Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	**)**	
	)	WC Docket No. 05-337
High-Cost Universal Service Support	**)**	

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON THE USE OF AUCTIONS TO DETERMINE HIGH-COST UNIVERSAL SERVICE SUPPORT

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October 10, 2006

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I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal-State Joint Board on Universal Service ("Joint Board"),[1] the National Association of State Utility Consumer Advocates ("NASUCA"[2]) offers these comments on the notion of determining universal service support in high-cost areas using "reverse auctions." In a reverse auction, "the bidder is specifying the amount of money it must receive to provide universal service in a given area for a given period of time,"[3] in contrast to a standard auction, where the bidder is specifying the amount that it is willing to **pay** for a good or service.

[1] FCC 06J-1 (rel. August 11, 2006). The Public Notice was published in the Federal Register on August 25, 2006.

[2] NASUCA is a voluntary national association of more than forty consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[3] Public Notice, ¶ 2, n. 1.

The Public Notice uses the terms "reverse auction," "auction," and "competitive bidding" interchangeably.[4] This is understandable, and reasonable.

At its base, the Public Notice raises the question of whether an auction process can be used in order to meet the purpose of the current high-cost fund,[5] that is, to ensure that customers in rural areas have affordable rates and services that are reasonably comparable to those seen in urban areas.[6] In other words, without the auction-determined amount of support, would rates and services in the area supported be reasonably comparable and affordable?[7]

Alternatively, if one accepts the proposition of many rural carriers that the purpose of the high-cost fund is to support their networks -- presumably so that they can offer those reasonably comparable rates and services -- then the question becomes one of devising an auction system that will support those networks at minimum cost, if that is possible. And, as the Public Notice acknowledges, the support could, in fact go to multiple networks.[8] This would suggest that an auction system would be as complex, if not more so, than the current system.

The Federal Communications Commission ("FCC" or "Commission") has noted

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[4] Id.

[5] Id. at 2.

[6] 47 U.S.C. 254(b). It is not clear how an auction could ensure reasonably comparable and affordable services when the Federal Communications Commission ("FCC" or "Commission") has not yet defined those terms. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 ("96-45"), Notice of Proposed Rulemaking, FCC 05-205 (rel. December 9, 2005), on remand from *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

[7] It should be noted that the concept of an auction-based universal service fund ("USF") is diametrically opposite the approach to universal service taken in the Missoula Plan, where support represents nothing more than a replacement for carrier revenues lost as a result of reducing intercarrier compensation.

[8] Public Notice, ¶ 3.

the theoretical value of auctions as a "market-based" solution to universal service issues.[9] One could look at this approach as bringing a market-based solution to an area that may show evidence of market failure; that is, where the market has not allowed affordable rates and services that are reasonably comparable to those seen in urban areas. On the other hand, auctions could be viewed as a market-based solution -- imposed for public interest purposes -- for areas where the market has operated perfectly in an economic sense, but imperfectly in an equitable sense. Either way, the possible contradictions should invite caution, not precipitous action.

There should be no question that adopting an auction-based mechanism should not be considered unless it can be shown that this action would reduce the size of the high-cost fund. NASUCA awaits presentation of estimates of such reductions. One would hope that those estimates would include the cost of implementation of such a radically different support mechanism.[10]

On a related note, apart from the issue of how to define the areas that would be included in an auction,[11] there is the issue of whether geographic areas that do not currently receive universal service support would have to be subject to the auction process. If the goal is reducing the cost of the system, then an auction process would have to begin with only those areas that currently receive high-cost support.[12]

Looked at from those perspectives, it should be understandable that NASUCA is

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[9] 96-45, Report and Order, 12 FCC Rcd 8776, 8948 (1997) ("*Universal Service First Report and Order*") (subsequent history omitted), ¶ 320.

[10] NASUCA has consistently proposed incremental changes in the USF.

[11] See Section II.

[12] Areas that receive only Interstate Access Support and Interstate Common Line support would probably have to be excluded from eligibility, because those mechanisms have a limited relation to cost.

skeptical of the possibility and practicability of an auction mechanism. Indeed, when in 2003, the Joint Board asked for comment on, *inter alia*, auctions,[13] NASUCA opposed the use of auctions for universal service purposes.[14]

The subject of auctions was one of a multitude of issues included in the 2003 Public Notice,[15] so it is understandable that no party spent a lot of time on the issue. But no commenting party supported the use of auctions, and a wide variety of parties outright opposed the concept.[16] No further action has been taken on the issue since then.

One would expect that the issues around the subject of auctions would not have changed significantly since then. So then the question is, why re-examine the issue? The Public Notice provides no reason -- especially no new reason. (The questions in the Public Notice cover the same territory as the auction questions in the 2003 Public Notice.)

The Commission examined the issue -- under significant time pressure -- in the 1996-1997 rulemaking that led to the *Universal Service First Report and Order*.[17] The Commission said it would be looking at the issue again, but has not. So again, the

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[13] 96-45, Public Notice, 18 FCC Rcd 1941 (2003) ("*2003 Public Notice*"), ¶ 20.

[14] NASUCA Reply Comments (June 3, 2003) at 35-37.

[15] 2003 Public Notice, ¶¶ 8-9, 11-19, 21-25, 27-35.

[16] Initial comments (filed May 5, 2003): Alaska Telephone Association Comments at 18-20; Fred Williamson and Associates Comments at 27-29; GVNW Comments at 10-11; Nebraska Rural Independent Companies Comments at 16-17; NTCA Comments at 17-19; OPASTCO Comments at 28-31; Texas Statewide Telephone Cooperative Comments at 10. Reply Comments (filed June 3, 2003): Alaska Telephone Association Reply Comments at 2; GNVW Reply Comments at 7-8; Minnesota Independent Coalition Reply Comments at 10-11; NTCA Reply Comments at 22; OPASTCO Reply Comments at 18-19; RICA Reply Comments at 11; South Dakota Telecommunications Association Reply Comments at 6. The only party not to oppose was Western Wireless, which merely said that the issue should be evaluated. Western Wireless Comments at 18. Verizon responded by saying that if auctions were used, it should be as a means to drive down the cost of the fund. Verizon Reply Comments at 11.

[17] *Universal Service First Report and Order*, ¶ 320.

question is, why re-examine the issue at this time?

Then in 1999, the Commission sought comment on the targeted question of using auctions for tribal and unserved areas.[18] Indeed, in the *Unserved/Tribal Areas NPRM*, the Commission included an extensive discussion of methodologies and an appendix that described a number of the auction proposals and actual uses of auctions in telecommunications.[19] Yet in 2000 the Commission did not resolve the issues related to auctions raised in that Notice when it adopted measures to promote subscribership and infrastructure deployment on tribal lands.[20] Given this experience, it is certainly reasonable to ask why this issue is being revisited now.

For the purpose of a complete record, however, NASUCA will first quote its 2003 Reply Comments, and then expand on some of the points made therein:

> An auction mechanism would be worthy of consideration only if there existed multiple ETCs already capable of providing interchangeable "carrier of last resort" service to all persons in a service area. Regardless of policies that aim to create competitive neutrality with respect to high-cost support, the telecommunications market in most of the U.S. is not yet at the point [that] any single provider is available to, or required to, provide ubiquitous service as reliably as the ILEC. NASUCA agrees with OPASTCO that services of different types of ETCs are not necessarily substitutable for one another. Moreover, if an auction were to be won by a non-ILEC, there would be substantial and sudden shifts of revenues that would require undue regulatory intervention.
>
> Even if multiple qualified carriers were available to bid in an ETC auction, NASUCA believes that the service being bid upon -- long-term reliable service -- is not amenable to an auction mechanism

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[18] 96-45, *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21217-24 (1999) ("*Unserved/Tribal Areas NPRM*"), ¶¶ 93-114.

[19] Id., and Appendix D.

[20] *See generally* 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

> which is better suited to relatively short term contracts. RICA also correctly observes that, under an auction scenario, support would no longer be predictable, as required by the Act. NASUCA agrees with OPASTCO that provision of reliable and ubiquitous service requires long-term investment decisions. While ILECs should be subject to competitive losses under changing industry circumstances, auctions have the potential to create sudden artificially induced winners and losers. Therefore, an auction system would not be likely to bring simultaneous viable choices to rural customers comparable to those in urban areas, as intended by Congress.
>
> Any winner of an ETC auction would not have incentives to make long-term investments in facilities or to provide good customer service, if that carrier's obligations were subject to elimination after a short period of years. Similarly, any long-term contract awarded to a single firm would detract from competitive opportunities that could develop during the term of the contract. Assuming the ILEC is the likely winner of an auction, the expected result will be a reversal of recent policies to enhance competition in rural areas and to provide support in a competitively neutral manner. On the other hand, it is difficult today, to imagine a wireless provider being designated as a provider of last resort. In either case, [the] potential harm is greater than the potential benefit that could be expected by limiting costs through an auction process.
>
> NASUCA agrees with those commenters that expressed concern about the incentives for degradation of quality by any entity that wins an ETC auction. An entity offering the lowest bid may have a direct incentive to decrease service quality. MTA warns of a "race to the bottom" with respect to quality and availability of services that could result from an auction process. By awarding the right to receive support to one entity, the incentive to compete for support would be eliminated. NASUCA cited the benefits of competition over each primary line designation in its initial comments. Auctions, however, fail to provide any of the most important incentives, as noted by commenters such as ATA, GVNW and OPASTCO.[21]

These are all reasons not to adopt an auction process. And, unfortunately, at this point most of the Joint Board's questions simply provoke additional questions.

[21] NASUCA Reply Comments (June 3, 2003) at 35-37 (footnotes and citations omitted).

II. SUPPORTING MULTIPLE CARRIERS AND MULTIPLE NETWORKS

Assume an auction. Carrier X wins the auction, for $10 per line in monthly support.[22] In a "traditional" reverse auction (if there were such a thing), Carrier X would get all the support for the area.[23] So what happens to Carrier Y, which also serves the area? And, especially, what happens if Carrier Y is the ILEC that has served the area for over a hundred years, has a network throughout the area, and -- pursuant to state law -- is the carrier of last resort for that area?[24] These are questions for which the answer probably depends on state law, but should greatly influence the Commission's decision.

One part of the answer, however, is found in 47 U.S.C. 214(e)(4), which provides that

> [a] State commission … shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission … of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission … shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission … shall

[22] If support were not based on the number of lines to be supported, what would it be based on?

[23] The Public Notice asks about the results of an auction: "[I]f two bids each meet all minimum requirements, must the lower bid be selected, even if the higher bid includes higher quality of service or greater service capabilities?" Public Notice, ¶ 12. Obviously, it depends how "non-monetized" factors like service quality or service capabilities are valued in the auction process. This would be one more complication among many.

[24] See Public Notice, ¶ 13.

> establish a time, not to exceed one year after the State commission … approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.[25]

An ETC that has been receiving support would probably want to give up its ETC obligations if it ceased to receive that support. Thus the transition issues -- requiring the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served -- would have to be addressed in any such situation.

The Public Notice asks a number of questions about the situation where there would be multiple "winners" for a given area.[26] Indeed, the Public Notice includes a "Discussion Proposal" that holds out the possibility that there would be **two** winners in an auction, providing somewhat different services -- hence two networks that would be supported.[27] It is not clear how this would necessarily act to limit the current fund -- other than, perhaps, to eliminate support to the multiple wireless carriers that currently receive support based on the incumbent LEC's costs. Beyond that, there would be a possibility for more carriers to collect from the USF than do now.

If there were only one winner for an auction, and no other ETC will receive any support,[28] this raises the question noted earlier of what happens to the loser, especially if the loser is the ILEC.[29] Obviously, one attempt at a solution would be a phase-down or

[25] The statute provides for Commission action where states may lack jurisdiction.

[26] Public Notice, ¶ 11.

[27] See "Services and Number of ETCs Supported." The Discussion Proposal is discussed in Section __, below; for now it suffices to note that under the Discussion Proposal one network would include broadband functionality and the other would be a mobile network.

[28] As with the current system, only ETCs should be able to obtain universal service support.

[29] This is also key to the discussion of the term of the auction's effective period, discussed in Section III.

phase-out of current support levels. Equally obviously, the length of the phase-down period would have a great effect on whether the auction would result in a reduction in the amount of support provided by customers elsewhere and received by the winner of the auction.[30]

The possibility of multiple winners would obviously have a significant influence on the amounts bid. A carrier that expected to receive all of the support in an area would bid differently from a carrier that expected to have to share the support.[31] This would make the bidding process fraught with a greater than usual level of uncertainty.

If there are to be multiple winners (supported providers) in a particular area, then questions raised under the current system become even more important. For instance, under the current system competitive ETCs receive support based on that received by the incumbent.[32] This has been the subject of much dispute under the current system, and it seems unlikely that the disputes would diminish under an auction system.

Even more problematic is the question of how such support would be awarded either to carriers that bid but didn't win, or to carriers that did not even bid. If support were awarded based on each carrier's bid, then there would be no way to determine a "winner." If support were to be awarded to multiple carriers based on the lowest bid,

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[30] The Joint Board asks if an incumbent LEC that lost an auction would be relieved of certain pricing, service, carrier of last resort, or other regulations, and how an auction mechanism would avoid stranded investments. Public Notice, ¶ 11. The services supported by the USF are local question. The decision on how and when to regulate the ILEC and how and whether to address the stranded investment issue would be up to the states with jurisdiction over those issues.

[31] In Appendix D of the *Unserved/Tribal Areas NPRM*, a number of examples of traditional auctions with multiple winners were set forth, e.g., spectrum auctions and FTS-2000. There, however, a winner would not be obligated beyond its bid. Things might work differently in a reverse auction for universal service support.

[32] For rural carriers, the support is based on the ILEC's embedded costs; for non-rural carriers, the support is based on a forward-looking cost model that does not reflect competitors' costs -- especially the cost of wireless carriers.

why would any carrier bid, knowing that it might have an obligation as a "winner" even if the winning bid were substantially below its own bid?

The Joint Board asks how competitive and technological neutrality can be achieved through auctions.[33] One response is that technical neutrality is **not** found in a system that preselects a technology, such as one that reserves a place for mobile carriers.[34]

The Joint Board asks for comment on the appropriate geographic area for support.[35] The choices range from a carrier's entire service territory in a state, to a metropolitan statistical area, to a wire center, or perhaps even more granularly. At this point, one thing is clear: unless the mechanism is based on the current system -- study areas -- there will be additional costs of transition. Yet it is clear that the service areas of various carriers do not match up: ILEC territories[36] do not match cable franchises or wireless serving areas.

An auction-based USF would have to be based on a tight framework for both process and substance. The central question of which areas are those where auctions could be used effectively, and which not[37] is in itself daunting. An auction mechanism would certainly be no simpler than the current mechanism with its mendable flaws.

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[33] Public Notice, ¶ 11.

[34] See id; see also Discussion Proposal at II.

[35] Public Notice, ¶ 8.

[36] It does not appear that CLEC territories necessarily coincide with ILEC territories, either.

[37] Public Notice, ¶ 8.

III. THE TERM OF AN AUCTION WOULD HAVE TO BE LONG ENOUGH TO ENCOURAGE INVESTMENT IN THE HIGH-COST AREA.

The statute directs that support be sufficient and predictable.[38] If the term for which support is awarded is too short, the resultant support will be neither sufficient nor predictable. Further, a carrier that knew its support could vanish next month or next quarter or even next year would certainly be unwilling to make the long-term investments required to enable quality service at reasonable rates.

On the other hand, as the Commission has acknowledged, an auction term that is too long is also to be avoided.[39] As if things weren't complicated enough, it is probably true that the length of the appropriate term varies by the cost of serving the area. It may be that the term of the support commitment may have to be another condition of the auction.[40]

IV. APPLYING A MARKET-BASED SOLUTION TO A MARKET-FAILURE SITUATION

In the *Universal Service First Report and Order*, the Commission addressed the use of competitive bidding mechanisms for universal service purposes, stating, "[w]e agree with the Joint Board and the commenters that a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal

[38] As previously noted, those terms are as yet undefined. See footnote 6, supra.

[39] *Unserved/Tribal Areas NPRM*, ¶ 109.

[40] The Joint Board asks if there should be any phase-in of responsibilities between the winner of the last auction and the winner of the next auction. Public Notice, ¶ 9. There would definitely need to be a phase-in for the very first auction in an area; there would also likely need to be a lesser phase-in between auction terms after the first.

service support, if any, for a given area."[41] After all this time, is it not possible that this doctrinaire predilection for market-based approaches might be -- in this context -- somewhat misplaced? Given the incredibly complicated regulatory details that would have to be resolved and implemented in order to replace the current system with an auction/reverse auction/competitive bidding system, it does not appear that the gains in terms of ideological purity are worth the costs of implementation.

The Public Notice states:

> In many contexts, auctions have been used as a way to introduce market forces into the allocation of scarce resources. Generally, proposals to use auctions in the universal service context contemplate competitive bidding for the obligation to serve a specified area at an acceptable quality of service for a specified term, with the benefit of receiving universal service support to do so. By limiting the number of supported networks in each area and selecting the most cost-effective proposal(s), auctions could minimize the burden on customers providing the support.[42]

It should be clear that there are easier ways to limit the number of supported networks in each area and to select the most cost-effective proposals for support. Most of those ways have already been submitted to the Joint Board and the Commission.

The "scarce resource" referred to in the quotation is the support dollars paid by consumers around the country. NASUCA certainly agrees that this support should be treated as a resource not to be wasted, and we have, over the years, proposed a number of means by which the scarce resource could be conserved. Under the circumstances, however, it does not appear that the market forces included in an auction mechanism will be any better at meeting the purposes of universal service support than the current mechanism, especially if the current mechanism evolves consistent with NASUCA's

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[41] *Universal Service First Report and Order,* ¶ 320.

[42] Public Notice, ¶ 4.

proposals.[43]

As previously noted, with the *Unserved/Tribal Areas NPRM*, the Commission included an appendix that described various of the previous auction proposals but also provided information about some "real-life" auction systems. At this point, it should be sufficient to note that most of the historical examples were radically different from the nationwide reverse auction system that would be needed to replace the current support mechanism.[44] The only domestic example given was Hawaii, but it appears that the process never actually came to fruition, with the winning bidder eventually withdrawing from the deal.[45] A recent comprehensive report on state universal service funding by the National Regulatory Research Institute gives no indication that any state utilizes an auction-type system for universal service.[46]

One hopes, for the sake of discussion, that the Public Notice will elicit the real-world examples of auction processes that it seeks. Based on the history of this issue, however, NASUCA is not confident of such a result.

V. LEGAL ISSUES

The Joint Board summarizes the legal framework that must be considered by the Commission in this and other universal service inquiries:

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[43] See Public Notice, ¶ 5.

[44] E.g., spectrum auctions (*Unserved/Tribal Areas NPRM*, ¶¶ 175-180), auctions for government telephone systems (id., ¶ 181-184), cable franchises (id., ¶ 185-187), and essential airline service. Id., ¶¶ 188-189. The examples from Chile and Peru do not appear comparable either. Id., ¶¶ 173-174.

[45] See http://starbulletin.com/1999/07/20/business/story1.html.

[46] See "State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey" (July 2006), available at http://www.nrri.ohio-state.edu/Telecom/state-universal-service-funding-mechanisms-results-of-the-nrri-s-2005-2006-survey/.

> The Act instructs the Joint Board and the Commission to base their policies for the preservation and advancement of universal service on a set of defined principles. For example, section 254(b)(5) directs the establishment of specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service. Rates for quality services shall be just, reasonable, and affordable. The Act also establishes that through universal service, consumers in all parts of the country should have access to reasonably comparable services at reasonably comparable rates. The Act also requires that universal service support be "sufficient" to achieve the universal service goals of the Act.[47]

The Joint Board seeks "comment on whether and how a competitive bidding proposal would serve to preserve and advance universal service and remain consistent with these important statutory goals, including rate comparability and affordability."[48] As previously noted, with so many of the key universal service terms from the Act still not officially defined (after ten years), it is even more difficult to see how an auction-based system could be an improvement over the current mechanism. NASUCA expects to reply to other parties' claims for the legality (or illegality, for that matter) of general or specific auction proposals.

VI. COMMENTS AND QUESTIONS ON DISCUSSION PROPOSAL

The Public Notice included an example of an auctions proposal that includes some of the level of detail that the Joint Board is seeking from interested parties,[49] "solely for the purpose of encouraging a constructive dialogue about how a universal service

[47] Public Notice, ¶ 6 (footnotes omitted).

[48] Id.

[49] Id., ¶ 14. The proposal in the attachment is, not as a final proposal. The attachment is not endorsed by any member of the Joint Board.

auction might be structured and operate."[50] NASUCA includes the Discussion Proposals verbatim below, and submits its comments and questions by inserting them in the margin at the appropriate spots in the text. These comments and questions are not intended to be exhaustive.

Discussion Proposal

I. Purpose

This option proposes a cooperative federal-state program to introduce market forces into the universal service program by requiring competitive bidding for support. By limiting the number of supported networks in each area and selecting the most cost-effective proposals, the burden on customers providing the support would be minimized.

II. Services and Number of ETCs Supported

Section 254(b) of the Communications Act requires that consumers in rural areas have access to services, including advanced telecommunications and information services that are reasonably comparable to those available in urban areas. The current universal service program directly or indirectly supports traditional telephone service, broadband internet access, and wireless mobility. These would be the services supported in the competitive bidding option. No more than two ETCs would be supported in each area. Both ETCs would be required to support basic voice. One would be required to provide broadband internet access in addition to voice service and the other would be required to provide wireless mobility service in addition to voice service.

III. Universal Service Requirement

An ETC would be required to provide service universally, unless it obtained a waiver. Its own network would have to be capable of providing service to 90% or more of the households in the area supported, although this requirement could be phased in during the contract period. The ETC would serve the remaining households, whenever possible, by purchasing and reselling the most nearly equivalent service available from another vendor. For example, the broadband ETC would be required to purchase cable or satellite service where available and resell it to consumers not accessible by its own network at the same price charged for its own service. This would include a requirement to install, maintain, and lease any required terminal equipment.

IV. Contracts with ETCs

All proposals would be evaluated for compliance with the requirements in the RFP. A winning and runner-up bid would be selected on the basis of multiple criteria, not limited to price. Contract negotiations would then begin with the winner. If an acceptable contract were not agreed to within 90 days, the universal service program representative would have the option to enter into negotiations with the runner-up, in addition to or in

[50] Id., n. 20.

lieu of continuing negotiations with the winner.

The FCC would establish rules governing the contents of these contracts and, to the extent possible, standardize the provisions. The contracts would be for a ten-year term and would specifically address all of the requirements contained in Section 254 of the Communications Act, viz. service quality, comparable rates, services offered, etc.

The contract would require the ETC to relinquish or share at fair market value any essential facilities or rights in the served area at the end of the contract term without which a winning bidder for a subsequent term would not be able to provide universal service. If necessary, an arbitrator would make the determination.

The contracts would require performance bonds and provide for penalties in the event of non-performance; repeated violations could result in early contract termination and the ETC would be prevented from rebidding.

V. Phase-In

Incumbent ETCs—could elect an option to be treated as the winning broadband network bidder in their current service areas for the first ten year term. For this purpose, the service area would be the operations of the company in a state. They would have to meet all of the ETC requirements in return for annual universal service support equal to the support they actually received for the most recent full year plus an allowance for inflation. In the event that a suitable contract could not be agreed to between the rural ETC and the entity representing the universal service program, the normal competitive bidding process would be conducted for the area.

Competitive ETCs (i.e., wireless mobility providers)—would be subject to the normal competitive bidding process immediately.

VI. Universal Service Geographic Areas

The basic geography would be counties or equivalent, subject to an exception for rural incumbents described below. Bids could be for a single county or for groups of counties at the bidder's option. The bid could be made contingent on receiving support for the entire group of counties.

Rural Incumbent Carrier Exception—Incumbent carriers who meet the definition of a rural telephone company in the Communications Act could make bids covering their current franchised service area notwithstanding the fact that they do not serve entire counties.

VII. Non-competitive bidding

If in the opinion of the responsible entity the bidding for a particular area was not competitive, it should have the right to reject all bids and enter into negotiations with any potential provider, including companies that did not bid. The receipt of only one qualified bid would be considered prima facie evidence of non-competitiveness.

VIII. The Role of State Commissions
States should be the responsible entity for recommending to the FCC the choice of the winning and runner-up bidder. Upon approval by the FCC, they would also be responsible for negotiating the contract with the winning or runner-up bidder, as described above. This contract would be subject to FCC approval.

The State Commission would also be responsible for ongoing contract administration, and, when necessary, applying sanctions. All State commission decisions would be subject to FCC review.

This role would not involve receiving or disbursing universal service funds, a function that would continue to be performed by USAC or a successor designated by the FCC.

VII. SUPPLEMENTING THE RECORD

The Public Notice also asked commenters to supplement the record "with respect to any additional issues or facts that have been raised since the previous comment periods closed."[51] Specifically, the request is for supplemental comment on three subjects set forth in the August 2004 Public Notice: (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges.[52] The Public Notice also requests supplemental comment on several proposals for addressing the three issues submitted by

[51] Public Notice, ¶ 2.

[52] Public Notice, ¶ 2, n. 3, citing 96-45, Public Notice, 19 FCC Rcd 16083 (2004) ("August 2004 Public Notice").

individual Joint Board members and staff members.[53]

At this point, NASUCA reiterates its support for its comments submitted in response to the August 2004 Public Notice[54] and the August 2005 Public Notice,[55] and does not believe that any supplementation is required. NASUCA reserves the right to respond to any other party's supplementation.

Respectfully submitted,

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[53] Public Notice, ¶ 2, n. 3, citing 96-45, Public Notice, 20 FCC Rcd 14267 (2005) ("August 2005 Notice"). Specifically, the proposals included: "The State Allocation Mechanism: A Universal Service Reform Package," proposed by Joint Board Member Ray Baum; "Three Stage Package for Universal Service Reform," proposed by Joint Board Member Billy Jack Gregg; "A Holistically Integrated Package," proposed by Commissioner Robert Nelson; and "Universal Service Endpoint Reform Plan (USERP)," proposed by Joel Shifman, Peter Bluhm, and Jeff Pursley.

[54] Initial comments (October 14, 2004); reply comments (December 14, 2004).

[55] Initial comments (September 30, 2005); reply comments (October 31, 2005).