

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
To: The Commission		

**REPLY COMMENTS OF PUBLIC SERVICE CELLULAR, INC.**

Public Service Cellular, Inc.. (“PSCI”),<sup>1</sup> by its attorneys, hereby submits reply comments in response to the *Public Notice* of the Federal-State Joint Board on Universal Service (“Joint Board”) seeking comment on the use of competitive bidding, also known as “reverse auctions,” to determine high-cost universal service support for eligible telecommunications carriers (“ETCs”) pursuant to Section 254(e) of the Communications Act of 1934, *as amended* (the “Act”).<sup>2</sup> While PSCI salutes the Joint Board’s efforts to reform the Universal Service Fund (“USF” or “Fund”), PSCI opposes the use of reverse auctions to determine eligibility for high-cost universal service support and to determine

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<sup>1</sup> Until its recent transfer of licenses, PSCI was a CMRS carrier, licensed by the FCC to provide personal communications services (“PCS”) and cellular service. PSCI provided analog and TDMA-based CMRS wireless service in the Columbus, GA/AL Metropolitan Service Area; Georgia Rural Service Areas (“RSAs”) 5, 6, and 9; Alabama RSAs 5 and 8; and in the Anniston, AL, Columbus, GA, and Anderson, SC Basic Trading Areas. PSCI was designated by the FCC as an ETC on January 31, 2005. Since it was designated as an ETC, PSCI used the Federal universal service support it received to speed the delivery of advanced wireless services and to provide expanded and higher quality service to residents of rural Alabama and Georgia.

<sup>2</sup> *Federal – State Joint Board on Universal Service Seeks Comment on the Merits of Using Auction to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, FCC 06J-1 (August 11, 2006).

carriers' funding levels. PSCI urges the Joint Board to reject the reverse auction mechanism since it is contrary to the statutory principles that define universal service and will harm rural consumers and businesses that rely on broadband and wireless telecommunications solutions. The Joint Board has previously examined and rejected a competitive bidding mechanism to determine high-cost universal service support<sup>3</sup> and it should reject such a mechanism again.

## **I. Introduction**

Prior to the Telecommunications Act of 1996 ("1996 Act"), the Federal Communications Commission ("FCC" or "Commission") established the USF to promote the availability of reasonably comparable service at reasonably comparable rates in rural areas because AT&T, and later, large incumbent local exchange carriers ("ILECs"), would not serve high-cost, low-density areas. In the 1996 Act, Congress affirmed the FCC's historical universal service structure and codified the FCC's universal service principles to ensure that rural consumers had access to the same telecommunications services as were available in urban areas. The Joint Board now seeks to reform the USF due to concerns over the growth of the Fund. While PSCI applauds the Joint Board's efforts to reform the Fund, the Joint Board should reform the Fund in a competitively and technologically neutral manner that does not risk destroying broadband deployment and eliminating consumer choice in communications technologies.

## **II. Competitive Bidding Is Contrary to Sections 214(e) and 254 the Act**

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<sup>3</sup> See NECA Comments at 2-4.

Section 254(e) of the Act provides that only an ETC designated under Section 214(e) shall be eligible to receive specific Federal universal service support.<sup>4</sup> Section 254(e) further states that such support should be explicit and sufficient. Section 254(b) of the Act establishes the principles and policies upon which universal service should be based including, among other principles: quality of service available at affordable rates; telecommunication and information services in rural areas should be comparable to services in urban areas and available at comparable rates; and there should be specific, predictable, and sufficient support mechanisms to preserve and advance universal service. As explained below, a reverse auction mechanism will undermine the requirement that service should be of comparable quality and at affordable rates in urban and rural areas because of the inherent focus on cost without regard to quality.

In its comments in this proceeding, CTIA: The Wireless Association® (“CTIA”) correctly notes that the goal of universal service is to bring services to consumers through sufficient funding.<sup>5</sup> CTIA, however, incorrectly states that competitive bidding complies with the FCC’s statutory requirement that support mechanisms be specific, predictable and sufficient.<sup>6</sup> If anything, support to current carriers of last resort will become arbitrary, unpredictable, and, most likely, insufficient. As the Rural Cellular Association (“RCA”) notes, using auctions would result in support being specific and predictable for only an artificially selected subset of carriers.<sup>7</sup> Reverse auctions would violate the most important principle of universal service – promoting the availability of reasonably

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<sup>4</sup> See 47 U.S.C. § 254(e).

<sup>5</sup> See CTIA Comments at 11.

<sup>6</sup> See *id* at 10.

<sup>7</sup> See RCA Comments at 9.

comparable services at comparable rates. PSCI reminds the Joint Board that CTIA's large, nationwide (mostly urban and suburban) members generally eschew serving remote, rural regions. CTIA's analysis of USF is based on its desire to lower universal service contributions and improve its members' collective bottom lines, not on any concern or expertise concerning the provision of telecommunications services in genuinely rural areas. Large, nationwide wireless carriers primarily serve densely-populated areas and interstates, and their limited coverage off of the interstates could be a harbinger of universal service if reverse auctions take hold.

Unlike competition, reverse auctions create no incentive to deploy better quality service. In fact, reverse auctions would stifle competition, and therefore, the development of new technology and services. Even if the FCC could implement a reverse auction mechanism that incorporates quality of service as a successful bidding element, quality of service would still suffer due to lack of funding. In a reverse auction, support will be primarily based on the lowest bid. The lower the bid, the less amount of support a carrier will receive. Simply put, low-ball bids will make it extremely difficult for carriers to upgrade networks and provide the quality of service guaranteed by the Act. Further, a carrier who wins a reverse auction would have the economic incentive to provide cheap and insufficient ("discounted") services to high-cost rural areas. Discounted services would lead to the degradation of rural networks, and rural businesses and consumers would be stuck with aftermarket and sub-par networks. By statute, rural consumers should have services comparable to urban areas and at comparable rates. Discounted services would be in violation of this statute.

Furthermore, as the Rural Independent Competitive Alliance (“RICA”) notes in its comments, Section 214(e)(2) requires that any carrier meeting the requirements of Section 214(e)(1) be designated as an ETC.<sup>8</sup> Reverse auctions would essentially create a ten-year monopoly for one carrier in violation of the 1996 Act.

Reverse auctions will result in the carrier that provides the cheapest service-- without regard to quality-- being designated the ETC in a particular service area. This exclusive focus on cost to create a ten-year monopoly violates the Section 214(e)(2) requirement that ETCs are to provide quality services comparable to urban areas.<sup>9</sup> No commenter adequately explained how quality will not suffer if high-cost universal service support is based solely on the lowest cost as it would be under a reverse auction mechanism.

### **III. Public Policy Dictates that the Joint Board Reject Competitive Bidding**

In addition to legal concerns outlined by commenters in this proceeding, there are numerous public policy reasons why the Joint Board should not adopt reverse auctions to determine high-cost universal service support for ETCs including: harm to rural consumers, stranded investment, little emphasis on quality of service, and most importantly, deterioration in the deployment of broadband in rural areas.

#### **A. Competitive Bidding will Diminish, if Not Destroy, Broadband Deployment in Rural Areas**

One of the inevitable results of a reverse auction is “discounted” services in rural areas due to the economic incentive for the provider to keep as much of the support as

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<sup>8</sup> See RICA Comments at 5.

<sup>9</sup> *Id.*

possible by spending and investing as little as possible. With a possible ten-year monopoly on high-cost support, the winning carrier will not be spurred by competition to improve services. This will lead to a degradation of rural infrastructure necessary for the provision of broadband, both wireless and wireline. Businesses and consumers in rural areas will suffer accordingly. A decision to implement reverse auctions will decimate rural economies if broadband applications and modern telecommunications solutions are incapable of being used in rural regions with discount quality telecommunications “merchandise.”

While there is no specific high-cost support for rural broadband today, current high-cost support mechanisms allow rural carriers, be they wireline or wireless, to upgrade their systems to provide the foundation for broadband applications and services. Businesses and consumers depend upon broadband to communicate with the outside world. As traditional rural income generators such as farming and other industries such as textiles decline, advanced telecommunications provide an alternative economic development resource. Reverse auctions will remove any incentive for an ETC to upgrade its network since building the price of upgrades into a reverse auction bid will most likely cause the bidder to lose the auction and lose *all* high-cost support. The emphasis will be on who can provide basic service for the cheapest price. Thus, service quality will deteriorate and broadband investments will suffer, adversely affecting rural businesses and consumers.

### **B. Competitive Bidding Will Lead to Stranded Investments and to Degraded Networks**

Whether any particular commenter supported or opposed the use of competitive bidding, most agreed that carriers that have invested substantial sums of money in their networks should have the opportunity to recover the costs of network investments.<sup>10</sup> Pursuant to the FCC's new ETC obligations, competitive ETCs like PSCI have invested millions of dollars to develop their networks to provide consumers with higher quality service. When PSCI was designated as an ETC, the FCC's rules provided for a reasonable opportunity for cost recovery of its long-term investment. If the Joint Board adopts a competitive bidding mechanism, PSCI and all other ETCs who have made significant investments in their networks will have to abandon their network investment plans if they do not win at auction.

As the Rural Iowa Independent Telephone Association stated, long-term investment creates a regulatory contract.<sup>11</sup> ETCs have fulfilled their regulatory end of the contract by investing universal service support as it was intended. The Joint Board and the FCC should not default on their end of this contract by adopting a reverse auction mechanism, essentially asking former ETCs to abandon their investments. Going forward, telecommunications networks still require significant investments in infrastructure to update and upgrade the technology, services, and facilities. Under a competitive bidding mechanism, a ten-year contract, based on the lowest bid, may not provide the support necessary to provide for future upgrades. Consumers in high-cost areas will then be stuck with outdated technologies.

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<sup>10</sup> See OPASTCO Comments at 4; see NTCA Comments at 14-15; see TSTCI at 10.

<sup>11</sup> See Rural Iowa Independent Telephone Association Comments at 2.

### **C. PSCI Supports Elimination of the Identical Support Rule to Better Protect Rural Consumers**

As previously stated, the USF was created to promote the availability of comparable service at comparable rates in rural areas because AT&T and its ILEC offspring would not serve high-cost, low-density areas. For years, the high-cost fund has successfully provided support to rural carriers who used such support for what it was intended. Rural carriers have built-out their networks to provide high quality service at reasonable rates to rural consumers who would not otherwise have such service.

Universal service is vital to rural consumers. Further, as the United States Telecom Association (“USTA”) stated in its comments, universal service is vital to the nation by expanding contact beyond the cities and urban areas, improving the economy, public safety and homeland security.<sup>12</sup> While it supports the FCC’s efforts to reform the USF, PSCI requests that the Joint Board propose an alternative means to reform the Fund. Reverse auctions will dramatically harm rural consumers, and the nation, by emphasis on cost to the virtual exclusion of quality.

Rather than using reverse auctions, the Joint Board should target its reform directly at the problem, the increased size of the Fund. Like most carriers, PSCI supports elimination of the identical support rule.<sup>13</sup> Support should not be based on the incumbent carrier’s costs. PSCI is willing to base the support it receives on its own costs to provide quality service to its rural consumers. Elimination of the identical support rule would

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<sup>12</sup> See USTA Comments 2 – 5.

<sup>13</sup> See NTCA Comments 20 – 22.; see OPASTCO Comments at 10; see Small Company Committee of the Louisiana Telecommunications Association Comments at 12 -14.

reform the USF by curbing growth of high-cost support, while protecting rural consumers by continuing to provide *quality* services at reasonable rates.

#### **IV. Reverse Auctions are Administratively Unworkable**

The majority of the commenters oppose the Joint Board's reverse auction proposal. One of the main reasons why most commenters oppose the Joint Board's reverse auction proposal is that reverse auctions are administratively unworkable. As the Small Company Committee of the Louisiana Telecommunications Association stated, it would be too difficult to compare bids of carriers with completely different economies of scale.<sup>14</sup> It will be impossible to develop nationwide criteria to be implemented in unique service areas, with vastly differing topographies, facilities, and other service challenges. USTA correctly noted that the cost of providing service "varies significantly depending on population density, distance of which infrastructure must be deployed, topography, and socioeconomic conditions."<sup>15</sup> Other administrative obstacles include regulating quality of service and facilities, enforcement of winning bidders, and regulating carriers of last resort.<sup>16</sup>

Finally, incumbent ETCs have an unfair advantage over competitive ETCs in reverse auctions. RCA stated that competitive bidding cannot produce equitable or desirable results until competitive networks exist.<sup>17</sup> Incumbent ETCs have a competitive advantage over competitive ETCs because the incumbents have received support for

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<sup>14</sup> See Small Company Committee of the Louisiana Telecommunications Association Comments at 10.

<sup>15</sup> See USTA Comment at 8.

<sup>16</sup> See Small Company Committee of the Louisiana Telecommunications Association Comments at 10 – 11; RCA Comments at 5; OPSACTO Comments at 3; NTCA Comments at 12.

<sup>17</sup> See RCA Comments at 5 – 6.

years, and therefore, their networks are complete. Competitive ETCs are currently making substantial investment on improving their networks. Competitive carriers can not and should not be expected to compete in an auction where the lowest bid wins.<sup>18</sup> Reverse auctions could have the perverse effect of reverting high-cost support back to its pre-1996 Act monopoly days.

**V. Conclusion**

For the foregoing reasons, PSCI urges the Joint Board and the Commission to refrain from adopting any competitive bidding mechanism. Such a mechanism, emphasizing cost rather than quality, will doom rural Americans to substandard “discounted” telecommunications services, in direct violation of the Act.

Respectfully submitted,

**PUBLIC SERVICE CELLULAR, INC.**

By: \_\_\_\_\_/s/\_\_\_\_\_

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<sup>18</sup> *See id.*