



that these ILECs (and other similarly situated ILECs) have been able to provide their rural, and often insular, customers with a plethora of modern telecommunications services comparable to urban areas, at rates lower than they otherwise would be without these USF funds. Furthermore, due to existing rules<sup>5</sup> these companies have been given the incentive to invest, and are willing to continue to invest, in infrastructure to make services available to customers in their rural and insular geographic locales. These existing rules provide the “specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service,”<sup>6</sup> and therefore, absent any new evidence that has been presented, Alexicon questions the timing and subject of this Notice.<sup>7</sup>

Alexicon asserts that the continued underlying assumption (or apparent rationale) for the Joint Board’s consideration of reverse auctions as a method of determining high-cost universal service support is that there would be significant fund cost savings as compared to existing high-cost determination methodologies. There has been no previous empirical data presented in support of this theory and in our opinion nothing new has recently been presented in support of the issuance of this Notice to justify this theory. While reverse auctions may, in some other instances and circumstances, provide some type of economic benefits, there is no documented evidence that they would produce similar benefits in the determination of high-cost USF support. Perhaps if there were either some “trial experiments” or related academic research (supported by real-world activities) that provide some indication of positive economic benefit(s) without detrimental effects to customer service, then Alexicon may be more open to the further development and exploration of the concept of reverse auctions for determining high-cost USF support.

Another concern we have is that a reverse auction process, in the context of replacing existing “cost-based” recovery rules, may well lead to unfettered vastly increased bid amounts to replace existing high-cost support levels. Not only would there be the

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<sup>5</sup> 47 C.F.R. Part 54

<sup>6</sup> The Act, Sec. 254 (b) (5).

<sup>7</sup> As noted in pp3 of this Notice, auctions have previously been explored, rejected and not supported by any previous record; also Notice footnote 6

potential for bidder collusion and/or possible other forms of anticompetitive behavior in the bid process, but also the auction process would lack the existing protective layers of cost development review inherent in the current process. In addition to significant inclusionary rules being in place, there are multiple review layers in today's processes: carrier diligence/supervision/management; the National Exchange Carrier Association ("NECA") review of submitted data; review by the Universal Service Administrative Company ("USAC"); and finally oversight by the FCC. All of this review occurs in conjunction with the acceptance of submitted company-specific and industry data. Furthermore, the existing process only compensates carriers after a threshold of investment/expense is incurred in excess of a computed "national average cost per loop." This threshold and comparative high-cost basis of recovery would be lost in an auction process and in our view would most certainly lead to increased overall high-cost USF determination in the future.

Based on the above concerns alone, Alexicon respectfully suggests that reverse auctions are not, and will not, become a viable method for the determination of high-cost USF support. As contained in these Comments, Alexicon believes that there are more important and urgent items that should be considered in any review of the Federal USF program.

Alexicon also finds it peculiar that the issuance of this Notice comes at a time when there has been much ongoing publicly quoted FCC and Congressional member concern regarding the urgent need for some type of "reform" to the method of collecting USF funding. These discussions, which have neither currently risen to the level of FCC actions nor passage of Federal legislation, center around potential expansion of the contributor base and have *not* focused upon additional limitations of providing high-cost USF support to ILECs and other Eligible Telecommunications Carriers ("ETCs").<sup>8</sup> It would appear to us to be counter-productive to divert the existing dialogue from the issues of a potentially expanded USF contributor base and to re-open this subject area, as

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<sup>8</sup> 47 C.F.R. Part 54 currently contains several limiting factors toward the recovery of high-cost loop support to eligible carriers.

it was explored and rejected by both the Rural Task Force and again in recent FCC Comments in CC Docket 96-45, Public Notice 20 FCC Rcd 14267 (August 2005 Notice). Neither these nor in any other public forum was any sufficient record developed to support the implementation of reverse auctions as a viable method for high-cost USF funding.

Of a final general comment, Alexicon believes that many of the potential rules, methods, requirements, contractual options, etc. contained in the Attachment (Discussion Proposal) to the Notice<sup>9</sup> may well be considered as “artificial barriers to competition”<sup>10</sup> and may also be contrary to the “rural exemptions for certain rural telephone companies.”<sup>11</sup> While we are cognizant of the Notice footnote 20, we have noted in previous proceedings that items like this “Discussion Proposal” are often indicative of philosophical aspects held by various parties, including Joint Board members. We will therefore make reference to certain of the proposal items.

It is because of these stated objections, and others that we will specifically address as requested in comment specifics, that Alexicon comprehensively rejects the supposition that reverse auctions would somehow benefit the recipients of telecommunications services<sup>12</sup> in rural, insular, and ultimately urban areas of the country in the quest for universal telecommunications service availability to all who seek connection to the PSTN.

## **II. RESPONSES TO SPECIFIC NOTICE QUESTIONS**

### **A. Are there conditions under which reverse auctions for universal service support yield significant benefits to the preservation and advancement of the fund<sup>13</sup>?**

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<sup>9</sup> Notice pg 8-9.

<sup>10</sup> The Act, Section 253, Removal of Barriers to Entry.

<sup>11</sup> The Act, Section 251(f).

<sup>12</sup> Including Broadband and wireless services; in addition to the existing list of mandated USF supported services.

<sup>13</sup> Notice, pp5

Alexicon can see no significant value to the reverse auction process other than as some “artificial” method of attempting to reduce USF outlay. Existing ILECs and ETCs have invested in infrastructure to provide universal service and because of accounting and earnings limitations these investments require relatively long time periods for their economic recovery. These ILECs and other ETC providers, in almost all cases, provide competitive services and pricing options to telecommunications service users as envisioned by the 1996 Act and reverse auctions would appear to reduce rather than enhance competition opportunities.

Furthermore, the very existence of most rural ILECs occurred because the larger price cap carriers elected not to provide telecommunications services in the rural/insular areas of the country. We believe that a reverse auction process, in which some rural/insular carrier may have no winning bidders, might well leave these types of areas without a service provider or cause reduced service capabilities compared to existing ILECs. Under a reverse auction process, absent specific rules and economic incentives, there might not be carriers willing to assume carrier-of-last-resort obligations.

**B. What are major disadvantages of using auctions for determining universal service support<sup>14</sup>?**

In addition to the issues mentioned above, Alexicon believes there are other disadvantages: First, the existing USF high-cost recovery mechanism has provided incentives that ILECs and ETCs have utilized to provide high quality, state-of-the-art telecommunications services, including universal broadband access to rural and insular portions of the country. Second, the existing system has encouraged competition to expand to geographic portions of rural/insular areas, both in wireline and in wireless services. Both of these would undoubtedly suffer under a regime that discouraged multiple providers in recovering what otherwise would be uneconomical service provisioning costs.

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<sup>14</sup> Notice, pp5

**C. Whether and how (would) a competitive bidding proposal serve to preserve and advance universal service and remain consistent with these important statutory goals, including rate comparability and affordability<sup>15</sup>?**

Alexicon believes that the auction process would likely be counter-productive, from both a legal and practical basis, to many items in the Act.<sup>16</sup> There is neither certainty that there would be bidders in all geographic areas nor is there any evidence that under a reverse auction scenario the bidders would bid rates that would reduce high-cost recovery.

Indeed, as suggested in the Notice Attachment, based on the “minimum ten (10) year serving terms” and “negotiations” concepts, overall USF high-cost outlays may well increase. Furthermore, Alexicon questions 1) how the losing bidder(s), if they were already providing telecommunications services, would be incented to continue providing service?; 2) what basis would be provided for their relinquishment of service territory, including recovery of sunk costs?; and 3) under what basis in the auction process, assuming that the successful bidder has costs in excess of existing providers (who might choose not to bid/compete), would the consumer be assured that retail rates would not drastically increase or become non-compatible with similar services in urban areas?

Again, it appears that these possibilities continue to not be factored into any consideration of potential offsetting advantages that reverse auctions might offer. Without much greater exploration of these issues, and absent the gathering of empirical data, it is impossible to “guestimate” how reverse auctions may work, how true economic benefits are provided to the USF process through reverse auctions, or how/if they may conflict with existing laws and rules.

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<sup>15</sup> Notice, pp6

<sup>16</sup> 47 U.S.C. 254(b), 254(b)(5), 254(b)(1), 254(b)(3) & 254(e).

**D. What would be the appropriate roles of the Commission, the State Commissions, and the Universal Service Administrative Company (USAC)?**

Alexicon is most concerned regarding the role(s) of State Commissions under a regime of reverse auctions. Many states currently have their own state-specific high-cost/universal service fund, and unless they all acquiesced to any proposed Federal reverse auction program there would be a hodge-podge of potentially overlapping/conflicting rules and eligibility standards for high-cost recovery. We believe it highly unlikely that all states would agree to the reverse auction process, and most assuredly not on the same schedule as the FCC. The role specified in the Notice Attachment<sup>17</sup> appears to us to be one that most states would not be very willing to accept - that is only to “recommend to the FCC the choice of the winning bidder.” Where states have their own universal high-cost service fund they would surely want to retain the existing level of greater control over expenditure of state-generated funds. The potential that could be created allowing separate federal and state successful high-cost bidders would be a totally unacceptable outcome in any reverse auction process and be counter-productive, negating any economic advantages.

The overall roles of the FCC and USAC would appear not to greatly differ under reverse auctions, except for the lengthy process to revise and replace existing Part 54 Rules, etc. The time and cost expended in these efforts must also be factored into any assessment of reverse auction economic benefits.

**E. How (would) competitive bidding comport with the ETC process established by the Act and the Commission<sup>18</sup>?**

Alexicon believes that the competitive bidding process is contrary to the Act, and that it would require Congressional legislative action changing the Act to allow it to occur. Based upon both the original timeframe that it took to pass the 1996 Act from its initial draft, and given several attempts since then to modify the Act, we believe that the overall

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<sup>17</sup> Attachment, pg 9, VIII. The Role of State Commissions.

<sup>18</sup> Notice, pp 7.

time involved in the entire legislative and regulatory processes to implement any sort of reverse auction far out-weigh any possible benefits that might accrue to it.

**F. Supported Areas: targeted support; appropriate geographic support; optimal criteria to indicate the appropriateness of auctions in an area; and could auctions be used in some areas, but not in others<sup>19</sup>?**

Alexicon believes that if reverse auctions were to become the appropriate method to determine eligibility for USF high-cost recovery it must be done on a universal basis. We do not believe that sufficient neutral criteria could be developed to utilize reverse auctions only on a partial basis.

We believe that the price-point of the winning bidder should not be the sole criteria for award, as suggested in the Notice.<sup>20</sup> Service quality and overall service availability must be major factors in any evaluation process. These factors must be supported by a verifiable track record of the bidder, not based on “future promises.” To ensure compliance with service standards, adequate performance bonding, or other satisfactory performance, insurance measures must be put in place.

The appropriate geographic area for an auction would logically be the ILEC’s existing service territory (or certificated area), and not contain provisions to partition or subdivide these areas to reduce the successful/awarded bidder’s responsibility for adequate coverage of an area. Only under extreme circumstances, where repeated efforts have yielded no responsible bidders, might there be consideration for alternatives to the reverse auction process, such as retention of existing funding methods. These exceptions must be clearly spelled out in the overall auction process rules and then applied on a uniform basis.

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<sup>19</sup> Notice, pp 8

<sup>20</sup> Notice, pg 8

**G. Optimal Auction Structure: optimal term; any phase-in between the winner of the last auction and the winner of the next; what happens if the auction process does not result in competitive bidding; what constitutes an auction failure, and what should be the basis of support in those cases<sup>21</sup>?**

Alexicon believes that the optimal term of an auction must recognize the required period for the successful bidder to economically, and in compliance with appropriate accounting standards, recover their investment dedicated to the supported high-cost infrastructure. This period has to recognize the technological and economic life cycles as well as competitive realities of each market area. These may be different dependent upon the service provided, the geographic serving area, competitive service providers and other related factors. These may also cause different auction contract periods/terms as opposed to a single uniform time period throughout all auction activities.

Phase-in must be provided between auction period winners and incumbent service providers as the unsuccessful bidder may wish to withdraw from the subject service territory. This changeover can not be accomplished without the potential for major customer service disruption that might occur on a “flash-cut” basis. This timeframe will vary by type(s) of service provided, ownership and extent of relevant infrastructure, number of customers affected, size of the area, and many other factors. Again, each circumstance will be different enough that allowances must be made in the phase-in period to reflect a myriad of issues.

A major concern is the inability, or ultimate unwillingness, of a successful bidder to actually fulfill their service obligations under their bid and contract. Although there may be a variety of financial incentives or disincentives put in-place to try to assure compliance with all bid terms, it is the protection of customer services that is of paramount importance in this process. Alexicon is concerned that if a bidder fails in service quality or is unable to provide sufficient quantities of services, what recourse will the customer(s) have? Who and how quickly can another provider offer, or be required, to provide service? These are not hypothetical questions but rather have occurred on

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<sup>21</sup> Notice, pp 9

multiple occasions by the failures of some ETCs to deliver on their service promises, leaving consumers as the ultimate losers. These concerns and real possibilities must be resolved prior to any change of service provider caused by any auction process.

The issue of “lack of competitive bidders” that may significantly increase the high-cost support outlay must be considered as a potential realistic outcome in rural/insular areas. As previously discussed, these geographic areas are not normally considered to be concentrated economic investment areas and many are not likely to draw qualified bidders who would provide service(s) at costs less than existing ILECs.

These are all complications that are not inherent in today’s system of high-cost determination and recovery and of themselves may present insurmountable obstacles to implementation of any successful auctions and/or the ability to produce any significant high-cost recovery savings.

#### **H. Quality of Service Obligations and Enforcement<sup>22</sup>?**

As previously mentioned, Alexicon believes that these areas are critical to any change in the high-cost recovery process. The nature of the auction process is that it is highly likely that existing multiple service providers (competitive providers) would cease operations in cases when they no longer qualify for high-cost recovery. In many areas it is competition, or the threat of competition, that helps maintain existing high levels of consumer service satisfaction and provides incentives for increased technological service advances and enhancements. In spite of many existing state and federal service quality standards, it often is either a combination of competitive pressures, peer pressure, pride in service quality, or the ability to achieve a fair rate of return on investment that drives companies to invest in infrastructure needed to provide unmatched customer service. If the auction process reduces, eliminates or minimizes any or all of these items, the related incentives for continuing great customer service may diminish accordingly. Customer service standards should be the underlying and most critical factor in auction success,

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<sup>22</sup> Notice, pp 10

followed by potential cost savings, and these may be the most difficult standards to enforce on a long term basis.

### **I. Multiple Support Winners<sup>23</sup>?**

Alexicon is somewhat perplexed by these questions relative to the “Discussion Proposal” and its suggested potential limitation on the number of support winners. Alexicon believes that any limitation of support winners, or specifications related to the number of supported service providers, is both anti-competitive and poses artificial barriers to entry contrary to the Act.<sup>24</sup> Furthermore, we believe that the Discussion Proposal also violates Section 254 (c). To attempt to arbitrarily define the number and type of service providers seems counter-productive to actions taken over the past ten years related to assuring high quality and compatibility of services between urban and rural/insular areas.

This potential treatment of multiple support winners, or limiting the number of winners, may also cause unintended economic harm to not only existing service providers but also to a wide range of private and public debt and equity holders of existing service providers.<sup>25</sup>

We also remain concerned with the Discussion Proposal’s references to specific technologies (broadband and wireless) since current requirements for high-cost recovery are basically technology neutral. Alexicon does not understand why there is any suggestion toward the imposition of these specific services/technology items and why there are proposed limitations to a number of providers and services. The inclusion of items like these provided in the Notice is both unsupported and not logically explained.<sup>26</sup>

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<sup>23</sup> Notice, pp 11

<sup>24</sup> 47 U.S.C. Section 253

<sup>25</sup> Many existing ILECs have federally funded, or guaranteed, debt through the Rural Utility Service as well as investors, private bank debt, and other debt instruments-all which could be at increased risk under auctions.

<sup>26</sup> Attachment, II

## **J. Selection of Winning Bids<sup>27</sup>?**

As previously discussed, Alexicon believes that price alone should not be the sole criteria for a successful bid. The demonstrated ability to provide quality service as well as satisfactory service availability on a timely basis must be equally important criteria for bid selection. Any additional criteria demonstrating a bidder's ability to successfully be proficient in enhancing or adapting its service and technologies to changing market and regulatory requirements should also be considered.

The impact to both consumers and the existing ILEC are final criteria to be considered in selection of winning bidders if the replacement of the ILEC is contained in this process. It simply cannot be ignored. To suddenly replace a demonstrated successful ILEC who has invested significant resources for a significant period of time to provide quality service in rural/insular regions deserves serious consideration. It must be factored into reverse auction award contemplations.

## **K. Treatment of the Incumbent ILEC<sup>28</sup>?**

The issue of potentially stranded investment of existing ILECs, made under existing USF high-cost rules and other federal/state regulatory, legal and "social contract" requirements, must not be ignored. This issue is furthermore complicated considering the nature of cooperative companies<sup>29</sup> and the many small family-owned entities that are providing supported services and receiving high-cost USF funding. These companies usually have state carrier-of-last-resort obligations that would not likely immediately disappear under a federal auction/winning bidder process.

There must be accommodations made within any auction process that allows for the continuation of ILECs receipt of high-cost USF funds through the recovery period relative to the total recovery of their existing infrastructure investment.<sup>30</sup> One also must

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<sup>27</sup> Notice, pp 12

<sup>28</sup> Notice, pp 13

<sup>29</sup> Owned by their member customers and often heavily financed by federally backed or guaranteed funds.

<sup>30</sup> This is also complicated by the existing lag in recovery of high-cost investment and expense related to the period the cost is incurred, when it is reported under Part 54 Rules, and when the proportional yearly expense adjustment (cash flow from USAC) is received by the company. This is also further affected by the

consider the need for modifications of state rules and regulations affecting both ILECs and ETCs, as well as other related requirements contained in the 1996 Act,<sup>31</sup> in reverse auctions.

#### **L. Attachment-Discussion Draft<sup>32</sup>?**

As referenced throughout our Comments, Alexicon believes this Discussion Proposal is extremely deficient in both content and intent, and we essentially reject the specifications therein. As we are adamantly opposed to the reverse auction concept, and have seen no empirical data or applicable real-world examples in its support, we decline to offer any comprehensive alternative to this proposal. We do, however, suggest that *if* any auction plan is to be implemented, significant efforts will be required to develop rules and regulations that are both legal under the 1996 Act and are acceptable to all state regulators, neither of which we believe are adequately covered in the Discussion Proposal.

### **III. CONCLUSION**

Alexicon, as noted throughout these Comments, respectfully rejects the concept of reverse auctions as any solution to current high-cost USF funding. We question the issuance of this Public Notice and note that we are unable to detect significant changes in the Federal USF program. In addition, we are unaware of any new empirical evidence that warrants the reopening of this subject.

We believe that there are other areas that could be further explored that would enhance the continued success of the Federal high-cost USF. For example, in our opinion the removal of the existing high-cost recovery cap would be more productive to the ongoing dialogue in support of the existing successful high-cost USF than any continued efforts related to reverse auctions.

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normally long (10-20 year) periods in which high-cost related investments are depreciated and recovered in the rates and USF processes.

<sup>31</sup> Section 251, Section 253, & Section 102

<sup>32</sup> Notice footnote 20 & pgs 8-9

Present Federal USF high-cost funding levels and computation methods are generally allowing high-cost USF ILEC and ETC recipients to provide high quality, affordable, and urban-comparable telecommunications services in rural and insular areas.

Of final note, Alexicon, as stated in previous FCC Comments , continues to believe that there should be a comprehensive proceeding that addresses, and possibly resolves, a myriad of issues that are currently affecting the telecommunications industry including Intercarrier Compensation, Federal Universal Service Funding ( including resolution of wireless and VoIP issues), and Separations Reform.

**Respectfully Submitted,**

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