

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Federal-State Joint Board on Universal Service)	WC Docket No. 05-337
)	CC Docket No. 96-45
)	

To: The Federal-State Joint Board

**REPLY COMMENTS OF
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“USCC”), by counsel and pursuant to the Commission’s *Public Notice*, “Federal-State Joint Board On Universal Service Seeks Comment On The Merits Of Using Auctions To Determine High-Cost Universal Service Support,” FCC 06J-1, ___ FCC Rcd ___ (Jt. Bd. rel. Aug. 11, 2006) (“*Public Notice*”), hereby provides the following reply comments.

I. Introduction.

At this early stage, support for reverse auctions is thin, and the number and diversity of parties opposing the proposal is significant. From a legal perspective, attempting to craft an auction that will meet the Congressional goals set forth in Section 254 of the Act, while maintaining the Commission’s core principle of competitive neutrality, is very difficult. A “winner take all” approach will not deliver the benefits of choice to rural consumers and will overwhelmingly favor incumbents with mature networks. It may also harm consumers by driving support below levels that are “sufficient” to provide the supported services throughout the ETC service areas at affordable rates and at acceptable service quality. Finally, it contradicts the mandate from Congress to develop universal service mechanisms that exist within a

competitive marketplace. An auction-based system that picks a winner and limit support to that winner for ten years would by definition stifle newcomers to rural areas for a decade.

From a practical perspective, moving to auctions would appear to be trading in one set of complications for another. U.S. Cellular identified in its comments a host of complex issues that would need to be dealt with in order to develop a workable reverse auction methodology.¹ Numerous parties agree.² Before embarking on an entirely new direction, the Joint Board should examine reform proposals outlined by U.S. Cellular in its comments, which would rationalize the fund, maintain competitive neutrality, and encourage efficient carriers to enter rural markets.

II. Many of the Issues Raised in the Comments Were Decided Several Years Ago.

Between 1996 and 2001, the Commission released a series of orders implementing the universal service provisions contained in the 1996 Act. In each order, the Commission consistently developed universal service policies that operate within a competitive marketplace.³ The Fifth Circuit in *Alenco* affirmed almost all of the FCC's universal service policies contained in its *First Report and Order* and its *Fourth Order on Reconsideration*.⁴ Likewise, the court in *TOPUC* affirmed the core of the Commission's universal service rulemakings.⁵

Given that the Commission has set its universal service policy course, through its articulation of core principles and substantive decisions—adopted over many years, with the

¹ See U.S. Cellular Comments at pp. 10-15.

² See generally comments of Dobson Cellular Systems, Inc., Rural Cellular Association (“RCA”), National Telecommunications Cooperative Association (“NTCA”), Western Telecommunications Alliance (“WTA”), Small Company Committee of the Louisiana Telecommunications Association (“SCC”), Oregon-Idaho Utilities and Humboldt Telephone Company (“OIU-HT”), ITTA.

³ See, e.g., *Federal-State Joint Board on Universal Service, Seventh Report & Order, and Thirteenth Order on Reconsideration in CC Docket No. 96-45 Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 8078, 8086 (1999).

⁴ *Alenco, et al. v. FCC*, 201 F.3d 608 (5th Cir. 2000) at n.1.

⁵ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

Joint Board's recommendations, and affirmed by the courts—it is time to move forward to improve the system, not backward to restore preferences to any class of carrier. We think that the Joint Board's first order of business, before any substantive issues on reverse auctions are addressed, should be to make clear that this proceeding is not about reversing the Commission's core mission and principles, which have guided all decisions since 1996.

To illustrate, the Commission has adopted a core principle that all universal service rules and policies must be competitively neutral, and not favor one technology over another.⁶ If competitive neutrality is to be honored, the field of suggestions can be narrowed substantially.

For example, CenturyTel claims that support should be limited to only one CETC because wireless carriers have caused fund growth.⁷ This claim is demonstrably incorrect. The Commission specifically intended for the fund to grow when it declined to cap support to rural ILECs upon competitive entry:

[W]e decline at this time to adopt the Rural Task Force's proposal to freeze high-cost loop support upon competitive entry in rural carrier study areas. As discussed below, the purpose of this proposal is to prevent excessive growth in the universal service fund as a result of an incumbent carrier's loss of lines to a competitive eligible telecommunications carrier. The likelihood of this harm occurring in the immediate future is speculative, however, and in some instances the proposal may increase support levels. Moreover, the proposal has significant drawbacks, including administrative complexity and disincentives to infrastructure investment by rural carriers. We conclude, therefore, that adoption of the Rural Task Force's proposal is not warranted at this time.⁸

As a result of the Commission's decision, rural ILEC support is not affected by competitive entry. That is, rural ILECs who lose customers retain the same (or higher) levels of support.

The FCC's protection of ILECs from losing support when they lose customers is a major cause

⁶ *Federal State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, 8801 (1997) (“*First Report and Order*”).

⁷ CenturyTel Comments at pp. 11-12.

⁸ *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11294 (2001) (“*RTF Order*”).

of fund growth and is a policy decision the Commission made. U.S. Cellular has never objected to a “fully portable” fund that only provides support when a competitor gets a customer and removes support when a competitor loses a customer. Indeed, that is the system today for competitors, but not for rural ILECs.⁹ Rather than limit support to one entrant, the far better course is to make all high-cost support “fully portable” by providing the same per-line support to the carrier that captures the customer.

Similarly, WTA and ITTA incorrectly claim that portability of access support is a “windfall” for competitive carriers.¹⁰ Others misleadingly state that Interstate Access Support (“IAS”) and Interstate Common Line Support (“ICLS”) are merely “access replacement” and apparently not universal service support.¹¹ The Act and the Commission’s longstanding precedents hold otherwise. Section 254(e) of the Act provides that all support “should be *explicit* and sufficient to achieve the purposes of this section” (emphasis added). Both IAS and ICLS represent universal service subsidies which the Commission has removed from carrier rates and placed into an explicit fund, pursuant to its Congressional directive, pursuant to protracted rulemaking proceedings in this docket.¹²

With respect to IAS, the Commission has stated:

By simultaneously removing implicit subsidies from the interstate access charge system and replacing them with a new interstate access universal service support mechanism that supplies portable support to competitors, this Order allows us to

⁹ *Report and Order*, 12 FCC Rcd at 8933.

¹⁰ WTA Comments at p. 8; ITTA Comments at p. 22.

¹¹ Centurytel Comments at p. 12.

¹² *Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Rcd. 12,962 (2000) (“*Sixth Order*”); *Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers. Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256. Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd. 19,613 (2001) (“*MAG Order*”).

provide more equal footing for competitors in both the local and long-distance markets, while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas.¹³

With respect to ICLS, the Commission has stated:

Our actions are consistent with prior Commission actions to foster competition and efficient pricing in the market for interstate access services, and to create universal service mechanisms that will be secure in an increasingly competitive environment. *By simultaneously removing implicit support from the rate structure and replacing it with explicit, portable support, this Order will provide a more equal footing for competitors in the local and long distance markets, while ensuring that consumers in all areas of the country, especially those living in high-cost, rural areas, have access to telecommunications services at affordable and reasonably comparable rates.* This Order also is tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and will help provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.¹⁴

IAS and ICLS represent revenue streams that ILECs purportedly need to meet their universal service obligations. IAS and ICLS have been made explicit in the form of universal service support and are funded by universal service contributions. As such, IAS and ICLS funds are required by statute to be portable.¹⁵

In addition to conflicting with universal service policy, any suggestion to cut off IAS to competitive ETCs would not accomplish its stated objective. IAS is frozen at \$650 million per year and “fully portable” to CETCs.¹⁶ Thus, when a CETC draws from the fund, it reduces the

¹³ *Sixth Order*, 15 FCC Rcd at 12,964

¹⁴ *MAG Order*, 16 FCC Rcd. at 19,617 (emphasis added).

¹⁵ *See also Alenco*, 201 F 3d at 622 (“Furthermore, portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent ‘only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.’ 47 U.S.C. § 254(e)”).

¹⁶ *Sixth Order*, 15 FCC Rcd at 12976 (“The CALLS Proposal identifies and removes \$650 million of implicit universal service support in interstate access charges, creates an explicit interstate access universal service support mechanism in this amount to replace the implicit support, *and makes interstate access universal service support fully portable among eligible telecommunications carriers*; IAS is also disaggregated so that support is targeted to high-cost areas.”) (emphasis added)

amount flowing to ILECs. In short, if there were no CETCs, the IAS fund level would be the same. The only possible effect of denying IAS to competitors would be to “discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.”¹⁷

ICLS is different. When a competitor draws from the ICLS fund, the ILECs do not lose support, even if they lose the customer. The Commission should finish its long overdue task of making ICLS “fully portable” by freezing support to an area upon competitive entry so that fund growth is controlled and all carriers are forced to compete for both customers and support. As in a competitive market, ETCs that lose customers would lose universal service funding formerly associated with serving that customer. This will further the Act’s requirement to balance the advancement of universal service in a competitive marketplace. To date, no party has presented any evidence that making IAS fully portable has reduced investment by non-rural ILECs. As a result of reporting requirements placed on competitors, there is a wealth of data available in the states and at the FCC showing how CETCs in non-rural areas have used support to construct new network facilities benefiting consumers.

Suggestions that existing or future support mechanisms should be reserved to ILECs is antithetical to the Act and the universal service principles implemented by this Commission over the past ten years. From the many Commission pronouncements, we think this best captures where the law is – and where it must remain:

We reiterate that federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers. A competitive eligible

¹⁷ *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432, 20480 (1999) (footnotes omitted) (“*Ninth Order*”).

telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. *To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount.* While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. *Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.*¹⁸

In sum, while there is work to be done to improve universal service mechanisms, the principles underlying those mechanisms have not changed. The Commission must act in a competitively neutral fashion, consistent with the promotion of both universal service and competition in rural areas – *not* in a manner that favors one class of carrier or otherwise limits competitive entry. “The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.” (emphasis in original).¹⁹

III. Reform of the Existing Program as Contemplated in 2001 Should Be Completed Before Considering Reverse Auctions.

In its 2001 *RTF Order*, the Commission’s stated desire to ensure that rural ILECs continued to invest in America’s rural areas was sound.²⁰ The Commission committed to make

¹⁸ *Id* (emphasis added); see also, *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration in CC Docket No 96-45, Report and Order in CC Docket Nos 96-45, 96-262, 94-1, 91-213, 95-7*, 13 FCC Red. 5318 (“*Fourth Order*”).

¹⁹ *Alenco, supra*, 201 F.3d at 620.

²⁰ *RTF Order, supra*, 16 FCC Red at 11,264.

adjustments needed to ensure that the program continued to advance the 1996 Act's goals while maintaining financial integrity. Since 2001, the Commission has released no orders addressing the underlying structural issues that it committed to address.

In its Comments, U.S. Cellular set forth specific measures that will stabilize growth in the fund while advancing universal service principles in the 1996 Act. Reforming the current system requires three steps: (1) moving support for areas served by rural ILECs to the cost of building an efficient network; (2) targeting support to the highest-cost areas; and (3) making the fund "fully portable" by freezing support to an area upon competitive entry. In its 2001 *RTF Order*, the Commission anticipated completing steps (1) and (3) by 2006 and partially implemented Step 2 (by allowing rural ILECs the option to not target support upon competitive entry):

We will use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural telephone companies serving the highest cost areas and recognizing the significant distinctions among rural carriers and between rural and non-rural carriers. In addition, we would include in that comprehensive review consideration of general issues related to excessive fund growth and competitive neutrality.²¹

U.S. Cellular urges the Joint Board to address specific reforms within the existing universal service program's framework. Implementing reverse auctions, if they are to be adopted at all, is a long-term project. In the meantime, reform steps can and should be implemented to improve the program for consumers and stabilize the fund.

IV. Moving to a Reverse Auction Regime Would Be More Complicated Than Refining the Existing Distribution Mechanism.

Most commenters oppose implementing reverse auctions as a means of distributing high-cost support. Rural ILEC commenters were virtually unanimous in opposition. Literally scores of objections were raised, many focusing on the complications of conducting reverse auctions,

²¹ *Id.* at 11,310.

similar to those discussed by U.S. Cellular in its comments. In a vacuum, an auction methodology is capable of wringing excess support out of the system, especially for rural ILECs that receive support either on “the more you spend, the more you get,” or pursuant to an “average schedule” that estimates costs.

However, at this early stage, when competitors are literally just getting off the ground in building new networks out in rural America, it is extraordinarily difficult to conduct a fair auction process given the enormous advantages of incumbency. For example, since 1996, ETC service areas for competitors have been based generally on ILEC study areas and constituent wire centers.²² Competitors have many different service areas, for example, MSA, RSA, MTA, BTA, EA, or REAGs, none of which overlaps with ILEC boundaries. With the presence of many and diverse FCC-licensed boundaries, the only way to make auctions viable and competitively neutral is to define the service areas for auction at the smallest possible level, so as to not prejudice any class of carrier.²³

The proposal which would require auction winners to enter into contracts introduces enormous complexities. Contracts between auction winners and regulators will be very challenging to implement. Moreover, enforcement of contracts by regulators has yielded a mixed bag of results, including some cases that have wasted significant and valuable resources.²⁴ Most commenters who addressed the subject believe that requiring hundreds or even thousands of contracts to be negotiated is a non-starter.²⁵

²² 47 U.S.C. Section 214(e).

²³ See RCA Comments at 10; Dobson Comments at 7; AT&T Comments at 13.

²⁴ See, e.g., *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003).

²⁵ See, e.g., RCA Comments at p. 12; CenturyTel Comments at p. 19, WTA Comments at p. 26.

To the extent that auctions are considered, U.S. Cellular believes a “winner take all” system disserves consumers and the public interest. Limiting support to a single auction winner (or one incumbent and one competitor, as some have proposed) artificially determines the number of effective competitors in any market area. Limiting competition, whether as a result of monopoly power or regulators choosing marketplace winners, is antithetical to the 1996 Act.

In fact, the pre-1996 Act implicit universal service system was the single biggest factor preventing competition from coming to rural areas. As a result, Congress in the 1996 Act directed the Commission to remove high-cost support from carrier rates and place it into an explicit mechanism from which *all* qualified carriers can draw. The purpose of making support explicit was to allow any carrier providing the supported services, using any technology, to capture customers and draw from the fund.²⁶ Rather than use auctions to go backward and limit competition, the far better course is to let the marketplace determine the appropriate number of competitors so as to usher in the new era of competition for all Americans promised in the 1996 Act.

V. Conclusion.

It is certainly possible to balance the need to sustain support mechanisms for areas served by rural ILECs with the goal of ensuring that consumers continue to receive high-quality services as competition develops. The Commission has repeatedly affirmed its Congressional mandate to develop competitively neutral universal service mechanisms that encourage efficient competitors to enter. For example:

Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized *so that*

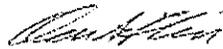
²⁶ See, e.g., Section 254(e) (“Any such support should be explicit and sufficient to achieve the purposes of this section.”).

*no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.*²⁷

As of this writing, wireless consumers are contributing far more than they are getting from the program, despite the clear indication that for many consumers wireless service is fast becoming the preferred means of receiving the supported services.²⁸ The appropriate policy choice must be to continue the work of reforming universal service mechanisms so as to encourage efficient competitive entry in rural areas. Any attempt to manage or limit competition will only create economic distortions that the 1996 Act intended to remove.

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²⁷ *First Report and Order*, *supra*, 12 FCC Rcd. at 8802 (emphasis added). *See also Sixth Order*, *supra*, 15 FCC Rcd at 13,007-08 (“We found that deaveraged rates more closely reflect the actual cost of providing service, which promotes competition and efficiency by allowing a LEC to compete for subscribers when it is the lowest cost service provider, and by removing support flows to the LEC’s higher-cost services. Prices that are below cost reduce the incentives for entry by firms that could provide the services as efficiently, or more efficiently, than the incumbent LEC.”).

²⁸ *See Rural Cellular Association Comments* at pp. 2-3.