

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Office of the Secretary

In the Matters of)	
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Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
Merits of Using Auctions to Determine High-)	WC Docket No. 05-337
Cost Universal Service Support)	
)	

To: Federal-State Joint Board on Universal Service

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SUMMARY

In these Comments, CenturyTel proposes a combination of improvements to the universal service program that, if implemented, would benefit consumers and advance the affordability and reasonable comparability principles in the Act. In considering the use of reverse auctions to provide high-cost fund support, the Joint Board should recommend:

1. Refraining from implementing any unproven, high-risk funding mechanism that may destabilize existing telecommunications infrastructure in rural markets.
2. Limiting the number of supported carriers in rural markets, and using the reverse auction “discussion proposal” to determine the one *competitive* eligible telecommunications carrier (“CETC”) in a market that should be awarded high-cost loop support. The discussion proposal should also be considered as a means to attract providers to unclaimed rural and remote areas that have no telecommunications service today.
3. Managing growth of CETC support by conditioning support on demonstrated investment in rural markets, and ceasing CETC payments of ICLS and IAS.

Any consideration of a competitive bidding mechanism must be considered in light of the goals of preservation and advancement of universal service under the Act. The Joint Board also should take into consideration the consumer benefits that have been achieved under the present system. Today’s ever-increasing telecommunications traffic traverses all sections of the country seamlessly, almost instantly, and without degradation in quality, because of a robust and evolving underlying network. It is the wireline network built and maintained by ILECs that continues to provide the core telecommunications infrastructure that makes the delivery of all

other traffic including CMRS and high speed internet possible for almost every consumer, regardless of location.

At the most basic level, universal service funding, whether it be rural high-cost funding, Lifeline and Linkup, or rural health care funding, will not meet the statutory requirements of "sufficiency" and "predictability" if essential support is placed at risk within the constructs of an unproven mechanism. Moreover, if ILEC network investment incentives are dampened by such uncertainty, so too will we put at risk the availability of ubiquitous, high-quality, affordable and reliable service in rural areas, where competitive providers often rely on ILEC networks.

If a competitive bidding mechanism is adopted to control fund growth, it should be used only to award support (1) to attract one carrier to provide telephone service to previously unclaimed high-cost areas; and (2) to award one carrier support from among multiple CETCs using similar network platforms (such as CMRS).

As theoretically appealing as the auction concept may appear to be on the surface, a reverse auction applied to all carriers in a market could inadvertently undermine existing statutory requirements and destabilize investments and service quality. Moreover, the administrative complexities of auctions warrant a cautious approach.

The Joint Board should recommend that the current high-cost program be bifurcated, and the discussion proposal for competitive bidding be evaluated as a pilot program for CETCs only. Because there are, on average, three or more wireless providers in rural markets, the support for CETCs could be auctioned among multiple bidders and awarded to the CETC with the most consumer-focused combination of services and price. This approach would maintain the quality of the underlying network, minimize the support program's burden on

customers, and ensure competition. The Commission also would gain valuable experience in administering an auction system. At the same time, support to the ILEC would remain predictable and sufficient to ensure it can continue to fulfill its duties as carrier-of-last-resort.

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To: The Federal-State Joint Board on Universal Service

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. on behalf of its incumbent local exchange carrier (“ILEC”) subsidiaries (collectively, “CenturyTel”), hereby submits the following Comments in response to the Public Notice in the above-referenced proceeding.¹ CenturyTel is a leading provider of integrated communications services to rural and small urban markets in 21 states.

I. THE ESSENTIAL ROLES OF UNIVERSAL SERVICE SUPPORT AND ILEC NETWORKS IN RURAL MARKETS

The statutory goals for universal service programs are to ensure that all Americans have access to high-quality telecommunications services at affordable rates, and that rates and services in rural areas remain reasonably comparable to those in urban areas.² The Communications Act of 1934, as amended (the “Act”), clearly states that universal service support should be specific, predictable and sufficient to achieve these goals.³ Moreover, universal service policies should not merely preserve a minimal level of service, but promote the

¹ *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, WC Docket No. 05-337, FCC 06J-1 (rel. Aug. 11, 2006) (“Public Notice”).

² 47 U.S.C. §§ 254(b)(1), (b)(3).

³ *Id.* § 254(b)(5).

deployment of advanced telecommunications and information services to all Americans. Key to achieving those goals is the continued development of an evolving and increasingly robust, ubiquitous network that benefits all telecommunications users.

There is tension between these universal service goals and another major goal of the Act—competition, especially in rural markets. Congress recognized in the Act that competition could jeopardize universal service in rural areas, and thus the Act requires a heightened level of scrutiny in considering petitions by competitive eligible telecommunications carriers (“CETCs”) to receive federal funding in study areas served by rural carriers.⁴ As such, Sections 214(e) and 254 of the Act require that, in rural areas, priority be given to preserving and promoting universal service.

In rural, insular, and high-cost areas ILECs play an essential role in providing universal service. Because of the plethora of carrier-of-last-resort (“COLR”) responsibilities, ILECs provide high-quality service to communities and customers to whom no other eligible telecommunications carriers (“ETCs”) will provide comparable services. Typically, it is the ubiquitous availability of the ILEC network in rural markets that enables rural consumers to receive basic voice service as well as incremental services such as broadband and commercial mobile radio service (“CMRS”). Without ILEC transport, CMRS providers would not reach many of the markets CenturyTel ILECs serve; ILEC transport and “last mile” facilities also are a necessary component of many of the advanced telecommunications and information services (including broadband Internet access and E-911 service) provided to rural customers by a variety of service providers using a variety of technologies.

⁴ *Id.* § 214(e)(2).

The industry and policy-makers now find themselves in an environment where the overall size of the universal service fund, and the universal service program itself, is under attack. In response, the Federal-State Joint Board on Universal Service (“Joint Board”) now seeks comment on the feasibility and appropriateness of using reverse auctions to allocate universal service support to rural carriers.⁵ In the short term, the use of auctions to distribute support to rural ILECs may or may not reduce the size of the rural high-cost fund. However, the potential benefits of auctions must be weighed against the risks. Reverse auctions can only be viewed as a high-risk proposition that generates un-answerable questions. Will auctions lessen the digital divide between the rich and the poor, and rural and non-rural consumers? Will they increase availability of high-quality, advanced service in rural areas or dampen investment incentives? Will auctions diminish or increase viable competitive alternatives? Will auctions slow or speed the launch of new broadband-enabled services in rural markets? Any mechanism that in any way further destabilizes already shaky support will inevitably impede the Act’s goals for universal service.

Because ILEC loop and transport facilities are integral to universal service, a reverse auction mechanism applied to all carriers in a specific rural market is unlikely to provide adequate support to ensure that Americans in rural areas will have access to quality, affordable and evolving technologies that are widely available to consumers in metropolitan markets. The essential nature of the ILEC network in rural markets mandates that the ILEC, as the only entity with COLR responsibilities in the market, must continue to receive support at predictable and sufficient levels. If auctions are to be tested, especially given their administrative complexity and uncertain effect on investment and service quality, they should only be applied to the second

⁵ See generally Public Notice.

ETC in the market. A bifurcated mechanism system that would preserve the underlying ILEC network and provide support to a single CETC in the market through an auction system may be a worthwhile experiment. Under such an approach, fund growth could be controlled while universal service is preserved. The Joint Board could achieve its stated goal of minimizing the burdens of the fund on consumers, without putting universal service or network infrastructure at risk; and the Commission could gain valuable experience administering auctions to determine their efficacy for awarding universal service support.

II. THE JOINT BOARD AND THE COMMISSION HAVE CONSIDERED AND REJECTED COMPETITIVE BIDDING FOR UNIVERSAL SERVICE

As noted by the Public Notice, this is not the first time the Joint Board and the Commission have considered using reverse auctions to award universal support.⁶ Beginning in 1996, the Joint Board sought comment on the feasibility of a competitive bidding mechanism in this context.⁷ Espousing that competitive bidding was a potential market-based approach to determining universal service funding, the Joint Board determined that the record was insufficient at that time to adopt any particular competitive bidding mechanism.⁸ The Joint Board recommended that the Commission “continue to investigate how to structure a fair and effective competitive bidding system,” and that any such system should be competitively neutral.⁹ Agreeing with the Joint Board, the Commission rejected adoption of a competitive

⁶ Public Notice § 3.

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 (1996).

⁸ *Federal-State joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 320 (1997) (“*Universal Service First Report and Order*”).

⁹ *Id.* ¶ 321.

bidding mechanism.¹⁰ Because of its “limited utility,” the Commission emphasized it would thoroughly examine the complex issues involved in developing a competitive bidding mechanism before rushing to adopt such procedures.¹¹

The Commission identified several potential problems that may be associated with an auction mechanism.¹² For example, rules or restrictions may need to be imposed to prevent collusion between bidders and to prevent excessively low bids to drive out competitors.¹³ The Commission also raised the need for additional quality of service standards where support levels were set by competitive bidding.¹⁴ Intending to address these issues in a further notice, the Commission has not subsequently explored the concept in detail except in the tribal lands proceeding.¹⁵ In that proceeding, the Commission sought comment on using auctions to promote subscribership and infrastructure deployment on tribal lands, but ultimately did not adopt that approach.¹⁶ The Joint Board raised this issue in 2003.¹⁷ The record developed in response to that inquiry again pointed out the many difficulties and risks of an auction approach.

¹⁰ *Id.* ¶ 324

¹¹ *Id.*

¹² *Id.* at ¶ 324 FN 819.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Public Notice ¶¶ 3, 14. *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶¶ 93-114 (1999); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

¹⁶ *Id.*

¹⁷ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 F.C.C.R. 1941 ¶ 20 (2003).

The conclusion that a competitive bidding mechanism applied to all carriers in a market would have limited utility remains equally compelling today, and the same troubling questions warrant thorough consideration once again. There are far less risky ways to reduce the overall size of the fund. In many rural areas, the public interest is best served by a single provider receiving government support,¹⁸ yet multiple CETCs are being funded without any serious attempt to determine whether they use the money to advance universal service. In high-cost rural areas, where services are expensive for even one provider, CETCs should not receive unlimited funding on the basis of the ILEC's costs. As described below, limiting support to CETCs is the best way to reduce overall growth in the fund. Responsible administration of CETC support, with meaningful accountability requirements, is the single most effective and least disruptive way to reduce the burdens of high-cost funding on consumers. Moreover, relying on market forces to rein in CETC excesses, while assuring a foundation of support to the COLR, can appropriately limit the burden of universal service contributions on consumers in a way that still preserves and advances universal service to rural customers.

III. THE PROS AND CONS OF COMPETITIVE BIDDING MUST BE CONSIDERED

¹⁸ In a March 2003 speech, Commissioner Martin reiterated his past and continued concerns with the use of universal service high-cost funds to support competition and multiple ETCs in rural areas:

When the FCC adopted its MAG order, I publicly questioned the use of universal service support as a means of creating "competition" in high cost areas. In expressing this concern, I questioned the wisdom of a policy that subsidized multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. I also warned that this policy may make it difficult for any one carrier to achieve economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning service fund. *Recent data appears to verify the urgency of this issue.*

Remarks by Kevin J. Martin, Federal Communications Commission, to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, March 18, 2003.

IN LIGHT OF THE UNIVERSAL SERVICE GOALS OF THE ACT

A. The FCC and Federal State Joint Board Must First Determine the Desired Policy, Technology and Service Outcomes for Reforming Universal Service

The Joint Board must determine first and foremost if the quality, reliability, availability and affordability of telecom services that Americans enjoy today are indeed worth maintaining at present levels. The Joint Board must consider the positive consumer outcomes under the present system. For the most part, local rates have remained constant (accounting for inflation), thanks to the availability of explicit and predictable universal service support. Throughout the country, competition is flourishing, and new technologies are driving meaningful innovation in the way ILEC networks are used. Assuming all of these outcomes are worthy, policy-makers should be careful not to introduce any new system that risks derailing an ever-improving telecommunications infrastructure.

In light of the universal service goals of the Act, the following issues must be examined before an auction process can be recommended:

- What are the long term goals for the deployment of advanced services in rural areas?
- What impact will auctions have on investment in rural areas?
- How will communications services in rural areas remain affordable?
- Are there better ways to limit the growth of the universal service fund than an auction process?
- Will competition for rural consumers manifest itself in such a way that universal service principles can be fulfilled?
- Will winning bidders be required to honor the social contracts associated with universal service and investment or face the risk of stranded investment that will be applied to incumbents?

None of these questions appear to be addressed by the Joint Board in considering competitive bidding. Instead, the Joint Board's goal appears to be reducing the size of the fund. Even assuming this is a legitimate goal, competitive bidding is not the best way to achieve it. If the goal is limiting the number of providers per market, a far more direct method is available in

the CETC designation process today, with far less risk to consumers. The TDS Telecommunications petition should be granted¹⁹ and the guidelines made mandatory for all ETC designations.

Additionally, if the Joint Board's goal is ensuring that service is cost-effective, a competitive bidding mechanism applied to all carriers misses the mark. Rural customers today rely on practically ubiquitous ILEC networks, even where they obtain services from carriers other than the ILEC. ILEC networks provide essential transport and termination in rural markets, without which little broadband or wireless service would be available. The ILEC network therefore is the essential prerequisite to *any* provider in rural markets.

Mandating competitive bidding for universal service support between various technology platforms and providers in a given market requires policy-makers to engage in an "apples-to-oranges" comparison. The challenge in such an approach would be reconciling a multitude of regulatory, jurisdictional, cost, service, geographic and legal issues among providers.

As CenturyTel and other ILECs have pointed out numerous times, the identical support rule for receipt of universal service dollars is an inefficient means of awarding support to CETCs that do not have similar regulatory obligations or cost. The FCC and states have been auditing ILECs' costs and monitoring their quality of service for decades, and require ILECs to follow detailed cost-accounting rules.²⁰ In contrast, CETCs are not subject to cost accounting or

¹⁹ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration of Independent Telephone and Telecommunications Alliance, the Western Telecommunications Alliance, and TDS Telecommunications*, CC Docket No. 96-45 (filed June 24, 2005).

²⁰ See generally 47 C.F.R. §§ 36.611-36.631 (rules applicable to ILEC justification of high-cost support): see <http://www.universalservice.org/hc/components/loop.asp> (USAC description of the process for reporting and obtaining high-cost support, including the considerable delay between expenditures and receipt of support).

reporting rules. CenturyTel remains concerned that any auction system would create considerable administrative burdens, and risk of declining service quality, without giving regulators meaningful insight into whether the support is being used for the purposes for which it is intended.

B. Alternative Measures for Controlling Growth In the Fund Can Advance the Goals of Universal Service Without Putting Essential Rural Networks At Risk

To the extent the Joint Board seeks to limit growth of the fund in considering an auction mechanism, there are several other remedies available that effectively do so while advancing the goals of universal service. While the Joint Board and Commission are charged with developing funding mechanisms for universal service support, state commissions have the primary responsibility for designating most ETCs, the recipients of the funds.²¹ Under the current scheme, state commissions have granted CETC designations based on highly inconsistent criteria that often fail to meet the public interest standard established in the Act. As a result, CETCs are obtaining state and federal universal service support based on the lowest possible standard of local exchange service, which ultimately results in burdens to contributors. Further, as ILECs lose customers to wireless and broadband CETCs who make reduced or no universal service contributions, the contribution requirement continues to grow without corresponding benefits to consumers. ILECs are also left with numerous state regulations and various COLR obligations not imposed on competing voice providers. Therefore, CenturyTel advocates the following specific steps to cure the underlying causes of the current program's deficiencies:

²¹ The Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 254(e). The FCC has jurisdiction to designate carriers that are not subject to the jurisdiction of a state commission. *Id.* § 214(3)(6). Under the Act, state commissions may designate more than one ETC in a rural area if it is consistent with the public interest. *Id.* § 214(e)(1).

- **Limit the Number of CETCs Per Market.** There are multiple rural markets where both the ILEC and as many as 10 wireless CETCs are supported today.²² If the Joint Board believes it is desirable to use reverse auctions to choose from among CETCs, one CETC per market could be chosen using the discussion proposal outlined by the Joint Board.
- **Impose COLR Requirements on CETCs.** Rural CMRS offerings typically are subject to geographical limitations, and may not meet the same service standards as ILEC service. CMRS carriers should satisfy the same obligation to serve all customers in the ILEC study area, make investment at required levels, and meet the same service quality, affordability, and reliability standards imposed by the state on the ILEC, before identical support may be justified. Comparable services and critical services such as E-911 must be provided throughout an entire market. However, CenturyTel notes that the wireless industry continues to resist any form of consumer-focused regulation even while seeking increasing amounts of universal service support.
- **Eliminate support to CETCs from the ICLS and IAS programs.** These programs were created as access replacement mechanisms for ILECs that lowered their interstate access rates. CMRS providers had no access rates to lower and were not involved in those proceedings. NECA estimates that this step would result in a savings of approximately \$600,000,000 this year alone.²³
- **Condition Support on Demonstrated Investment in Rural Markets.** ILECs receive support based on costs already incurred in providing, maintaining, and upgrading supported services.²⁴ Today, by contrast, CETCs receive support merely by filing line counts, even before they may have made any investment in the local market.²⁵ As with ILECs, CETCs

²² In one CenturyTel market there are 10 ETCs, including 9 CMRS carriers, receiving support, and most of the CETC support is *not* for lines formerly subscribed to CenturyTel. Out of a total of 681,119 lines reported by CenturyTel and its competitors in that state as of 2Q 2006, wireless CETCs serve *more than one-third* (233,460 “lines”), even though CenturyTel has only lost 10% of its customer lines in the last 5 years. The number of “lines” for which these wireless ETCs receive support significantly exceeds the number of lines “won” from the incumbent. CenturyTel has only “lost” 50,675 lines since 2001; thus, 182,785 of the supported CETC “lines” (78%) represent *newly supported connections*.

²³ Based on USAC’s 3Q 2006 filing, if the CETCs were only paid support for the loop, then their monthly support would be reduced by over \$49 million per month (from \$84.7 million per month to \$35.25 million). Annualized it would be a reduction of \$593,400,000 for the year.

²⁴ 47 C.F.R. § 36.611.

²⁵ 47 C.F.R. § 54.802; *see also* www.universalservice.org/hc/competitive-carriers/step04 (explaining filing requirements for CETCs).

should receive support only after expenditures are made, rather than *funding promises for future investment that may or may not occur.*²⁶ Where a carrier cannot show that it has invested in services to the areas for which support is intended, support should be withdrawn.

IV. A “REVERSE AUCTION” AWARDING SUPPORT TO THE LOWEST BIDDER WOULD SET OFF A “RACE TO THE BOTTOM” AND RELEGATE RURAL COMMUNITIES TO INFERIOR SERVICE

In response to the Joint Board’s specific questions, CenturyTel offers the following observations about the proposed use of reverse auctions as a general methodology to award high-cost support in any given market.

A. Service Quality Problems Would Arise Under a Competitive Bidding System

CenturyTel agrees with the concern that quality of service issues will arise if support levels for all carriers in a market are set by competitive bidding.²⁷ Today, the overall amount of support available to ILECs is based on the actual cost of providing service (although any individual carrier may not get sufficient support due to the cap on the overall fund and the rules for computing support).²⁸ Under an auction system, universal service support would be

²⁶ See generally 47 C.F.R. §§ 36.611-36.631 (rules applicable to ILEC justification of high-cost support).

²⁷ See *Universal Service First Report and Order* ¶ 324 FN 819.

²⁸ Rural ILEC high-cost loop support is paid in rural study areas where average per-line costs are more than 115 percent of the national average cost per loop (“NACPL”), and the support available is significantly reduced for study areas with over 200,000 lines. 47 C.F.R. § 36.631. The total funding for rural ILEC high-cost loop support is capped at the prior year's funding times the Rural Growth Factor (change in the GDP-CPI plus the change in rural ILEC working loops), and the NACPL is capped at \$240. *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carrier and Interexchange Carriers*, Fourteenth Report and Order, FCC 01-157, ¶¶ 40, 48, 55 (2001). The Commission adjusts the effective NACPL so that the amount of support distributed fits within the overall size of the capped fund. *Universal Service Monitoring Report*, CC Docket No. 98-202, 3-3 (rel. Dec. 29, 2005). Because the Commission continually adjusts the effective NACPL upwards to keep the support amounts actually being distributed within the limits of the overall size of the fund, many rural ILECs with per-line costs above the NACPL are not actually receiving support according to the

fixed based on competitive conditions, not actual costs. Thus, any increase in costs, even if due to enhanced service quality, investment in infrastructure, network upgrades, or line increases would likely go unsupported, and therefore would not be incurred unless other revenues (such as end-user rate increases) were made available. Further, if competitive bidding diminishes the support available in a market, ILECs can be expected to decrease investment in the network. If the cost of maintaining the network cannot be met,²⁹ it would be increasingly unlikely that current levels of service could be sustained, to say nothing of advancing the level of service to meet future demands. Overall, a reverse auction would decrease incentives for incumbents and competitors alike to invest in rural networks, thereby undermining the intent of the universal service program.

1. Service Quality Problems Associated with Awarding a Fixed Amount of Support Per Market or a Fixed Amount Per Line

There are several ways in which funds can be awarded under a competitive bidding system, each with its own investment disincentives. As an initial matter, carriers incur some cost per line, but many costs are “total network” costs—they do not diminish if a line is disconnected. Moreover, there are significant ongoing costs in providing service and maintaining and upgrading networks, all of which universal service support is intended to help defray. With a fixed amount of support awarded per line, incentives to invest in network upgrades or improved services decline. To the extent support is awarded based on a fixed

original assumptions. If the fund size is insufficient to cover all the requested support, the support of every requesting carrier must be reduced. *See also* Letter from Karen Brinkman to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 01-92 (Jan. 19, 2006).

²⁹ This already has occurred in rural markets receiving no support, where price cap carriers driven by profit incentives have allowed rural plants to deteriorate. LEGG MASON WOOD WALKER, INC., *Reshaping Rural Telephone Markets, Financial Perspectives on Integrating Acquired Access Lines*, 135-136 (Fall 2001). *See also* Public Notice ¶¶ 10, 13.

amount per market, incentives to add lines to expand service to high-cost customers at the fringes of markets diminish, because each additional line adds to the cost of serving the market without any corresponding increase in support.

2. Service Quality Problems Associated with Awarding Support for a Fixed Term

Similar disincentives to invest would arise in an auction that awards support for a fixed term, such as for ten years.³⁰ As a general matter, the length of the term will determine the carriers' incentives to invest; but in any fixed term, incentives diminish toward the end of the term. The likelihood of stranded investment is greater when the term is finite. It is not clear whether an outgoing provider would have the ability to negotiate with an incoming provider for use of the existing network at compensatory rates. Thus, incentives to invest in capital-intensive projects would be dampened. CenturyTel has witnessed this effect when purchasing lines from price cap carriers. Each time CenturyTel has purchased lines, it appears that the outgoing provider has stopped maintaining the lines well before the decision to sell, resulting in serious deterioration in line quality and customer service during the last few years of ownership. Under a reverse auction system, such deterioration would be expected with each auction term.

Where a carrier has COLR responsibilities, it must be able to foresee and meet capital commitment demands, and therefore requires a commercially reasonable schedule for investment and recover of capital. For example, much of CenturyTel's ILEC plant is depreciated over lives of between 15 and 30 years. Moreover, a COLR is required to invest on a rolling basis, not only at the start of a fixed period. In contrast, an auction winner can be expected to maintain and upgrade its plant only so long as it is assured it will recover a reasonable return on

³⁰ See Public Notice ¶¶ 9, 10 (the Joint Board raises concerns relating to term and transition issues).

that investment; a limited term of service will ensure such investment ceases well before the term expires. Thus, even though the discussion proposal suggests retaining the ILEC as one of two “chosen” ETCs in a market for an initial ten-year term, CenturyTel believes the proposal will result in declining service quality across all markets, purely as a result of the limited horizon for investment recovery.

B. Numerous Difficulties Would Arise In Administering Auctions and Enforcing Performance

In addition to the likely deterioration in service quality resulting from an auction, CenturyTel believes that conducting a universal service auction such as the type suggested in the discussion proposal would create numerous practical problems of administration and enforcement. Mainly for these reasons, the FCC has rejected competitive bidding for universal service in the past. The discussion proposal, therefore, should be tested only on a limited basis going forward.

1. Administrative Problems in Selecting a Winning Bid

As an initial matter, it would be difficult to choose “winners” based on paper representations. It may be difficult to determine what costs make up an estimate and the feasibility of the bid. The Commission has recognized that any funding mechanism for rural carriers should “use flexible inputs to accommodate the variation in cost characteristics among rural study areas due to each study areas unique population distribution.”³¹ With so much variability between rural markets and between states, it would be administratively difficult to develop national criteria for the area to be served, the services to be offered, the performance criteria, or the rates at which service should be provided.

³¹ *Universal Service First Report and Order* ¶ 255.

Further, it will be difficult to make an “apples to apples” comparison of bids from providers offering varying types and qualities of services. Service criteria would have to be developed for a variety of different technologies. How would regulators weigh a superior service at a higher price against a less advanced service offered at a lower price? Moreover, it would be impossible to compare bids of carriers with completely different scale and scope economies – some carriers would bid to serve a single county, while others would only want to serve a larger region. The difficulties of ensuring a fair bidding process are considerable.

2. Administrative Difficulties in Enforcing Performance

Numerous issues would arise with enforcing performance of the winning bid, including: verifying how support is being used, enforcing performance standards on a day-to-day basis, and ensuring adequate investment is being made so service will not decline over the long term. As discussed above, under the current system, support is based on an ILEC’s proof of its actual costs, which are audited, regulated, and capped. The rules are clear on what costs can be used to justify support. In contrast, in a reverse auction system costs are divorced from the support received. Thus, to ensure that funds were being used for their intended purpose, regulators would have to create enforcement mechanisms based on other criteria.

While ILECs are subject to rate regulation and service quality standards, other CETCs of varying technologies are not. States would need to set service standards applicable to all technologies, because the ILEC may no longer be available to act as the COLR in that area. For example, if a wireless carrier were the winning bidder, rural customers would be dependant only on this provider for telecommunications services, so it would be essential that such a wireless carrier meet acceptable service quality and reliability standards and demonstrate it could cover the applicable study area at affordable rates.

Additionally, the measure suggested by the Joint Board of entering into a contract to establish obligations and penalties for non-performance raises further questions and burdens.³² For example, if a contract were negotiated, with whom would the carrier contract? Does the Commission or the state regulator have authority to contract with private carriers? Would the contracting parties be subject to the jurisdiction of state or federal civil courts? Would the government be entitled to specific performance and damages? Could it impose regulatory sanctions, such as fines and revocation of license, in addition to the remedies provided in the contract? Numerous enforcement concerns would be raised by failure of an auction winner to perform. Can a state force a carrier to provide better service in the event performance criteria are not met? Can the designation be revoked and transferred to an alternative provider?

These enforcement quandaries do not merely represent challenges for administrators but, more importantly, they suggest the high degree of risk to which consumer welfare could be subjected. The potential harms to consumers in the event a supported carrier fails to live up to its promises include not only the economic and social harms of not having access to high-quality telecommunications and information services but also potential health and safety threats, such as lack of access to E911 service, or failure of other critical communications links. Even if penalties can be collected from a provider that fails to perform, as suggested by the Public Notice, consumers will have suffered on a daily basis from inadequate service, and it is not at all clear that an alternative provider will be readily available -- much of the damage could take years to repair.³³ CenturyTel views these risks to consumer welfare as unacceptable.

³² Public Notice ¶10.

³³ *See id.* ¶ 10.

3. Including ILECs In an Auction Is Inherently Inconsistent With COLR Responsibilities

It would be infeasible for an ILEC that was receiving rural high-cost support to uphold its COLR responsibilities after that support was awarded to a competitor. By definition, end-user rates would be unaffordable if the ILEC were forced to make up the deficit through a rate increase. Auctions should not be used to deny support to an ILEC unless the ILEC also is relieved of its COLR responsibilities. Moreover, any auction winner must be required to assume COLR obligations in the market. If the COLR obligations were not assumed, the hardest-to-reach customers could potentially be left without services, and the market could be subject to the pervasive service quality and investment disincentives, as discussed above.

C. Reverse Auctions May Be Used for Universal Service Funding Only In Limited Circumstances, Under the Act

The essential nature of the ILEC network in rural markets mandates that the ILEC, as the only entity with COLR responsibilities in the market, must continue to receive support at predictable and sufficient levels.³⁴ Under the current scheme where states set service standards and local rates, ensuring support is “sufficient” and “predictable” is already complex. Adding a competitive bidding mechanism increases the difficulty of meeting this statutory mandate, and further disrupts a carriers’ ability to plan networks and services accordingly. Because support levels will vary by auction period and will be determined by the lowest bidder, support may not be either “sufficient” or “predictable.”³⁵ ETCs will be unable to predict from term to term whether or how much universal service support will be available.

³⁴ 47 U.S.C. § 254(b)(5).

³⁵ *Universal Service First Report and Order* ¶ 409 (citing to Comments of various parties).

The Act also requires telecommunications services to be affordable.³⁶ In designing the current funding mechanisms, the Commission relied on states to ensure that current rates were affordable and based the rural high-cost funding mechanism on costs. As a practical matter, most states employ geographic rate averaging and a host of different rate structures and pricing plans. Therefore, as CenturyTel has pointed out elsewhere, it would be nearly impossible to adopt any national “affordability” benchmark.³⁷ It would be impossible to develop a uniform competitive bidding process for nationwide application across rural markets because local rates and service areas vary so greatly by state, and consequently there would be no uniform measure of “sufficient” support.

Under the Act, state commissions have the primary responsibility for designating most ETCs.³⁸ State commissions “may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area” if it is consistent with the public interest.³⁹ It is not clear how states would be able to carry out the required public interest analysis if they were compelled to award support to the lowest bidder in all markets.

CenturyTel does believe that auctions may be worth testing on a limited basis, in two types of markets. First, in markets in which there are multiple CMRS carriers seeking support (in addition to the ILEC) auctions may be a useful tool for selecting only one CETC per

³⁶ 47 U.S.C. § 254(b)(1).

³⁷ Federal-State Joint Board on Universal Service; High-Cost Universal Service Support, Comments of CenturyTel, Inc., CC Docket No. 96-45, WC Docket No. 05-337, at 7-10 (filed Mar. 27, 2006).

³⁸ 47 U.S.C. § 214(e)(1),(2).

³⁹ *Id.* § 214(e)(1).

market.⁴⁰ In such case, funding would be separately awarded to the ILEC (as it is today) and to the CETC on the basis of the auction conducted by the state along the lines set forth in the Joint Board's discussion proposal. This bifurcation of the funding process could help the Joint Board achieve its stated goals of minimizing the burdens of the fund on consumers and reducing fund growth, without putting universal service or network infrastructure at risk.

Second, there are some isolated places that are simply unclaimed today – they are not receiving service due to their remote and sparsely populated nature. In such markets, there may be no carrier designated as the COLR, or the COLR simply may not have deployed any facilities because no customer was willing to order service at the tariffed rate. In such markets, which should be identified by state commissions pursuant to objective criteria, an auction might help determine whether any carrier is willing to serve the area. If more than one carrier applied, the state still would face the administrative difficulties identified above in selecting from among competing bids which might propose very different technological solutions, and enforcing the requirements of the contract. However, no incumbent provider would have been displaced, so consumers would not risk being worse off than they were before the auction.

IV. CONCLUSION

For the foregoing reasons, the Joint Board should adopt a reverse auction mechanism only in limited circumstances where consumer welfare would not be put at risk. In addition, the Joint Board should consider the alternative remedies identified herein for reducing the burden on contributors by setting reasonable limits on CETCs drawing identical ILEC support. The number of CETCs in a market should be limited to one per rural area, the amount of support to a CETC should be limited, and CETCs should be required to assume COLR and

⁴⁰ Today, the growth of the fund stems from multiple CMRS CETCs receiving support in rural markets.

other regulated responsibilities as a condition of receiving support. These measures will help ensure the integrity of the underlying network while promoting sensible market-based solutions where appropriate.

Respectfully submitted,

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