

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

In the Matter of)	
)	
Federal-State Joint Board on)	WC Docket No. 05-337
Universal Service Seeks Comment)	
on Long Term, Comprehensive)	
High-Cost Universal Service Reform)	CC Docket No. 96-45
)	

To: The Federal-State Joint Board on Universal Service

**COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION®**

The single greatest universal service challenge currently facing policy makers is ensuring that mobile wireless and broadband services are available to all consumers. In furtherance of that goal, CTIA – The Wireless Association®¹ (“CTIA”) submits these comments in response to the Federal-State Joint Board on Universal Service’s (“Joint Board’s”) public notice seeking comment on long-term, comprehensive high-cost universal service reform.² Over the last three years, CTIA has filed several hundred pages detailing a variety of short- and long-term high-cost universal service reforms. Over that period, demand for mobile and broadband wireless services has exploded as consumers have recognized their social, economic, and public safety benefits. Consumers have developed a corresponding expectation that high-quality, reliable mobile wireless services will be available throughout the United States, including high-cost, rural areas.

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

² Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform, *Public Notice*, FCC 07J-2 (May 1, 2007) (“*Long Term Reform PN*”).

The current universal service mechanisms simply do not account for consumer expectations. Indeed, the high-cost universal service system has been overtaken by changes in the market. The vast majority of high-cost universal service funding – about 75% – continues to be directed to incumbent local exchange carriers (“LECs”), even though there are now significantly more mobile wireless subscribers than wireline switched access lines and mobile wireless services are now the telecommunications of choice for the majority of consumers.³ In fact, a majority of consumers currently using wireline service consider their wireless phone their “primary” connection – if forced to choose one or the other, they say they would keep their wireless phone and give up their wireline connection.⁴ This does not even account for the growing percentage of wireless only households.

Band-aid “reforms,” such as a competitor-only cap, that perpetuate (and over time exacerbate) current funding inequities are not acceptable or defensible from a policy, economic, or legal perspective. CTIA, therefore, again urges the Joint Board to pursue market-oriented, competitively- and technologically-neutral universal service reforms that recognize what is now so obvious to consumers – a greater portion of universal service funding must be available to mobile wireless providers in order to ensure ubiquitous service.⁵ CTIA urges the Joint Board to

³ Not surprisingly, those rural incumbent LECs that have most abused the current system and receive the greatest share of universal service funding have been the most resistant to reform.

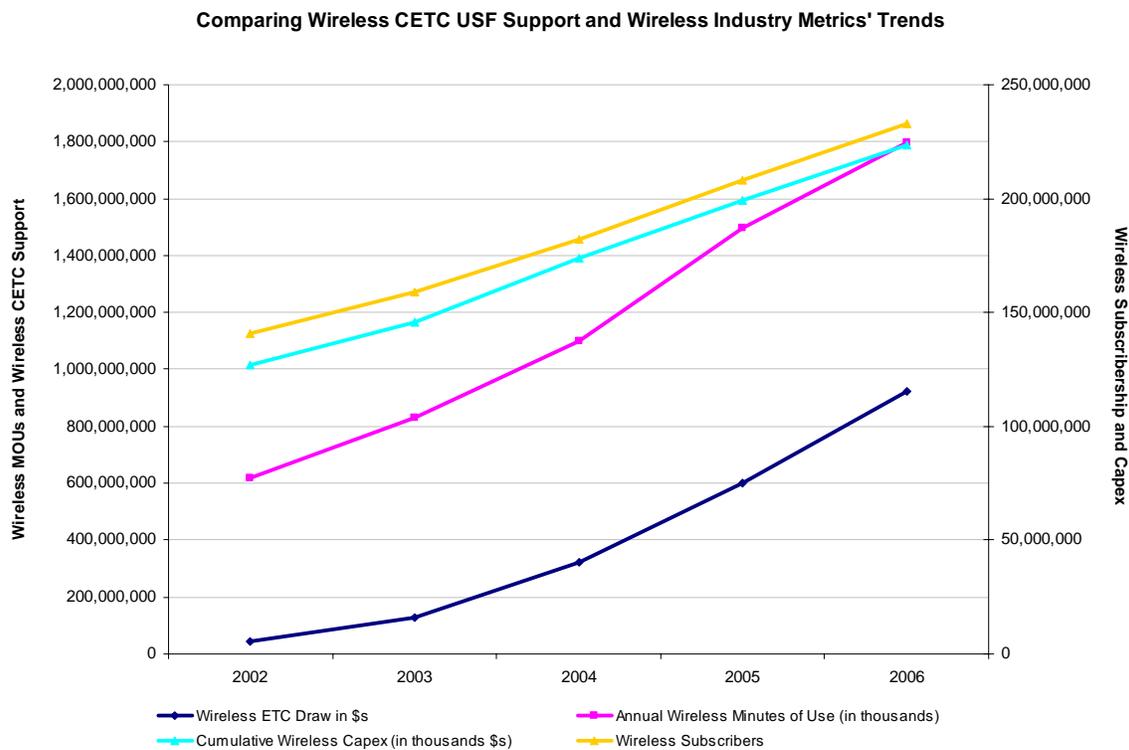
⁴ On March 6-8, 2007, MyWireless.org® commissioned a national survey of 1,000 adult wireless phone users who also have wireline phones and who are likely voters (“MyWireless.org National Consumer Survey”). All interviews were conducted by professional interviewers via landline telephone. Interview selection was at random within predetermined geographic units. The accuracy of the sample is within 3.1% at a 95% confidence interval. The precise question asked was: “If you could keep one service, would you keep your cell phone service or your home landline phone service?”

⁵ In a recent consumer poll commissioned by MyWireless.org®, 70% of consumers said they support using a *greater* portion of the universal service fund to help wireless carriers improve wireless service in rural areas. Only 14% of consumers said they oppose such a proposal. MyWireless.org National Consumer Survey, *supra* note 4. The question posed was: “You are currently charged about \$1 a month for a ‘universal service’ fee on landline phone bills and cell phone bills in part to enable telecom carriers to provide service in rural and other high-cost areas. About 75% of the funds currently go toward providing landline phone services. Would you support or

develop such recommendations in less than the six month timeframe detailed in the public notice.

I. Growth In High-Cost Support for Mobile Wireless Carriers Is Unremarkable

Contrary to recent statements, there is absolutely nothing “uncontrolled”⁶ about growth in high-cost universal service support for mobile wireless carriers. Under the FCC’s current rules, high-cost support for wireless carriers is entirely a function of subscribership.⁷ So, consumers control whether and how much support a wireless eligible telecommunications carrier (“ETC”) receives. As the chart below demonstrates, growth of wireless carrier high-cost universal funding has tracked other measures of the wireless industry’s incredible success.



oppose using a greater portion of universal service funding to help cell phone companies improve the quality of cell phone service in rural and high-cost areas?”

⁶ See *Long Term Reform PN* at para. 7.

⁷ More subscribers translate to more support and less subscribers translate to less support. This is in stark contrast to high-cost universal service funding for rural incumbent LECs, which can (and often do) retain funding even as they lose customers.

Over the past five years, annual high-cost universal service support for wireless ETCs has increased to about \$1 billion. At the same time, the number of mobile wireless subscribers has increased from 118 million in June 2001 to more than 233 million in December 2006.⁸ Over the past five years, the average number of minutes that subscribers use their mobile devices each month rose from 380 to 714 minutes, or approximately 12 hours per month.⁹ In 2006, there were approximately 1.8 trillion minutes of use on wireless networks.¹⁰ U.S. commercial wireless service providers are investing billions of dollars a year, more than \$27 billion to be exact, to increase the capacity of their networks so they can respond to consumer demand and deliver next generation services to consumers.¹¹

In many respects, growth of mobile wireless carriers' high-cost support has failed to keep pace with other more recent measures of the wireless industry's success, such as mobile wireless broadband subscribership. From December 2005 to June 2006, almost 60% of all new high-speed lines reported were mobile wireless broadband lines.¹² Over that six month period, mobile wireless broadband subscription grew by almost eight million subscribers, a tremendous 250%. Collectively, wireless companies are providing wireless broadband coverage to more than 200 million Americans in communities across the country. Public safety users also are increasingly using commercial mobile wireless broadband networks.

⁸ CTIA's Semi-Annual Wireless Industry Survey Results, January 1985 - December 2006, available at http://files.ctia.org/pdf/CTIA_Survey_Year_End_2006_Graphics.pdf.

⁹ CTIA's Year-End 2006 Wireless Industry Indices Report, May 2007.

¹⁰ CTIA's Semi-Annual Wireless Industry Survey Results, January 1985 - December 2006, available at http://files.ctia.org/pdf/CTIA_Survey_Year_End_2006_Graphics.pdf.

¹¹ See Annual Capital Expenditures: 2005, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at Table 4a (Issued February 2007).

¹² See HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF JUNE 30, 2006 at Tables 1, 8 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf (Jan. 31, 2007).

II. Competitive and Technology Neutrality Remains a Necessary Component of Achieving Universal Service

Whatever theory of competitive or technology neutrality the Joint Board develops in this proceeding, it should not overlook a significant body of case law demanding nondiscrimination in universal service. As the Rural Task Force noted during the course of its deliberations, “Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”¹³ The FCC noted this statutory mandate in the *First Report and Order*, when it stated that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”¹⁴

In *Alenco Communications, Inc. v. FCC*, the United States Court of Appeals for the Fifth Circuit stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”¹⁵ As the Fifth Circuit noted, non-discriminatory incumbent and competitor access to high-cost support “is made necessary not only by the realities of competitive markets but also by statute.”¹⁶ Accordingly, “[t]he FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other.”¹⁷

It should be no surprise then that competitive and technological neutrality enjoys nearly universal support as a bedrock legal principle. Senator Stevens’ proposed universal service

¹³ Rural Task Force, *White Paper 5: Competition and Universal Service*, at 8 available at <http://www.wutc.wa.gov/rtf> (hereinafter “White Paper 5”) (2000).

¹⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 para. 47 (1997) (subsequent history omitted).

¹⁵ *Alenco Commun. Inc. v. FCC*, 201 F.3d 608, at 616 (5th Cir. 2001).

¹⁶ *Id.*

¹⁷ *Id.* at 614 (emphasis in original).

legislation would codify the requirement that “[u]niversal service support mechanisms and rules should be competitively neutral” – *i.e.*, that such rules must “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”¹⁸ Moreover, United States Senator Jay Rockefeller and his colleagues recently urged the Joint Board to “seriously consider competitively-neutral proposals” as it works to reform the universal service system. Likewise, United States Senator John Sununu and his colleagues voiced opposition to universal service reforms that “unfairly skew the marketplace” and “pick winners and losers or favor one technology over another.”

A commitment to technology neutrality is shared at the FCC. Commissioner Tate has expressed her goal of “work[ing] to create and maintain a regulatory landscape that is fair and technology neutral”¹⁹ and of placing competing services “on a level playing field.”²⁰ Chairman Martin has stated that “all providers of the same service must be treated in a similar manner *regardless of the technology that they employ*,” and “[r]egulation must not have the effect, unintended or otherwise, of favoring the adoption of certain technologies over others.”²¹ Commissioner Copps, too, has emphasized that “[t]he role of government” in an age of

¹⁸ See S.101, A Bill To Update and Reinvigorate Universal Service Provided Under the Communications Act of 1934 at § 203.

¹⁹ “A Rewrite for the 21st Century,” Tennessee Telecommunications Association; Commissioner Deborah Taylor Tate, 2006 FCC LEXIS 2156 (May 2, 2006). Commissioner Tate also praised the Commission’s 2006 *Contribution Order* on the ground that it would “ensur[e] that services are treated in a technology-neutral manner under the Commission’s contribution rules.” *Universal Service Contribution Methodology et al.*, 21 FCC Rcd 7518, Statement of Commissioner Deborah Taylor Tate (2006).

²⁰ *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, Statement of Commissioner Deborah Taylor Tate (rel. Nov. 7, 2006).

²¹ Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, DC, 2005 FCC LEXIS 5797 (October 26, 2005) (emphasis added). *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Statement of Chairman Kevin J. Martin at 1 (rel. March 23, 2007); Remarks by Commissioner Kevin J. Martin Federal Communications Commission to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, 2003 FCC LEXIS 1797 (March 18, 2003) (citing FCC’s agreement with principle that “the government should not pick winners and losers among rival technologies or industries”).

intermodal competition “is not to pick winners and losers,” because “[g]overnment is poorly equipped for that job.”²²

Discriminating against mobile wireless carriers in the receipt of high-cost universal service support would also be discrimination against the growing share of consumers that have chosen wireless as their exclusive mode of telecommunication. According to a survey conducted in the second half of 2006 by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention’s National Center for Health Statistics, approximately 12.8% or about one of every eight U.S. households now rely exclusively on mobile wireless services.²³ Just a few years ago, that percentage was in the low single digits. Consumers most often cite cost and the convenience of mobility as the top two reasons for becoming wireless only.

Accordingly, as the Joint Board moves forward, it must not once again single out one technology or competitor class, but must instead focus on wholesale reform to the universal service system.

III. The Joint Board Should Recommend Adoption of Competitively- and Technologically-Neutral Reverse Auctions

Throughout this Joint Board referral, CTIA has put forth market-oriented proposals to reduce demand for universal service, while ensuring that support is available to both incumbent and competitive ETCs on a non-discriminatory basis. As the success of the wireless industry demonstrates, auctions are a proven method for allocating a limited resource. Reverse auctions for universal service have worked well in other countries and they can work in the United States. If properly designed, reverse auctions can serve as a market-oriented means to place disciplines

²² Remarks of Commissioner Michael J. Copps, OECD Conference on the Future Digital Economy, Rome, Italy, 2006 FCC LEXIS 576 (January 30, 2006).

²³ Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July-December 2006, May 14, 2007, *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf>.

on the size of the universal service fund while still achieving important universal service goals. Three elements are key to the success of any reverse auction system in the United States.

First, wireline and wireless ETCs must compete in the same auction. CTIA adamantly opposes separate auction funds for different technologies or groups of carriers. For example, some have proposed that reverse auctions should apply only to wireless carriers or that separate auctions should be conducted for different technologies. These proposals are premised on outmoded and overly simplistic thinking about distinct wireline and wireless markets and boil down to regulation, not consumer choice, picking winners and losers in the competitive market. These discriminatory proposals clearly violate the Act and should be rejected.

Second, reverse auctions can only succeed if there is competition for the subsidy. That has been a key lesson learned from the successes and failures of reverse auctions in other countries and in other contexts. In order to ensure that the pool of eligible bidders is as broad as possible, eligibility criteria must be clear and the ETC designation process should be streamlined.

Third, CTIA supports a “winner gets more” style of auction, which would reward the lowest bidder with the bid upon level of support and would provide some lesser level of support for auction participants that fail to submit the lowest bid. A “winner gets more” auction appropriately balances the goal of driving down the cost of universal service and allowing consumer choice to direct funding.²⁴ Importantly, a “winner gets more” auction mitigates the effect of migrating existing wireless and wireline ETCs to an auction based system. Existing

²⁴ A “winner gets all” universal service reverse auction developed by the Public Utilities Commission of Hawaii was previously found to be unlawful under sections 253 and 254 of the Act. *See GTE Haw’n Tel. v. Pub. Util. Comm’n*, Findings of Fact, Conclusions of Law and Order, Civil No. 97-4732-10 (Haw. 1st Cir. Ct. Apr. 1, 1999).

ETCs will retain some opportunities to cover the costs of investment made under the current high-cost system.

CTIA is realistic that the transition to a reverse auction system cannot happen overnight. For that reason, we advocate a multi-step transition process. Each step in that transition must be a step forward in developing efficiency rewarding high-cost universal service mechanisms. CTIA supports mandatory disaggregation of high-cost support to at least two cost zones upon competitive ETC entry. In addition, CTIA supports development of a cost model that can be used both to identify the relevant geography of auction areas and to place a cap on support amounts. Under such a system, bids above modeled amounts would be rejected. To that end, CTIA supports proposals to use geographic information system (“GIS”) technologies to determine areas that should qualify for support.²⁵ During that transition, the FCC could conduct reverse auction pilots, particularly in highly-competitive markets currently receiving high-cost support. Important lessons could be learned from reverse auction pilots.

IV. The Joint Board Should Reject Proposals to Determine Support Based on Carriers’ Embedded Costs

The Joint Board should reject proposals to determine support for competitive ETCs based on their actual or embedded costs.²⁶ Such a change would be a significant setback in market-based reforms. An embedded cost system for competitors would require complex and indeterminable new reporting requirements²⁷ and would simply repeat the mistakes of the past. Neither the incumbent nor any competitor should receive support based on their inefficiencies.

²⁵ See *Long Term Reform PN* at para. 5.

²⁶ See *Long Term Reform PN* at para. 7.

²⁷ Letter to Marlene Dortch, Secretary, Federal Communications Commission from Gene DeJordy, Vice President, Regulatory Affairs, Alltel Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed Feb. 16, 2007).

Under an embedded cost system, competitive carriers would have the same incentives for inefficiency that incumbent carriers now have.

As a practical matter, an embedded cost system for competitive ETCs would impose regulatory obligations not imposed today on many incumbent LECs. It is simply incorrect that all incumbent LECs receive high-cost universal service support based on their actual costs. We conservatively estimate that about \$1.3 billion or about 40% of annual incumbent LEC high-cost universal service support is not based on their actual or embedded costs. This estimate includes interstate access support, model-based support, local switching support, high-cost loop support for average schedule incumbent LECs, and transferred section 54.305 support. Moreover, as CTIA previously pointed out, incumbent LECs that receive support based on their “embedded costs” also receive a guaranteed universal service rate of return of 11.25% percent. That guaranteed universal service profit would need to be included in any calculation of “embedded cost” support for competitors.

The better alternative to support based on embedded costs is to move forward with developing mechanisms proposed by CTIA, such as competitively- and technologically-neutral reverse auctions that will encourage and reward both incumbent and competitive carrier efficiency and further important universal service goals. Such a mechanism would in fact be a better measure of actual costs than any mechanism that relies on complex and highly regulatory cost reporting. Under a reverse auctions mechanism, wireline and wireless carriers alike would simply reflect their “actual costs” in their bids.

V. Conclusion

CTIA reiterates its support for competitively-neutral reverse auctions to determine high-cost universal service support amounts for both incumbent and competitive eligible

telecommunications carriers. If implemented in a technologically- and competitively-neutral manner and coupled with other reforms that CTIA supports, reverse auctions can serve as a market-oriented means to reduce the size of the universal service fund while ensuring that mobile wireless and broadband services are universally available to consumers.

Respectfully Submitted,

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