Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of itself and its wholly-owned subsidiaries and affiliates (collectively "AT&T"), respectfully submits these reply comments in the above-captioned docket.

In the initial round of comments, a broad cross-section of parties agreed with AT&T regarding the need for comprehensive reform of the nation's high-cost universal service support regime to preserve and advance universal service in today's increasingly competitive marketplace, and the potential for a properly-structured competitive bidding process to efficiently and effectively achieve congressional universal service objectives, as set forth in section 254(b) of the 1996 Act.[1] Indeed, apart from those parties that benefit under the existing regime (which, as AT&T and others have shown, has not and cannot achieve the objectives of section 254(b) in a competitive environment), most commenters urged the Commission at least

[1] *See* Verizon and Verizon Wireless (collectively "Verizon") Comments at 13-16; TracFone Comments at 2-4; The Seniors Coalition Comments at 3-4; Satellite Industry Association Comments at 3-5; Qwest Comments at 2-4; CTIA Comments at 5-6.

to consider adoption of a reverse auction mechanism to distribute universal service support.[2] These commenters generally agreed that a well-structured competitive bidding process could offer a number of significant advantages over the current mechanism, including providing an effective means of minimizing the cost of universal service through the introduction of market forces, while ensuring that support is available where it is needed.[3]

While these and other parties did not agree on all the details of a competitive-bidding mechanism for distributing universal service support, commenters generally concurred that the focus of any such mechanism should be on the carrier of last resort obligation.[4] As AT&T explained, the objective of any such mechanism should be to identify the least-cost carrier willing to become or remain the provider of last resort in a particular geographic area, and provide universal services at an affordable rate to any customer within that area.[5] Winning bidders should be required to commit to serve the entire geographic area as the carrier of last resort (COLR), and other providers serving that area (including the incumbent for that area if it is not the successful bidder) should be relieved of that obligation, as well as any restraints or other regulation of their rates.[6]

---

[2] For the most part, only those carriers with a vested interest in the status quo flatly opposed any consideration of reverse auctions.

[3] Verizon Comments at 13 ("Such a system would subsidize only the most efficient ETC capable of providing supported services in a defined service area with the lowest amount of subsidy."); Qwest Comments at 2-4; AT&T Comments at 5.

[4] *See* CTIA Comments at 6; Qwest Comments at 7; GCI Comments at 14; CenturyTel Comments at 20; Missouri PSC Comments at 3.

[5] AT&T Comments at 9-11. *See also* Qwest Comments at 7.

[6] AT&T Comments at 11; FairPoint Communications Comments at 11-13; Qwest Comments at 8; Alaska Communications Systems Group (ACS) Comments at 3-4 (arguing that any method of reverse auction that results in designation of an exclusive provider of USF-supported services must require that the winner assume all COLR obligations); Oklahoma Carriers Comments at 8 (if the ILEC ceases to receive universal service support, it no longer should bear the substantial costs of carrier of last resort obligations and dominant carrier regulation.").

Many commenters also agreed that any competitive bidding mechanism should be technologically and competitively neutral, and should not favor any particular technology or service provider.[7] Establishing neutral standards for evaluating competitive bids is imperative to realize the benefits of an auction-based support mechanism, and, in particular, to promote innovation and efficiency, and ensure that support is targeted to the most efficient technologies and suppliers able to provide supported services with the lowest amount of subsidy. And, consistent with the competitive neutrality principle, the geographic scope of the auction should be the same for all potential bidders – ILEC and CLEC, wireline and wireless alike.[8] Again, insofar as the bidding process favors particular suppliers (such as by favoring incumbents over new entrants, allowing different providers to bid on territories with different geographic scopes, or favoring particular technologies), it would needlessly increase the cost of universal service to the detriment of consumers across the country.

Commenters also generally proposed that, if the Commission adopts an auction-based mechanism, the term of COLR obligation to be auctioned must be fixed in advance and long enough to provide the winning bidder a reasonable opportunity to recover its fixed costs of providing universal service in the relevant market, but not so long as to foreclose competition in that market.[9] As AT&T observed in its initial comments, adopting a term that is too short will unnecessarily drive up the cost of universal service and discourage the type of investment

[7] AT&T Comments at 10; GCI Comments at 12; Verizon Comments at 22; Satellite Industry Association Comments at 5.

[8] *See* AT&T Comments at 8; U.S. Cellular Comments at 11-12 (all carriers must bid on identical territories).

[9] AT&T Comments at 15-16; CTIA Comments at 7-8; Qwest Comments at 7; GCI Comments at 15.

necessary to achieve universal service objectives, while a term that is too long will deprive consumers of the competitive benefits that derive from the auction process itself.[10]

A number of parties opposed consideration of any auction-based mechanism, or urged that such a mechanism (if adopted) only be applied to "the other guy." Virtually all of these commenters benefit under the existing support mechanisms, and oppose any change that could reduce the amount of support they receive – irrespective of whether the consumers they purport to champion would be better off under a different regime. But none of the arguments they offer justifies rejecting competitive bidding without any further consideration, or employing such a process to distribute support only to a subset of carriers serving rural and other high cost areas.

Some parties, for example, contend that a reverse auction mechanism inherently would be inconsistent with the mandates of section 254(b), such as the requirement that federal and state support mechanisms be specific, predictable and sufficient to preserve and advance universal service.[11] However, as Verizon, Qwest and others rightly observed, a competitive bidding process plainly could be designed to meet congressional and Commission universal service objectives.[12] For example, a properly designed competitive bidding process would ensure that rates are affordable not only by providing carriers serving rural consumers with sufficient support to maintain just, reasonable and affordable rates, but also by ensuring that carriers and consumers in low cost areas are not forced to contribute more to the universal service fund than

---

[10] AT&T Comments at 15-16. *See also* Qwest Comments at 6-7 (the term must be long enough to encourage sufficient investment in infrastructure but not so long as to irreversibly harm competition in an area).

[11] *See, e.g.*, Telecom Consulting Associates Comments at 5 ("Competitive bidding for high-cost support would not comply with the statutory universal service provisions established by Congress."); Oklahoma Carriers Comments at 2 ("[R]everse auctions appear to be irreconcilable with several universal service mandates set forth in the Act. For example, a reverse auction of universal service support likely would: (1) contravene the universal service principles set forth in the Act requiring, among other things, that support be 'sufficient' and 'predictable' to ensure provision of affordable, high-quality telecommunications services and advanced services to rural communities . . .").

[12] Verizon Comments at 21-22; Qwest Comments at 5-6.

is necessary to achieve universal service objectives.[13] In addition, the bidding process itself would ensure that support is specific, predictable and sufficient insofar as the amount of support available would be keyed to the amount of support the winning bidder deems necessary to compensate it for providing universal service in a particular area for a set term.[14] In any event, contrary to the claims of the Oklahoma Carriers and others,[15] the fact that a carrier that previously received federal high cost funding could lose that funding under a competitive bidding mechanism does not mean that such a mechanism is inconsistent with the requirements of section 254(b). Indeed, the Fifth Circuit specifically rejected the analogous claim that USF portability "violates sufficiency or predictability": "The purpose of universal service is to benefit the customer, not the carrier. 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy."[16]

Of course, as AT&T pointed out, in order to achieve these objectives, the Commission would have to eliminate the artificial distinction between rural and so-called "non-rural" carriers and the reliance on state-wide averaging for determining eligibility for, and the level of support available to, "non-rural" support, which has denied support to many "non-rural" carriers that serve a substantial portion of consumers in rural and high cost areas. The Commission originally adopted, and has maintained, these anachronistic policies on the incorrect premise that so-called "non-rural" carriers are large enough to internally subsidize the cost of serving rural and other high cost customers with revenues from customers in lower cost areas. But, as the Commission has long and repeatedly acknowledged, such internal subsidies are fast eroding and cannot

---

[13] *See* Verizon Comments at 21.

[14] *Id.* at 21-22.

[15] *See* Oklahoma Carriers Comments at 2; Telecom Consulting Associates Comments at 5.

[16] *Alenco Communications, Inc., et al v. FCC*, 201 F3d 608, 621 (5th Cir. 2000) (*Alenco*).

survive the opening of markets to competition, and retaining the foregoing aspects of the existing regime would doom any auction-based mechanism to failure.

For this reason, the Commission should reject suggestions that the Commission artificially cap any auction-based mechanism at existing support levels, and/or apply such a mechanism only to a subset of carriers.[17] Verizon, for example, claims that an auction mechanism should be limited to those areas and carriers that currently receive high cost support because "[a]reas currently served by carriers that do not receive high cost support, by definition, do not require high cost subsidies in order to ensure affordable access."[18] Verizon further maintains that growing intermodal competition obviates the need for continued support in any area where competition exists.[19] But, Verizon's claims rest on the incorrect premises that competitors are ready, willing and able to serve every customer in the market and that existing carriers that currently serve rural and high cost areas without support can and will continue to provide service at affordable rates as the carrier of last resort without explicit support, even as competition whittles away the implicit subsidies on which those rates were based. As the Commission has long recognized, new entrants generally have focused only on the most lucrative customers rather than providing basic services to high-cost and/or low revenue customers. Consequently, even where competition exists for most customers, a significant number of customers still will require universal service support to continue receiving access to affordable services. Moreover, as competition has increased for the most lucrative customers

[17] Verizon Comments at 29; GVNW Consulting Comments at 11. The fact that many of those parties that purport to champion the interests of consumers in rural areas have long sought to preserve the status quo (under which purportedly "non-rural" carriers serving a substantial percentage of rural customers receive no high cost support), and do so again here says volumes about whose interests those parties truly represent.

[18] Verizon Comments at 29.

[19] *Id.* at 7 ("In areas where there are carriers willing and able to offer service without high cost subsidies, subsidies should be eliminated or vastly reduced as part of market-oriented reforms to high cost distribution.").

and in the most lucrative markets, many carriers serving high cost areas have found it increasingly difficult to continue offering affordable (and below cost) service in those areas. Consequently, rather than obviating the need for external subsidies in high cost areas, the growth in competition actually has significantly increased the need for support for the carrier of last resort in high-cost areas.

A number of parties with vested interests in maintaining the current system, such as GVNW Consulting (which provides consulting services to so-called "rural" carriers), argue that the Commission should maintain the artificial distinction between purportedly "non-rural" and "rural" carriers based on the size of the carrier rather than the customers and areas it serves, and apply a competitive bidding process only to "carriers other than rural wireline carriers."[20] But, that distinction has no basis in the Act, which requires that support be provided to consumers in "rural, insular and high cost *areas*" irrespective of the artificial regulatory classification of the carrier that serves them. Moreover, applying an auction-based support mechanism only to a subset of carriers – that is, so-called "non-rural" carriers – or, indeed, limiting high cost reform only to such carriers, would prevent realization of the increased efficiencies and other benefits that come with competitive bidding because the amount of high cost support afforded to "non-rural" carriers is dwarfed by the support distributed to "rural" carriers.

Some of these parties also suggest that existing ILECs are legally entitled to continued support, and that any cut-off of such support (for example, if an ILEC were an unsuccessful bidder in a reverse auction) would result in an unlawful taking or abrogation of the "social contract" under which those carriers previously provided service.[21] But, the loss of federal

[20] GNVW Consulting Comments at 11.

[21] *See* Alexicon Telecommunications Consulting Comments at 12 (arguing that any auction mechanism must address the issue of "potentially stranded investment of existing ILECs, made under existing USF high-cost rules

universal service support by an unsuccessful ILEC bidder would not necessarily result in an unlawful taking. As Verizon correctly points out, ETCs, including incumbent carriers, are not entitled to indefinite federal universal service support, and the loss of such support does not constitute a taking.[22] Indeed, the Fifth Circuit specifically rejected the notion that incumbent ETCs have a property right to universal service support: "The mere fact that, 'for many rural carriers, universal service support provides a large share of the carriers' revenues,' is not enough to establish that [a reduction in or elimination of such support] constitute[s] a taking. The Fifth Amendment protects against takings; it does not confer a constitutional right to government-subsidized profits."[23] In any event, as AT&T and others advocated, under a properly structured competitive bidding support mechanism, only the winning bidder for a particular market would be required to serve the entire geographic area as the carrier of last resort; all other providers serving that area (including the incumbent if it is not the successful bidder) should be relieved of that obligation, as well as of any restraints or other regulation of their rates.[24] To the extent that an incumbent LEC is relieved of such obligations if it is unsuccessful in any reverse auction, it would retain the opportunity to offer service to customers in the relevant market without restraint, and thus would have no credible taking claim.

---

and other . . . 'social contract' requirements," and "allow[]for continuation of ILECs [sic] receipt of high-cost funds through the recovery period relative to the total recovery of their existing infrastructure investment"); GNVW Consulting Comments at 6 (arguing that, "[i]f an existing rural wireline carrier were to be unsuccessful in a reverse auction proceeding, . . . [it is] entitled, as a matter of law, to a full recovery of [its] costs . . .").

[22] Verizon Comments at 22.

[23] *Alenco*, 201 F.3d at 624.

[24] AT&T Comments at 11; FairPoint Communications Comments at 11-13; Qwest Comments at 8; ACS Comments at 3-4; Oklahoma Carriers Comments at 8.

CONCLUSION.

For the foregoing reasons, the Commission should reject claims that: (1) an auctions-based mechanism for distributing universal service support is inherently inconsistent with the requirements of section 254 or would necessarily result in an unlawful taking; (2) any auctions-based mechanism should maintain the distinction between carriers based on their size rather than the areas and customers they serve; and (3) that any auctions-based mechanism, or other high cost reform, should allocate federal high cost support only where such support is provided today, and cap support at existing levels.

Respectfully submitted,

/s/ Christopher M. Heimann

Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-3058
Its Attorneys

November 8, 2006