The negotiation and execution of thousands of contracts between the auction administrators and winning bidders setting forth the services to be offered, service quality, comparable rates, relinquishment of facilities[10], performance bonds, penalties and other matters are a telecommunications attorney's dream. Because of the substantial differences among bidders and service areas, it is likely to be very difficult to standardize these contracts. Rather, the contracts are likely to require substantial negotiation comparable to cable television franchises, and to cost auction administrators and winning bidders substantial time, effort and expense.

Finally, the use of "qualitative factors" in addition to bid prices to select auction winners can help to reduce gaming, but may also lead to lengthy appeals by losing bidders. The subjective/qualitative approach was used previously by the Commission in broadcast comparative hearings during the 1960s, 1970s and 1980s to determine the winners of similarly valuable designations, and frequently resulted in judicial appeals by one or more of the losing parties..

In sum, reverse USF auctions pose a myriad of design and administrative issues. Whereas the Discussion Proposal attached to the Public Notice represents a start, there are many issues left to be addressed and resolved.

V

Alternatives for Controlling USF Growth

[10] WTA notes that any contract provision or other attempt to require a losing USF auction bidder to relinquish "essential" facilities to the winning bidders, or even to share such facilities with the winning bidder, would be challenged vigorously in the courts and the legislatures.

In considering alternatives to reverse USF auctions, the most obvious and productive practice to investigate is the provision of portable USF support to wireless and other CETCs on the basis of the per-line USF support received by the ILECs with whom they allegedly "compete." This practice was rationalized by previous Commissions as promoting the Commission-specified principle of "competitive neutrality." However, it has never been explained satisfactorily why any ETC should receive USF support in amounts that do not purport to bear any relationship whatsoever to its own investments, costs, facilities or services in the affected rural area.

It is time for the Joint Board and the Commission to re-examine the assumption that wireless carriers compete with ILECs. Whereas there have been press reports that some individuals (primarily students, first-time renters and/or young single people in the early stages of their careers[11]) have "cut the cord" and subscribe only to wireless service, the substantial majority of American households and businesses continues to treat wireline and wireless services as complementary, and subscribes to both. Moreover, although the Commission has long had the authority in Section 3(26) of the Act to classify and regulate Commercial Mobile Radio Service providers as "local exchange carriers," it has not heretofore exercised its discretion to do so and to treat them as full-fledged competitors of ILECs.[12]

WTA recommends that the Joint Board and the Commission declare that ILECs and wireless carriers are not competitors, and that neither competitive neutrality nor any other reason justifies the distribution to wireless CETCs of the same per-line USF

[11] It is not yet discernable whether this is a permanent trend, or whether most of today's young wireless-only customers will purchase both wireline and wireless services when they settle down into marriages and other long-term living arrangements.

provided to ILECs. Rather, wireless and other CETCs should henceforth receive USF calculated solely on the basis of the actual and properly allocated and depreciated costs of the facilities they construct and install in high-cost rural areas to serve the residents thereof. Appropriate accounting and allocation rules and procedures will have to be developed and implemented for this purpose. Whereas wireless carriers have not previously been subject to accounting and allocation rules, they should be required to accept and implement them as a condition of receiving substantial amounts of federal USF dollars. Likewise, all USF recipients should be subject to the same Carrier of Last Resort obligations, as well as substantially equivalent requirements regarding service quality and affordable rates.

In the alternative, if the Joint Board and the Commission determine to continue to employ per-line ILEC support as a proxy to calculate CETC support, such proxy should be limited to the original high-cost loop support and exclude LSS, ICLS and other access revenues transferred into the USF. LSS is provided to rural ILECs because they must install and operate switches to serve study areas with relatively small numbers of access lines, and are unable to generate significant economies of scale or scope with respect to their switching facilities. In contrast, many wireless CETCs employ a single switch (MTSO) to serve multiple urban and rural license areas in one or more states. They are not subject to the same inability to realize significant switching economies as are rural ILECs, and do not need or warrant portable LSS. Likewise, ICLS is a rural ILEC cost recovery mechanism that bears no relationship whatsoever to CETC operations or costs. WTA knows of no CETC that increased its facilities, services or service quality, or

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[12] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (released August 8, 1996), at par. 1004.

experienced any increase in its costs, as the result of the transfer of ICLS from access charges into the USF. Therefore, neither ICLS nor any future access revenues transferred into the USF should be used as a proxy for calculating USF support for CETCs.

VI

Conclusion

Reverse USF actions and other options for controlling the size and growth of the federal USF must be evaluated with respect to their compliance with the statutory Section 254 universal service requirements for quality services at affordable rates; reasonably comparable rural and urban services and rates; access to advanced telecommunications and information services; and a specific, predictable and sufficient USF mechanism. WTA's major concern with reverse auctions is that they render the critical federal USF revenue stream uncertain and unstable, and thereby imperil the funding, incentives and cycles of the infrastructure investment by rural telephone companies that remains necessary to bring existing and evolving universal service to substantial portions of Rural America. In addition, the complexities of differing existing service providers, service packages, service quality, rate plans, technologies, facilities, service areas and regulatory requirements will make it very difficult to design and conduct fair reverse auctions. At this time, WTA believes that the more investment-friendly, effective and efficient way to control the size and growth of the USF is be to re-evaluate the existence of "competition" between wireline and wireless services, and stop providing portable USF support to CETCs on the basis of per-line support received by ILECS. This can be accomplished: (1) by providing support to CETCs on the basis of the actual and properly allocated costs of their own rural operations; or (2) by providing support to CETCs only on the basis of the per-line high-cost loop support received by the ILEC serving the same area, and eliminating the portability of LSS and of present and future access recovery mechanisms such as ICLS transferred into the USF.

Respectfully submitted,
THE WESTERN TELECOMMUNICATIONS ALLIANCE

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