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

In the Matter of	**)**	
	)	WC Docket No. 05-337
High-Cost Universal Service Support.	**)**	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON "LONG-TERM, COMPREHENSIVE HIGH-COST UNIVERSAL SERVICE REFORM"

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I. INTRODUCTION AND SUMMARY

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits these reply comments on the issues regarding high-cost universal service support set forth in the Public Notice released on May 1, 2007.[2] The initial comments were, as expected, from a wide variety of interests: incumbent local exchange carriers and their

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[1] NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] FCC 07J-2 ("Public Notice"). Unless indicated otherwise, all citations herein are to orders and filings in CC Docket 96-45 or WC Docket 05-337.

organizations[3]; wireless carriers and their organizations[4]; combinations of the first two categories[5]; competitive local carriers[6]; cable companies and their organizations[7];various other industry members[8]; state regulators[9]; and consumer advocates.[10] It is tempting to parse the industry's positions by simplistic reference to the desire of a carrier to receive

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[3] Alaska Telephone Association ("ATA"); BEK Communications Cooperative ("BEK"); CenturyTel, Inc. ("CenturyTel"); Embarq; Fred Williamson and Associates, Inc. ("FWA"), on behalf of seven ILECs; Frontier Communications ("Frontier"); Gardonville Cooperative Association ("Gardonville"); GVNW Consulting, Inc. ("GVNW"); ICORE Companies ("ICORE"); Independent Telephone and Telecommunications Alliance ("ITTA"); Iowa Telecommunications Association ("ITA"); Mid-Rivers Telephone Cooperative, Inc. ("MRTC"); National Exchange Carrier Association, Inc. ("NECA"); National Telecommunications Cooperative Association ("NTCA"); Nebraska Rural Independent Companies and South Dakota Telecommunications Association ("NRIC/SDTA"); Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"); Rural Iowa Independent Telephone Association ("RIITA"); TCA, Inc. - Telcom Consulting Associates ("TCA"); Texas State Telephone Cooperative, Inc. ("TSTCI"); Western Telecommunications Alliance ("WCA"); Windstream Communications, Inc. ("Windstream"). BEK's and Gardonville's comments appear to be substantially similar; references to BEK's comment s should therefore be read to include reference to Gardonville's.

[4] ACS Wireless, Inc. ("ACS"); Corr Wireless Communications, LLC ("Corr"); CTIA - The Wireless Association® ("CTIA"); Dobson Cellular Systems, Inc. ("Dobson"); Sprint Nextel Corporation ("Sprint"); Rural Cellular Association and the Alliance of Rural CMRS Carriers ("RCA/ARCC"); Rural Telecommunications Group, Inc. ("RTG"); T-Mobile USA, Inc. ("T-Mobile"); United States Cellular Corporation and Rural Cellular Corporation ("USCC/RCC"). RCA/ARCC's and USCC/RCC's comments are virtually identical in content, but not in format; references to the former should be read to include references to the latter. Page citations to RCA/ARCC's comments are to the body of the comments, not those reflected in RCA/ARCC's table of contents.

[5] AT&T Inc. filed a single comment, presumably including AT&T Wireless (formerly Cingular). Verizon and Verizon Wireless filed joint comments.

[6] Comspan USA ("Comspan"); General Communication, Inc. ("GCI"); Rural Independent Competitive Alliance ("RICA"); YourTel America, Inc. ("YourTel").

[7] Comcast Corporation ("Comcast"); National Cable & Telecommunications Association ("NCTA"); Time Warner Cable ("Time Warner").

[8] CoBank, ACB ("CoBank") (cooperative bank lending to rural carriers); DialToneServices, L.P. ("DialTone") (service provider in rural areas using mobile satellite service technology).

[9] New Jersey Board of Public Utilities ("NJBPU"); Iowa Utilities Board ("IUB"); Nebraska Public Service Commission ("NPSC"); People of the State of California and the California Public Utilities Commission ("CalPSC"); Public Service Commission of the State of Missouri ("MoPSC"); South Carolina Office of Regulatory Staff ("SCORS").

[10] NASUCA; Consumers Union, Consumer Federation of America and Free Press ("CU/CFA/FP"); and New Jersey Division of Rate Counsel ("Rate Counsel").

the maximum amount of universal service support, or, similarly, to ensure that its competitors do not receive support.[11] Some of that is inevitable, but NASUCA will attempt to focus on the substance of the various and extremely varied arguments of the stakeholders here.[12]

NASUCA continues to believe "that certain of the five items described in the Public Notice are not crucial for 'long-term, comprehensive' reform of the federal high-cost universal service mechanisms."[13] Based upon a review of the comments, NASUCA continues to believe that the five issues set forth in the Public Notice should be addressed by the Federal-State Joint Board on Universal Service ("Joint Board") and the Federal Communications Commission ("FCC" or "Commission") as follows:

- **Reverse auctions**[14]: NASUCA reiterates its opposition to the use -- at this time -- of reverse auctions to supplant the high-cost mechanism. NASUCA does support the use of auctions in pilot programs, particularly for support for broadband service.[15]

- **Geographic information systems/network cost modeling**[16]: NASUCA asserts that the use of newer technology "to more

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[11] The same sort of issue arises for state regulators, who often seek to maximize the dollars flowing to the state's carriers, or, on the other hand, to minimize the flow of dollars out of the state.

[12] On June 26, 2007, NASUCA filed a request for a reasonable extension of three weeks for these reply comments. In contrast to the requests of other parties that were promptly acted upon, there has been no action on NASUCA's request.

[13] NASUCA Comments at 1.

[14] Public Notice, ¶ 4.

[15] See Section III. below.

[16] Public Notice, ¶ 5.

efficiently calculate and target support at more granular levels"[17] should not have the effect of increasing the size of the fund.[18]

- **Disaggregation**[19]: The disaggregation of rural carriers' support below the study area level or below the wire center level need not be a high priority.[20]

- **Competitive eligible telecommunications carrier ("ETC") support**[21]: Elimination of the equal support rule should be a priority for the Joint Board and for the Commission. Competitive ETCs ("CETCs") should have their support based on their own costs. CETC support should be capped at the level of support received by the incumbent local exchange carrier.[22]

- **Broadband**[23]: NASUCA supports a pilot program for broadband support using reverse auctions.[24]

Of these, only the fourth -- fixing CETC support -- and the fifth -- adopting a broadband pilot program -- should have priority in the Joint Board's and the Commission's deliberations. Then fixing the current cost modeling based on improvements in geographic information systems ("GIS") and other aspects of the model should be undertaken for the non-rural carriers. Neither reverse auctions nor disaggregation need to occupy the Joint Board's or the Commission's attention as priorities.

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[17] Id.

[18] See Section IV. below.

[19] Public Notice, ¶ 6.

[20] See Section V. below.

[21] Public Notice, ¶ 7.

[22] See Section VI. below.

[23] Id., ¶ 8.

[24] See Section VII. below.

Other items that should be priorities should include attempts to limit support to a single line or connection for each household, and transitioning the larger rural carriers to a forward-looking cost approach like that used for non-rural carriers. But a key focus for the Commission should be in making the hard decisions that have yet to be made, including those that been compelled by the courts, as described in the next section.

II. THE JOINT BOARD'S AND THE COMMISSION'S EFFORTS AT RESOLVING UNIVERSAL SERVICE ISSUES DO NOT SEEM TO BE FOCUSED ON RESULTS.

In the initial comments, NASUCA pointed out the numerous crucial issues that the Commission and the Joint Board have failed to resolve, despite receiving extensive comments months and years ago. This includes, for the Commission's part, definitions of what constitute "reasonably comparable" and "affordable" rates and services, and what would make the USF "sufficient," on remand from the 10th Circuit.[25] This also includes proposed changes to the non-rural carrier high-cost mechanism, in the same part of this proceeding. There are also pending decisions on the process by which states can request supplemental universal service funding, and on the overall management, administration and oversight of the USF. Other long-pending inquiries before the Joint Board include changes to the high-cost fund for rural carriers and on four USF proposals submitted by members and staff of the Joint Board. And there is also the long-standing issue of the accuracy (or inaccuracy) of the Commission's analyses of telephone subscribership levels.

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[25] *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*").

These many outstanding issues caused NASUCA to state:

> Given the variety of subjects set forth in the Public Notice, some of which are not crucial to "long term, comprehensive high-cost universal service reform," NASUCA remains concerned that once again some of these issues will distract the Joint Board from the mission required by Section 254 of the 1996 Telecommunications Act.[26]

Those concerns remain, and are shared by others.[27]

III. THE JOINT BOARD SHOULD RECOMMEND PILOT PROGRAMS FOR REVERSE AUCTIONS.

Perhaps the best thing that can be said about reverse auctions is that there is no consensus on whether such auctions will ease the pressures on the USF, whether they are feasible, or even whether they are lawful. There are those who support the use of auctions[28]; not surprisingly, they are those who would appear to benefit from such a change.

But there are also many commenters that oppose the use of reverse auctions, especially as a direct replacement for the current system.[29] Indeed, some of the opponents come from segments of the industry that one would expect to support new ways of

[26] NASUCA Comments at 5.

[27] See, e.g., MoPSC Comments at 1-7; TCA Comments at 2-3.

[28] See Comcast Comments at 5; Corr Comments at 1-2; CTIA Comments at 7-9; DialTone Comments at 3-4; GCI Comments at 15-19; NJBPU Comments at 6-9; NCTA Comments at 5-6; Sprint Comments at 2-9; T-Mobile Comments at 3-7.

[29] See BEK Comments at 4; CoBank Comments at ;3-4 CU/CFA/FP Comments at 51-55; Embarq Comments at 13-20; GVNW Comments at 6-10; ICORE Comments at 3-6; ITA Comments at 1-2; ITTA Comments at 18-33; MRTC Comments at 7-11; NECA Comments at 3-8; NRIC/SDTA Comments at 15-18; NTCA Comments at 3-12; OPASTCO Comments at 12-16; RIITA Comments at 2-5; TCA Comments at 3-6; TSTCI Comments at 2-7; WTA Comments at 11-22.

getting additional support.[30] These commenters appear to be more numerous, but mere numbers of opponents do not good public policy make. Yet as the MoPSC states, "the logistics of managing such a fund are considerable."[31]

For example, even those that support the use of auctions show no consensus on how the auction process should work. MoPSC says that, if there is an auction, there should be a single winner[32]; NJBPU says there should be one wireline and one wireless CETC winner,[33] and Frontier says that support should be limited to one ILEC, one wireline CETC and one wireless CETC,[34] while GCI says there should be multiple winners.[35] DialTone says that there should be an affordability component.[36] MoPSC asserts that "wining" the auction should not be based only on the lowest bid.[37] And Verizon has presented a detailed plan, beginning with a wireless auction, then moving to a wireline CETC auction, then possibly an auction involving all carriers.[38]

Given these substantial differences, NASUCA reiterates its two-fold recommendation: First, pursuit of reverse auctions need not be a priority for the Joint

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[30] See ACS Comments at 2-6; Comspan Comments at 7; RICA Comments at 3-11; RTG Comments at 2-4; RCA/ARCC Comments at 22-23.

[31] MoPSC Comments at 10; see id. at 10-14 for some of the details.

[32] Id. at 10.

[33] NJBPU Comments at 8.

[34] Frontier Comments at 7.

[35] GCI Comments at 15-19.

[36] DialTone Comments at 7.

[37] MoPSC Comments at 12.

[38] Verizon Comments at 4-8 and Appendix at 6-7; see also NJBPU Comment at 8-9.

Board or for the Commission. And second, any exploration of the concept should begin with a trial or pilot program. Windstream suggests that a trial could be held in an area that currently has multiple CETCs,[39] presumably in order to eliminate that multiplicity. This makes sense, especially in light of NRIC/SDTA's argument that CTIA's proposal for a "winner takes more" auction would do little to control the size of the fund.[40]

On a related note, YourTel argues that, even if reverse auctions are used to designate ETCs for the high-cost fund, this should not preclude the separate designation of ETCs to provide Lifeline and receive support from the low-income fund. NASUCA agrees.

IV. IMPROVEMENTS IN GIS AND MODELING SHOULD BE ADOPTED, BUT SHOULD NOT BE USED AS A REASON TO INCREASE THE USF.

In the initial comments, NASUCA noted that "NASUCA has argued for years that the Commission's cost models for universal service support were outdated, and need serious overhauling."[41] Nothing in the comments of others changes that view. Many of the commenters, representing diverse interests, support the use of updated technology for cost modeling.[42] In an ex parte filed in this docket concerning the petition of Iowa Telecommunications Services, Inc., a number of state regulatory commissions and relates

[39] Windstream Comments at 4; see also IUB Comments at 2.

[40] NRIC/SDTA Comments at 15-18.

[41] NASUCA Comments at 13, citing, e.g., NASUCA Comments (May 27, 2005) at 63-64.

[42] See, e.g., CalPSC Comments at 4-5; Dobson Comments at 5-9; Embarq Comments at 2-13; GCI Comments at 19-20; ITTA Comments at 33-38; MoPSC Comments at 14-16; SCORS Comments at 1-2; Sprint Comments at 18-20; T-Mobile Comments at 7-9.

state agencies reveal that the FCC Staff has not even run the Synthesis Model for support purposes since 2004.[43]

The opposition to this proposal appears to come mostly from rural carriers and others that benefit from rural carriers' use of embedded costs to determine their levels of support.[44] These commenters assert that the use of these "actual" costs better suits the rural carriers' situations. It may be that in some situations this is true. But in other cases, the use of these supposedly "real" costs benefits the company and its owners far beyond any benefit to the customers or the fund as a whole. As set forth in ALLTEL Exhibit 6, these include mutual companies that pay annual dividends to their owners in excess of the amounts that the owners (as customers) pay each year for their telephone service, and companies with high overhead (rather than facilities) costs.[45]

NASUCA submits that many of these concerns can be assuaged by adopting NASUCA's proposal -- echoed by ALLTEL[46] -- to apply the (updated and corrected) cost model to the largest rural carriers, those with more than 100,000 access lines in a state.[47]

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[43] Ex parte filed by NPSC, Maine PUC, South Dakota PUC, Vermont Public Service Board, Vermont Department of Public Service, and Kentucky PSC (May 31, 2007) at 5.

[44] See, e.g., CenturyTel Comments at 19-21; BEK Comments at 5; GVNW Comments at 10-13; ITA Comments at 3; IUB Comments at 3; MRTC Comments at 11-12; NECA Comments at 20-22; NTCA Comments at 12-16; OPASTCO Comments at 4-7; RICA Comments at 11-13; TCA Comments at 9; TSTCI Comments at 7-8.

[45] To be fair, ALLTEL Exhibit 6 also raises valid questions about the support that some wireless ETCs receive.

[46] ALLTEL Comments, Exhibit 2, "ALLTEL USF Reform Proposals" at 7 (supporting use of cost model for study areas with more than 50,000 access lines).

[47] See NASUCA Comments at 25.

The smaller carriers should not be reviewed under a cost model until a model is developed that accurately represents the variations among those carriers.[48]

This does not mean, however, that the Commission should overlook rural ILECs with hefty rates of return. In Ohio, for example, six of the 34 small rural ILECs have 10-year average returns on equity in excess of 17%; and those numbers do not count the federal USF funds, which are treated as jurisdictionally interstate.[49]

The NPSC proposes that state commissions should be included in the process of updating the cost models.[50] NASUCA agrees that state commissions should join federal regulators and the industry in improving the cost models, to the extent that they are able and interested. Likewise, NASUCA members may be interested and able to participate in this effort.

Verizon complains about the length of time it would take to fix the cost model.[51] Yet the auction process proposed by Verizon will take as long or longer to come to fruition.[52]

V. SUPPORT NEED NOT BE DISAGGREGATED BELOW THE STUDY AREA OR WIRE CENTER LEVEL.

A number of parties are in favor of disaggregating support below the current

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[48] See Supplement to NASUCA Comments.

[49] For the 15-year average, nine of the RLECs had returns on equity in excess of 15%.

[50] NPSC Comments at 6; see also RTG Comments at 4.

[51] Verizon Comments at 9.

[52] See Section III., supra.

study-area level of aggregation.[53] But despite the theoretical merits of these proposals, none discuss or overcome the factor that makes such action unnecessary, at least in the short term: the definite absence of the kind of "cherry-picking" competition that disaggregation is intended to discourage, that is, CETCs focusing only on the low-cost (or lower-cost) portions of a study area. There are few wireline CETCs, which might be tempted by such a strategy, and wireless CETCs service coverage is so different from the ILECs as to make disaggregation of the ILEC's wire centers non-productive for regulators.[54]

A number of parties oppose such disaggregation.[55] Others suggest it should remain as an option.[56] Others suggest it should be left up to the individual states.[57] Especially given the lack of demonstrable benefit from the substantial effort required from small rural ILECs, this appears to be the wiser course.[58]

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[53] See Comspan Comments at 8; Corr Comments at 2; DialTone Comments at 6-7; Dobson Comments at 2-5; GCI Comments at 20; MoPSC Comments at 17-18; NPSC Comments at 7-9; RCA/ARCC Comments at 22-23; Sprint Comments at 18-20.

[54] See NASUCA Comments at 15; see also RICA Comments at 13.

[55] See BEK Comments at ; CenturyTel Comments at 21-22; GVNW Comments at 13-14; ICORE Comments at 10-11; ITA Comments at 3-4; MRTC Comments at ; NRIC/SDTA Comments at 22-23; NTCA Comments at 16-18; Rate Counsel Comments at ; RIITA Comments at 5-6; RTG Comments at 4-5; TSTCI Comments at 7; WT Comments at 22.

[56] ACS Comments at 8-10; Embarq Comments at 20-21; ITTA Comments at 38-41.

[57] CalPSC Comments at 5-7.

[58] This also eliminates the need for a "safe harbor" process, as proposed by IUB. IUB Comments at 3.

OPASTCO correctly points out that there will be less of a need for disaggregation if the identical support rule is abandoned.[59] That subject is discussed in the next section.

VI. THE JOINT BOARD SHOULD RECOMMEND SIGNIFICANT CHANGES IN CETC SUPPORT.

A substantial number of the commenters recommend elimination of the identical support rule.[60] As previously mentioned, "vote-counting" should not be a major basis for the formulation of policy, but in this case the numbers also have reason on their side. By contrast, those who seek to retain the identical support rule appear to be CETCs that benefit from receiving support at a level based on the ILEC's costs, rather than on their own costs.[61]

Until and unless there can be some truly competitively neutral mechanism for ensuring that rural ETCs' rates are affordable and reasonably comparable to the rates charged in urban areas,[62] it should be clear that the current identical support rule is **not** competitively neutral. Instead, it gives an advantage to the CETCs, which appear to

[59] OPASTCO Comments at 18-20.

[60] BEK Comments at 5-6; Embarq Comments at 21-23; Frontier Comments at 5-6; GVNW Comments at 14-15; ITA Comments at 4; ITTA Comments at 44-50; IUB Comments at 4; MoPSC Comments at 18; MRTC Comments at 13; NECA Comments at 9; NJBPU Comments at 6; NPSC Comments at 11; NTCA Comments at 18-21, 26; OPASTCO Comments at 7-12; RICA Comments at 14-15; RIITA Comments at 6-7; SCORS Comments at 2-3; TCA Comments at 6-9; TSTCI Comments at 7; Verizon Comments at 11-15; Windstream Comments at 7-8; WTA Comments at 22-24.

[61] ACS Comments at 6-8; Corr Comments at 4; Dobson Comments at 9-11; GCI Comments at 22-27; NCTA Comments at 7; Sprint Comments at 10-13.

[62] As discussed above, the determination of what constitute "reasonably comparable" rates is one that the Commission has not yet made to the satisfaction of the courts.

have, for the most part, lower costs than the wireline incumbents.[63] The identical support rule is one of the primary causes of the growth of the USF.[64] It must be abandoned.

VII. THE JOINT BOARD SHOULD RECOMMEND THE ADOPTION OF PILOT PROGRAMS FOR SUPPORTING BROADBAND SERVICE.

Many commenters assert that the USF should support the deployment of broadband facilities and the services that travel over them.[65] Others argue that the USF should not support broadband.[66]

There are also a wide variety of related views. Some say that even though broadband should not be directly supported, the Commission should require ETCs to certify that they offer broadband.[67] There is also the view that carriers' full cost recovery through the USF will effectively support broadband.[68] The MoPSC notes that "carriers are finding creative, yet legal, ways to deploy broadband using the existing funding formulas and definition.[69]

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[63] See NASUCA Comments at 20-21.

[64] Again, to be fair, other related causes include the rule that maintains the level of support for ILECs when CETCs gain lines in their territories, and the rule that requires the USF to support multiple lines from multiple carriers in a single household.

[65] CenturyTel Comments at 22-26; CoBank Comments at 4-5; Comspan Comments at 9; CU/CFA/FP Comments at 7-49; Embarq Comments at 23-25; GVNW Comments at 15; ITA Comments at 4; OPASTCO Comments at 20-26; RTG Comments at 6-7.

[66] CalPSC Comments at 7-9; Corr Comments at 5-8; NCTA Comments at 3-4; RICA Comments at 15-17; Time Warner Comments at 4-13; Verizon Comments at 15-18.

[67] Frontier Comments at 9-10; GCI Comments at 27-29.

[68] BEK Comments at 8.

[69] MoPSC Comments at 19; some of those ways are described id. at 19-21.

Others say that broadband should be supported, but also that the Commission should not define broadband as a supported service.[70] A few commenters say that broadband could or should be defined as a supported service.[71] Others say that broadband should not be supported and should not be defined as a supported service.[72] One commenter says that broadband should not be supported until the Commission has fixed the current high-cost system.[73]

One commenter says that the Commission should open a separate redefinition proceeding.[74] Another says that such a proceeding would be premature.[75]

Given all of these differences of opinion, but recognizing the national goal of advancing advanced services, it appears that the best approach would be to adopt a limited pilot program, as NASUCA recommended in the initial comments.[76] As discussed in the Public Notice, ALLTEL has proposed such a program,[77] on which NASUCA offered comments.[78]

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[70] ACS Comments at 10-12.

[71] CU/CFA/FP Comments at 13-51; ITTA Comments at 50-51; NPSC Comments at 12.

[72] T-Mobile Comments at 11-14.

[73] MRTC Comments at 18.

[74] NTCA Comments at 21-22.

[75] NECA Comments at 13.

[76] NASUCA Comments at 23-24.

[77] Public Notice, ¶ 4.

[78] NASUCA Comments at 11-12.

AT&T presents details on another proposal in its comments.[79] For the most part, AT&T's proposal appears reasonable, with the following exceptions:

- AT&T would devote $1 billion to the "pilot" program.[80] This is one-seventh of the amount currently consumed by the entire USF, and is excessive for a pilot.

- AT&T would require recipients of the funding "to offer broadband services in that area at an affordable rate for a specified period of time (such as for five or ten years)."[81] The USF having paid for the infrastructure, there is no reason to allow the recipient to withdraw the service, or to price the service at an unaffordable rate, after some period of time.

- AT&T would focus the pilot on areas served by "price-cap" carriers, especially non-rural carriers.[82] Given the vagaries of state regulation, it does not appear that AT&T's complaints about non-rural carriers' ability to finance broadband investments have any general credibility.[83]

- AT&T would allow applicants "to group multiple underserved census blocks in a single application."[84] For the reasons set forth in NASUCA's initial comments,[85] such "combinatorial" applications can be problematic, especially where there are competing applications that do not cover exactly the same territories.

With these exceptions, AT&T's proposal deserves consideration.

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[79] AT&T Comments at 5-17. AT&T also proposes a wireless support program (id. at 17-21), which NASUCA submits could be addressed as a separate pilot program like that discussed in Section III. above.

[80] Id. at 6.

[81] Id. at 7.

[82] Id. at

[83] NASUCA unequivocally rejects AT&T's assertion that the current high-cost mechanism provides insufficient funding for non-rural carriers. Id. at 12, 16.

[84] Id. at 15.

[85] NASUCA Comments at 11.

One thing should be clear, however, about any broadband pilot program: In order to ensure that the program does not duplicate current efforts that are occurring in the absence of such a program, the pilot program should focus on currently unserved areas, as NASUCA initially recommended.[86] Others agree.[87]

NJBPU points out that the Commission is currently engaged in a number of broadband inquiries that would impact the use of the USF to promote broadband, including definitions of advanced telecommunications capability and data on the availability of broadband.[88] At the very least, the process of developing a pilot program can begin in the near-term, to be implemented once the neediest areas are identified.

In an ex parte filed on June27, 2007, Qwest revealed a combined plan for expanding broadband deployment and reforming the USF. The former would be accomplished through reverse auctions administered by the states, funded through block grants "based on the percentage of unserved households in each state."

Qwest's two-page plan is scarcely detailed enough to require serious response, but two substantial questions arise immediately: First, Qwest's proposal assumes that all states have commissions or other bodies that would be capable of performing the reverse auction. And second, perhaps more importantly, Qwest does not explain how the amount of funding from which the block grants derive will be determined, other than through eliminating the ability of wireless carriers to collect high-cost funds for more than one

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[86] NASUCA Comments at 24. AT&T's proposal says that it would be available for "underserved" areas (AT&T Comments at 6, 7, 15), but also states that it is for "areas without access to such services today." Id. at 11. Defining "unserved" is relatively easy; defining "underserved" is far more difficult

[87] See Dobson Comments at 15-21; IUB Comments at 5; Windstream Comments at 10.

[88] NJBPU Comments at 12.

connections per household. But will the total for the block grants be the total dollars at particular point in time represented by wireless connections for which support is eliminated? Qwest also does not explain how its proposal relates to the Congressional direction for the Commission not to spend money to limit the number of connections per household.[89]

Finally, in comments designed to increase broadband penetration with a different focus, Rate Counsel and YourTel propose including broadband service as part of the Lifeline program.[90] Given that the rates for broadband are typically higher than those for the basic service that Lifeline currently covers, and the uncertainty as to the price point at which broadband will be affordable for a low-income family (and the corresponding uncertainty as to the discount amount that will be required to produce affordable broadband rates), it would be appropriate to have the Lifeline broadband program be a pilot program as well.[91]

VIII. THERE ARE OTHER HIGH-PRIORITY ISSUES FOR WHICH THE JOINT BOARD SHOULD MAKE RECOMMENDATIONS.

As expected, many commenters, like NASUCA, did not view the five topics set forth in the Public Notice as exhausting the universe of important issues for long-term

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[89] See H.J.Res. 20, § 105 (governing spending through September 30, 2007). This prohibition has been continuing since late 2004.

[90] Rate Counsel Comments at 7; YourTel Comments at 4-5.

[91] Such a program could focus on the AT&T footprint, where a $10 broadband rate and "naked" digital subscriber line service are required under the AT&T/SBC merger conditions. See *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 (rel. March 26, 2007), Appendix F.

comprehensive reform of the high-cost universal fund.[92] NASUCA responds here to some of the submissions of other parties.

First, it is important to present NASUCA's opposition to certain of those submissions. Most of these issues are ones on which NASUCA's positions have long been on record.

NJBPU, as a significant net payor, makes the understandable complaint that New Jersey's contributions significantly outweigh the support it received from the USF.[93] The complaint is understandable as a basis for a desire to constrain the size of the fund. Yet NJBPU also states, "The consumers in more urban states such as ours should not be expected to continue to subsidize telephone service for rural consumers from a small number of states."[94] But that is precisely what federal law requires. To the extent that New Jersey focuses on limiting "distributions … to only those consumers and service providers who are truly in need," however, [95] NASUCA agrees.

But it should be remembered that New Jersey's payments do not go only to the high-cost fund, but also to the low-income fund, the schools and libraries fund and the rural health care fund. And the inevitable conclusion of NJBPU's position is that no state would pay more into the fund that it receives, which of course would defeat the entire purpose of a government-sponsored transfer program like the USF. Despite all that, NASUCA -- on behalf of its members nationwide and the consumers they represent --

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[92] See NASUCA Comments at 25-27.

[93] NJBPU Comments at 13.

[94] Id. at 4.

[95] Id. at 2-3. NJBPU adds "and only to ensure affordable access" to this statement. Id. This disregards the concomitant requirements of reasonably comparable services at reasonably comparable rates.

strongly agrees with NJBPU that limiting the number of supported networks and defining areas requiring support more clearly should be a key motivator for the Joint Board and the Commission.

Other comments raise objectionable positions. For example, AT&T repeats its support for a numbers-based or connections-based contribution mechanism.[96] Not only is this subject well outside the scope of inquiries into fixes for the high-cost fund, it is demonstrably both unnecessary and harmful to consumers.[97] AT&T also asserts that reform of intercarrier compensation must be accomplished[98]; that may be true, but, as NASUCA has argued (and many others agree), that reform can be accomplished without adopting the Missoula Plan. The Missoula Plan, of which AT&T is the largest supporter, has explosive impacts on the USF and consumers caused by returning to the carriers that reduce their access charges far more dollars from the USF and elsewhere than they lose.[99] The "AT&T USF Stabilization Proposal" cited by AT&T[100] proposes to protect the USF by reducing USF payments to CETCs that represent replacements for ILEC access charges.[101] Yet on the other hand the Missoula Plan will explode the USF through guaranteeing, for the ILECs, replacements of access charge dollars. And AT&T says

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[96] AT&T Comments at 3; see also NJBPU Comments at 2.

[97] See, e.g., NASUCA April 6, 2007 ex parte, filed in 96-45 , 01-92, 03-133, 04-36 and 06-122.

[98] AT&T Comments at 3. It should be noted that it appears AT&T was the only commenter to raise the issues of intercarrier compensation, except ITTA, raising the need to solve the phantom traffic problem. Albeit as a way to reduce the strain of the USF. ITTA Comments at 57.

[99] SEE NASUCA Reply Comments (February 1, 2006) in 01-92.

[100] AT&T Comments at 3.

[101] AT&T March 22, 2007 ex parte at 10.

nothing about eliminating ILEC receipt of the CALLS and MAG USF payments that should have already been phased out.

A final rejoinder to AT&T is that its continued insistence on the elimination of implicit universal service support[102] is contrary to the explicit finding of the 10th Circuit.[103] Another position contrary to the 10th Circuit's holdings is that taken by NPSC, which suggests that the Commission should require state matching funding as a condition of the receipt of high-cost funding. The 10th Circuit stated:

> In *Qwest I*, we held that the FCC must develop mechanisms to induce the states "to assist in implementing the goals of universal service." 258 F.3d at 1204. In response, the FCC has drafted a requirement into its support mechanism for non-rural carriers requiring states to certify that rural rates within their boundaries are reasonably comparable. If they are not, the states must develop and present an action plan to the FCC indicating the state's response. If the state fails to do so, federal funds will be withheld. The Petitioners assert that the certification process constitutes an inadequate inducement. We disagree.[104]

An "inducement" is not a "requirement"; clearly, if an inducement is sufficient to be lawful, a requirement is not necessary.

Other suggestions are less directly contradicted by court rulings, but no more practicable or reasonable. For example, NRIC/SDTA assert that the amount of support a carrier received should be based on the carrier's "regulatory obligations."[105] This raises difficult if not impossible questions about how to place value (or costs) on those obligations. And those obligations vary so much from state to state, from carrier to

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[102] AT&T Comments at 1; see also Windstream Comments at 9.

[103] *Qwest II*, 398 F.3d at 1232.

[104] Id. at 1238.

[105] NRIC/SDTA Comments at 2-13.

carrier and from year to year, that support amounts based on such factors could hardly be deemed either sufficient or predictable.[106]

Windstream supports the adoption of an "affordability benchmark."[107] No details are given; indeed the purpose of Windstream's proposal is unclear. One can surmise, however, from Windstream's remark that "[a]ffordability benchmarking would help ease the burden of the overall universal service fund"[108] that Windstream intends that support be denied where rates are affordable, and only where rates are not affordable -- or would not be, without the support -- would support be allowed.

On another front, CTIA understandably says that the USF should pay more -- not less -- to wireless carriers. This is because "there are now significantly more mobile wireless subscribers than wireline switched access lines and mobile wireless services are now the telecommunications of choice for the majority of consumers."[109] CTIA's view overlooks a number of key factors: 1) the growth in mobile subscribership (whether in urban or rural areas) has largely taken place without USF support[110]; 2) only a small minority of consumers have abandoned wireline service in favor of wireless service -- for most consumers, wireless remains a complement to, not a substitute for, wireline service[111]; and 3) most importantly, it has not been shown that the receipt of support by

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[106] 47 U.S.C. § 254(b)(5).

[107] Windstream Comments at 9-10.

[108] Id. at 10.

[109] CTIA Comments at 2 (footnote omitted).

[110] In addition, the count of mobile subscribership is overstated because it includes, for example, a family share plan with four phones as four separate subscriptions.

[111] See id. at 7. We discount the surveys undertaken for MyWireless.org®.

wireless carriers accomplishes much if anything toward the statutory goal of ensuring reasonably comparable services at reasonably comparable rates in rural areas.[112]

With regard to all of those factors, it appears that the concept of a separate mobility fund deserves consideration.[113] This would recognize the still-significant differences between the two services. This is consistent with the positions held by some commenters that the USF should support at most only one wireless and one wireline network.[114]

Dobson asserts, in effect, that the Commission is obliged to support an unlimited number of ETCs in a given area, in order to promote competition.[115] Dobson overlooks the requirement that designation of ETCs -- whether in rural carriers' areas **or** in non-rural carriers' areas -- must be viewed in light of the overriding public interest.[116]

Finally, there are a number of comments that are consistent with positions that NASUCA has taken in the past. These include:

- Expanding the contribution base for the USF[117];
- Restricting support to primary lines[118];

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[112] See Criterion Economics, LLC ex parte (June 13, 2007) at 3.

[113] See CenturyTel Comments at 5-8; ITTA Comments at 55-57.

[114] See NPSC Comments at 9; RTG Comments at 5-6.

[115] Dobson Comments at 11.

[116] 47 U.S.C. 214(e)(2) (state commissions designate ETCs "consistent with the public interest, convenience, and necessity….").

[117] E.g., CenturyTel Comments at 2-5; NCTA Comments at 27-31; NJBPU Comments at 2,

[118] E.g., MRTC Comments at 14 (support one wireline and one wireless connection per household); NJBPU Comments at 5.

- Aggregating study areas;[119]

- Strengthening the tests for designation of ETCs.[120]

All of these proposals deserve serious consideration by the Joint Board and the Commission.

IX. CONCLUSION

NASUCA appreciates the Joint Board's consideration of NASUCA's recommendations as set forth herein and in the initial comments.

Respectfully submitted,

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[119] MRTC Comments at 14-16.

[120] E.g., Frontier Comments at 78; ITTA Comments at 41-44; NCTA Comments at 23-26.