

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

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

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

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The National Telecommunications Cooperative Association (NTCA)¹ hereby submits these reply comments in response to initial comments filed May 31, 2007, regarding the Federal Communications Commission’s (Commission’s or FCC’s) Public Notice in the above referenced proceeding (Notice).²

I. INTRODUCTION AND SUMMARY

The initial comments filed by other parties resemble a feeding frenzy, asking the Federal-State Joint Board on Universal Service (Joint Board) to consider more precise targeting of high cost support, eliminating rural/nonrural ILEC carrier distinctions, creating pilot programs for supporting broadband and/or mobility, and supporting competition through the use of the high-cost universal service fund (USF). NTCA urges the Joint Board to resist these temptations to

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 575 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, WC Docket No. 05-337, CC Docket No. 96-45 (Public Notice) (rel. May 1, 2007).

unnecessarily increase the size of the high-cost universal service fund and further risk its sustainability. Instead, the Joint Board should heed the concerns expressed by National Association of State Consumer Advocates (NASUCA) that most of these issues are tangential or diversions, and that the Joint Board should focus instead on the essential reforms needed to continue and enhance universal service. This requires, first, the elimination of the identical support rule, second, a decision regarding the number of networks that high-cost USF should support in a given ILEC service area, and third, a resolution to competitive eligible telecommunications carrier (CETC) funding problem.

NTCA has commissioned Dale Lehman, Director, Executive MBA in Information and Communication Technology, Director MBA program, and Professor of Economics, Alaska Pacific University, to help the Joint Board and the Commission answer these fundamental questions and provide further guidance. Professor Lehman has reviewed the initial comments in this proceeding and has authored a paper entitled *Diversions and Essential Reforms*, which includes a road map for resolving these fundamental questions in order to resolve the current problems with the high-cost USF distribution mechanism. (Attachment A).

The pressure on the fund comes from two sources. First, the fund has grown to potentially unsustainable levels. Second, it is not clear that the fund is achieving the desired results. The fund's growth is undeniably attributed to the rise in wireless CETC support. The fact that wireless services are increasingly popular and important and that wireless carriers pay more into the fund than they take out are mostly irrelevant to the issues at hand. Universal service is about achieving public goals, not about equalizing support across technologies,

carriers, or customers. The dysfunctional identical support rule is the basis for the rising wireless CETC support, and it needs to be changed.

Professor Lehman believes that reverse auctions, cost models, or cost accounting can be applied to wireless CETCs in place of the identical support rule. He understands that there are important differences between these three methods, but he asserts that the Joint Board has ample information on which to choose a path. Professor Lehman stresses that the Joint Board should choose one of these options as a substitute for the identical support rule. As part of making this choice, the Joint Board must articulate the nature and extent of the need to have USF support wireless networks. This is essential if such support is to be effective at achieving regulatory goals.

Professor Lehman also believes that the remaining issues – disaggregation, GIS modeling, reform of rural/nonrural definitions, and support of broadband – should not divert the Joint Board from the essential reform of high-cost CETC USF support. The complexities need to be carefully considered. Targeting support to the highest cost areas suggested by carriers operating under state incentive regulation plans:

1. Risks increasing the total size of the fund,
2. Erodes the rural/non-rural distinction, and is
3. Inconsistent with many of the incentive regulation plans that these carriers have voluntarily agreed to which includes universal service and broadband deployment obligations in return for pricing and earning flexibility.

Professor Lehman further states that broadband is a multidimensional problem, encompassing subscription behavior, infrastructure deployment, and varying uses of broadband services of different speeds. It is not clear that USF is the most appropriate vehicle for increasing the use of broadband in rural areas where availability is present. Some targeted type pilot programs may

make sense, but they are not the core of the universal service problem that the Joint Board and FCC are facing.

The current methodology for determining rural ILEC high-cost support is not broken, is not in need of repair, and is not the cause of the dramatic growth in the size of the high-cost USF mechanism. The Joint Board and the Commission should therefore focus its energy on long-term solutions that address the main problem with the high-cost universal service funding mechanism which is basing CETC support on ILEC costs and granting multiple CETC designations in ILEC service areas that have already achieved the Act's universal service goal of providing affordable and comparable rates and services to consumers living in these ILEC service areas.

The Joint Board and FCC should fully consider Professor Lehman's approach to resolving the current problems with the high-cost USF distribution mechanism contained in Attachment A. The Joint Board and FCC should also reject the implementation of reverse auctions for determining rural ILEC high-cost USF support in areas with preexisting rural ILEC infrastructure and ubiquitous service availability.³ Silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals. Unless specifically stated below, NTCA reasserts its positions described in its May 31, 2007 initial comments filed in this docket.

³ NTCA Initial Comments, *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, Public Notice, WC Docket No. 05-337, CC Docket No. 96-45 (Public Notice), May 31, 2007, p. 2 (NTCA Initial Comments).

II. REVERSE AUCTIONS SHOULD NOT BE USED AS A MEANS OF DETERMINING HIGH-COST UNIVERSAL SERVICE SUPPORT FOR RURAL ILEC AREAS WITH PREEXISTING COMMUNICATIONS INFRASTRUCTURE AND UBIQUITOUS SERVICE.

NTCA has long held that while reverse auctions may be an appealing theoretical construct, in reality they are fraught with uncertainty and risk when applied to ILEC service areas with preexisting infrastructure and ubiquitous service. Reverse auctions raise significant issues of stranded investment and confiscation issues.⁴ The administration of a reverse auction would be time and labor intensive, prohibitively expensive, and technically burdensome. An education process would be needed to ensure that participants understand auction procedures. Ongoing evaluation and enforcement would be required to ensure that participants are complying with auction rules. Lastly, reverse auctions provide incentives contrary to the provisions of Section 254 of the Act.

Initial comments filed by other parties in this proceeding indicate significant agreement with NTCA's position on reverse auctions. All of the rural groups and consumer groups filing were unanimous in their opposition to reverse auctions. GVNW Consulting correctly warned of the "unintended consequences [of a reverse auction approach for rural carriers], including an inability to raise capital and evolve appropriate levels of service."⁵

While several of the state commissions filing showed some interest in the reverse auction concept, many did with reservations. The Iowa Utilities Board said that reverse auctions could be used to select a single CETC; the incumbent ETC should be left in place.⁶ The Missouri Public Service Commission cautioned that if reverse auctions were implemented, winners should

⁴ See, NTCA Initial comments, pp. 3-12.

⁵ GVNW comments, p. 3.

⁶ Iowa Utilities Board comments, p. 2.

not be selected based on price alone, but also on the commitments the carrier was willing to make.⁷ The Nebraska PSC said that reverse auctions could only work if winning bidders agreed to assume carrier of last resort obligations and meet quality of service requirements.⁸ Comcast opined that reverse auctions could harness the incentives of the competitive marketplace—if “properly designed.”⁹ The problem as Professor Dale Lehman detailed in his papers written on NTCA’s behalf¹⁰ and submitted with NTCA’s comments in the Commission’s reverse auctions proceeding¹¹ is that it is not possible to design a reverse auction mechanism that would be effective in areas with preexisting infrastructure and ubiquitous service.

Many commenters specifically addressed the reverse auction proposals offered by Verizon, Alltel, and CTIA. Virtually all who did so found them lacking, as did NTCA.¹² Nebraska Rural Independent Companies and South Dakota Telecommunications Association (NRIC/SDTA) made note of the service quality problems and high administrative costs that would arise from the Verizon plan¹³ and believes that the CTIA plan would not address high-cost fund growth.¹⁴ Embarq says that the Verizon plan fails to address lack of support in some areas,¹⁵ and that the CTIA proposal misses both the lack of support in some areas and the

⁷ Missouri Public Service Commission comments, pp. 13-14.

⁸ Nebraska Public Service Commission comments, p. 5.

⁹ Comcast comments, p. 5.

¹⁰ Dale Lehman, “The Use of Reverse Auctions for Provision of Universal Service,” filed with NTCA’s Initial Comments in Reverse Auction Proceeding; “Reply to Reverse Auction Comments,” filed with NTCA’s Reply Comments in Reverse Auction proceeding.

¹¹ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, FCC 06J-1 (Reverse Auction Proceeding.) NTCA Initial Comments filed October 10, 2006; Reply Comments filed November 8, 2006.

¹² NTCA Initial comments, pp. 5-7.

¹³ Nebraska Rural Independent Companies and South Dakota Telecommunications Association comment, p. 14.

¹⁴ *Id.*, p. 19.

¹⁵ Embarq comments, pp. 14-16.

redundant support provided to multiple CETCs.¹⁶ NRIC/SDTA further notes that another plan, proposed by Embarq, does not address fund growth and needs additional development.¹⁷ The inability of any party to this proceeding to put forward a workable reverse auction plan only serves to underscore the arguments of NTCA and numerous other commenters who feel strongly that reverse auctions are inherently unworkable under conditions of existing infrastructure.

III. HIGH-COST USF SUPPORT SHOULD NOT BE TARGETED OR DISAGGREGATED BELOW THE STUDY AREA OR WIRE CENTER LEVEL.

Universal service support should not be targeted or disaggregated below the study area level or wire center level.¹⁸ As NASUCA demonstrates, there has been no valid showing that competition has prevented low-cost wire centers from subsidizing high-cost wire centers or that competition has prevented the low-cost portion of a wire center from subsidizing high-cost portion of the same wire center.¹⁹ Indeed, NASUCA points out in Ohio, in 2002, Embarq (then Sprint) voluntarily opted-in to an incentive regulation plan that capped basic service rates throughout its service territory, giving total pricing flexibility for most other services. This provided the company with the ability to remove any supposedly unsustainable cross-subsidies at the state level. In return for pricing and earnings flexibility, some of these incentive regulation carriers have agreed to fund high-cost wire centers for voice and broadband service. Additional federal high-cost USF support should therefore not be distributed to carriers who have agreed to meet their universal service and broadband obligations as part of their state incentive regulation plans.

¹⁶ *Id.*, pp. 18-20.

¹⁷ Nebraska Rural Independent Companies and South Dakota Telecommunications Association comments, pp. 20-22.

¹⁸ NASUCA comments, p. 14.

¹⁹ *Id.*, pp. 15-17.

IV. THE COMMISSION SHOULD REJECT THE USE OF GIS TECHNOLOGY AND HYPOTHETICAL NETWORK COST MODELING.

While NTCA agrees that significant advances may have occurred in network cost modeling and the availability of location data, systemic problems inherent with cost modeling present significant challenges. Cost models are intellectually appealing but are costly to build and maintain. Model accuracy becomes more difficult to obtain as models are applied to smaller and smaller areas. GVNW Consulting agrees, correctly pointing out that models are expensive to implement and update, and that road-based modeling may not work in some high-cost rural areas.²⁰ Iowa Telecommunications Association notes that for smaller exchanges mapping has been generally ineffective.²¹ Mid Rivers Telephone Cooperative Inc. deems modeling “clearly inferior to the use of the actual costs incurred in providing service and deploying networks in high cost areas.”²² For these reasons, NTCA opposes the use of hypothetical network cost models that do not take into account actual costs, competitive conditions, and variables unique to individual small rural ILECs to determine high-cost USF support for rural ILECs.

More troubling is that applying cost models, such as the cost model proposed by Embarq, to all non-rural, rural ILECs, and wireless/landline CETCs, would blow the lid off of the high-cost universal service funding mechanism. As NASUCA correctly identifies, quoting the CTIA proposal, statewide averaging:

[H]as the effect of keeping the size of the federal fund currently estimated at \$291 million for 2005, low. If funding were to change (without a move to auctions, or without any other change in revenue benchmarks or other offsetting adjustments) to carrier funding (rather than an aggregation of carrier wire centers within the state), we estimate the non-rural funding for ILECs would nearly double. If,

²⁰ GVNW comments, pp. 10-12.

²¹ Iowa Telecommunications Association comments, p. 3.

²² Mid Rivers Telephone Cooperative, Inc. comments, p. 2.

instead, funding were to change to the wire center (i.e., all high-cost wire centers would receive support – even those located on [sic] lower average cost states), we estimate the non-rural funding for ILECs would grow to over \$2 billion, a nearly seven-fold increase to the current fund size.²³

If rural ILEC and wireless CETC cost models targeted support below the study area level or wire center level, the additional impact on the size of the high-cost universal service fund would be tremendous. Such growth in the high-cost fund would clearly jeopardize the future sustainability of the fund. The Joint Board and FCC should therefore reject applying new hypothetical cost models to rural ILECs, non-rural ILECs, and CETCs below the study area or wire center level. The Joint Board and FCC should instead maintain the current non-rural/rural ILEC distinction and maintain the current cost models for determining high-cost universal service support for rural ILECs and non-rural ILECs. The focus of this proceeding should be: (1) eliminate the identical support rule, (2) determine the appropriate substitute for the identical support rule, and (3) determine the maximum number of CETCs allowed in a given service area.

V. THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED AND THE JOINT BOARD MUST DECIDE ON A SUBSTITUTE FOR DETERMINING WIRELESS CETC USE SUPPORT.

With the exception of the cable companies and the wireless carriers, all commenters were united in support of eliminating the identical support rule. Several correctly recognized that the rule subsidizes competition where it would not otherwise exist, contrary to the intended spirit of the universal service program.²⁴ As Frontier Communications correctly notes, “There is no sound public policy supporting CETCs receiving support based on ILEC costs.”²⁵ The only

²³ NASUCA comments, pp. 18-19, quoting the CTIA’s Proposal, p. 16.

²⁴ See, Alexicon Telecommunications Consulting comments, p. 8, GVNW Consulting comments, p. 14.

²⁵ Frontier Communications comments, p. 5.

question remaining is what should the Joint Board recommend as the substitute for the identical support rule?

If the Joint Board recommends that one landline and one wireless infrastructure should be supported in a single study area, then reverse auctions may play a role as a substitute for the identical support rule and the basis for future wireless CETC support. The FCC does not currently collect consistent data on wireless CETC costs. An auction could potentially reveal the cost of providing universal wireless service by permitting the multiple wireless CETCs to bid for their required subsidy in a given ILEC study area, assuming FCC or state commission determines there is need for a second eligible carrier in the ILEC's study area. This is the first stage in Verizon's auction proposal, which addresses a necessary fundamental reform of the identical support rule, as well as providing valuable insight into issues associated with reverse auctions for universal service. Professor Lehman discusses the necessity of reforming the CETC support process in section 3 of Attachment A.

Professor Lehman makes clear, however, that it is necessary to further develop the basis for supporting wireless universal service. Wireless services are important and the quality of services in rural areas may not be comparable to that in urban areas. Mobility is not part of the current definition of universal service, and there has been no determination of the dimensions of rural wireless services that might need support. Multiple providers serve most rural areas of the nation – and have done so without support. Therefore, the FCC should take several steps before enacting a sensible support policy for wireless services:

1. Establishment of mobility as a supported service.
2. Determination of the dimensions of service that require support.

3. Development of a distribution mechanism for awarding support for these dimensions of service.
4. Building an oversight mechanism to ensure that support is used for the purposes intended.

The existing USF for wireline service provides a useful model for these steps, but it will necessarily differ for wireless service. In particular, the dimensions of comparable services and comparable rates need to be explored. It is in the third step above that reverse auctions may have a role to play while other alternatives, such as cost models, cost accounting, and proxy models could also be used as a substitute for the identical support rule in step 3.

VI. THE ADDITION OF BROADBAND AS A SUPPORTED SERVICE SHOULD BE EXPLORED IN A SEPARATE PROCEEDING.

Recognizing the critical importance of broadband service to the nation's long-term economic competitiveness, NTCA recommends that the Joint Board and FCC open a separate proceeding to determine whether broadband should be included in the list of supported services in the definition of universal service. NTCA also recommends that the Joint Board and the FCC work with Congress to establish a national broadband policy for the United States. Several commenters noted that the question of adding broadband as a supported service should be postponed until after the high-cost universal service fund has been stabilized.²⁶ While NTCA sees no reason why the question should be postponed, it agrees that preserving and sustaining the high-cost fund should be the primary focus of this proceeding.

VII. NTCA OFFERS EIGHT RECOMMENDATIONS FOR PRESERVING AND SUSTAINING UNIVERSAL SERVICE.

The current policies for determining and distributing rural high-cost USF support have enabled the Commission to reach and maintain a 94.6 percent universal service penetration rate

²⁶ See, Alexicon Telecommunications Consulting comments, p. 9, Mid Rivers Telephone Cooperative comments, p. 3, Comcast comments, p. 6.

in U.S. households.²⁷ Adopting a new reverse auction mechanism could jeopardize this achievement by the United States and create significant disincentives for rural carriers to continue to invest and to provide high-quality affordable basic and advance services to their rural communities.²⁸ Rather than heading down the very uncertain and risky path of attempting to impose reverse auctions on rural ILECs in areas with preexisting infrastructure and ubiquitous service, the Joint Board should consider more certain and less risky alternatives for providing affordable and comparable services, efficiently managing the growth of high-cost USF support, and sustaining universal service in rural, high-cost areas throughout the United States.

Consumers in most high-cost service areas are already receiving affordable and comparable voice communications services through either the ILEC and/or wireless CETC. Thus, the Act's goal of providing comparable rates and services has been achieved. The need to add additional CETCs in rural high-cost service areas therefore should be limited on a going forward basis.

The statutory universal service goals contained in Section 254 do not promote USF competition nor direct the Joint Board or the Commission to use universal service support dollars to artificially stimulate competition. The focus of the Joint Board in this proceeding therefore should focus on the goals of Section 254 and consider alternative proposals that will maintain the existing affordability and quality service consumers receive in rural, high-cost areas. As discussed previously, reverse auctions will likely lead to the deterioration of service quality, customer confusion and dissatisfaction, and, at worst, the inability to provide service to

²⁷ FCC Report: *Telephone Subscribership in the United States, Data Through March 2007* (rel. June 29, 2007), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-274714A1.doc.

²⁸ 47 U.S.C. 254(b)(5) states that Federal and State mechanisms to preserve and advance universal service should be specific, predictable and sufficient.

consumers living in rural, high-cost areas. NTCA therefore urges the Joint Board to consider and recommend the proposed alternatives described below to accomplish the same goals, with much less risk to those consumers who rely on sufficient, reliable universal service support for the provision of affordable communications services.

1. Dismiss reverse auctions as a means for determining future rural ILEC high-cost universal service support in areas with preexisting communications infrastructure and ubiquitous service;
2. Reject the use of GIS technology and hypothetical network cost modeling, which do not take into account actual costs, competitive conditions, and variables unique to individual small rural ILECs;
3. Maintain the current rural/non-rural distinction in the high-cost USF funding mechanism and reject targeting support below the study area or wire center level;
4. Abandon the identical support rule;
5. Require that CETC USF support be based on a CETC's embedded costs, reverse auctions, or proxy models;
6. Establish a separate proceeding to determine whether broadband should be included in the definition of universal service;
7. Establish and enforce a meaningful public interest test for future CETC applicants; and
8. Expand the base of USF contributors to include all broadband service providers.

In addition to the implementation of long-term high-cost USF reform measures, the Commission should concurrently implement modifications to the universal service contribution methodology to further ensure the sustainability of universal service.

VIII. CONCLUSION

During the last two decades, rural ILECs have invested in rural, high-cost and insular areas in the United States based on a system of rate-of-return regulation, NECA²⁹ pooling, and

²⁹ National Exchange Carrier Association (NECA).

universal service support. This existing regulatory structure has allowed the Commission to meet its Congressional mandate to ensure rural consumers access to communications services at prices that are comparable to similar services and prices received by urban consumers. Applying the current embedded-cost methodology to determine rural ILEC high-cost universal service support has enabled the Joint Board, FCC and Congress to achieve its universal service goals in areas served by rural ILECs.

The current methodology for determining rural ILEC high-cost support is not broken, is not in need of repair, and is not the cause of the dramatic growth in the size of the high-cost USF mechanism. The Joint Board and the Commission should therefore focus its energy on long-term solutions that address the main problem with the high-cost universal service funding mechanism which is basing CETC support on ILEC costs and granting multiple CETC designations in ILEC service areas that have already achieved the Act's universal service goal of providing affordable and comparable rates and services to consumers living in these ILEC service areas.

The implementation of reverse auctions for determining rural ILEC support in service areas with preexisting infrastructure and ubiquitous service would be a serious mistake and would only punish rural ILECs for bringing communications service to rural areas when no one else would. Imposing hypothetical costly network cost models on rural ILECs to determine future universal service support or forcing rural ILECs to disaggregate study areas to determine future universal service support would also be a serious mistake and would penalize rural ILECs and rural consumers for no valid reason. NTCA therefore urges the Joint Board and Commission to adopt its eight long-term USF reform recommendations and concurrently implement

modifications to the universal service contribution methodology to further preserve and ensure the future sustainability of the universal service mechanisms in the United States.

Respectfully submitted,

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I, Adrienne Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 05-337, CC 96-45, FCC 07J-2, was served on this 2nd day of July 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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