Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support	)	

To: The Federal-State Joint Board on Universal Service

COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.

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COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.

Dobson Cellular Systems, Inc., on behalf of itself and its affiliated providers of Commercial Mobile Radio Service ("CMRS") (collectively, "Dobson"), files these comments in response to the Joint Board's request for comment on the merits of using auctions to determine high-cost universal service support. Dobson is a CMRS carrier with a strong historical commitment to providing high-quality wireless service in rural and other non-urban areas. Within the last few years, Dobson has been designated as an eligible telecommunications carrier ("ETC") in 7 states;[1] in so doing, it has assumed the myriad responsibilities and obligations that go along with ETC status and is using the support it receives to improve service in the rural areas in which it has been designated.

Consistent with Dobson's prior comments in this and other universal service proceedings, Dobson believes that setting appropriate support amounts is crucial to controlling the size of the

[1] The states are Alaska, Minnesota, Wisconsin, Michigan, Kentucky, Oklahoma, and Texas. Dobson also has acquired Highland Cellular, which was designated in Virginia and West Virginia.

fund. The current system does not adequately control fund size, especially in rural incumbent local exchange carrier ("ILEC") territory, because it is based on inefficient embedded costs and legacy network designs. To the extent that an appropriately structured auction process can reveal the efficient amount of subsidy necessary to ensure service in a rural area, the approach may warrant further study. Great care must be taken, however, to ensure that the auction process is fair to all participants and serves the program's public policy goals.

I. IDENTIFYING EFFICIENT SUPPORT LEVELS IS AN IMPORTANT ELEMENT OF HIGH-COST UNIVERSAL SERVICE REFORM

As Dobson repeatedly has argued in this and other universal service-related proceedings, the key to ensuring a sustainable fund is to provide funding based on only the *efficient* cost of providing service in high-cost areas.[2] The existing system fails to meet this ideal in several important respects. This problem is most severe in areas served by "rural" ILECs, where support is based on the ILEC's embedded costs, which are determined in a rate-of-return environment that lacks any incentives for efficiency. The situation is better in areas served by non-rural ILECs, where support is based on the forward-looking cost of providing the supported services, but the cost model used to establish costs in these regions still assumes the use of wireline technology and inefficient network design.[3] In particular, the model assumes existing ILEC switch locations, without regard to whether cost savings could be achieved by consolidating switching functionality in fewer, higher-capacity switching facilities.[4] Thus, Dobson has

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[2] *See, e.g.*, Dobson Comments, CC Docket No. 05-337 (filed March 27, 2006) at 3 ("Dobson 10th Circuit Remand Comments").

[3] *See generally Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order, 14 FCC Rcd 20432 (1999) (subsequent history omitted).

[4] *Id.*

advocated that the universal service system be comprehensively reformed so that support is based on a more efficient measure of costs.[5]

While an auction, in theory, could be a tool to reduce the size of the fund, the nature of auctions often creates bidder behaviors that could jeopardize the public policy objectives of universal service. If the auction-specific risks discussed herein can be overcome, competitive bidding might be one way to reveal the efficient cost of providing service in rural and high-cost areas. Theoretically, the low bidder will be the most efficient provider for an area. In that case, the low bid amount will reflect the efficient cost of providing service. As described below, however, protections would have to be implemented to assure that low bids are not made for anti-competitive purposes or for reasons that reflect factors other than real economic efficiencies.

II. A UNIVERSAL SERVICE AUCTION PROCESS WOULD HAVE TO BE CAREFULLY CRAFTED TO ENSURE AN ACCURATE OUTCOME

A. The Auction Process Would Have to Guard Against Insufficient Support

While auctions have the potential to reveal the minimum efficient amount of support needed to provide universal service in a given rural or high-cost area, this potential will be realized only if the auction is properly structured. Participants in an auction are fundamentally motivated by economic factors that may be inconsistent with the public policy goals the universal service fund seeks to achieve. Any universal service auction process would have to be designed to protect against behavior that would undermine universal service policy and prevent carriers from fulfilling the obligations they undertake as ETCs.

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[5] *See, e.g.*, Dobson 10th Circuit Remand Comments at 9-10 (advocating support based on the forward-looking cost of providing the supported services). *See also* Dobson Comments on Joint Board Proposals for High-Cost Universal Service Reform, CC Docket No. 96-45 (filed Sept. 30, 2005) at 4-8 (same).

In particular, the auction design must protect against the possibility that certain carriers may submit bids so low that the costs of service cannot be covered. For example, an auction participant may place an artificially low bid in an effort to drive another carrier (or carriers) out of the market.[6] Even if the bidder did not receive sufficient universal service support after the auction, it might be willing to gamble that, in a less competitive market, it would be able to increase prices enough to remain profitable. Moreover, to the extent a carrier uses its supported infrastructure to provide advanced services, it might rely in the short term on internal cross-subsidies to cover its costs, expecting that support levels will rise again after fledgling competitors exit from the market. In either case, the general quality, availability, and choices in telephone service in the area are likely to decline. This would reduce support flows but ultimately disserve the goals of universal service, including comparability of rates and services.[7]

Bidding also may result in excessively low support levels if the auction design does not adequately ensure that the winning bidder must provide high-quality service throughout the designated service area. A carrier that lacks the ability and willingness to provide service throughout the designated area could underbid higher-quality providers that already have or intend to develop ubiquitous networks in the designated area. A new carrier also may be tempted to bid an unrealistically low support level if it is, for example, flush with start-up capital early in its life cycle. Often, new companies are able to generate investor interest that cannot be sustained if the company's performance does not justify it over time. In that event, a support

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[6] In this context, the "market" would be those portions of the designated service area that are uneconomic to serve absent support.

[7] *See* 47 U.S.C. § 254(b).

level that seemed sufficient for the company during the auction may be insufficient for other providers (if any) from the start – and inadequate for the bidder itself a few years later.

If support levels were set too low by competitive bidding, there is likely to be insufficient incentive for carriers to fulfill the ETC obligations to provide quality service in rural areas or to invest in new services, such as broadband. This would undermine the provision of universal service.[8] It also would interfere with the national policy goal favoring universal broadband access.[9] Thus, if the Joint Board and the Commission decide to pursue a competitive bidding approach, adequate safeguards must be built into the auction design to guard against an uneconomically low support amount.

B. Support Must Remain Available to All Otherwise Eligible Providers in the Designated Area

Even if competitive bidding is used to determine support levels, support must not be restricted to the winning bidder. Such a restriction would be inconsistent with the Communications Act and harmful to the telecommunications marketplace. Indeed, some commentators have even argued that competitive bidding is an inappropriate means of determining universal service support amounts precisely because an auction implies a need to provide a "premium" for the winning bidder – typically exclusivity – and such exclusivity is

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[8] *See* 47 U.S.C. § 254(b) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to … advanced telecommunications and information services[]that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.").

[9] *See, e.g.*, President George W. Bush, Remarks in Albuquerque, New Mexico, March 26, 2004; The White House, *A New Generation of American Innovation* at 11 (April 2004).

inconsistent with the Act's pro-competitive goals. [10] The academic literature reveals, however, that it unquestionably is possible to design a universal service reverse auction that sets support amounts but permits multiple carriers to receive support at that level.[11]

Sction 214 requires that ETC designation be available to "more than one" carrier in each service area. Section 214(e)(2) states that the regulator "shall designate more than one" ETC in areas served by non-rural ILECs and "may designate" more than one ETC in an area served by a rural ILEC if to do so would serve the public interest. This clear contemplation of the designation of multiple ETCs for each designated area – particularly when viewed in the context of the overall pro-competitive intent of the Telecommunications Act of 1996 (which added sections 214(e) and 254 to the Communications Act) – squarely precludes a support system that is designed to select a single ETC (or even a limited number of ETCs).

Further, section 254(b)(3) requires "reasonable comparability" of services and rates in rural and urban areas. A system that supports only one (or a small number of) providers in rural areas will rob rural consumers of the benefits of the vibrant competitive marketplace that urban consumers enjoy. As the Commission frequently has acknowledged, a competitive marketplace delivers innovative services, higher quality, and lower prices. If the universal service system precludes the same vibrant competitive marketplace in rural areas, the Act's goal of comparability of services for rural consumers will be foreclosed.

Limiting support to only one or a small number of providers also could irretrievably skew the vigorously competitive CMRS marketplace. The Commission's spectrum licensing policies

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[10] Peter K. Pitsch, "Reforming Universal Service: Competitive Bidding or Consumer Choice" (Cato Institute 1997), available at http://www.cato.org/pubs/briefs/bp-029es.html.

rightly have sought to ensure that consumers in all areas of the country have access to the maximum possible number of competing wireless providers in all areas, including rural areas. If suddenly, in rural areas, one of those providers had access to a subsidy while the others did not, the competitive market would cease to function effectively. Denying funding to carriers that otherwise would be willing to take on ETC obligations in rural areas would retard the growth of CMRS in rural areas.

C. Any Auction Design Must Be Competitively Neutral

In structuring any universal service competitive bidding mechanism, the Joint Board and the Commission would have to take care that the system's structure did not place a thumb on the scales in favor of any auction participant or class of participants. For example, the service areas to be auctioned must be determined in a competitively neutral way, and should not be established based on any existing provider's license area, study area, or franchise. A neutral geopolitical boundary, such as those defining counties or Census Block Groups, should be used. Further, the auction design must not include any special provisions, bidding credits, or set-asides for any carriers or class of carriers. All providers should enter the auction on equal footing to maximize the likelihood that the auction produces an efficient and fair outcome.

III. THE DISCUSSION PROPOSAL ATTACHED TO THE *PUBLIC NOTICE* IS SERIOUSLY FLAWED

In the previous section, Dobson has set out certain elements that the Joint Board and the Commission would have to incorporate into any system of competitive bidding used in the universal service context. The Discussion Proposal attached to the *Public Notice* is inconsistent

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[11] *See, e.g.,* "Auctions for Universal Service Obligations," Dennis Weller, 23 Telecommunications Policy 645 (1999).

with several of these design elements, and accordingly should *not* be used as a model for any Joint Board recommendation in this regard.

First, the Discussion Proposal would limit support to two providers in each service area. As discussed above, limiting support in this way is inconsistent with sections 214(e) and 254(b)(3) of the statute, and would harm competition in the vigorously competitive CMRS marketplace.[12]

The Discussion Proposal is even more inconsistent with section 254(b)(3) because it would pigeonhole one of the two ETCs in each area as the "broadband provider" and the other as the "wireless mobility" provider. These limitations will preclude the comparability of services in rural and urban areas by imposing a market limitation in rural areas that does not exist in urban areas. For example, already today mobile wireless carriers in urban area increasingly are providing broadband services, and cable providers are showing an interest in entering the mobile wireless market. Artificial limitations on certain ETCs' service offerings would ignore the reality of convergence and undermine the comparability of service that the Act requires the Joint Board and the Commission to protect. It also likely would be inconsistent with section 706 of the Act, which requires that the Commission encourage *competitive* deployment of advanced telecommunications services.

CMRS carriers can use their facilities to provide both broadband and wireless mobility. Thus, they can capitalize on economies of *scope* in the provision of service. The Discussion Proposal precludes them from doing so, or at least severely undercuts their ability to do so by placing them at a build-in disadvantage to another provider with regard to one or both of these

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[12] *See supra* section II.B.

services. By limiting CMRS carriers' ability to capitalize on inherent economies of scope, the discussion proposal would undermine the aims of section 254 and section 706. For example, a CMRS provider could have expanded service by sharing fixed costs between broadband and wireless mobility but now is effectively prohibited from providing one or the other.

More generally, the dramatic increases in broadband speeds and decreases in prices since 1996 demonstrate the considerable change that is possible over a ten-year period. In a technologically dynamic marketplace, locking in a single provider at a fixed support level for such a long period of time cannot be justified.

Further, the "phase-in" provision allowing the ILEC to be treated as the winning broadband-oriented provider, without an auction, would be bad policy and inconsistent with the Act. This procedure would completely eliminate the only justification that can be offered for using competitive bidding in the universal service context – the ability to determine the efficient support amount. Instead, the Discussion Proposal would set support levels for the incumbent at current levels plus an inflation factor for a ten-year term, eliminating any hope of solving the most fundamental problem facing the Joint Board and the Commission – ensuring that support amounts are efficient and paring back bloated support payments that result from historical rate-of-return methodologies.[13] This kind of set-aside for ILECs would violate the Joint Board's and the Commission's interests in ensuring a sustainable fund. It also would flagrantly violate the section 254(b)(7) principle of competitive neutrality by providing a substantial advantage in the support system for a particular class of providers that is not available to other competing carriers.

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[13] *See, e.g.*, Dobson Comments on Joint Board Proposals for High-Cost Universal Service Reform, CC Docket No. 96-45 (filed Sept. 30, 2005) at 4-8.

CONCLUSION

Competitive bidding may warrant further study as a means of identifying the efficient level of support necessary in certain rural and high-cost areas. Great care must be taken, however, to guard against potentially uneconomic outcomes that may result in insufficient support levels, which would undermine universal service policy and broadband deployment goals. Any reverse auction system would have to be designed carefully to ensure that it does not preclude other important statutory requirements, such as reasonable comparability of services and rates and competitive neutrality. The Discussion Proposal attached to the *Public Notice* violates many of these requirements and must be rejected.

Respectfully submitted,

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