteria other than price. Quality of Service and Greater Service Capabilities are two possible criteria set forth in section II.12.

2. Sufficient Support

The auction proposal also places the concept of sufficient support at risk. In an auction where the lowest bid for universal service support wins, the bidder who hopes to have any chance of winning will probably need to settle for less than his current level of support. If the present level of universal support is not quite sufficient (due to various “caps” such as the cap on corporate operations expense), a lower level of support will be even less sufficient. The ultimate insufficiency, however, will be thrust upon the unsuccessful bidder who loses at auction and receives no support. This unfortunate ETC will then be faced with the choice of raising rates in an attempt to replace the lost supports (and risk losing most, if not all, of its customers), or filing immediately for bankruptcy. Since the Act did not discuss these outcomes, we submit that the auction proposal, which makes such outcomes possible, is inconsistent with the directives of the Act.

3. Advancement of Universal Service

Universal Service is not a stagnant concept. While the basic notion of all citizens being able to contact each other is still intact, the means of contact are changing. It is widely understood and acknowledged that voice communications will be based upon some type of IP-type protocol before long. Internet access is starting to be considered as something

of a birthright. If communications visionaries are correct, IMS (described earlier) will be the network architecture of the future. All of these developments share a couple of demanding attributes in common. They all require new transmission and control equipment, they all require a high bandwidth network, and they all cost a lot of money to build and maintain.

The Congress, through the Act, has indicated that it is mandatory that Universal Services advances. The FCC, as it should, has embraced the Act's mandates. Now the FCC, through its auction deliberations, appears to undermine the advancement of Universal Service by reducing universal service support at a time when communications is poised to achieve its most significant (and costly) advancements in decades. The cognitive dissonance that this creates does not serve to advance Universal Service and it detracts from where the FCC should be looking to solve the excess universal support problem: the causers of the dramatic rise in high cost USF claims.

IV. JURISDICTIONAL ROLES

Siskiyou has very few comments on the jurisdictional roles should an auction process be implemented in spite of Siskiyou's strongest objections. If auctions are inevitable, however, the FCC should be the judge over whether each and every ETC is (1) actually eligible for ETC status and (2) eligible to participate in the auction. If states failed to exercise due diligence in the granting of ETC status, the FCC should not hesitate to revoke the ETC status of those entities who do not qualify. Under the current universal service rules, the California Public Utilities Commission is taking its ETC qualification and monitoring roles very seriously. If the FCC insists on foisting auctions on the ETC community, it should be no less diligent.

V. SUPPORTED AREAS

Siskiyou's only comment regarding supported areas is that, in the case of the rural ETCs, the support areas should be identical with the incumbent's serving areas (exchanges) unless the rural ETC agrees to an enlarged area.

VI. OPTIMAL AUCTION STRUCTURE

The fact that the FCC is asking the questions listed in this section is prima facie evidence that the auction concept can't be the preferred solution.

Example 1: "Should there be any phase-in of responsibilities between the winner of the last auction and the winner of the next auction?" Answer: If the previous winner's investment is to be abandoned on the last day of its contract, why should it be encumbered serving the new winner's customers? Let the new winner build in advance and prepare for a flash cut.

Example 2: “What happens if an auction process does not result in competitive bidding?”
Answer: Nothing. It would prove the FCC was correct in 1997 when it stated,
“Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future.” [Reference cited in footnote 1 above.] In such an event, it would only indicate that the auction-centric future contemplated by the FCC had not arrived yet.

Question for the FCC: Did certain influential FCC staffers attend a Competitive Auction Seminar and now seek to apply what they have learned? If so, could they be assigned to the wireless spectrum auction branch?

VII. QUALITY OF SERVICE OBLIGATIONS AND ENFORCEMENT

Siskiyou believes that the winning bidder should enter into a contract establishing its obligations with particularity and providing for penalties in the event of non-performance. The question we have is, why isn't this being done today in the awarding of ETC status? The FCC should be the administrator and enforcer of these contracts since it is the FCC who is proposing to lead us into this swamp . Unfortunately the auction winner will have little incentive to upgrade its telecommunications plant during its winning term because it will be hard-pressed to maintain this plant with its reduced universal support level.

VIII. MULTIPLE SUPPORT WINNERS

If the goal of the auction process is to reduce universal service support claims, awarding support to multiple “winners” would seem to work against this goal. If the sum of the awards to the multiple winners is supposed to be less than the level of universal service support currently being provided, then each of the winners will probably be a loser.

FCC Chairman Martin is undoubtedly the most “rural-savvy” chairman in recent memory. Although a verbatim quote is not possible, Chairman Martin once said something to the effect that if the USF system strains to afford support for a single ETC in rural America, he had difficulty understanding how the USF system could afford to support multiple ETCs. Amen.

One question in this area is particularly pertinent. “If multiple winners are preferred, how would the auction function?” How indeed. The auction process is almost hopeless with a single winner. How can the FCC seriously suggest multiple winners across multiple technologies?

IX. SELECTION OF WINNING BIDS

Siskiyou presumes that the FCC has solved this issue in the awarding of wireless spectrum in the past. If the FCC decides to use factors other than price, Siskiyou requests that

the FCC does so in a way that does not always award the contract to the entity that can sustain a legal challenge for the longest amount of time.

X. TREATMENT OF THE INCUMBENT LEC

The FCC asks how an auction mechanism can avoid stranded investments in the event that the incumbent LEC fails to win at auction. The only way Siskiyou can think of is to (1) delay the start of the winner's contract until the incumbent LEC's plant is depreciated out or (2) compensate the incumbent LEC for its stranded plant at once so as not to delay a prompt handoff to the winning bidder. If neither of these options seems acceptable, then the FCC has a problem. If the incumbent LEC loses at auction and the winning ETC takes over, then the incumbent LEC should immediately be released from all obligations including tariffing, service, carrier of last resort, etc. Such an outcome may seem draconian, but the FCC's proposed universal service auction will produce many drastic outcomes.

XI. CONCLUSION

If universal service support levels are too high, Siskiyou believes that the obvious solution is to revisit Chairman Martin's thinking and ask if supporting multiple ETCs is really appropriate in many areas. We submit that "buying" competition in a market through universal service support targeted to sustain a second competitor is not what the USF was designed to accomplish. If a market is truly competitive, no universal service support should be needed. If a market can't be made competitive without subsidizing a second competitor, we submit that subsidized competition is not appropriate and the FCC's attention should be directed toward monitoring the use of universal support funds by the single ETC/USF recipient in that market. Whatever the FCC does to reduce USF support levels, trying to force the auction process into some type of bizarre and unwieldy solution is not the right approach. Siskiyou thanks the FCC for its serious consideration of our views.

Dated this 21st day of August, 2006, at Etna, California

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