

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)
)
FEDERAL-STATE JOINT BOARD) **WC DOCKET NO. 05-337**
FOR UNIVERSAL SERVICE) **CC DOCKET NO. 96-45**
)

**COMMENTS OF THE
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE**

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SUMMARY

Universal service policies have resulted in remarkably pervasive deployment of telecommunications networks throughout the United States (U.S.). Universal Service Fund (USF or the Fund) monies have been directed to areas where, absent that support, consumers likely would not receive service comparable to that enjoyed in urban areas. Certain policies, however, have contributed to recent rampant unchecked growth, which has precipitated the near-term crisis regarding the viability of the Fund. The Independent Telephone & Telecommunications Alliance (ITTA) notes that while support to incumbent local exchange carriers has been controlled and capped, the root of the near-term problem is support to competitive carriers that has grown rapidly, often in unmanageable and sometimes illogical ways. Lawmakers and regulators have now undertaken the arduous task of examining where and how the USF system can be amended, in the short term and for the longer term. In this proceeding, ITTA is focused on several key points:

1. Affirmation of Joint Board's interim freeze recommendation.
2. Recommendation that the Joint Board and FCC consider additional controls on competitive carrier funding.
3. Reverse auctions should be approached with caution because of their complexity and the potential for harm.
4. Focus on broadband and other advanced services.
5. ITTA recommends an approach which allows targeting of support in certain areas.
6. Application of a framework for reform, consistent with ITTA's Reverse Auctions Comments, filed October 2006.

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**COMMENTS OF THE INDEPENDENT TELEPHONE AND
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone and Telecommunications Alliance (ITTA) files these Comments in response to the Public Notice issued by the Federal Communications Commission (FCC or Commission) for the Federal-State Joint Board on Universal Service (Joint Board) seeking comment on various proposals for comprehensive reform of the high-cost universal service support mechanisms.¹

I. INTRODUCTION

Recent growth in the high-cost program of the Universal Service Fund (USF or the Fund) has generated increased Congressional and regulatory scrutiny of the Fund. Decision-makers' stated goals include stability of the Fund and control of Fund growth. At the same time, increased National broadband deployment has emerged as a key priority for many legislators, regulators, and other policymakers. ITTA's Comments in

¹ *Federal State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, CC Docket No. 96-45, FCC No. 07J-2, rel. May 1, 2007 (May 2007 Public Notice).

this proceeding address core issues identified by stakeholders and decision-makers, suggest approaches to stabilize the Fund, and propose a template that will lead ultimately to wider broadband deployment across the Nation. These Comments build upon and are entirely consistent with ITTA's Reverse Auctions Comments, filed October 2006.²

In this proceeding, ITTA focuses on several key points.

1. **Affirmation of the Joint Board recommendation.** ITTA supports the Joint Board recommendation that Competitive Eligible Telecommunications Carrier (CETC), that is, the non-incumbent carrier, funding should be subject to an interim cap. This recommendation is a first step toward resolving the near-term concerns regarding uncontrolled funding growth, which is putting good and necessary support programs at risk. As the Joint Board is aware, other elements of support received by wireline carriers are already subject to caps.
2. **Recommendation that the Joint Board and the Commission consider additional controls on CETC funding, in order to ensure consumers receive full value for support provided.** ITTA urges the Commission and the Joint Board to consider several refinements regarding the near-term controls for supporting CETCs. This is also an opportune time to create a separate program for mobile carriers because the characteristics of supporting mobile service are distinct from that of incumbent wireline carriers. ITTA notes that there is confusion regarding USF distributions to mobile carriers because they have

² *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe LLC, on Behalf of the Independent Telephone and Telecommunications Alliance, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 10, 2006) (ITTA Reverse Auctions Comments).*

different operating characteristics, different investment costs, different geographic coverage areas, different responsibilities regarding any carrier of last resort (COLR) duties, and different quality of service requirements. ITTA recommends two steps, the first to establish defined goals and standards for mobile services supported by USF, and the second to create a separate mobility program within the USF. This effort should include (1) goals for mobile-carrier investment, (2) coverage requirements, (3) quality of service standards and other obligations (such as a modified “carrier-of-last-resort” duty), (4) accountability mechanisms, and (5) appropriate “support” calculations based on mobile-specific investment or some other approach.

3. **Reverse auctions should be approached with caution because of the complexity of the proposed process and the potential for harm.** As detailed in the ITTA Reverse Auctions Comments, there are serious issues that make auctions a high-risk approach. Fundamentally, the auction plan is designed to solve the growth in funding problem. However, there appear to be alternative methods to resolve the USF growth problem in a less complicated and lower-risk manner than reverse auctions.
4. **Focus on broadband and other advanced services.** ITTA recommends that the Joint Board and the FCC develop the record on investment and operating costs necessary to develop further policies that support wider availability of broadband services in rural regions.

5. **ITTA recommends an approach which allows targeting of support in certain areas.** ITTA supports both “targeted support” and disaggregation as separate options that can be applied to discrete areas where those solutions would work best. Even in rural areas, competition is emerging, focused on more profitable, denser population areas (leaving a figurative “donut” of less dense area further from the center of the hypothetical circle-shaped geographic market) which undercuts traditional implicit and explicit support mechanisms. For the longer term, USF likely will need to be reformed to support the highest-cost regions where no carrier can afford to provide service with an appropriate return on investment.
6. **Framework for reform.** In the ITTA Reverse Auctions Comments, ITTA suggested and today reaffirms the need for a framework for evaluating policy alternatives grounded in a clear statement of goals; rigorous data-centric analysis; evaluation of alternatives on the basis of adoptability, achievability, sustainability, and continuity; and, including a feedback mechanism to facilitate modifications based on changed circumstances.³ ITTA again urges the application of this framework, including the candidate goals and problem statements that were detailed in ITTA’s Reverse Auctions Comments.

³ ITTA Reverse Auctions Comments at 26-32.

II. BACKGROUND

A. **THE PURPOSE OF THE HIGH-COST PROGRAM OF THE UNIVERSAL SERVICE FUND IS TO SUPPORT NETWORK DEPLOYMENT IN HIGH-COST AREAS WHERE, ABSENT SUPPORT, CONSUMERS WOULD NOT BE SERVED OR SERVICE WOULD BE COSTLY OR OF LESSER QUALITY.**

As detailed in ITTA's Reverse Auctions Comments, the problems currently affecting the USF can be resolved only by identifying the causes of each problem and addressing directly those factors. At the same time, every effort should be made to avoid disruption of sound policy programs. For example, cost-based programs have enabled successful investment and network deployment. Radical changes to those mechanisms would appear to serve no constructive purpose. As modifications are considered and evaluated, Congressional directives must be met in order to provide comparable services, including access to advanced services, in rural areas at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴

A foundational purpose of universal service policies is to ensure the provision of telecommunications service in areas where an economically rational carrier otherwise would not provide service, or in which service would be too costly for consumers, or of lesser quality. More specifically, the high-cost program supports networks and operations that ensure for rural regions rates and products comparable to those offered in urban areas. Thus, the USF, by Congressional mandate, is maintained to ensure that

⁴ 47 U.S.C. § 254(b).

consumers throughout the U.S. have access to the advanced telecommunications and information services found in urban markets, at rates that are comparable to those provided in regions with greater population density. Congress ordered that USF mechanisms be designed according to the statutory principles that the funding should be “specific, predictable and sufficient.”⁵

The policy of universal service has worked well over the last century, as the U.S. has realized a Nationwide telephone service penetration rate of 94.6 percent.⁶ Citizens benefit from a near-ubiquitous communications network that connects markets, communities, health care facilities, and educational centers across the Nation.

B. THE SCOPE OF UNIVERSAL SERVICE WAS EXPANDED BY THE TELECOMMUNICATIONS ACT OF 1996.

In the Telecommunications Act of 1996,⁷ Congress formalized certain of the historical universal service policies and established two pillars intended to ensure that all Americans have access to comparable services, including access to advanced services at comparable rates: (i) competition and (ii) universal service support.⁸

Congress intended through the 1996 Act to unleash market forces to generate better services, lower prices, and new applications. The 1996 Act, consistent with the

⁵ 47 U.S.C. § 254(b)(5).

⁶ *Trends in Telephone Service: Industry Analysis and Technology Division, Wireline Competition Bureau*, at 16-3, Table 16.1, Federal Communications Commission, Washington, DC (Feb. 2007).

⁷ Pub. Law No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. In this proposal, “the Act” refers to the Communications Act of 1934, as amended by the 1996 Act.

⁸ 47 U.S.C. § 254.

historic principle that led initially to the development of universal service policies, recognized that market economics would not be equal in all regions of the Nation and that in certain regions the costs would be so high that competitive network deployment was unlikely to occur. Congress therefore provided an opportunity for the support of multiple carriers in certain high-cost-to-serve regions. This provision of support to competitive carriers in uneconomic service areas represented a novel expansion of the USF, which for the first time might support multiple networks or carriers in rural regions.

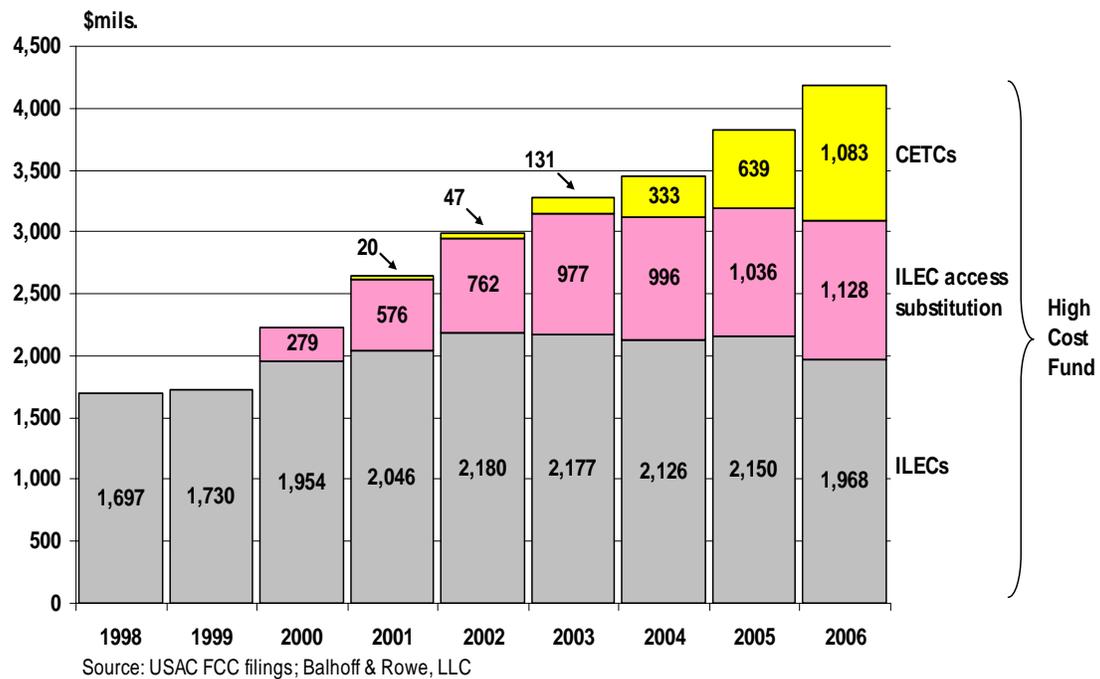
To balance the goals of competitive policy with universal service policy, Congress attempted to place limits on the support of multiple carriers in a single, high-cost market. Pursuant to the 1996 Act, the competitive provider must be designated an eligible telecommunications carrier (ETC) in order to qualify for USF support. In areas served by non-rural telephone companies, the state is required to designate a qualified applicant as a non-incumbent, or competitive, eligible telecommunications carrier; when a state cannot or does not assert authority to designate the ETC or CETC, the Commission undertakes the review (the non-incumbent ETC is referred to often as a “competitive ETC,” or “CETC”). In areas served by rural telephone companies, the state or the FCC may, *but is not required to*, designate an otherwise qualified applicant as a CETC. In each instance, the designation must be determined to be consistent with the public interest.⁹

⁹ Upon request and *consistent with the public interest*, convenience and necessity, the State commission 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 . . . Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission *shall*

C. RECENT GROWTH IN HIGH-COST SUPPORT

The high-cost component of USF which is the subject of the current proceeding generally funds three primary uses: (1) support provided to incumbent carriers (ILECs); (2) access charge replacement; and (3) support provided to CETCs. As illustrated below, support to incumbent carriers has remained flat or declined since 2003. Access replacement is a “revenue/cost neutral” reallocation of previously implicit support monies that has increased slightly, partially offsetting the decline in the traditional high-cost support to ILECs. Only high-cost support to CETCs has risen sharply, with the increase in CETC payments accounting for all of the “real” growth in the high-cost program over the period.

find that the designation is in the public interest. 47 U.S.C. § 214(e)(2)
(emphasis added).

Figure 1: Growth In High Cost Fund

1. Support of Multiple Competitive Eligible Telecommunications Carriers Has Contributed to Rapid Fund Growth.

Notwithstanding the limitations intended by Congress to constrain the designation of multiple supported carriers in uneconomic, high-cost regions, CETC designations are a growing cause for concern. As recognized by the Joint Board in its Recommended Decision, CETCs are identified by public and private parties as the largest source of USF growth in recent years.¹⁰ CETC funding grew from \$1 million in 2000 to \$131 million in

¹⁰ See also Statement of FCC Chairman Kevin Martin Before the Federal-State Joint Board on Universal Service, (Feb. 20, 2007) (Martin *en banc* Statement); Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission,

2003; the Universal Service Administrative Company (USAC) estimates that the trend will continue, with CETC support rising from approximately \$1 billion in 2006 to \$2.5 billion in 2009.¹¹

Inasmuch as CETC support represents the major growth driver in the Fund, appropriate solutions to the USF growth-problem must be tailored specifically to resolve that burgeoning demand. As a result, ITTA applauds the Recommended Decision, which places a rational cap on CETC support in order to relieve the pressure on Fund disbursements while comprehensive high-cost USF reforms are developed.

2. The Incorporation of Access Replacement into USF Has Increased the Size of the Fund, But Has Not Resulted in Additional Receipts by ILECs.

A separate component of USF “growth” emerged when the Commission ordered reductions in access charges in the MAG and CALLS proceedings.¹² Carriers (ILECs)

regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007) (Verizon Proposal); Letter from Mary L. Henze, AT&T, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Rau Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (Mar. 22, 2007) (AT&T plan, or filing).

¹¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1, at para. 4 (rel. May 1, 2007) (Recommended Decision).

¹² *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 92-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, 15 FCC Rcd 12,962 (2000) (CALLS Order) and *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifteenth Report and Order, Access Charge Reform for Incumbent

whose access revenues (typically acknowledged to include some component of implicit high-cost network support) were reduced as a result of the proceedings were compensated for these reductions by increased receipts of explicit USF support. That particular component of USF support, known as “access replacement,” represents growth in the Fund that should have had no net impact on either affected incumbent carriers or customers. The reform was structured so that incumbent carriers would receive virtually the same level of compensation they received before the reform of access charges, and consumers would pay approximately the same amount in higher subscriber line charges (SLCs) and higher explicit USF, which were offset by reduced access revenues. The result for the incumbent wireline carriers and for the consumer was “zero-sum.” Therefore, in considering reforms to reduce growth in high-cost support, growth resulting from prior access replacement reforms was one-time in nature and should not be a focus of current reform efforts. Under the “identical support rule,”¹³ of course, access reform was not “zero sum” for mobile CETCs, which benefited both from reduced access payments and from “identical” access-replacement payments, even though they generally had not previously received access revenues.

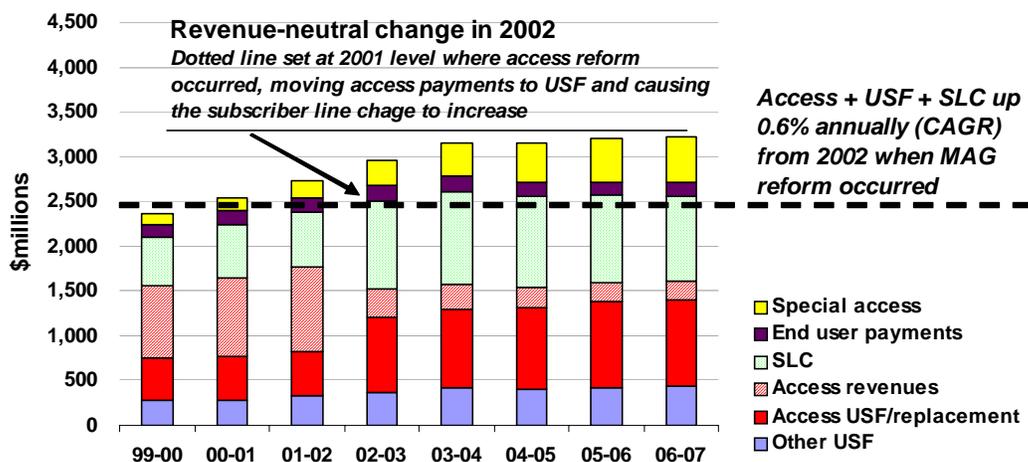
The real “growth” in USF funding is not due to higher monies received by incumbent carriers. After adjusting for the *transfer* (importantly *not* incremental

Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Report and Order, Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers, CC Docket No. 98-166, Report and Order, FCC 01-304 16 FCC Rcd 19,613 (2001) (MAG Order).

¹³ 47 C.F.R. § 54.307(a)(1).

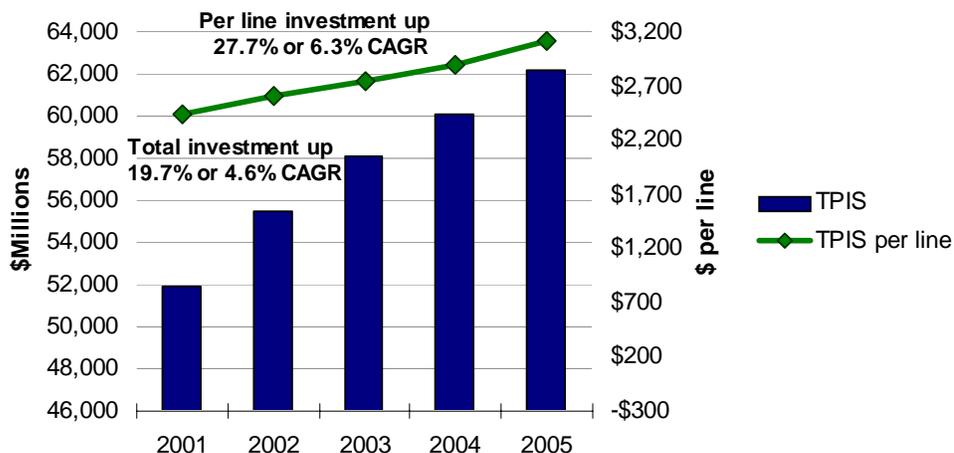
payments) of implicit funding from access charges to explicit funding in USF, as explained in the ITTA Reverse Auctions Comments, the support payments to ILECs are virtually flat since the time of the USF and access reforms. ITTA includes Figure 2 (which was presented in the ITTA Reverse Auctions Comments) to illustrate that funding for incumbent carriers is not expanding. As we noted in that filing, the data are drawn from the National Exchange Carrier Association's (NECA) records of revenues generated by approximately 780 small companies that participate in the NECA revenue pools. Because the data provide a more precise insight into specific revenue components, they offer a relatively accurate illustration of what has occurred among all rural carriers. The figure illustrates pooled company revenues from 1999 through 2007. The dotted line in the figure is set at the combined level of interstate switched access revenues, universal service receipts, and SLCs in 2002 when the MAG access reform was implemented. Using that baseline, the figure highlights that these combined small local exchange carrier revenues have been virtually flat, rising only at a compound annual growth rate of 0.6 percent since 2002. While these small LECs' retail revenues (end user payments) have been stable, customers are paying less for long-distance access, which is offset by the regulatory-mandated increases of SLCs. The only significant source of increased revenues noted below is interstate special access, which is associated closely with provisioning data services.

Figure 2: Are ILECs receiving additional revenues? USF partially offsets access reductions!



Source: NECA Pooled-Company data; Balhoff & Rowe, LLC.

The next figure, also drawn from the ITTA Reverse Auctions Comments, illustrates an important insight related to the previous graphic. Despite the essentially flat high-cost support flowing to RLECs, rural providers continue to fulfill their COLR responsibilities and are continuing to make significant investments in their networks to provision data services, as reflected in the growth in interstate special access revenues. The figure illustrates that, from 2001 to 2005, total rural-carrier investment increased 19.7 percent, a compound annual growth rate of 4.6 percent. Over the same period, per-line investment increased 27.7 percent, a compound annual growth rate of 6.3 percent. Importantly, rural customers benefited from this network investment through higher-quality service, including increased deployment of advanced high-speed services. Despite advances to date, much work remains, loans undertaken to finance deployment must be repaid, and “last mile” deployments will bear great cost.

Figure 3: RLECs increasing investment to provide more service

Source: USAC appendices HC04; Balhoff & Rowe, LLC.

Accordingly, as demonstrated above, support to incumbent carriers has remained flat or declined during the same period in which those carriers have increased network deployment.

D. ITTA SUPPORTS THE JOINT BOARD RECOMMENDATION AS A SENSIBLE AND LOGICAL INTERIM MEASURE.

The Joint Board's recent Recommended Decision addresses directly the fundamental growth problem caused by multiple CETC designations, if only in a potentially temporary fashion.¹⁴ The proposed emergency interim cap on the high-cost support that CETCs may receive, calculated on a per-state basis, protects current supported entities and their customers, while ensuring that redundant CETC certifications do not expand the Fund unnecessarily. The emergency interim cap is consistent with the Joint Board's finding that "[i]n recent years, growth has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line

support that the incumbent local exchange carriers receive, rather than the competitive ETC's own costs."¹⁵

The Joint Board's Recommended Decision addresses directly the number of supported CETCs, while also addressing indirectly the basis upon which those carriers receive support, thereby breaking the artificial linkage between CETC support and the incumbent's costs. Moreover, the cap on a per-state basis has the benefit of underscoring the public interest component of CETC designations. States with finite CETC support at their disposal likely will undertake more rigorous analyses to determine the most appropriate allocation of scarce resources. The Joint Board recognized this benefit as it noted that the interim cap "allows states some flexibility to direct competitive ETC support to the areas in the state that are most in need of support."¹⁶ ITTA supports the interim measure in the Recommended Decision and looks toward more comprehensive high-cost program modifications, as described below, to support network deployment and maintenance in all parts of the U.S.

E. SOLUTIONS MUST ADDRESS THE ROOT CAUSE OF THE USF GROWTH "PROBLEM."

The Joint Board's Recommended Decision is an important step toward necessary reform of USF mechanisms. The interim cap will bring stability to the fund by reducing demand for distributions and aiding policymakers in determining how to distribute USF among multiple providers serving single, high-cost markets. Importantly, by applying the interim cap solely to CETC high-cost support (and not to stable or declining ILEC

¹⁵ Recommended Decision at para. 4.

¹⁶ Recommended Decision at para. 9.

support, which is already subject to a cap), it is apparent that the Joint Board has tailored this emergency solution to address the root cause of current Fund growth, specifically, rapidly escalating payments to CETCs. Alternatives to the current USF system must maintain what works and fix what does not. Modifications to the USF system clearly must be directed to realizing the purpose of the USF, cope with the problems related to uncontrolled growth, and advance the overall goals of universal service. The Joint Board has struck such a balance in its Recommended Decision.

III. COMMENTS ON THE PUBLIC NOTICE

The Commission issued a Public Notice for the Joint Board seeking comment on various proposals to reform the high-cost universal service support mechanisms.¹⁷ The following comments respond to the Joint Board's request.

From the outset, ITTA recommends that the Commission employ a clear framework for its reform process, as explained in the ITTA Reverse Auctions Comments. Other evaluation frameworks certainly are valid and helpful. However, the point is to undertake a structured analysis that incorporates practical and political considerations as well as economic, financial, legal, and other data, intended to select policies that realistically may be implemented and will address, rather than exacerbate, real world problems. The framework previously outlined in the ITTA Reverse Auctions Comments is that, at a minimum, policy recommendations should have the following characteristics to ensure they are effective:

¹⁷ May 2007 Public Notice.

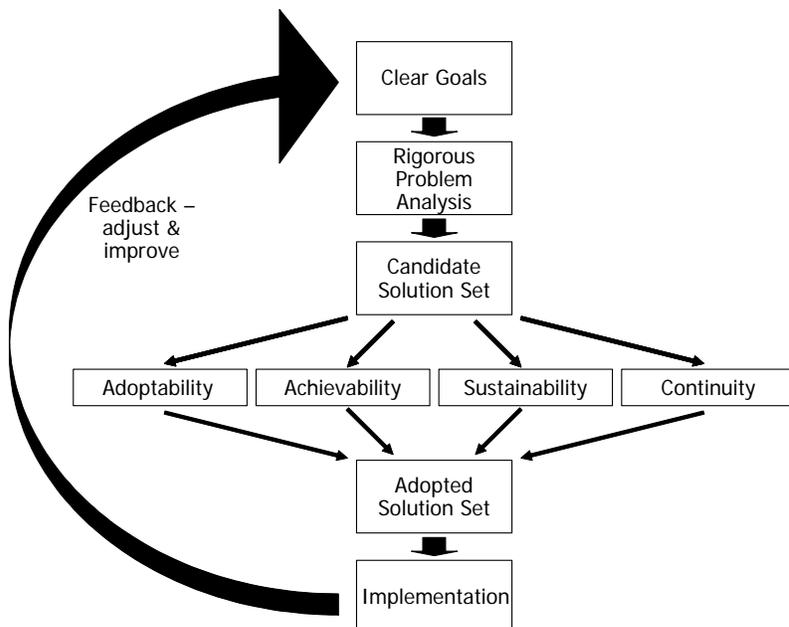
1. **Political adoptability.** There should be a reasonable probability that recommendations actually could be adopted and implemented in the administrative and political process.
2. **Achievability.** Recommendations should have a high likelihood of achieving the desired policy goals. Are the recommendations grounded in a clear analysis of the problem? Are the goals clear? Have probable and possible outcomes - including financial outcomes - been considered, so that there are not unintended negative effects?
3. **Taking into account the starting point for reform (continuity).** Opportunities to implement policy on a clean slate are rare, and rarer still are the attempts that have succeeded. In the case of Universal Service funding, the slate is not clean, raising questions about, among other things, substantial risk of stranded investment.
4. **Sustainability over time.** Will policies continue to “make sense” on a going forward basis as facts on the ground change?

Figure 4 below portrays this “framework for achievable reforms.” The diagram expressly includes problem analysis as a prelude to developing a solution set that will be evaluated. The data and analysis provided in these Comments and in other documents filed in this record may constitute core inputs to the Joint Board’s problem analysis.

The diagram also highlights implementation, leading to a control and feedback phase. One of the Joint Board’s most useful contributions is to monitor developments and recommend modifications based on analysis of those developments. The current docket presents an opportunity to accomplish further progress. In particular, the CETC regime, which has grown rapidly since its inception, appears to be in the monitoring and feedback phase when policymakers should consider seriously the need for meaningful

modifications. This framework also suggests that, at the very least, targeted adjustments to the ILEC programs must occur to ensure support that is sufficient and adapted to investment in advanced solutions or to restructuring of rural properties. In short, rigorous analysis of current facts leading to adoptable, achievable recommendations will be a tremendous contribution to sound and sustainable telecommunications policy.

Figure 4: Framework for achievable reforms



Source: Balhoff & Rowe, LLC

A. REVERSE AUCTIONS

1. Reverse Auctions Raise Substantial Issues When Applied to the Distribution of Support for Incumbent Carriers.

As discussed in the ITTA Reverse Auctions Comments, the Joint Board must account for significant implementation issues when considering the use of auctions. Even if auctions are determined to have merit in certain instances, it is unlikely that auctions for ILEC areas would yield benefits outweighing the significant risks.

Auctions and other mechanisms proposed by policy-makers are meritorious in affirming the insight that there is a need to resolve equitably how to fund fewer, rather than more, eligible carriers. As described above, the data reveal that growth in CETC funding is precipitating sharp increases in USF payments with no apparent effective controls on that growth. The insight of auctions is also correct that there should be mechanisms that focus carriers on cost-efficient networks. Finally, auctions at least appear to offer the hope of potentially avoiding tedious and complex wrangling about which cost methodology is most appropriate—embedded, forward-looking or some other approach.¹⁸

Through adoption of certain policies, the ultimate goals of auctions can be obtained without bearing the implementation risks. Further, implementation of auctions to replace mechanisms that have worked well to-date may be a cure in search of a problem: rational USF distributions to incumbent carriers are based on appropriate costs and have resulted in the efficient deployment of networks that bring not only plain old telephone service (POTS) but also transmission components for advanced services to consumers across the Nation. Unintended consequences of universal use of auctions to distribute high-cost support could be severe.

The Joint Board and the FCC previously have considered auctions on at least five occasions, dating back to 1995.¹⁹ The most recent consideration occurred in the context

¹⁸ In practice, many auction designs do require some costing method to determine maximum or minimum prices, for example.

¹⁹ See *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board: Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket No. 80-286, 10 FCC Rcd 12309 (1995).

of unserved Tribal lands, where the FCC tentatively concluded it should adopt a competitive bidding mechanism.²⁰ The proposal, however, was never implemented.²¹

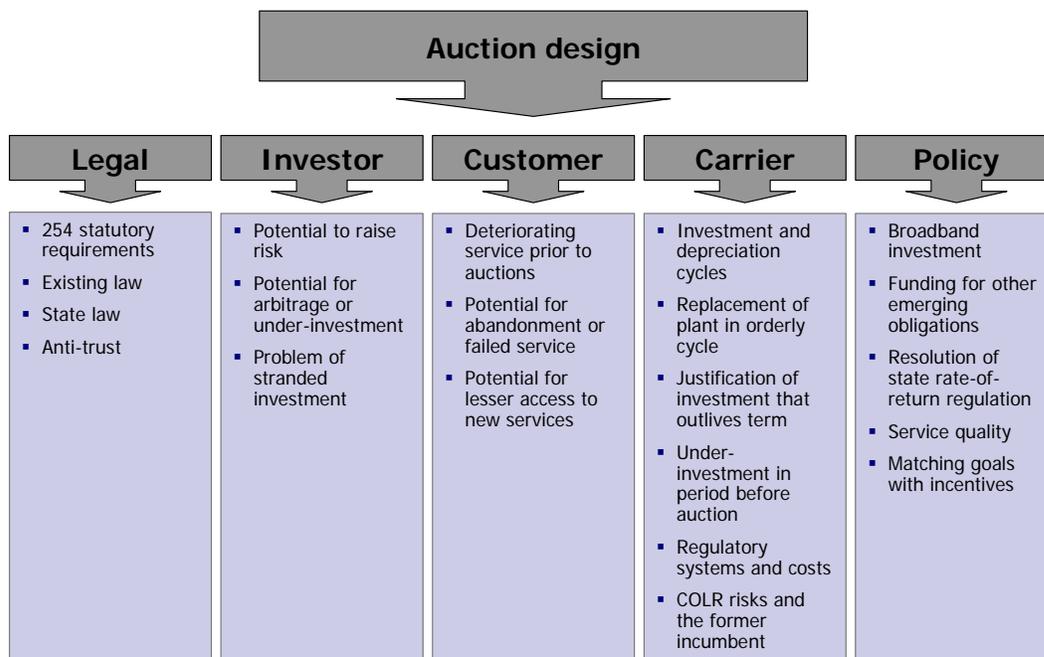
As described in ITTA's Reverse Auctions Comments, the path from academic theory to implementation is twisted and impaired by obstacles and pitfalls (many of which currently may not be obvious). Auction implementation issues that would need to be addressed include, among others, the services to be bid; the temporal and geographic scope; how to initiate an auction, how to qualify the bidder; how many bids will be accepted; how many rounds of bidding to conduct; how to handle potential stranded investment; how to ensure a sufficiently long term such that investors are attracted; how to monitor ongoing fulfillment of obligations; and, how to cope with failure to fulfill obligations. At most, ITTA recommends that auctions be used in a focused, relatively lower-risk context, such as a pilot program for allocating support for unlicensed or abandoned areas, which could be a more appropriate initial step than widespread implementation.

²⁰ *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas: Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 99-204, 14 FCC Rcd 21177 (1999).

²¹ Similarly, the California Public Utilities Commission adopted rules concerning withdrawal from COLR that included an auction process. *See CPUC COLR Order at Appendix B, Rule 6.d.7*. The CPUC Telecommunications Division held workshops in the spring and fall of 1997, and issued a report suggesting further investigation of legal issues with competitive bidding, whether a COLR can be relieved of interconnection responsibilities, and whether the commission can require an ILEC COLR to sell its facilities according to a specified pricing formula. Opinion 16(d) of D.96.10.066 as modified by D.97-01-020 (in R.95-01-020/021). An auction mechanism was never put in place. Auctions are again discussed in the CPUC's current review of the state high cost fund. *See Order Instituting Rulemaking Regarding California High Cost Fund-B Program*, 06-06-028, pp. 40-43 (Calif. Pub. Utils. Comm. mailed June 30, 2006).

If auctions were to be used, multiple issues that add complexity to the process and heighten the risk must be resolved. Figure 5 depicts some of the decisions that would be necessary in implementing an extensive auction process, categorizing issues in the categories of legal, investor, customer, carrier, and policy.

Figure 5: Some decision issues related to auction design and implementation



Source: Balhoff & Rowe, LLC

With respect to legal issues, any auctions proposal must be weighed against the statutory objectives of universal service. Depending on how it is structured, an auction proposal could raise concerns with regard to objectives set forth at Section 254(a):²² quality services at affordable rates; access to advanced telecommunications and information services in all regions; reasonably comparable rural and urban rates and services; and, specific, sufficient, predictable support. Auctions would also require

²² 47 U.S.C. § 254(a).

coordination with existing laws concerning state certification of ETCs and CETCs, as well as ILEC obligations, including rates, service levels, service quality, and COLR responsibilities.²³ A reverse auction would encourage diminished network investment, since winners would achieve ETC designation solely by offering services at the lowest cost. A “lowest cost” basis likely would not enable a winner to grow to provide services reasonably comparable to those provided in urban areas during the auction term.

In addition to the legal issues surrounding auctions, the impact of auctions on investor relationships must be considered. To the extent the Commission desires to avoid increasing the cost of capital and deterring investment, auctions would have to be designed and implemented accordingly. High-cost support is a significant revenue stream for many rural carriers, and for rural wireline carriers is tied directly to investment. Investors (debt and equity) are very sensitive to uncertainty and disruption of this revenue source, as it is intended to assist in providing required rates of return for otherwise uneconomic investment. Moreover, the potential for arbitrage and underinvestment raises, rather than lowers, the need for policymakers’ scrutiny. Auction winners bound to provide service at low-end costs could well be encouraged to undertake

²³ The Fifth Circuit has considered the relationship between FCC policy and state COLR policies: “The FCC suggests that GTE’s problems stem not from bundling but from state-imposed ‘carrier of last resort’ (‘COLR’) requirements, which prohibit ILEC’s such as GTE from disconnecting low-profit consumers and leave ILEC’s vulnerable to outside competition. But the elimination of COLR requirements would only further undermine the goal of making basic services available to low income consumers and those in “rural, insular, and high cost areas.” See 47 U.S.C. § 254(b)(3) This again would violate the express intent of the universal service program. Without a better explanation for its unreasonable interpretation, we would be inclined to find the FCC’s implementation “arbitrary and capricious and manifestly contrary to the statute.” See *Chevron*, 467 US, at 844. *Texas Office of Public Utility Council v. FCC*, 183 F.3d 393 (5th Cir. 1999).

inappropriate measures to preserve their pre-determined business models. By contrast, rural ILEC ETCs are required to account for costs, but with the understanding that rational investment is supported as it grows to meet new network needs based on defined public policy and consumer demands, while non-rural ILEC ETCs are held to an objective forward-looking standard. The prospects of underinvestment are complicated by issues related to stranded investment that might loom toward the end of an auction term, when the prospect of transferring assets to a new auction “winner” emerges. The creation of stranded investment also raises investors’ concerns about policymakers’ willingness to support a financially-sound long-term rural telecommunications business model.

In addition to legal and investor-related concerns, there are valid considerations related to customer service. Commission rules for conducting and implementing the results of auctions would also most likely need to address the significant risk of deteriorating service, especially in the final years of the “bid” (these risks might be compared with the insufficient capital and expense budgets that typically unfold before a company – in any sector – is sold). Moreover, the possibility of replacing the auction “winner” looms: what party would stand ready to assume COLR obligations in such a case? Customers who receive service from the supported entity could be faced with the potential of forced change of service providers every set number of years. There is also the possibility of no access to new “advanced” or “evolving” services, unless an enforceable framework related to new services is factored into the bidding; presumably a corresponding bid price adjustment would have to be allowed, as well.

Further, Commission auction rules would most likely have to consider other carrier-related issues. For example, there is a poor correlation between investment and depreciation cycles. A longer investment term is better than a shorter term, but the longer term may not be as attractive when measured by policy and consumer expectations for the deployment of new features and services. Additionally, an auction process would need to accommodate the reality that plant typically is replaced on an orderly cycle and with different depreciation lives, rather than “all at once.” An auction process, therefore, does not coincide with the normal and ordinary course of business in providing telecommunications services. In fact, a rational bid winner could not justify investment that outlived the auction.

Further, auctions might result in the transfer of existing network components, which could affect subsequent rounds by effectively ordering that the new supposedly “most efficient” provider adopt processes that were previously used. This is distinguishable from an incumbent carrier building on past practices, since the rolling continuum of an entity in business for the “long haul” can formulate its ongoing purchases and deployment on the basis of past actions *and* future expectations. High investment risk in the run-up to an auction environment effectively would preclude the incumbent from justifying investment in the period before an auction was to occur. Notwithstanding a carrier’s commitment to its customers, its investment activity would need to be consistent with lender and shareholder expectations.

Incumbent landline carriers have built networks and incurred ongoing costs to meet a defined set of regulatory mandates, including COLR, rate regulation, network capacity, network reliability, and customer service. They have also been required to

develop and maintain complicated cost allocation, rate design, and reporting systems. None of these systems and costs may be shed easily. Much as in the electric industry, this scenario creates a set of costs that were incurred in order to achieve legal and regulatory requirements, but which likely put the incumbent at a significant disadvantage at the outset of the auction. Further, losing the auction while retaining the cost-overhang could exacerbate the incumbent's disadvantage. If so, it could lead to a negative ripple-effect or even failure that profoundly harms the carrier, its lenders, its employees, and its customers. ITTA questions whether that risk is justified when auctions are proposed to remedy growth not caused by a segment of the market to be subject to auctions.

The link between new and current incumbent carriers must also be addressed. Would an existing incumbent be required to assume COLR duties in the event the successful bidder produces unacceptably low levels of service or abandoned service? If so, how would that cost be compensated? What are the questions of equitable and competitive-fairness if an incumbent loses the USF support, but must stand ready to provide service in uneconomic regions?

While there are, indeed, positive aspects to auctions, such results can be achieved with other modifications, discussed throughout these Comments. The Joint Board should take great pause in recommending replacement of current ILEC mechanisms that have resulted in remarkable penetration of telephone and transmission components underlying advanced services in high-cost areas served by rural carriers. The primary cause of rapid fund growth as identified by Joint Board members²⁴ is the certification of multiple

²⁴ See Recommended Decision, Separate Statements of Kevin J. Martin, Lisa Polak Edgar, and Larry S. Landis.

redundant CETCs serving uneconomic, high-cost regions. The imposition of auctions on incumbent carriers introduces unnecessary risks (some predictable, some undoubtedly unintended) where the existing system already demonstrates consumer benefits and success.

The introduction of a new support distribution mechanism should match incentives with primary regulatory goals. If the incentives and goals are not well aligned, then auctions will require much more effective oversight, enforcement, or penalty regimes. For example, ILEC support that is based on demonstrable historical investment costs has proven to be conducive to high-quality service and technology deployment. However, it appears that the current CETC support mechanism misaligns incentives by providing for “competitively-neutral” duplicative payouts without clear obligations—precipitating confusion about achievable policy goals, and apparently causing wasteful Fund growth. Auctions likely would require an even higher level of monitoring and penalties, given the incentives to minimize costs and potentially supply services that are below acceptable levels. This would result in costly processes and those expenses would not flow directly to generating incremental consumer benefits. Therefore, to the extent that auctions are determined to have merit in certain instances, it is unlikely that auctions for ILEC areas would yield benefits outweighing the significant risks.

2. Various Industry Proposals Recognize Common Issues But Do Not Provide an Adequate Overall Remedy

(a) Verizon

The Verizon proposal²⁵ consists of four major elements: (1) “stabilize” the fund by capping USF payments at current levels; (2) where more than one wireless CETC receives support, implement auctions to award support to a single wireless ETC per designated area; (3) where a wireline CETC receives support, implement auctions for wireline support; (4) after a period of time and based on the experience in the previous elements, consider additional uses for auctions, including single-winner auctions for which both wireline and mobile carriers would be eligible to participate.

Verizon’s proposal recognizes issues raised by ITTA. The key insights are consistent with statements from the Joint Board, the Commission, and the industry:

- The “largest source of growth in USF in recent years [is] new funding to CETCs;”²⁶
- The growth “threatens core universal service goals if not contained;”²⁷
- Wireline and mobile, carriers have “fundamentally different cost structures.”²⁸

²⁵ Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007) (Verizon Proposal).

²⁶ Verizon Proposal at 3.

²⁷ Verizon Proposal at 5.

²⁸ Verizon Proposal at 7.

The Verizon proposal, however, raises substantial questions. The first concerns the arbitrary cap on the Fund size that could have the effect of limiting customer support and network deployment in areas that truly need support. Provisions to limit the Fund size must be flexible to ensure the optimal balance of public interest, including containing costs while expanding policy-driven (complementing market-driven) service deployment, to the greatest extent possible. For example, the current capped fund includes a benchmark readjustment mechanism that can have the effect of eliminating support for areas that fall beneath the level of the benchmark when that factor is readjusted.

General hazards of auctions have been described above. Concerning Verizon's proposal, an additional problem arises from the recommendation to award a "flat payment" to auction winners, which could be a disincentive to acquire or serve new customers, since under the Verizon approach, "[t]he benefit to any ETC of gaining a customer would simply be the additional revenue the ETC would obtain from that customer."²⁹ This approach does not appear to support appropriately a carrier that incurs increased subscriber-based costs.

The Verizon proposal properly includes a transition plan for wireless (mobile) carriers currently receiving support that fail to secure auction-based support. Employing a transition element in the reform is correct, regardless of whether auctions or other processes determine a limitation on support to multiple CETCs.

In sum, Verizon offers a thoughtful filing that properly identifies certain problems within the current system. However, certain of the recommendations made by Verizon,

²⁹ Verizon Proposal at 7.

for the reasons stated above, impose unwarranted burdens on carriers that have not precipitated the recent Fund growth, and potentially put an effective system at risk.

(b) CTIA

CTIA supports the use of reverse auctions to determine high-cost support for both incumbent and competitive ETCs.³⁰ CTIA makes other recommendations that would be detrimental to universal service policies. For example, CTIA reaffirms its position that ILECs should combine study areas within a single state and that larger ILECs with more than 50,000 access lines in a state should be moved toward forward-looking economic cost-based mechanisms.³¹ ITTA contends strongly that statewide averaging is not appropriate for rural carriers.³² In fact, as explained below, averaging can sometimes mask the need for support in some truly high-cost areas; notably, the system of averaging (imposing obligations on specific carriers to serve high cost regions) relies on internal-company cross-subsidization that is increasingly problematic in a competitive marketplace. Forced averaging, therefore, would violate the public interest by operating to obscure, rather than highlight, the need for high-cost support.

³⁰ *Federal-State Joint Board on Universal Service Seeking Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support: Reply Comments of CTIA – The Wireless Association®*, WC Docket No. 05-337, CC Docket No. 96-45 (Nov. 8, 2006) (CTIA Reply).

³¹ CTIA Reply at 2.

³² ITTA Reverse Auctions Comments at 2; *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe, LLC*, CC Docket No. 96-45, at 46-47 (filed Sep. 30, 2005).

Similarly, forward-looking models are not necessarily appropriate for embedded-cost (that is, non-price-cap) carriers, including ones that have more than 50,000 lines in a state. Further, there is risk that averaging USF payments over large areas will result in a system in which the highest-cost areas are eventually isolated and are supported insufficiently as competition expands in lower-cost areas. This view is consistent with ITTA's suggestion that the Joint Board recommend that the Commission revise or add to its existing USF programs to ensure the funding of service provision in high-cost wire centers or sub-wire-center areas.

CTIA previously submitted a paper that set forth its position on reverse auctions.³³ These include a recommendation that consumers should define supported services.³⁴ ITTA recognizes the usefulness of incorporating into a definition of "supported services" the relative demand for a particular service by consumers. The Commission has taken this approach when previously addressing whether advanced services should be included within "supported services."³⁵ However, ITTA maintains that consumer selection alone should not determine the definition of supported services. The list of supported services should include policy-determined components related to public health, convenience, and necessity, as well as public policy goals related to

³³ "Controlling Universal Service Funding and Promoting Competition through Reverse Auctions," by James Stegeman, Dr. Steve Parsons, Robert Frieden, and Mike Wilson, filed with CTIA Reply, *supra* (Nov. 8, 2006) (CTIA Auctions Paper).

³⁴ CTIA Auctions Paper at 3.

³⁵ *Federal-State Joint Board on Universal Service: Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 03-170, 18 FCC Rcd 15,090, at para. 10 (2003).

network design and implementation. While consumer preferences should be fully evaluated, they should inform, rather than dictate, results.³⁶

ITTA opposes the CTIA plan for auctions for the reasons explained generally above, and, more particularly, because the CTIA plan would result in less support for critical wireline networks and because it does not address the root cause of Fund growth. It is also important to note that CTIA suggests that there are imbalances between contributions and distributions among and between the wireline and mobile industry.³⁷ ITTA urges a position that the Joint Board and the Commission have firmly endorsed—that USF collections are today unified and then distributed to various types of recipients through various programs, including Schools & Libraries, Lifeline and Link-up customers, Rural Health Care and various High-Cost Fund (HCF) companies. Bifurcating into mobile and wireline contribution mechanisms would almost certainly create unnecessary complexity and problems. Further, the proposal does not reflect the reality that, in the vast majority of instances, the wireline network provides the underlying transmission basis for wireline and mobile wireless communications, as well as, frequently, call completion. Mobile wireless communications, therefore, enjoy a critical benefit of the support provided to wireline networks.

Finally, the “winner gets more” approach of the CTIA proposal,³⁸ which appears to provide for multiple supported carriers in a single market, risks leading the industry

³⁶ 47 U.S.C. § 254(c)(1)(B).

³⁷ CITA Reply at 6, 7.

³⁸ CTIA Auctions Paper at 19.

back into the morass of multiple supported entities in markets unable to support naturally a single entity. Simply stated, the CTIA proposal does not resolve the core problem of growth which is primarily driven by payouts to multiple mobile carriers whose cost and revenue characteristics are very different from the incumbent carriers for which the system originally was created and designed.

(c) Alltel

Alltel recommends the use of “pilot” reverse auctions in order to speed broadband deployment.³⁹ ITTA proposes a different solution, which is to include broadband among the supported services for all ETCs, regardless of what happens to the auctions proposals; as described above, ITTA recognizes that auctions may be valuable in certain limited circumstances, including pilot projects such as distributing support to unserved areas. Notably, Alltel implies that broadband could be included as a required supported service.⁴⁰

Alltel further recommends that per-line support in each study area should not grow by more than the inflation rate.⁴¹ This recommendation does not account fully for the needs to support the underlying network, parts of which may require investment in infrastructure to accommodate increasing demand from retail and wholesale customers.

³⁹ Letter to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Utility Commission, from Gene DeJordy, Steve R. Mowery, and Mark Rubin, Alltel Wireless, attachment, at 1 (Feb. 16, 2007) (Alltel Attachment).

⁴⁰ Alltel Attachment at 2.

⁴¹ Alltel Attachment at 4.

Alltel recommends targeting funding to the highest cost areas.⁴² ITTA recognizes that this approach may have certain situational benefits, and discusses this issue more fully below. Alltel recommends the consolidation of study areas,⁴³ which ITTA strongly opposes because of the potential isolation of the highest-cost service areas, as described above. Consolidation is also inconsistent with the optional rural targeting approach discussed more fully, below.

Alltel recommends rural study area disaggregation.⁴⁴ For the reasons set forth below, ITTA supports continuation of the Commission's current disaggregation models with the possible reopening of the self-selection window in order to reduce transaction costs for disaggregation.

B. GIS TECHNOLOGY AND NETWORK COST MODELING

There is widespread recognition that current high-cost fund (HCF) mechanisms suffer from significant structural problems when applied to certain providers. In addition to the problem of duplicative support to redundant CETCs, described above, the current USF does not satisfy important statutory criteria set forth in Section 254 of the 1996 Act. Specifically, USF is required to provide "specific, predictable and sufficient"⁴⁵ support, yet current mechanisms fail to do so in some rural high-cost areas.⁴⁶ Rather than provide

⁴² Alltel Attachment at 6.

⁴³ Alltel Attachment at 7.

⁴⁴ Alltel Attachment at 8.

⁴⁵ 47 U.S.C. § 254(b)(5).

⁴⁶ It also fails many, if not most, non-rural high cost areas. ITTA members do not serve non-rural areas for the most part, so these comments focus on the problems in rural areas.

“explicit”⁴⁷ support to the carrier of last resort, USF forces some carriers, including some ITTA members, to rely on implicit support that is *no longer available* in some rural high-cost areas where it is truly uneconomic to provide service. This, in turn, threatens those rural carriers’ ability to ensure that “quality services [are] available at just, reasonable, and affordable rates”⁴⁸ that are “reasonably comparable” to those in rural and urban areas.⁴⁹ While current universal service policies work well in many rural areas, including many served by ITTA members, the public interest compels the Joint Board and the Commission to address the problems in unsupported rural high-cost areas.

1. The Public Interest Would Be Well Served by Permitting, but Not Requiring, ETCs to Demonstrate and Calculate the Need for Support Using GIS Technology Rather than Study Area Averaging.

The cost of deploying and supporting telecommunications networks varies significantly depending on population density, the distance over which infrastructure must be deployed, and topography.⁵⁰ First, a large part of the cost of the network is shared and subject to significant economies of density and/or scale. As the Commission has noted repeatedly, “a lower population density generally indicates a higher cost

⁴⁷ 47 U.S.C. § 254(e).

⁴⁸ 47 U.S.C. § 254(b)(1).

⁴⁹ 47 U.S.C. § 254(b)(3).

⁵⁰ This is true for all terrestrial technologies, although the actual investments needed and the relative efficiencies of different technologies may differ from place to place. Satellite technologies have their own cost and service challenges, notably the “lumpiness” of incremental investment, the need to share bandwidth over large numbers of users, and time delays associated with providing service from orbital atmosphere.

area.”⁵¹ The fixed costs associated with deploying telecommunications networks are generally high in comparison to the incremental (marginal) costs. Accordingly, each customer in an area where there are fewer consumers must bear a higher portion of the network’s fixed cost. The Government Accountability Office (GAO) found that “[t]he most frequently cited cost factor affecting broadband deployment was the population density of a market,” and that “the cost of building a broadband infrastructure in areas where people live farther apart is much higher than building infrastructure to serve the same number of people in a more urban setting.”⁵²

Second, sparsely settled areas will also result in higher costs because facilities must be constructed over far longer distances to reach end users. The distances between individual end users coupled with the carrier’s need to aggregate a critical mass of traffic in a switch often necessitate the use of particularly long loops, increasing costs dramatically. Accordingly, the Commission has stated that “for universal service purposes ... cost differences caused by differing loop lengths are the most significant cost factor.”⁵³

⁵¹ *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina: Order*, CC Docket No. 96-45, DA 06-1628, 21 FCC Rcd 9151, at para. 23 (2006).

⁵² United States Government Accountability Office, *Broadband Deployment Is Extensive Throughout the United States, But It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* at 19 (May 2006) (GAO Report).

⁵³ *Federal-State Joint Board on Universal Service (Forward-Looking Mechanism for High Cost Support for Non-Rural LECs): Fifth Report and Order*, CC Docket No. 96-45, FCC 98-279, 13 FCC Rcd 21323, at para. 75 (1998).

Finally, the topography of an area can also make it difficult to provide affordable service by making it more costly to deploy networks (whether wired or mobile), as the Commission has also noted.⁵⁴ Accordingly, the GAO found that “terrain was also frequently cited as a factor affecting broadband deployment decisions,” because “infrastructure build-out can be difficult in mountainous and forested areas because these areas may be difficult to reach or difficult on which to deploy the required equipment.”⁵⁵

ITTA members serve predominately rural areas. Some ITTA members are similar to most of the smaller rural carriers in that the substantial costs of deploying and operating telecommunications networks in rural areas are observable directly and reflected accurately in the average costs they report to regulators. Others, however, serve mixtures of higher- and lower-cost regions, often within the same study areas. For many of these carriers, the cost problems that accompany their COLR obligations in high-cost areas are often masked from universal service support mechanisms because the need for support is calculated based on study areas averages. This masking of high-cost areas is a result of serving both low-cost and high-cost wire centers within the same study area, yielding a lower reported average cost figure. Serving the low-cost areas does not help in any way to cover the cost of deploying telecommunications services in the high-cost areas, however, because competition in the low-cost areas forces prices and, thus, revenues to reflect the lower costs. Therefore, there is no margin with which to cover the higher costs in other areas within the study area.

⁵⁴ See, e.g., *Access Charge Reform: Notice of Proposed Rulemaking*, CC Docket 96-262, FCC 96-488, 11 FCC Rcd 21354, 21370, at para. 28 (1996).

⁵⁵ *GAO Report* at 19. Topographical concerns also affect the costs of terrestrial wireless providers and hinder the use of satellite communications. *Id.*

Competition has grown rapidly in markets served by ITTA members since 1996, however, making the implicit subsidies for universal service tenuous and, ultimately, unsustainable. Today, rate averaging in some rural study areas does not produce enough contribution margin to cover the cost of service in the less densely-populated parts of those study areas. Instead, averaging can create the incentive for entrants to “cherry pick,” whereby competitors – which are not subject to COLR obligations - can target the customers in low-cost areas and still receive support. Accordingly, while study area averaging often is an effective tool, it does not always work as a methodology for calculating the need for high-cost support. Therefore, the Commission should make available the option of using a more granular approach to demonstrate the need for support. Otherwise, the Commission will risk failing to direct specific, predictable, and sufficient support to all areas that are truly uneconomic to serve. This lack of appropriately-targeted support harms consumers by inhibiting network investment in high-cost areas and perpetuating implicit subsidies in lower-cost areas.

2. The Joint Board Should Recommend that the Commission Revise its Rules to Ensure that Currently-Unsupported High-Cost Areas Receive Funding.

Despite the best efforts of the Joint Board and the Commission, many high-cost areas remain unfunded by both the rural and the non-rural programs. Carriers must contend with the various cost problems described above in many areas without explicit support. Many of these unfunded areas are part of study areas with internal wire center cost variance that are served by price cap carriers unable to recover incremental investment through the access charge regime.

ITTA asks the Joint Board to recommend that the Commission develop data to establish a foundation for potential targeting of available funds to these unfunded high-cost areas, perhaps at a level as granular as sub-wire-center. Unlike models used during the time of the RTF proceeding, today's cost models are capable of producing cost estimates anywhere in the country at an extremely precise level, such as a single census block, using real-world engineering practices and real-world network characteristics (such as road systems), as well as geo-coded customer locations in their forward-looking costing methodology.

ITTA respectfully requests that the Joint Board recommend that when evaluating such data, the Commission also analyze the extent to which current programs can be modified to ensure that funding for severely under-funded areas becomes sufficient and the extent to which new programs may be needed. The Joint Board should also encourage the Commission to engage in whatever changes may be possible without further Joint Board referral.

C. DISAGGREGATION

Disaggregation refers to the practice of directing the support that a carrier receives to particular areas served by its network, usually the more remote, high-cost areas. The concept of disaggregation is, therefore, different from targeting support along the lines discussed above. Targeting can be defined as identifying the need for support more precisely than is done today, while disaggregation can be defined as a way to allocate by geography any support received by an eligible carrier.

The Commission should abide by its previous determination that disaggregation is

optional, which means that it is not appropriate or useful for all carriers.⁵⁶ ITTA submits that the reasons underlying the Commission's optional disaggregation approach are still valid. The Commission recognized that in some instances, demographics, cost characteristics, location of a carrier's service territory, and the lack of a realistic prospect of competition combine to render disaggregation not economically rational.⁵⁷ The Commission cited as examples that there are carriers that may serve only a few lines or a very small study area with little geographic variability, and found that for such carriers, disaggregation of support may not be appropriate.⁵⁸

Disaggregation now requires a state adjudication, which is costly. The MAG Order set out three disaggregation paths:

Path 1: no disaggregation;

Path 2: carriers electing to disaggregate pursuant to state commission approval;

Path 3: carriers electing to disaggregate under a self-certification plan submitted to a state commission for approval.

Carriers were required to elect one of the three paths by May 15, 2002. If a carrier did not file a disaggregation plan by that date, it could only disaggregate pursuant to a state

⁵⁶ See, *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers: Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45, 00-256, FCC 01-157, 16 FCC Rcd 11244 (2001) (MAG Order).*

⁵⁷ See MAG Order at para. 148, *citing* Rural Task Force *White Paper* 6 at 10-11.

⁵⁸ MAG Order at para. 148, *citing* Texas Commission Comments at 7 (recognizing that it may be reasonable to allow some small rural carriers to not disaggregate and target support under Path One because of their size and cost characteristics.)

commission order approving a disaggregation plan. The Joint Board should consider recommending a new “self-certification window,” to allow carriers to disaggregate based on several years of intervening experience, without the complexity and transaction costs of a contested case.⁵⁹

⁵⁹ Pursuant to 47 C.F.R. § 54.315, on or before May 15, 2002, all rural incumbent local exchange carriers and rate-of-return carriers for which high-cost universal service support is available had to select a disaggregation path. In study areas in which a competitive carrier was designated as a competitive eligible telecommunications carrier prior to June 19, 2001, the rural incumbent local exchange carrier or rate-of-return carrier could only disaggregate support pursuant to specified terms. A rural incumbent local exchange carrier or rate-of-return carrier failing to select a disaggregation path was not permitted to disaggregate and target federal high-cost support unless ordered to do so by a state commission.

The Path 1 carriers were those certifying to a state commission that they would not disaggregate and target high-cost universal service support, and the path would be effective for at least four years from the date of certification to the state commission.

The Path 2 carriers were required to file a disaggregation and targeting plan with the state commission, proposing some method of disaggregation and targeting of support consistent with the general requirements as presented in paragraph (e) of the section.

The Path 3 carriers were those that self-certified a plan for disaggregation and targeting of support. The Path 3 carriers were required to file a disaggregation and targeting plan with their state commission along with a statement certifying each of the following: (i) it has disaggregated support to the wire center level; or (ii) it has disaggregated support into no more than two cost zones per wire center; or (iii) the carrier's disaggregation plan complies with a prior regulatory determination made by the state commission. The carrier was also required to provide support for its plan, that is, by a description of the rationale employed, including the methodology to develop the disaggregation zones, and an explanation of how the plan complies with the requirements of the regulation.

D. COMPETITIVE ETC SUPPORT

1. **New Standards Should be Created to Address the Public Interest Aspect of Certifying Multiple CETCs in a Single Market.**

Support to CETCs represents the largest portion of recent USF growth, as described above. During the period of rapid increases in CETC support, support to incumbent wireline carriers has decreased in aggregate and decreased more significantly for certain carriers. ITTA recommends that CETC growth can be disciplined through caps (as in the Joint Board's Recommended Decision) and through CETC certification proceedings with a sharper set of standards relying on the public interest test required by the statute. The 1996 Act requires that any designation of an ETC be consistent with the public interest.⁶⁰ The use of a more robust public interest standard will control funding disbursements and ensure that monies are being used properly. In addition, revised public interest guidelines will increase public confidence in the USF.

The public interest finding required by the 1996 Act must be a dynamic test that reflects current circumstances, similar to Congress's determination that USF supports an "evolving" set of services.⁶¹ Precedent exists for an evolving public interest standard. In *Federal-State Board on Universal Service - Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier: Memorandum Opinion and Order*, CC Docket No. 96-45, DA 00-2895, 16 FCC Rcd 39

⁶⁰ 47 U.S.C. § 214(e)(2).

⁶¹ See 47 U.S.C. § 254(c)(1).

(2000) (*Cellco*), the Commission determined that, “for those areas served by non-rural telephone companies . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. *The carrier need make no further showing to satisfy this requirement.*”⁶²

In March 2005, the Commission recognized tacitly that the facts on the ground changed and, accordingly, revised its approach.⁶³ Citing *Federal-State Board on Universal Service – Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338, 19 FCC Rcd 1563 (2004) (*Virginia Cellular*), the Commission stated that “merely showing that a requesting carrier in a non-rural area study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.”⁶⁴

Virginia Cellular, along with *Federal-State Board on Universal Service – Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 04-37, 19 FCC Rcd 6442 (2004) (*Highland Order*), were instances in which the Commission granted ETC designation conditioned, in part, upon then-new

⁶² *Cellco* at para. 14 (emphasis added).

⁶³ See *I/M/O Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2006) (*ETC Order*).

⁶⁴ *ETC Order* at para. 42.

commitments by the carriers. Certain of those standards were later formalized in the *ETC Order*.⁶⁵

The 1996 Act describes benefits of competition as including lower prices.⁶⁶ In a perverse result, the introduction of supported CETC-based competition tends to raise consumer prices through larger USF assessments. This contradicts the purpose of the 1996 Act and cannot be characterized as consistent with the public interest. As noted above, the USF contribution factor has increased as duplicative CETCs in single markets receive designation and support. The public interest test should include consideration of the impact on the Fund of multiple CETCs in a single market.

The Commission should also re-evaluate whether it is appropriate to grant CETC status and attendant USF support to carriers that operated profitably in the supported markets while never being subject to COLR obligations and never relying on access support before turning to the Commission for public support. The question is whether USF is fundamentally an offset to excessively high costs or alternatively an incentive that realistically might contribute to additional profits. ITTA does not dispute the value of providing support that eases excess costs of carriers that are fulfilling a public policy purpose. However, it is clear that there is a potential abuse of competitive neutrality in ensuring excess profits where USF is not needed—whether to incumbent carriers or to competitors.

⁶⁵ See, *i.e.*, *ETC Order* at paras. 14, 15, 22, 28, 77-79.

⁶⁶ See Preamble to 1996 Act. The 1996 Act was intended to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage rapid deployment of new telecommunications technologies” (emphasis added).

2. CETCs Should be Supported on the Basis of Their Own Costs

(a) The Identical Support Rule Should be Eliminated

Imperative to discussions of modifications to the USF is the understanding that, in the original wireline context, USF “support” is *cost recovery* for investments already made. Incumbent local exchange carriers receive support on a post-hoc basis after investments have been undertaken. The cost recovery process includes scrutiny at the Federal and state level of “support” provided to carriers in building and operating networks. The standards are consistent with the principles of supporting the fixed costs of a network in low-density regions. By contrast, the “identical support” rule⁶⁷ provides to all CETCs revenue per subscriber, which might be argued to be essentially different from “support,” since it is not based on the carrier’s needs. In fact, competitive carriers receiving “identical support” have their support calculated on the basis of another carrier’s—the wireline carrier’s—costs divided by that other carrier’s loops, which are almost certainly very different from those of the competitor (nearly always a mobile provider). This approach is opposed diametrically to the notion of supporting a carrier’s costs, since it promotes circumstances in which providers receive recovery on the basis of costs they did not incur, and provides the opportunity for windfall profits.⁶⁸

The identical support rule was justified by the proposition that USF support should be technologically and competitively neutral. “Competitive neutrality,” which

⁶⁷ 47 C.F.R. § 54.307(a)(1).

⁶⁸ Mobile carriers can and should provide information describing how their costs justify the public interest expenditures of USF support. Publicly-traded mobile carriers should be able to demonstrate this information with fair precision in same manner as would be presented in publicly-available financial filings.

underpins the “identical support rule,” was a creation of the Joint Board and the Commission, which introduced the concept under the rubric of “additional principles” that the Commission is permitted to apply.⁶⁹ Importantly, the principle is not a Congressional mandate and the specific mechanism—identical revenue distributions per-line—is certainly not a statutory approach. Further, the identical support rule must be squared with the explicit Congressional mandate that a public interest finding be part of the CETC designation process.⁷⁰

In practice, “identical support” has been observed over the intervening years to be more anti-competitive than competitively neutral, creating artificial margins (returns unrelated to investment) for one class of companies. The underlying principle of “competitive neutrality” should be applied more thoughtfully, based on experience since its adoption, so that it reflects the fact that different technologies are based on different architectures, achieve different policy objectives, are based on different regulatory regimes, and can be directed to serve different segments of the market.⁷¹ As the

⁶⁹ See 47 U.S.C. § 254(b) and *Federal-State Joint Board on Universal Service: First Report and Order*, CC Docket 96-45, FCC 97-157, 12 FCC Rcd 8776, 8932-34, 8944, 45 (1997). The Act sets forth several principles, and then provides for, “[s]uch other principles as the Commission and the Joint Board determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with [the] Act.” The enumerated statutory universal service principles include: quality and rates; access to advanced services; access in rural and high-cost areas; equitable and nondiscriminatory contributions; specific and predictable support mechanisms; access to advanced telecommunications services for schools, health care, and libraries.

⁷⁰ 47 U.S.C. § 214(e)(2).

⁷¹ Verizon recognized in its proposal the “fundamentally different cost structures” of wireline and wireless carriers. Verizon Proposal at 7.

Recommended Decision articulated, “Fundamental differences exist between regulatory treatment of competitive ETCs and incumbent ILECs.”⁷² The Joint Board cited equal access, rate regulation, and COLR obligations as examples.⁷³ Therefore, the allocation of identical per-line revenues to disparate technologies is not consistent with the historical understanding of USF as an offset to specific high costs, and is contrary to the public interest when those allocations result in the disbursement of public monies in a wasteful and competitively asymmetric manner.

Turning to the important theoretical question, CETC support mechanisms appear even to fail the purpose of being competitively neutral. The “identical support” rule originally was justified as consistent with the rationale that support should be technology agnostic and competitively neutral. However, when industries use different technologies, deploy different architectures, have different regulatory regimes and expectations, continue to serve both differing (whether complementary or competing) and to some extent overlapping (competitive) functions, the resulting cost structures necessarily will be very different. As a result, paying identical HCF dollars to carriers with fundamentally different cost structures results in disparities that can be profoundly anti-competitive. Providing identical support to carriers with asymmetric obligations, especially COLR responsibilities, is not “competitively neutral.”

An “identical” *basis for support* basis is preferable to identical dollars, so there is less likelihood of competitive distortions or of excessive USF funding. If mobile carriers

⁷² Recommended Decision, at para. 6.

⁷³ *Id.*

have a lower cost structure, different functionality, and lesser regulatory-mandated commitments in true high-cost regions, the result should be a contraction in USF funding obligations to them, all as a result of a consistent (identical) methodology.⁷⁴ Further, this consistent methodology would resolve an important policy problem in addressing the disparity between the rural ILEC support mechanism, which is investment driven,⁷⁵ compared with the CETC program, which is revenue driven and based on ILEC costs.

The “identical support” rule is fundamentally anticompetitive, is wasteful, and apparently is not grounded in the investment goals that are core to legacy USF approaches. This problematic CETC “system,” coupled with confused and uncertain policy goals and practices, is producing stunningly unintended consequences that appear to be frustrating a clearly-stated public policy oriented toward ensuring network stability and expansion.⁷⁶ The appropriate methodology for calculating disbursements to CETCs

⁷⁴ One CMRS carrier has argued for an identical support methodology that “Must not establish [a] different methodology for different technologies. This would violate competitive and technological neutrality. And send the wrong signals and incentives to the market.” *Competitive Universal Service*, presentation by Western Wireless Corporation to the Regional Oversight Committee for Qwest, Phoenix, Arizona, at 9 (Mar. 14, 2005).

⁷⁵ Even the non-rural company USF support program is based on economic models of the recipients’ investments and expenses.

⁷⁶ Chairman Martin has repeatedly expressed concern about confused or disparate policy, and has expressly acknowledged the necessity for a link between carrier of last resort obligations and individual carrier’s receipt of universal service support. According to the Chairman: “(C)ompetitive ETCs seeking universal service support should have the same ‘carrier of last resort’ obligations as incumbent service providers in order to receive universal service support. Adopting the same ‘carrier of last resort’ obligation for all ETCs is fully consistent with the Commission’s existing policy of competitive and technological neutrality amongst service providers.” *Federal-State Board on Universal Service – Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion*

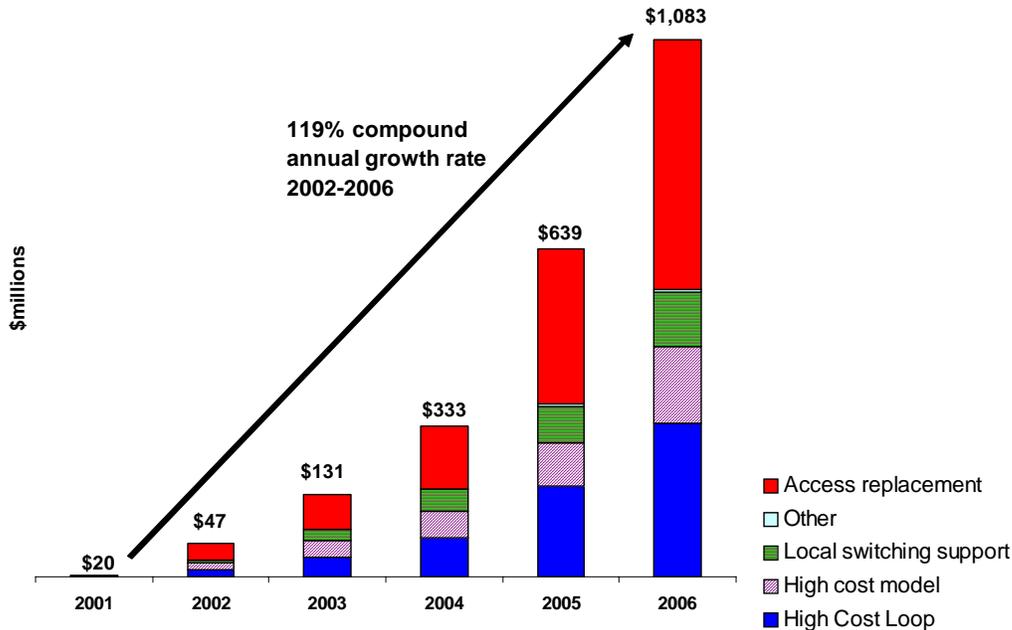
was deferred from the Joint Board's previous proceeding⁷⁷ and has been pending in the current docket for over two years. In addition to the caps proposed by the Joint Board, the other most valuable "competitively neutral" action the Joint Board can take in this docket is to recommend that support be paid to all recipients using a methodology based on their own costs, however those are determined.

(b) Mobile Carriers Should Not Receive Support Derived from Access Replacement

Removing access replacement from the support provided to mobile carriers would be consistent with the determination to provide support to carriers based on their own costs. USAC reports indicate that access charge replacement accounts for approximately 46 percent of the current total amount paid to CETCs, as depicted in Figure 6 from ITTA's Reverse Auctions Comments.

and Order, Separate Statement of Commissioner Kevin J. Martin Dissenting In Part, Concurring in Part CC Docket No. 96-45, FCC 03-338, 19 FCC Rcd 1563 (2004)); *see, also, Federal-State Board on Universal Service – Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia: Memorandum Opinion and Order, Dissenting Statement of Commissioner Kevin J. Martin Remarks of Kevin J. Martin*, CC Docket No. 96-45, FCC 04-37, 19 FCC Rcd 6442 (2004); and, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, DC on Oct. 26, 2005.

⁷⁷ *See infra*. Those comments suggested a framework that included, among other things, that the Joint Board make recommendations that are adoptable, achievable, sustainable, that take into account the point at which reform is commencing, that focus on the universal service program's emphasis on network support, etc.

Figure 6: Growth and classification of CETC Funds


Source: USAC Quarterly appendices HC01 (only eligible and ETC-approved funding); Balhoff & Rowe, LLC

Mobile carriers logically should not receive support based on access replacement. The access replacement portion of USF flows from the 1996 Act's mandate to remove implicit support structures and render them explicit. The disbursement of access replacement to mobile carriers provides to mobile carriers funding that they would not have received absent access restructuring. Pragmatically, the withdrawal of access-based support from mobile carriers could help stabilize the USF by creating the opportunity potentially to eliminate approximately five hundred million dollars of funding demand annually.

E. BROADBAND

1. Section 254(e)(1) Declares Universal Service Is “An Evolving Level” Of Service.

Broadband represents the next phase in telecommunications and information services. It has been recognized as a key economic driver and has been championed by President Bush, the Commission, individual Commissioners, and Federal legislators of both parties. Further broadband deployment can be achieved by expanding the list of “supported services” to include broadband. The Joint Board recognized this in the May 2007 Public Notice, asking also “whether there are statutory impediments to doing so.”⁷⁸.

Pursuant to Section 254(c)(1), universal service is “an evolving level of telecommunications services . . .”⁷⁹ Therefore, “broadband” could be included in the list of supported services if “broadband” is a telecommunications service. The Commission has ruled previously that the underlying transmission component of wireline broadband Internet access service can be a telecommunications service if it is offered as a common carrier telecommunications service.⁸⁰ The Commission affirmed that neither

⁷⁸ Recommended Decision at para. 7.

⁷⁹ 47 U.S.C. § 254(c)(1).

⁸⁰ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era: Report and*

the 1996 Act nor precedent requires that broadband transmission be a telecommunications service when provided to an ISP, but noted that the provider may choose to offer it as such. The Commission explained the transmission component underlying broadband is telecommunications, but is a telecommunications service only if it is offered on a common carrier wholesale basis. The Commission distinguished wholesale from retail offerings, ruling that end-users view the transmission component and the broadband service as a single offering. The Commission ruled similarly with regard to wireless broadband.⁸¹ Therefore, the underlying transmission component of broadband Internet access service when offered as a common carrier telecommunications service can be a supported service.

Although not offered to end-users directly, the classification of broadband as a supported service would benefit consumers by making available more widely affordable access to broadband services, since the inputs for broadband service providers would be available in areas where absent USF support the transmission component might not have been deployed. This approach is also consistent with the Universal Service Principles set forth by 1996 Act, which include “Access to Advanced Services.”⁸² That principle is intended to support “access to advanced telecommunications and information services . . .

Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, FCC 05-150, 21 FCC Rcd 14853, at para. 103 (2005) (Wireline Broadband Order).

⁸¹ See, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks: Declaratory Ruling*, WT Docket No. 07-53, FCC 07-30, 22 FCC Rcd 5901 (2007) (Wireless Broadband Order).

⁸² 47 U.S.C. § 254(b)(2).

in all regions of the Nation.”⁸³ This would also tend to address issues related to levels of consumer demand.

In 1997, the Commission declined to include access to internet services as a supported service. Specifically, the Commission stated:

[A] network transmission component of Internet access beyond voice grade access should not be supported separately from voice grade access to the public switched network because the record does not indicate that a substantial majority of residential customers currently subscribe to Internet access by using access links that provide higher quality links than voice grade access.⁸⁴

The Commission affirmed this decision in 2003, finding that “the Commission agrees with the Joint Board and commenters that advanced services are not subscribed to by a substantial majority of residential consumers.”⁸⁵ The Commission cited 2002 data indicating 17.4 million high-speed lines serving residential and small business subscribers, or approximately 16 percent of all U.S. households.⁸⁶

The Commission reported in 2007 that, as of June 30, 2006, 79 percent of residential end-user premises had access to high-speed services, defined as xDSL where ILECs offer local telephone service.⁸⁷ The growing availability tends to reduce costs,

⁸³ *Id.*

⁸⁴ *Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, at para. 83 (1997) (internal citations omitted).

⁸⁵ *Federal-State Joint Board on Universal Service: Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 03-170, 18 FCC Rcd 15090, at para. 10 (2003) (2003 Recon Order).

⁸⁶ 2003 Recon Order, at para. 10.

⁸⁷ *High-Speed Services for Internet Access: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 14 (Jan. 2007).

leading to wider subscription. Coupled with regulators' and law-makers' calls for a more substantive commitment to broadband, justifications for not including broadband as a supported service that are based on insufficient consumer demand have diminished.

To be recognized in this process is the fact that a major cost of broadband is backhaul, *i.e.*, the transmission of data from a company's local facility to major backbone provider. Therefore, the feasibility of wider broadband subscription in an environment in which broadband is a supported service would depend to some measure on supporting backhaul costs. This factor can be particularly important in certain regions such as Alaska.

During this period of declining support for ILECs, as described above, broadband availability in rural areas has grown. This is due, in part, to Commission "policies [that] do not impede the deployment of modern plant capable of providing access to advanced services."⁸⁸ The Commission has acknowledged that "the network is an integrated facility that may be used to provide both supported and non-supported services."⁸⁹ The ability to leverage existing technology to provide advanced services has enabled admirable broadband deployment in rural areas. A member of the Joint Board recognized that "Rural ILECs have generally done a good job of making broadband available to the

⁸⁸ See, *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers: Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45, 00-256, FCC 01-157, 16 FCC Rcd 11244, at para. 199 (2001).*

⁸⁹ 2003 Recon Order, *supra*, at para. 13.

rural consumers they serve. . . .”⁹⁰ In certain areas, however, terrain and population density will impede the further deployment of advanced services without adequate support. Broadband deployment will require adequate commitment of resources.

2. Definition of Broadband

As defined by the Commission “high-speed” refers to services with speeds of more than 200 Kbps in at least one direction.⁹¹ That definition and others used by the Commission are currently under review because “[g]iven the rapid technological changes in the marketplace, [the Commission] seek[s] comment on the need to alter the definitional framework utilized in prior inquiries.”⁹² For example, 1 Mbps is necessary for streaming video; six Mbps are required for video conferencing; six hours are required to download a four gigabyte video file at 1.5 mbps.⁹³ Given consumer expectations, the current 200 Kbps standard must be revised. And, in light of the “rapid technological changes” noted by the Commission, the new definition must be flexible to accommodate evolving technology.

⁹⁰ Recommended Decision, Concurring Statement of Commissioner Ray Baum.

⁹¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996: Third Report*, CC Docket No. 98-146, FCC 02-3317 FCC Rcd 2844, para. 7 (2002). “Advanced services” refers to services and facilities with upstream and downstream capabilities of more than 200 kpbs. *Id.*

⁹² *See, An Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996: Notice of Inquiry*, GN Docket 07-45, FCC 07-21, para. 10 (rel. Apr. 16, 2007).

⁹³ *Achieving Universal Broadband: Policies for Stimulating Deployment and Demand*, Alliance for Public Technology, at 41 (Feb. 2007), *citing* S. Derek Turner, *Broadband Reality Check*, Free Press (Aug. 2005).

Within the context of USF, broadband should be defined at an evolving standard reasonably comparable to what is available in urban areas. The intent of the definition is to include broadband services made available generally to business and residential users, but to exclude from the calculation extraordinary levels that may be available on limited contract-type or other special basis to select users. The Commission would be charged with determining and updating this standard periodically, perhaps bi-annually. This approach is consistent with Section 254(b)(4) of the Act which includes “services that are reasonably comparable to those services provided in urban areas;” the FCC would establish standards to set parameters for what is considered “reasonably” comparable. In this context, “reasonable” would incorporate consideration of terrain, population density, and other factors affecting copper or other plant deployment in rural areas characterized by longer loop lengths, and would apply to both broadband speed and total deployment rates. All USF recipients would be required to meet this standard in those areas in which they receive USF support in order to receive that support.

III. ADDITIONAL ISSUES

A. A SEPARATE MOBILITY PROGRAM SHOULD BE ESTABLISHED

1. A Separate Mobility Program Will Ensure Rational Distribution of Support.

The use of separate programs in the current USF focuses appropriate funding toward each supported service. ITTA recommends the establishment of a separate mobility program to focus support more precisely, based on the unique goals, costs, coverage, etc. of mobility services. As with the other USF programs—Schools and Libraries, Rural Health Care, High Cost Fund, and Low Income—the contribution mechanism should be unified to maintain the broadest possible base over which to spread

universal service costs, but the distribution approaches can be better designed to accomplish independent policy goals. The support of regulated carriers will continue successful policies that have achieved remarkable network penetration; the support of advanced network deployment will move the Nation further in the 21st century by creating economic and competitive opportunities and fortifying vital public interests throughout the U.S. The support of *mobility* will enable consumers to enjoy more broadly the convenience and benefits offered by mobile services, and will bring greater rationality to the bundle of universal services than does the current practice of attempting to squeeze two disparate but complementary services into one program.

In summary, ITTA recommends an approach consistent with Congressional recognition in the 1996 Act that different programs be maintained to serve different goals within the Section 254 framework, *i.e.*, schools and libraries, low income, and rural health care providers. ITTA recommends the establishment of a mobility program within the USF by which support to mobile carriers can be administered. A mobility program will serve to distribute support more efficiently because it will enable rational cost-based support based upon mobile carrier costs and in support of specific public policy goals related to mobile technologies.

2. Mobile Providers Should be Evaluated on Standards Specific to Their Technology, Including Service Quality Standards and Defined Public Policies that Underlie Support for Mobile Providers.

ITTA more specifically recommends that appropriate standards should be developed for the separate mobility fund. While the Recommended Decision proposes caps on the funding, ITTA believes that a longer-term solution should clarify (1) goals for mobile-carrier investment, (2) coverage issues, (3) quality of service standards and

other obligations (such as a modified “carrier-of-last-resort” duty), (4) accountability mechanisms, and (5) appropriate “support” calculations based on investment or some other approach. These factors have provided a sensible framework for the ILEC high-cost support, and likely would provide an appropriate framework for mobile carriers.

B. RULES CONCERNING TRANSFERRED EXCHANGES MUST BE MODIFIED TO ALLOW INVESTMENT IN IMPROVED SERVICE.

Treatment of acquired exchanges is a noticed issue in this docket. Unintended negative effects of the “parent trap” have been recognized by Joint Board members as a significant issue, growing more urgent as policymakers continue to push for rural broadband investment while some of the largest carriers rationally focus on their largest urban markets. Relatively smaller carriers, such as ITTA members, have established themselves as the premier “rural broadband specialists” yet lack high-cost funding or other policy-based supports when they acquire properties and invest to improve services in acquired exchanges. The record in this docket is ample.⁹⁴ It is time for the issue to be resolved and for the “parent trap” to be addressed.

C. PHANTOM TRAFFIC MUST BE ADDRESSED IN ORDER TO ENSURE RIGHTFUL COMPENSATION FOR NETWORK USAGE.

ITTA strongly urges the Commission to incorporate a solution to the Phantom Traffic problem sooner rather than later. Access reform and USF reform must be crafted on the basis of reasonable and controlled calculations of the need for support. ITTA notes that incumbent carriers cannot afford to maintain networks while supporting other carriers that utilize the incumbents’ networks and fail to compensate the incumbent

⁹⁴ See *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe, LLC*, CC Docket No. 96-45, at 39-42 (filed Sep. 30, 2005).

carriers that maintain those networks. Particularly in a broadband environment, carriers must have a reliable source of compensation for use of their networks. The Commission has before it the so-called “Interim Solution” of the Missoula Plan. ITTA recommends that the FCC implement this Interim Solution as soon as possible as an initial measure to address the growing Phantom Traffic problem.

IV. CONCLUSION

ITTA’s present Comments and previous comments in this proceeding have provided an analytical framework, data, and specific, actionable suggestions. Harmonized, focused sequential actions based on the analysis of facts may ultimately be more effective than a prolonged effort to find a single “grand design.”

Accordingly, ITTA:

- supports the Joint Board’s recommended interim decision, and urges long-term solutions that address the root cause of current concerns;
- acknowledges that auctions may be useful in certain circumstances, but questions whether they are a suitable course for incumbent carriers based on substantial risks associated with implementation;
- supports the use of GIS technology and network cost modeling, as well as continued elective disaggregation, for carriers that determine these approaches best apply to their network and territory needs;
- recommends a stronger public interest test for certification and support of CETCs, and providing to CETCs support based on their own costs;
- supports the inclusion of broadband as a supported service;

- calls for the establishment of a mobility program designed to support rationally the deployment and provision of mobile services; and,
- urges action to remedy the “parent trap” and phantom traffic.

ITTA submits that modifications within these guidelines will advance further the public policy goals envisioned by universal service policies and speed deployment of advanced services throughout all areas across the Nation.

Respectfully submitted,

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