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

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

<u>Reply Comments of the Montana Public Service Commission</u>

I. Introduction

In its May 1, 2007, Public Notice, the Federal Federal-State Joint Board on Universal Service ("Joint Board") seeks comments on "long term, comprehensive high-cost universal service reform."[1] The Joint Board commits to make further recommendations within six months regarding such reform. The Joint Board identified five topics for which it seeks comments: 1) use of reverse auctions to determine high-cost federal universal service fund (FUSF) support; 2) use of Geographic Information System (GIS) technology and network cost modeling to better calculate and target support at more granular levels; 3) disaggregation of support; 4) the method used to calculate competitive eligible telecommunications carrier (CETC) support; and 5) whether to use FUSFs to promote broadband deployment. The Public Notice expands upon each of these five comment areas. Filed comments included topics not specifically listed above.

The Montana Public Service Commission (MTPSC or Montana PSC) has commented previously on matters that relate to the issues raised in the

[1] FCC 07J-2, Released: May 1, 2007, WC Docket No. 05-337 and CC Docket No. 96-45.

Joint Board's Public Notice and the MTPSC will use this opportunity to again apprise the Joint Board of the MTPSC's views and concerns.

Most recently, the MTPSC filed on June 6, 2007, Initial Comments in response to the Federal Communication Commission's (FCC) recent inquiry on the Joint Board's recommendation that the FCC immediately act to rein in the alleged "explosive growth" in the high-cost universal service disbursements.

The MTPSC has reviewed the May 31, 2007, initial comments of CenturyTel, Inc. (CTI), CoBANK, ACB (CoBank[2]), GVNW Consulting, Inc. (GVNW), Mid-Rivers Telephone Cooperative, Inc. (MRTC), Montana Telecommunications Association, et al., (MTA[3]), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Rural Telecommunications Group, Inc. (RTG[4]). Based on the Montana PSC's review, as summarized below, we have the following reply comments.

II. Discussion

A. Reverse Auctions

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[2] CoBank is a cooperative bank with over $2.9 billion in loan commitments to over 200 rural communications companies.

[3] The other members include the Oregon and the Washington Associations. MTA's members participating in these comments include: 3 Rivers Telephone Cooperative, Blackfoot Telephone Cooperative, CenturyTel, Inc., of Montana, Frontier Communications, Hot Springs Telephone Company, Lincoln Telephone Company, Range Telephone Cooperative and Southern Montana Telephone Cooperative.

[4] RTG is a trade association whose members are small rural businesses serving rural markets and who are comprised of both independent wireless carriers and wireless carriers affiliated with rural telephone companies.

CTI believes that reverse auctions which depart from cost-based principles cannot ensure that funding is either predictable or sufficient and adds they will have "perverse results" for rural and high-cost areas (pp. ii, 11). CTI further adds that the benefits of the present universal service system are very real for rural communities, the poor, etc. (p. 9).

Chief among CTI's concerns is that auctions not be used merely to reduce spending on our national telecommunications infrastructure (p. 13). CTI adds, however, that an auction among CETCs competing for support in the "same market" could be used (p. 7). Another circumstance where auctions could be tested is with areas that are not served by "any telecommunications carrier" (p. 12). CTI notes the FCC's identification in 1997 of potential problems associated with auction mechanisms including: 1) collusion among bidders; and 2) quality of service (QOS) standards for low bidders and the Joint Board's recent 2003 effort wherein such issues were reiterated. Mandating competitive bidding for FUSF support between various technology platforms and providers in a given market will, however, require policy makers to engage in an "apples-to-oranges" comparison (pp. 15-16). Practical problems associated with competitive bids will include determining uniform criteria for a bid, feasibility of a bid, and enforcing the performance of a winning bid (p. 17).

CoBank cautions the FCC on the use of auctions as they have the potential to severely disrupt the provision of universal service to rural America (pp. 3-4). Reverse auctions might provide an unfair advantage to wireless carriers. As the true costs for CETCs are not known, rural ILECs would be disadvantaged because the true costs for rural ILECs are documented while they are not documented for CETCs.

GVNW advises the FCC to bear in mind that reverse auctions could have unintended consequences on rural carriers including the inability to raise capital and service levels (pp. 3-10). Reverse auctions will create uncertainty and no incentive to invest.

GVNW's express concerns include: 1) that competitive bidding is, per the Telecommunications Act of 1996 ('96 Act), anti-competitive with respect to a customer's access to competitive alternatives; 2) as the FCC would have to define the supported services, the ability to evolve services outside this definition would be compromised, a result that contradicts both Congressional and the administration's pursuit of broadband networks; 3) as auctions would occur on a cyclic basis, support would not be predictable in the longer term and therefore capital recovery would be uncertain; 4) absent adequate network performance standards, the FCC's reverse auction mechanism will trigger a race to the bottom in terms of QOS. In short, if the FCC decides to use auctions, reversing a conscious decision of a decade ago to not do so, rural carriers should not be the subject of the FCC's experiment.

MTA does not agree that reverse auctions are an effective mechanism (pp. 6-9). MTA notes the many other parties that filed similar comments with whom it agrees that reverse auctions raise substantial administrative problems. MTA also alerts the Joint Board to the earlier comments of the two major finance institutions for rural infrastructure, CoBank and the Rural Telephone Finance Cooperative, that reverse auctions will actually discourage investment in rural infrastructure. If used, however, reverse auctions should be slowly introduced, perhaps to determine a single wireless ETC in areas where multiple wireless ETCs exist.

MRTC strongly opposes the use of reverse auctions to determine, and to distribute, high cost support funds (HCSFs). MRTC's opposition stems from concerns about the details involved with implementing an auction, the enormous opportunity for competitive market impairment, errors, and unintended consequences (pp. 2, 7-11). Reverse auctions will not advance universal service and instead will negatively impact the provision of service to high cost areas.

MRTC identifies three issue areas. First, as for the "business environment issue," auctions will result in a disincentive to invest due, in part, to short-term planning horizons and aggressive bidding will harm rural subscribers due to poor service and, or, limited construction. Debt financing would also be impaired. Second, as for "recipient" issues, the transition from the incumbent to the bid winner raises stranded cost and subscriber transition process questions that need to be addressed. As well, questions involving the provision of wholesale services previously supplied by the incumbent arise. Third, actual auction criteria issues will arise that involve the service area for an auction, whether a single winner is allowed, limiting competition and carrier of last resort obligations. Other issues involving multiple platforms involve service quality and mobility.

OPASTCO asserts that if the FCC decides to apply reverse auctions to both competitive carriers and rural ILECs, there should be one wireline and one wireless carrier selected for each service area (pp. 12-16). OPASTCO is concerned that reverse auctions would place at significant risk the continued availability of reasonably comparable services and rates to consumers in rural service areas. OPASTCO urges the FSJB to reject Verizon's auction proposal as it envisions a single universal service provider for each service area. This approach could result in some high-cost rural consumers no longer having access to highly-reliable wireline telecommunications services at affordable rates. Reverse auctions will not encourage network upgrades and service quality improvements. Reverse auctions will threaten the outlook that lending institutions have on the stability and predictability of rural ILEC's core cash flows making new loans less accessible. In short, OPASTCO recommends rejecting reverse auctions as they place at significant risk the continued availability of "reasonably comparable" services and rates to consumers in rural areas.

RTG said because the FCC has no experience with reverse auctions it should not risk the continued viability of its successful universal service program on an untested experiment (pp. 2-4). While spectrum auctions give spectrum to the highest valued use a universal service auction may give high cost support to the entity that values rural customers the least. Although the '96 Act mandates comparable services in urban and rural areas, reverse auctions will create an insurmountable economic incentive for "winners" of rural auctions to take drastic cost cutting measures to the detriment of their customers who will be cut off from providing goods and services that rely on telecommunications links and broadband applications. Large, nationwide carriers may enter into auctions with the goal of lowering support to their rural competitors. The '96 Act's "comparable" service mandate requires fixed and mobile services.

Montana PSC Reply: The MTPSC last submitted on November 8, 2006, Reply Comments in response to the Joint Board's inquiry into the merit of reverse auctions.[5] In those comments, the MTPSC urged the Joint Board to not recommend the use of reverse auctions to ration FUSFs. Reverse auctions will jeopardize universal service generally and could be particularly harmful for customers in rural areas. The above summarized initial comments express general opposition to the use of reverse auctions and are, for the most part, ones with which the MTPSC agrees.

To address concerns about QOS, standards must be established in advance of any auction as bidding should not focus on price alone. As Alfred E. Kahn has asserted, price has no meaning except in terms of an assumed service quality, as price is a ratio of money to the physical unit of quality and quantity; that is, price and quality are inseparable.[6] As both the price and the quality must be considered if auctions are to be non-discriminatory, the Joint Board should first establish the QOS standards for the services for

[5] See the Joint Board's August 11, 2006, public notice FCC 06J-1, regarding high-cost federal universal service fund (FUSF) support. Before that, the MTPSC also filed on May 25, 2006, Reply Comments, Federal-State Joint Board, CC Docket No. 96-45, Universal Service High-Cost Universal Service Support, WC Docket No. 05-337.

which it intends to recommend auctions as a means to ration FUSFs. The Joint Board's QOS standards should not, however, preempt state PSCs from establishing their own QOS requirements.

B. Geographic Information System (GIS) Technology and Cost Modeling

CTI comments on proposals to depart from allocating support based on the "study-area cost of providing affordable services" (p. 19). CTI said the Joint Board's question, asking whether GIS tools could be used to identify areas where competition and market forces alone will not result in the provision of comparable services, fails to accurately reflect rural circumstances (p. 20). Since at some price a comparable service will be provided, the question that should have been asked is whether, whatever the forces, the services will be comparable and the price will be affordable in all areas of the country (p. 20).

MRTC asserts that, relative to using actual costs, the use of a model to determine HCSFs is inferior, as modeled proxy costs do not address the causes of growth. Thus, MRTC strongly opposed using GIS or any other network cost modeling.

OPASTCO said rural ILECs should not be required to have their support based on network cost models, as a model is unlikely to provide reasonably accurate estimates of costs for all rural telephone companies (pp. 16-18). OPASTCO added that basing high cost support mechanism for rural ILECs on their embedded network costs is a resounding success and should be preserved, otherwise, rural carriers will be highly reluctant to make upgrades needed to provide advanced services. Furthermore, the embedded cost mechanism is rational and accountable to the public.

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[6] The Economics of Regulation: Principles and Institutions, p. 21, Alfred E. Kahn, MIT, Cambridge, MA (1970). See also, the PSC's May 25, 2006, comments filed with the FCC (CC Docket No. 96-45, WC Docket No. 05-337).

Montana PSC Reply: The MTPSC agrees with those above commenters that raise concerns with using such modeling for rural carriers. The Joint Board is advised to first strive to improve the high cost modeling for non-rural carriers, perhaps by way of integrating some of the GIS ideas on which it seeks comment.

C. Disaggregation of Support

CTI said disaggregation in rural markets has produced mixed results. CTI adds that elimination of the "same support" rule and creation of a separate CETC program would reduce the need to disaggregate (p. 21).

MRTC strongly opposed the Joint Board's proposed disaggregation of support (pp. 2, 12-14). MRTC adds that while disaggregation may address implicit subsidies, it will increase the need for support for areas presently served by large ILECs and it will increase the number of eligible lines. MRTC notes that the FCC has already considered and rejected such disaggregation. Rather than disaggregation, the Joint Board should consider the aggregation of study areas as required for most wireline carriers and which is not required for any wireless carrier. Thus, a single study area per state is preferred. MRTC said only CETCs that are "similarly situated" to rural wireline ILECs should receive high cost support. MRTC would grant multiple ETCs in a given area so long as the public interest test is met and MRTC's other recommendations are adopted.

OPASTCO said disaggregation should remain an option for rural ILECs if the FSJB revises the rules for calculating CETC support in rural service areas in a manner that continues to base it on the costs of the rural ILEC. That is, rural ILECs should have another opportunity to disaggregate their support under Paths Two or Three (pp. 18-20). If the FSJB decides to recommend that certain rural ILECs be permitted to have their support calculated below the study area level, it is critical that the added support they receive does not negatively impact the support received by other rural telephone companies as a result of the cap on HCLS. Thus, to ensure this and absent removal of the cap, those rural ILECs that wish to have their support calculated below the study area level should receive support under an entirely separate mechanism.

RTG said there is no need for the FCC to force disaggregation on rural ILECs. Forced disaggregation may distort rational economic decisions and those of competitors. Disaggregation will shift costs rather than reduce support or more effectively target support. If rural telecommunication carriers believed disaggregation would have led to their competitors getting less support, they would have chosen Paths Two or Three.

Montana PSC Reply: The MTPSC agrees with those commenters that recommend making disaggregation a voluntary decision. The MTPSC specifically agrees with CTI's comment that elimination of the ISM is a better solution. The MTPSC also agrees with MRTC that forced disaggregation may have the unintended consequence of increasing the FUSF.

D. Competitive ETC Support

Replace the identical support mechanism ("ISM"):

CTI recommend, among other proposals, to eliminate the "same support" mechanism (p. 7). Other proposals include capping CETC support for CMRS carriers and limiting to one the number of CMRS providers that receive support.[7] CTI believes broadband deployment to unserved and underserved areas should be a higher priority than using funds to support multiple CETCs based on the ILEC's costs (p. 24).

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[7] CTI said the present cap on the rural high-cost fund needs correcting as the current Rural Growth Factor adjustment mechanism has decreased or eliminated support for some carriers when costs have sharply risen (p. 27).

CoBank asserts the solution to the problem of increased FUSF should be on the source of the problem, which is the ISM for CETCs (p. 2).

GVNW cites to opinions of FCC Commissioners Copps and Adelstein that the time has come to put an end to the ISM. GVNW agrees with their views (p. 14).

The MTA states to agree with the Joint Board that the ISM should be abandoned (p. 3). As MTA restates, the Joint Board recognized that the ISM is one of the primary causes of explosive FUSF growth. MTA urges the Joint Board to strongly consider limiting the number of ETCs, "in some areas" (p. 5). In areas where high cost support per-line is quite high, the principle that such markets can support no more than one network of each major technology could be established. That is, there should be a limit of one wireless ETC and one wireline ETC. MTA adds that such a limit will not violate the principle of competitive neutrality (p. 6).

MRTC asserts that rules for high cost support should be revised (pp. 3, 13-16). As an overarching principle, high cost support should offset actual incurred costs. MRTC asserts that because a rural CLEC is not able to offset its high costs by averaging them with low costs in urban areas, the support received is "usually much less than it would receive if it were based upon its own actual cost." As for wireless CETCs, MRTC asserts it is neither necessary nor desirable to maintain uniform high cost support between platforms. Rather than limiting an area to one wireline or one wireless ETC, MRTC favors a primary-line limit.

OPASTCO said that reform of the high-cost program should target what has failed -- the identical support rule (pp. 3-12). OPASTCO agrees with the FSJB that the high-cost universal service program needs reform if it is to remain sustainable. The identical support rule (the ISM) is in rural areas responsible for all of the unnecessary growth in the rural high-cost program and it fails to adhere to the principle of competitive neutrality. To base support for ETCs on their own costs would create true accountability for the support received. CETC complaints, that it is difficult to demonstrate costs, are an illegitimate reason to exempt them from having to qualify for support.

Montana PSC Reply: The MTPSC concurs with the above commenters that also support an end to the ISM. The MTPSC's June 6, 2007, Initial Comments responding to the FCC's recent inquiry on the Joint Board's recommendation that the FCC immediately act to rein in the alleged "explosive growth" in the high-cost universal service disbursements (WC Docket No. 05-337, CC Docket No. 96-45), provide the MTPSC's latest objection to the ISM. The Montana PSC has prior to June 2007 filed comments in opposition to the ISM.[8]

E. Broadband

CTI said the benefits of the present universal service system are very real for rural communities and the poor (p. 9). In turn, the core question for the Joint Board and the FCC is how to adjust the present support system to foster increasingly robust broadband networks for the future needs of the

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[8] The PSC's December 14, 2004, comments to the Federal-State Joint Board on Universal service (CC Docket No. 96-45) included the following cost evidence in support of eliminating the ISM: "*To further illustrate the need to eliminate the identical support rule we offer the following information. Western Wireless' CEO, John Stanton, in his presentation to this fall's Qwest Regional Oversight Committee (ROC) meeting of September 12 and 13, Missoula, Montana, presented estimates of relative wireline and wireless investment costs. Those costs are as follows: (1) national wireline carriers' cost is $2,492; (2) national wireless carriers' cost is $920; (3) rural wireline carriers' cost is $7,195; and (4) rural wireless carriers' cost is $1,734. It is apparent from the presentation that to base support to wireless carriers upon the cost of the ILEC would bequeath an extraordinary subsidy to the wireless industry. As OPASTCO comments, and the Montana PSC agrees, the "identical support" rule must be eliminated.*" (Italics added, footnote excluded.)

nation (p. 9). CTI adds that the first logical step to determine how to support broadband is to properly define what such support means. Baseline broadband principles are needed that will guide policies over the next five years so that comparable speeds can be attained in rural and urban areas (p. 22). CTI said broadband deployment to unserved and underserved areas should be higher priority than using funds to support multiple CETCs based on the ILEC's costs (p. 24). CTI further adds that broadband support is needed for rural networks whether they be used for "POTS" or for advanced services, in particular, "transport" (*e.g.*, interoffice transport between CTI's end office and the nearest tandem, and "backhaul" between a local exchange and the nearest urban Internet access point) funding to provide services to remote rural areas, neither of which is expressly supported today (pp. 24-25). That is, as the industry transitions to a broadband "connections-based" environment, all network cost components that are vital to provide advanced services should be supported, preferably by a separate cost-recovery mechanism for broadband support.

CoBank supports expanding the definition of universal service to include broadband services (pp. 4-5). Substantial investments need to be made in broadband networks in order for rural ILECs to deliver the advanced services that businesses and residences need. CoBank is concerned that the increased provision of non-regulated services over broadband networks may compromise the repayment capacity of many rural ILECs.

MRTC said the FCC should consider high cost fund support for broadband services and networks, but only after the existing high cost fund support is secure and viable for the long term (pp. 16-23). To do otherwise will cause the high cost support to fail. MRTC adds that broadband deployment is currently supported by the high cost support fund. Because of how the FCC's rules cap total ILEC support, when the Universal Service Administrative Company redistributes capped support, those ILECs that did not build fiber to the home will experience reduced support. Fund capping is the most critical factor that limits capital expenditures for broadband deployment that is imposed on ILECs. Thus a coherent broadband policy is needed, one that also addresses satellite-based broadband. A prerequisite to proper high cost support fund for broadband is a specific definition. Broadband, and not content (*e.g.*, IPTV), should be supported. MRTC also suggests the FCC conduct a survey to gauge what broadband services are "actually" available today in rural areas, including factors that inhibit penetration such as the absence of home computers.

OPASTCO said that to add broadband will require a commitment on par with high-quality voice-grade services that require ongoing investment (pp. 20-26). Concomitant with making broadband ubiquitously available, the indexed cap on the high cost loop support mechanism must be removed if broadband is made a supported service. Sufficient funding must be available. Funding for broadband needs to support initial deployment and continual upgrades as broadband is an evolving concept. OPASTCO adds that the existing high cost program is the best vehicle to achieve the goal of universal, affordable broadband availability. OPASTCO further adds that there are some portions of rural service areas that are so prohibitively expensive to serve that broadband deployment will simply not be feasible in the near term without explicit support. Broadband support should not be limited to areas where there is no broadband.

Montana PSC Reply: The '96 Act certainly permits the addition of broadband as a supported service if certain conditions are met. It appears that the time is ripe for the FCC to reconsider supporting broadband. The MTPSC also shares in the concern that such support should not put in jeopardy support for the existing supported services.

F. Other -- Contribution Base

CTI added that the contribution base needs reform such that it is expanded and stabilized so that all carriers that use the public switched telephone network (PSTN) contribute, preferably by means of a hybrid "numbers" or "connections" based method (pp. 2-4). Such an approach could include assessments on "special access" and Internet access connections.

MRTC also supports expanding the base to include all telecommunications services and jurisdictions. Thus intrastate should be included. A total revenue basis would assure fair and comprehensive reform, a hybrid numbers and revenue based system may be a logical solution.

Montana PSC Reply: The MTPSC agrees that the contribution base could and should be expanded. As for how, there is stability in diversity. Therefore, a hybrid approach is likely a good approach. However, what constitutes the "numbers" component needs more discussion and illumination. The simplicity of a "revenues" approach vis-à-vis the complexity of a hybrid approach would, however, tend to favor maintaining the revenues approach.

III. Conclusion

The MTPSC thanks the Joint Board for this opportunity to comment and urges the Joint Board to consider the comments of those parties that we endorse in our above reply comments.

Dated this 2nd day of July, 2007.

Montana Public Service Commission,

/s/

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