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

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

NOTICE OF PROPOSED RULEMAKING

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Comment Date: (30 days after date of publication in the Federal Register)
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By the Commission: Chairman Martin and Commissioners Tate and McDowell issuing separate statements; Commissioner Copps approving in part, dissenting in part and issuing a statement; Commissioner Adelstein concurring in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) serving rural, insular, and high-cost areas. As discussed below, in a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. We seek comment in this Notice on a number of specific issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism.

II. BACKGROUND

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition.[1] Section 254(b) of the Act, which was added by the 1996 Act, directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.[2] Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates.[3] Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section.[4]

3. In the *Universal Service First Report and Order*, the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support.[5] First, "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area."[6] Second, "by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service."[7] The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism.[8] Moreover,

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

[2] *See* 47 U.S.C. § 254(b).

[3] 47 U.S.C. § 254(b)(1), (3), (5).

[4] 47 U.S.C. §§ 214(e), 254(e).

[5] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8948, para. 320 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[6] *Id.* (agreeing with the Joint Board). The Commission also agreed with the Joint Board that "competitive bidding is consistent with section 254, and comports with the intent of the 1996 Act to rely on market forces to minimize regulation." *Id.* at 8951, para. 325.

[7] *Id.* at 8948, para. 320 ("In that regard, the bidding process should also capture the efficiency gains from new technologies or improved productivity, converting them into cost savings for universal service.").

[8] *See id.* at 8949, para. 320. Only GTE had proposed a detailed competitive bidding plan, which it characterized as an outline rather than a final proposal. GTE's Comments in Response to Questions, CC Docket No. 96-45, Attach. 1 (filed Aug. 2, 1996).

the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-cost areas in the near future.[9] Nonetheless, the Commission found that competitive bidding warranted further consideration.[10]

4. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. The Joint Board currently is reviewing the Commission's rules relating to high-cost universal service support in service areas in which competitive ETCs receive support and high-cost universal service support for rural carriers.[11] In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support.[12] In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support.[13] In his opening remarks, Chairman Kevin Martin explained that "reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time."[14] In a Public Notice, released May 1, 2007, the Joint Board sought comment on various proposals for long term, comprehensive reform of the high-cost universal service support mechanisms, including the use of reverse auctions.[15] The specific auction proposals filed during the course of this proceeding are briefly described below.

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[9] *See Universal Service First Report and Order*, 12 FCC Rcd at 8950, para. 324.

[10] *See id.* at 8948, para. 320. Although the Commission indicated it would issue a further notice of proposed rulemaking specifically examining the use of competitive bidding to determine high-cost support, until now, it has only sought comment in the more limited context of using competitive bidding to identify the carrier(s) best able to provide service to unserved tribal lands. *See id.* at 8951, para. 325; *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21217-24, paras. 93-114 (1999).

[11] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002) (*ETC/Portability Referral Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*).

[12] *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, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006) (*2006 Joint Board Public Notice*). The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941, 1950, para. 20 (Fed.-State Jt. Bd. 2003).

[13] *See Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (Wireline Comp. Bur. 2007).

[14] Statements, slides and audio transcripts from the *2007 en banc hearing* are available at http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html (last updated Oct. 1, 2007).

[15] *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023, 9024-25, para.4 (Fed.-State Jt. Bd. 2007). Comments were due May 31, 2007, and reply comments were due July 2, 2007. The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*2007 Recommended Decision*).

5. *CTIA Proposal*. In response to the *2006 Joint Board Public Notice*, CTIA – The Wireless Association® (CTIA) proposed a "winner-gets-more" reverse auction structure in which wireline and wireless ETCs would compete in the same auction.[16] Under this proposal, the winning bidder would receive the level of support it bid, and other auction participants would receive some lesser level of support. CTIA suggests two possible methods of calculating support for a non-winning bidder: (1) a percentage reduction in payment based on the difference between its bid and the winning bid; and (2) a percentage reduction in payment based on the difference between its bid and the winning bid, but also weighted by the share of customers of the winning bidder.[17] CTIA supports the use of small areas, such as counties, as the geographic areas on which providers would bid.[18]

6. *Verizon Proposal*. On February 9, 2007, Verizon proposed implementing competitive bidding on a limited basis, with the possibility of extending the use of auctions more widely after the Commission assesses the results.[19] Under Verizon's proposal, the Commission would introduce auctions in areas in which multiple wireless competitive ETCs currently receive support to select a single winning wireless provider to receive federal high-cost support in that area.[20] Once these auctions were completed, a separate set of auctions would be held in areas where there is at least one wireline competitive ETC. Both the incumbent local exchange carrier (LEC) and any wireline competitive ETCs would participate, and the auction would select a single wireline provider to receive high-cost support in that area.[21] After reviewing its experience with the separate wireless and wireline auctions, the Commission could then consider holding a general auction in any area where there is a competitive ETC. Both wireline and wireless ETCs would participate, and the general auction would select a single ETC to receive the support determined by its bid.[22] The Commission also could consider using the results of the auctions to adjust support of ETCs receiving support not yet determined by an auction.

7. Verizon also proposes an auction design that uses wire centers, at least initially, as the geographic areas for which "combinatorial" auctions would be held.[23] This type of auction allows bidders flexibility to submit bids for individual wire centers, or bids for packages of wire centers.[24] Bids would

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[16] *See 2006 Joint Board Public Notice*, Reply Comments of CTIA—The Wireless Association®, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions, by James Stegeman, Dr. Steve Parsons, Robert Frieden, and Mike Wilson) (filed Nov. 8, 2006) (CTIA Reply Comments).

[17] *See id.* Appendix at 21. For example, under the first method, if the winning bid is $8 per line and another bidder bids $10, the winning bid is 20 percent below the other bid, so the non-winning bidder would receive 20 percent less support, or $6.40. Under the second method, if the winning bidder at $8 serves fifty percent of the market, the carrier bidding $10 has its reduction factor multiplied by 50 percent, for a ten percent reduction and would receive $7.20 per line. The purpose of the market share adjustment value is to reduce gamesmanship opportunities available to providers with only a small share of the market. *Id.*

[18] *See id.* at 9.

[19] *See* Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Deborah Taylor Tate, Federal Chair and Ray Baum, State Chair, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Appendix (Modernizing Universal Service: A Design for Competitive Bidding), (dated Feb. 9, 2007) (Verizon Letter).

[20] *See id.* at 7-8.

[21] *See id.*

[22] *See id.* at 9.

[23] *See id.* at 5-6.

[24] *See id.* at 6. The specific auction design Verizon describes is called a "clock-proxy" auction, which is a hybrid of two auction designs, a "clock" auction and a "proxy" auction. A clock auction is a dynamic, multiple round process (continued....)

be for a flat amount of subsidy for a given area, or package of areas.[25] The reserve amount would be based on current high-cost support amounts and would ensure that the support determined by the auction is no greater than the amount of support provided prior to the auction.[26]

8. *Alltel Proposal*. On February 16, 2007, Alltel proposed a reverse auction pilot program that would target additional funds to promote broadband deployment in unserved or underserved rural areas.[27] In unserved or underserved zip code areas, any ETC could submit a bid for the minimum amount of universal service per line that it would need to make available broadband service, as well as the basic services currently supported by the high-cost program, to a minimum percentage of households in the zip code area within a specified period of time.[28] In areas where an ETC can satisfy this standard without additional support beyond that already available under the existing high-cost program, Alltel claims that the winning bid might be zero.[29] Each participating ETC would receive per-line funding only to the extent it provides broadband, as well as currently supported services to a customer line.[30] The participant offering the lowest bid would receive the full bid amount for each broadband line it provides during the duration of the service term (e.g., five years). All other ETCs that commit to meeting the same broadband build-out requirements would also receive support, but at a slightly lower per-line rate than the winning bidder.[31]

(Continued from previous page)
in which the auctioneer announces prices and bidders respond with quantities desired at announced prices. It is called a clock auction because the rounds of bidding are conducted at regular intervals. In a proxy auction, the bidding activity is conducted by a proxy agent (a computer program) following strict rules in order to limit the possibility of strategic behavior by the bidder. *See id.* Appendix at 8-14.

[25] *See id.* at 6.

[26] *See id.* at 7. As a first step, Verizon proposes that the Commission stabilize the universal service fund by placing a reasonable cap on current high-cost support levels. Support would be capped for each study area, with two separate caps, one for wireline ETCs and one for wireless ETCs. *See id.* at 3-5. Verizon also states that its auction design suggests two reserve amounts that would each have to be satisfied: one that applies at the study area level, and a second that applies at the wire center level. The aggregate reserve at the study area level would be the capped amount established at the beginning of the process. The wire center reserve would be based on a pro-rata distribution of the study area support to each wire center, but with some additional amount added to allow for auction results to direct more support to higher cost wire centers, and less to lower cost ones. This means that the sum of the individual wire center reserves in a study area would be greater than the aggregate reserve for the study area as a whole. The separate imposition of the study area reserve would ensure that the auction cannot result in an increase in support for any study area. *Id.* at 7.

[27] *See* Letter from Gene DeJordy, Vice President Regulatory Affairs, Steve R. Mowery, Vice President Public Policy, and Mark Rubin, Vice President Federal Government Affairs, Alltel, to Deborah Taylor Tate, Federal Chair, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45 (dated Feb. 16, 2007) (Alltel Letter) (attaching Alltel Universal Service Reform Proposals) (Alltel Proposal). Although Alltel believes that it may be possible to resolve certain problems and ultimately use reverse auctions to allocate all universal service support, its pilot program proposal would provide support in addition to support participating ETCs receive under the pre-existing high-cost program. *See* Alltel Proposal at 1.

[28] *See* Alltel Proposal at 1.

[29] *Id.* Alltel suggests that broadband could be defined as any service used for transmission of information of a user's choosing at a transmission speed of at least 400 kbps in at least one direction, regardless of the transmission medium or technology employed. *See id.* at 2.

[30] *See id.*

[31] Alltel suggests that the non-winning bidders could receive 90 percent of any amounts disbursed over and above the amounts already available under the pre-existing high-cost program. *See id.* at 3.

9. Alltel recommends that the bidding process be conducted in a manner similar to that used for spectrum auctions: a multiple round, combinatorial auction, in which participants can bid for any number of zip code areas. The reserve price in each zip code area would be set based on the current level of high-cost support disbursed to ETCs in the area, increased by a certain percentage for the presumably higher cost of broadband deployment. Alltel suggests, for example, establishing a maximum bid amount so that the total per-line support would not increase by more than 50 percent or 100 percent in any area where high-cost funds are already being disbursed to one or more ETCs.[32]

III. DISCUSSION

10. We seek comment generally on the advantages of using a reverse auction mechanism to determine the amount of high-cost universal service support distributed to ETCs. Technology and the marketplace have changed considerably since the Commission in 1997 found that competitive bidding mechanisms were unlikely to be useful in rural, insular, and high-cost areas because of the absence of competition in these markets. Since that time, many carriers, particularly wireless carriers, have become ETCs and receive support for serving high-cost areas. As a result of the policies and framework the Commission adopted at that time, the Commission's rules now result in subsidizing multiple competitors to serve areas in which costs may be prohibitively expensive for even one carrier to serve without a subsidy. The increase in the number of ETCs receiving high-cost support over the past several years is placing significant and increasing pressure on the stability of the universal service fund.[33]

11. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. Auctions have potential merit in that they allow direct market signals to be used as a supplement to, and possible replacement of, cost estimates made from either historical cost accounting data or forward-looking cost models, as is done under the current high-cost support programs. In an auction, bids would reflect each bidding ETC's cost estimates for serving the relevant geographic area. If a sufficient number of bidders compete in the auction, the winning bid might be close to the minimum level of subsidy required to achieve the desired universal service goals. In contrast, a support mechanism based on either a carrier's embedded costs or on a forward-looking cost model provides no incentives for ETCs to provide supported services at the minimum possible cost. In addition, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region.[34] We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. There are a number of detailed issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism, however. We seek comment below on these specific issues.

A. Eligibility Requirements

12. We seek comment on eligibility requirements for bidders participating in reverse auctions. Section 254(e) states, in relevant part: "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[35] Therefore,

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[32] *See id.* Alltel recommends that the pilot program start at about $25 million. *See* Alltel Proposal at Summary.

[33] *See 2007 Recommended Decision*, 22 FCC Rcd at 8999-9001, paras. 4-5 (recommending an interim cap on competitive ETC high-cost support to restrain the growth of the fund); *see also Universal Service Contribution Methodology*, WC Docket No. 06-133, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7527, para. 17 (2006) (adopting an interim contribution measures in response to strain on the universal service fund due to growth in disbursements).

[34] This benefit would result if the Commission adopts an auction design that awards support to a single winner per area. *See infra* para. 14.

[35] 47 U.S.C. § 254(e).

we tentatively conclude that a bidder must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area.

B. Single Winner Versus Multiple Winners

13. We seek comment on whether universal service support auctions should award high-cost support to a single winner or to multiple winners. Should only the carrier submitting the lowest bid be allowed to receive the subsidy? Should all ETCs participating in the auction receive support, and if so, should it be the same level of support, or different amounts of support as suggested in the CTIA and Alltel proposals?[36] We ask commenters that favor multiple-winner auctions in which different amounts of support go to different bidders to explain how the different levels of support would be determined. Alternatively, should there be a fixed number of winners greater than one? If there are a fixed number of winners receiving support, should the winning bidders receive the same amount of support (i.e., the same amount as the lowest bidder), or should the lowest bidder receive more?

14. We seek comment on the advantages and disadvantages of a single-winner auction versus a multiple-winner auction format. As mentioned above, if only one bidder receives support, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region, thereby ceasing the uneconomic practice of subsidizing multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. We expect that using single-winner auctions would result in less overall support than multiple-winner auctions. For example, if support were to be distributed as a fixed subsidy per geographic area, then an auction with two winners would result in twice the support of a single-winner auction. As the number of winners increases, the size of the total subsidy would increase proportionately. We tentatively conclude that this would violate the universal service principle of sufficiency and would be an unacceptable auction format.[37] We therefore tentatively conclude that universal service support auctions should award high-cost support to a single winner.

15. If support is determined on the basis of the number of subscribers served, we similarly would expect total support under a multiple-winner auction to be higher than support under a single-winner auction for several reasons. First, many subscribers may choose to purchase service from multiple ETCs, with the result that such subscribers could indirectly be subsidized multiple times in a multiple-winner auction.[38] Second, a multiple-winner auction would also increase the expected size of the subsidy under most common auction formats. For example, if the size of the subsidy is determined by the lowest bid of a non-winning bidder, the per-carrier subsidy would be expected to rise as the number of winners increased.[39] Third, when the number of winners is large relative to the number of expected bidders, tacit

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[36] *See supra* paras. 5, 8.

[37] *See* 47 U.S.C. § 254(b)(5); *Alenco Communications v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000) ("excessive funding may itself violate the sufficiency requirement of the Act"). To avoid this result, support in a multiple-winner auction would need to be distributed on a per-line basis, rather than as a fixed amount per area.

[38] If subsidies were based on the number of lines, then some households could also receive multiple indirect subsidies by subscribing to a single wireless carrier that offers discounted prices for additional lines to family members.

[39] When the subsidy is determined by the *lowest non-winning bid*, auction theory suggests that, absent scale economies, bidders will not change their bids when the number of winners is increased. *See* Vijay Krishna, *Auction Theory* 181-83 (Academic Press 2002). It follows that increasing the number of winners implies that the lowest non-winning bid will be higher. To ilustrate, under such a mechnism, if there were a single winner, the subsidy would be based on the second lowest bid. If there were two winners, the subsidy would be based on the third lowest bid, which by defintion would be higher, since bids do not change as the number of winners increases. Similar results would be expected if subsidies were determined on the basis of the *lowest winning bid*, although calculations for this case must take into account changes in optimal bidding strategies as the number of winners increases.

collusion may be facilitated, which would result in less competitive bidding for the required subsidy.[40] Finally, as the number of carriers receiving a subsidy increases, the market share of each subsidized carrier would correspondingly decline. Since it is well established that costs to individual carriers increase as their customer density decreases,[41] we would expect that the underlying costs on which carriers base their bids to increase as the number of winning bidders increased and the individual bidder's expected number of subscribers decreased.

16. Parties have argued that there are benefits to multiple-winner auctions. For example, CTIA argues that single-winner auctions run the risk of eliminating the consumer benefits of a competitive market by discouraging competitive entry during the period the auction winner has the exclusive right to receive support.[42] How would a winner-gets-more auction, as proposed by CTIA, affect the overall level of support? How would the fact that all bidders receive support in a winner-gets-more auction affect the bidder strategies? To what extent should the Commission's universal service policies be directed at promoting competition in rural, high-cost markets? Does the Act require that rural consumers have affordable access to both wireline and wireless services? Would a single-winner auction deny rural consumers affordable access to both wireline and wireless services?

17. Some parties have suggested that the Commission consider having separate auctions for wireless and wireline ETCs, at least initially. For example, Verizon proposes that the Commission initiate the use of auctions in areas in which multiple wireless competitive ETCs receive support.[43] Once these auctions have been completed, the Commission would hold a separate set of auctions in areas where there is an incumbent LEC and at least one wireline competitive ETC.[44] We seek comment on separate wireless and wireline auctions and any other issues relating to single- versus multiple-winner auctions.

C. Method of Distributing the Subsidy

18. We seek comment on the manner in which a subsidy should be computed and distributed. Specifically, subsidies could potentially be offered as a fixed payment for each geographic area, on the basis of the number of subscribers or households served, or on some combination of these methods. As noted above, a per-area subsidy with multiple winners would result in very large subsidies, and we have tentatively concluded above that this format would not be acceptable.[45] In the case of a single-winner auction, there are advantages to each of the above possible distribution methods. A per-subscriber subsidy provides a financial incentive to serve new customers who might be otherwise unprofitable. A per-area subsidy provides certainty about the total subsidy level. This knowledge may be important to a carrier's decision about whether to make fixed investment to serve an area, and to therefore participate in the auction. The form of the subsidy may also affect the allocation of customers among multiple

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[40] *See, e.g.*, Paul Klemperer, *Auctions: Theory and Practice* 151-67 (Princeton University Press 2004) (dealing with favorable and unfavorable outcomes in European auctions for third generation mobile phone spectrum licenses); *see also* J. Anton and D.Yao, *Split Awards, Procurement and Innovation*, 20 Rand J. Econ. 538-52 (1989) (a related theoretical argument in the context of procurement auctions).

[41] *See, e.g.*, Douglas W. Caves, Laurits R. Christensen, *The Importance of Economies of Scale, Capacity Utilization, and Density in Explaining Interindustry Differences in Productivity Growth*, 24 Logistics & Transp. Rev. 3-32 (1988).

[42] CTIA Reply Comments at 7. ("[A] 'winner-gets-more' reverse auction structure rewards the lowest bidder with the bid level of support, while still providing some lesser level of support for auction participants who fail to submit the lowest bid. A 'winner-gets-more' reverse auction therefore can balance the need to drive down the cost of universal service and minimizing competitive distortions.").

[43] *See supra* para. 5.

[44] *See id.*

[45] *See supra* para. 14.

providers in a multiple-winner auction. If carriers do not all receive the same per-line subsidy, then a given customer may not be served by the lowest cost provider, but instead by a carrier with a higher subsidy. In addressing these issues, commenters should also address the relationship of the subsidy distribution methodology to the statute's universal service principles, including, in particular, the principles that the fund be specific, predictable, and sufficient and that consumers in rural, insular, and high-cost areas have access to services at rates that are comparable to the rates for comparable services in urban areas.

D. Geographic Areas

19. We seek comment on the appropriate geographic areas for reverse auctions. In most areas of the country, telecommunications services are provided by a wireline incumbent LEC and possibly by one or more competitive ETCs, most of which are wireless carriers. Basing the geographic area on any particular carrier's service area would likely give that carrier an advantage in bidding because competing carriers are unlikely to have the same service footprint.

20. Currently, support is generally based on the wireline incumbent LEC's study area. We seek comment on whether we should use the wireline incumbent LEC's study area as the geographic area on which to base reverse auctions. We note that, in some cases, the wireline incumbent LEC's study area consists of multiple disjointed geographic areas within a state. We seek comment on whether an incumbent LEC's study area that consists of multiple non-contiguous geographic areas should be broken up at least into its contiguous parts for purposes of the auction, or be required to be auctioned as a single study area. An alternative to the wireline incumbent's study area would be to use the wire centers of the wireline incumbent LEC. What are the advantages and disadvantages of this approach? A third alternative is to use a geographic area that is independent of any carrier's service area, such as zip code, census tract, census block group, county, or metropolitan or rural statistical area (MSA, RSA). One potential advantage of such an approach is that it might better ensure that the auction is competitively and technologically neutral. What are the advantages and disadvantages of using independent geographic units that do not necessarily correspond to any wireline or wireless service area? CTIA contends that larger geographic units, such as MSAs/RSAs, would lead to problems of lack of coverage for many potential bidders.[46] In addition, under CTIA's analysis, geographic areas which correspond to an incumbent LEC's study area (or contiguous portions thereof) might discourage participation in the auction by competitive carriers. Verizon argues that the areas should be small enough to allow the auctions to target support where it is most needed, but not so small as to create unnecessary complexity.[47] Both CTIA and Verizon support using relatively small geographic areas, such as counties or wire centers, respectively.[48] Although defining the relevant region as the incumbent LEC's entire study area might make it difficult for any individual competitive ETC to bid successfully, would the same hold true for incumbent LEC wire centers? Verizon claims that incumbent LEC switches generally have been located in population clusters, and that competitive ETCs similarly have tended to locate their facilities in population clusters even though they may have different network topologies than incumbent LECs.[49] If geographic areas smaller than an incumbent LEC's entire study area are chosen, should the geographic areas nevertheless be defined so that each area is contained within the incumbent's study area, and that the total area of units up for auction completely covers the incumbent LEC's study area? We seek comment on how the size of the geographic area affects the ability of small entities to participate in auctions.

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[46] *See* CTIA Reply Comments, Appendix at 18.

[47] *See* Verizon Letter at 5-6.

[48] *See* CTIA Reply Comments at 9, Verizon Letter at 6.

[49] *See* Verizon Letter at 6.

21. The size of the geographic area chosen for auction will also have an effect on the amount of high-cost support. Specifically, a larger geographic area may include subsets of customers that are profitable (either because they live in low-cost areas or because they are likely to purchase related but unsubsidized services such as video or high speed data service). When these areas are included as part of a larger geographic area, the need for an overall subsidy is reduced on a per-customer basis. When smaller units are individually auctioned, there may be fewer profitable customers to offset losses for higher-cost customers, so a higher total subsidy may be required. We seek comment on the trade-offs that may exist between the advantages of small geographic areas in terms of economic efficiency and competitive entry and the potential costs in terms of higher support levels. We tentatively conclude that the wireline incumbent LEC's study area is the appropriate geographic area on which to base reverse auctions, and that further disaggregation is appropriate only if the total support is not increased for the resulting areas, but is capped at the award amount for the original study area. We seek comment on this tentative conclusion, as well as on how one might disaggregate a study area yet ensure the overall support amount does not increase as a result of such disaggregation.

22. We also seek comment on how we would implement different geographic areas for reverse auctions conducted in areas served by rural telephone companies. Section 214(e)(5) of the Act states: "In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."[50] If we decide to conduct an auction in a geographic area that is different than a rural telephone company's study area, does the Act require us to coordinate with the relevant state commission prior to conducting the auction? If so, we seek comment on issues relating to coordination with state commissions concerning the appropriate geographic areas for reverse auctions in areas served by rural telephone companies.

E. Universal Service Obligations

23. We seek comment on the extent to which we should define the universal service obligations of the winners of the auctions. Historically, only incumbent LECs received universal service support and had the obligation to serve customers subject to rates and terms specified by state regulatory authorities: so-called "carrier of last resort" obligations. Under the framework adopted by Congress in the 1996 Act, although only ETCs are eligible to receive federal universal service support, there may be multiple ETCs in a given area.[51] In addition, although competitive ETCs do not necessarily have carrier of last resort obligations under state law, they are required to provide the supported services throughout the service area for which the designation is received and to advertise the availability of such services and their rates using media of general distribution.[52] Moreover, section 214(e)(3) explicitly authorizes the

[50] 47 U.S.C. § 214(e)(5). The Federal-State Joint Board on Universal Service made such recommendations in its *1996 Recommended Decision*. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (Fed.-State Jt. Bd. 1996) (*1996 Recommended Decision*). Specifically, when the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for creamskimming is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Act, in many respects, places rural telephone companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than the study area level. *Id.*

[51] 47 U.S.C. §§ 214(e)(2), 254(e); *supra* para. 2.

[52] 47 U.S.C. § 214(e)(1).

states, with respect to intrastate services, and the Commission, with respect to interstate services, to order an ETC to provide service to an unserved area.[53]

24. We seek comment on how to ensure the universal availability of services under a reverse auction mechanism. Specifically, how should the carrier of last resort obligations be defined, and on whom should they be imposed? One possibility would be for an incumbent LEC to retain both the carrier of last resort obligation and the full right to subsidy over its entire study or service area unless lower bids were submitted by rival bidders in each of the geographic units up for auction within its overall service area. If lower bids were submitted by rival bidders in all of the geographic units up for auction, then the winning bidder would inherit the carrier of last resort obligations. Related to this, the incumbent LEC could be the only provider to receive a subsidy if rival bidders do not submit bids below the reserve price in each of the geographic units up for auction within its overall service area. Alternatively, both the carrier of last resort obligation and associated subsides could be awarded to the winning bidder in each geographic unit. The definition of the universal service obligation may be inextricably linked to the manner in which reserve prices for a geographic area are determined and to the specific auction format as discussed below.[54] We ask parties to comment specifically on the ways in which these issues are related.

25. We seek comment on several additional issues related to the continued availability of supported services. Should the winner of an auction be allowed to transfer to another ETC at any time the universal service obligations and the related support for any portion of a geographic area acquired through an auction? Currently the Commission has rules adopted pursuant to section 214 of the Act that address transfer of control and discontinuances.[55] Are these rules adequate or do they need to be modified where a carrier has both universal service obligations and subsidies? Should an existing incumbent LEC be allowed to unilaterally renounce its carrier of last resort obligations by refusing to bid in a subsequent auction? Should states or the Commission establish penalties to be imposed on an ETC that fails to fulfill its universal service obligations in a geographic area that it acquired at auction? If a carrier that has won an auction subsequently declares bankruptcy, what effect will the declaration of bankruptcy have on its universal service obligations and the subsidy that it receives? Do we need to adopt new rules to address this issue?

26. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.[56] Specifically, the Commission requires that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.[57] We seek comment on whether these same requirements and/or any additional requirements should apply to all ETCs winning universal service auctions. Should these requirements apply only to auction winners, or should some or all of the requirements apply to all ETCs participating in universal service auctions? As noted, these

[53] 47 U.S.C. § 214(e)(3).

[54] *See infra* sections III.F, III.G.

[55] 47 U.S.C. § 214; 47 C.F.R. §§ 63.03, 63.04, 63.71.

[56] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-56, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); 47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

[57] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20.

requirements currently apply to ETCs designated by the Commission. Should they apply to state-designated ETCs as well?

27. In the *ETC Designation Order*, the Commission also encouraged states to adopt the Commission's requirements for ETC designation, but declined to mandate that state commissions do so.[58] We seek comment on the extent to which states have done so. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.[59] Because the *ETC Designation Order* guidelines are not binding upon the states, the Commission rejected arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.[60] The Commission also found that federal guidelines are consistent with the holding of the United States Court of Appeals for the Fifth Circuit that section 214(e) of the Act does not prohibit the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1).[61] We seek comment on whether the Commission should condition an auction winner's receipt of federal high-cost support on compliance with additional requirements to ensure that the auction winner has obligations analogous to carrier of last resort obligations.[62] We discuss the Commission's specific ETC requirements and related issues in more detail below.

28. *Commitment and Ability to Provide the Supported Services*. The Commission requires that ETCs must provide service to all customers who make a reasonable request for service.[63] Specifically, when a request comes from a potential customer located within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.[64] The Commission encouraged states to follow the Joint Board's proposal that any build-out commitments adopted by states be harmonized with any existing policies regarding line extensions and carrier of last resort obligations.[65] We seek comment on what build-out commitments should apply to ETCs participating in and/or winning universal service auctions.

29. The Commission also requires that a competitive ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area.[66] The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) how signal quality, coverage, or capacity will improve due to

[58] *Id.* at 6380, para. 20, 6397, para. 61.

[59] 47 U.S.C. § 214(e)(2).

[60] *ETC Designation Order*, 20 FCC Rcd at 6397, para. 61.

[61] *See Texas Office of Public Utility Counsel v. FCC*, 183 F. 3d 393, 418 (5th Cir. 1999) (*TOPUC I*), *cert. dismissed sub nom. GTE Serv. Corp. v. FCC*, 531 U.S. 975, 121 S.Ct. 423, 148 L.Ed.2d 327 (2000).

[62] Consistent with *TOPUC I*, state commissions would continue to maintain the flexibility to impose further additional eligibility requirements in state ETC proceedings, if they so choose.

[63] *ETC Designation Order*, 20 FCC Rcd at 6380-81, para. 22.

[64] *Id.* at 6381, para. 22.

[65] *Id.* at 6380, para. 21.

[66] *Id.* at 6381-82, para. 23.

the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements.[67] We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to submit similarly detailed five-year plans.[68] If commenters believe that the requirement to submit five-year build-out plans, or the specific contents of the build-out plans, should be modified, they should explain how.

30. *Local Usage*. The Commission currently requires an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation, but the Commission declined to adopt a specific local usage threshold in the *ETC Designation Order*.[69] Should we adopt a specific local usage threshold for winners of auctions? Currently, we do not regulate the retail rates of ETCs as a condition of their receiving high-cost support. States generally regulate wireline residential rates for incumbent LECs, but are precluded from regulating wireless rates by section 332(c)(3) of the Act.[70] Wireline rates typically are set on a flat rate basis, whereas rates for wireless service generally are set on the basis of "buckets of minutes." What kind of restrictions on retail pricing, if any, should the Commission place on auction participants in order to ensure rough comparability of pricing plans? For example, if a carrier whose rates are not regulated wins an auction, should it be required to freeze its retail rates, or agree to increase them subject to a price cap plan already in place within the state? Should the Commission establish a maximum rate for the local usage plan offered by auction bidders or winners?

31. *Equal Access*. Although the Commission does not impose a general equal access requirement on ETC applicants, we require ETC applicants to acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.[71] The Commission found that, if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement on a case-by-case basis. We seek comment on whether we should require all ETCs participating in universal service auctions to acknowledge that they may be required to provide equal access in the event that they win the auction.

32. *Ability to Remain Functional in Emergency Situations*. The Commission also requires an ETC applicant to demonstrate its ability to remain functional in emergency situations by demonstrating that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.[72] In addition, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations. We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to demonstrate their ability to remain functional in emergencies.

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[67] *Id.*

[68] If the auction winner's obligation to serve the area is longer or shorter than five years, we tentatively conclude that it would be appropriate to adjust the time period for the plan to coincide with the time period of the obligation.

[69] *ETC Designation Order*, 20 FCC Rcd at 6385, para. 32.

[70] 47 U.S.C. § 332(c)(3).

[71] *ETC Designation Order*, 20 FCC Rcd at 6386, para. 35.

[72] *Id.* at 6382-83, para. 25.

33. *Consumer Protection*. The Commission requires a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application to the Commission.[73] A commitment to comply with CTIA's Consumer Code for Wireless Service currently satisfies this requirement for a wireless ETC applicant seeking designation before the Commission.[74] We seek comment on whether we should require all wireless ETCs participating in and/or winning universal service auctions to comply with CTIA's Consumer Code for Wireless Service. Are there other consumer protection and service quality standards that should apply to auction participants and/or winners? We seek comment on what type of consumer protection and service quality standards should apply to wireline auction participants and/or winners, including incumbent LECs.

34. *Adequate Financial Resources*. In the *ETC Designation Order*, the Commission declined to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area.[75] The Commission found that compliance with the requirements adopted in that order would require an ETC applicant to show that it has significant financial resources.[76] After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service.[77] We seek comment on whether we should adopt additional requirements for ETCs participating in universal service auctions to demonstrate that they have the financial resources and ability to provide quality services throughout the geographic area to be auctioned.

35. *Additional Obligations/Provision of Broadband Internet Access Services*. In addition to the ETC requirements adopted in the *ETC Designation Order*, we seek comment on whether we should adopt additional obligations in the context of reverse auctions. We ask parties to comment on the specific additional universal service obligations they believe to be appropriate, and how they should be defined. We tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 768 kbps in at least one direction throughout the entire geographic area for which it wins the auction. In addition, we tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 1.5 mbps in at least one direction throughout the entire geographic area halfway through the term of the obligations.[78] We reach these tentative conclusions because "[t]he Commission has consistently recognized the critical importance of broadband services to the nation's present and future prosperity and is committed to adopting policies to

[73] *Id.* at 6383-84, para. 28.

[74] *See id.* at 6383, para. 28 & n.71; CTIA, Consumer Code for Wireless Service, available at http://www.ctia.org/consumer_info/index.cfm/AID/10352 (last retrieved October 3, 2007). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to consumers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of customer privacy.

[75] *ETC Designation Order*, 20 FCC Rcd at 6387-88, para. 37.

[76] *See id.* at 6387, para. 37.

[77] *See id.* & n.100.

[78] We seek comment below on the appropriate length of time between auctions and, thus, on the term of the auction winners' obligations. *See infra* paras. 47-49.

promote the development of broadband services, including broadband Internet access services."[79] We seek comment on these tentative conclusions. Further, we tentatively conclude that an auction winner's broadband Internet access services should be offered at a reasonable price. We seek comment on how we should ensure that broadband Internet access services are being offered at reasonable prices.

F. Reserve Prices

36. Because there may be few bidders in certain geographic areas, it is important to establish a reserve "price" – i.e. a maximum subsidy level that participants in the auction would be allowed to place as a bid. We seek comment on how we should set the reserve prices for the areas to be auctioned. We expect that the reserve prices will play a critical role in the auctions. A reserve price that is set too low is likely to discourage bidders from participating in the auction, while one that is set too high raises the possibility that too much support will be allocated.

37. At least initially, reserve prices could be based on the current levels of high-cost support. We seek comment on how reserve prices based on current support should be determined if the geographic area to be auctioned differs from the area for which support is currently calculated. For example, if the geographic areas for the auctions are wire centers, for non-rural study areas it would be fairly straightforward to set wire center reserve prices based on the forward-looking costs estimated by the Commission's cost model.

38. Because the non-rural mechanism targets support to wire centers based on relative cost, the highest cost wire centers would have the highest per-line reserve price. For rural study areas with multiple wire centers, however, embedded costs for incumbent LECs are typically available only at the study area level. If a reserve price were based on the average cost per line in the study area, or if a fixed reserve subsidy for a study area were allocated on a per-line basis, the reserve price would not accurately reflect the costs of the individual wire centers or other geographic units within the study area. As noted above, this would discourage participation in the auction by competitive ETCs in the higher cost areas.[80] In addition, encouraging competitive ETCs to bid for the lower cost areas could potentially provide insufficient support for an incumbent LEC with the obligation to serve the remaining higher cost areas. One alternative would be to determine a reserve price at the wire center level by allocating the study area embedded cost on the basis of relative forward-looking costs as determined at the wire center level by the Commission's cost model. Another alternative would be to set reserve prices for rural study areas on the basis of a formula in which either forward-looking, model-generated cost or embedded cost data are used to estimate costs on the basis of observable factors such as customer density. For example, if a forward-looking approach is used to set a reserve price for non-rural geographic areas, one could use the data generated by the forward-looking cost model to regress model costs by wire center on wire center customer density. The result would be a simple analytic formula that could be used in place of the model to set reserve prices for geographic units in rural study areas.[81] We seek comment on these and other alternatives.

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[79] *Development of Nationwide Broadband Data To Evaluate Reasonable And Timely Deployment of Advanced Services To All Americans, Improvement of Wireless Broadband Subscribership Data, And Development of Data on Interconnected Voice Over Internet Protocol Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, para. 1 (2007) (citing *Appropriate Framework for Broadband, Access to the Internet over Wireline Facilities, et al.*, CC Docket No, 02-33 *et al.*, Policy Statement, 20 FCC Rcd 14986 (2005) (setting forth four principles intended to "encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet")).

[80] *See supra* para. 20.

[81] While forward-looking cost models are not currently used to determine high-cost loop support in rural study areas, a similar formula could be obtained from data generated within rural geographic areas, since most forward-looking models are also capable of estimating costs for rural areas.

39. We tentatively conclude that, if the reserve price is based on the current levels of high-cost support and the area to be auctioned is smaller than the incumbent LEC's study area, the reserve price should be based on disaggregated support amounts. We also tentatively conclude that, if reserve prices are based on disaggregated support amounts, reserve prices in the aggregate should be capped at the current study area support amount. We seek comment on these tentative conclusions.

40. After the initial auction, the winning bids in the most recent prior auctions could be used to establish a reserve price in the next auction. If the geographic areas subject to auction are smaller than an incumbent LEC's service area, then the reserve price could be determined for each geographic unit for both rural and non-rural study areas as described above, but using the previous auction's winning bid rather than the incumbent LEC's forward-looking or embedded cost. Use of prior auction data would result in reserve prices that are responsive to changing technologies, and would lessen the need to rely on forward-looking cost models after the initial auction. On the other hand, use of prior auction results might introduce new strategic considerations into any given auction, since participants would be aware that their bid might affect future reserve prices. We seek comment on these issues.

G. Auction Design

41. The Commission has conducted public auctions for electromagnetic spectrum rights since 1994. In a spectrum auction, a winning bidder obtains a license to use spectrum in a well defined geographic area. The value of winning a particular area, however, can be closely related to the value of winning in adjacent areas. Individual bidders may have unique business models, so that the value of winning a particular area will generally differ among the bidders. At the same time, there can be a common value component if competing bidders have similar business models, even though each bidder has unique information about demands, costs or other relevant aspects of the business model. In its spectrum auctions, the Commission has used an auction design known as the simultaneous multiple round (SMR) auction to address these issues. The SMR auction is a form of ascending price auction in which bidders are allowed to place bids for any number of single licenses in a series of discrete, successive rounds, with the length of each round announced in advance by the Commission. After each round closes, round results are processed and made public. At that time, bidders learn about the bids placed by other bidders, obtaining information about the value of the licenses to all bidders.[82] This increases the likelihood that the licenses will be assigned to the bidders who value them the most. In an SMR auction, there is no preset number of rounds. Bidding continues until a round occurs in which no new bids are submitted.[83]

42. Recently, variations on the SMR design have been proposed in which bidders are allowed to bid on packages of licenses. With package or "combinatorial" bidding, bidders may place bids on groups of licenses as well as on individual licenses. This approach allows bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses and to avoid the risk of winning only part of a desired set. Package bidding can be important to bidders who anticipate significant economies of scale and scope in deploying new infrastructure, or who expect customer demand to depend on total network coverage.

43. The auction design for a reverse auction to determine high-cost universal service support should make use of the Commission's experience with spectrum auctions as much as possible. As a

[82] For the 700 MHz auction (auction 73), the Commission will use anonymous bidding. *See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, AU Docket No. 07-157, Public Notice, DA 07-4171, at paras. 145-56 (rel. Oct. 5, 2007).

[83] The SMR auction also contains detailed rules governing bid increments, bid withdrawals, and bidder activity rules which require active bidding in order to remain eligible to make future bids on particular licenses. *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding,* PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348 (1994).

general matter, we invite parties to comment on the similarities and differences between auctions for spectrum and reverse auctions for subsidies for high-cost support.

44. Whether or not the SMR design is considered as a basis for a reverse auction for high-cost support, there are a number of specific issues that must be resolved. To what extent should package bidding be allowed? Unrestricted combinatorial bidding would allow bidders to place a bid for any package of geographic areas in the auction.[84] If small geographic areas are chosen as units for auction, package bidding may be essential for bidders to make appropriate bids based on their perceived cost and demand complementarities among geographic regions. On the other hand, an unrestricted combinatorial bidding procedure with a large number of distinct geographic areas could prove to be confusing to bidders and potentially computationally intractable. Should individual auctions with combinatorial bidding be held at a regional or state specific level instead of on a national basis? A broader scope for the auction would allow bidders to better capture interrelationships between geographic areas. However, a larger scope would also significantly increase the complexity of the auction, whether or not package bidding is allowed.

45. If a multiple round auction is considered, another important issue is the information that is revealed to bidders between rounds. A multiple round auction can lead to efficient outcomes in auctions with a common value component, since the highest bid at any round is necessarily revealed to all bidders.[85] However, if additional information, such as the identity of the current winning bidder for each item is also revealed, strategic behavior may be facilitated. We seek comment on the potential dangers of anti-competitive strategic behavior in an auction for high-cost support, and the potential effects on economic efficiency.

46. If parties do not believe that an SMR auction design should be used for high-cost support, they should propose and discuss in detail the specific auction design that they believe to be superior. For example, would a single round "sealed bid" format be acceptable? If so, should the winning bidder receive a subsidy based on its own bid for the necessary subsidy or on the bid of the next higher bidder? Under the latter alternative, known as a "second price auction," it is well known that bidders have an incentive to place a bid based on the minimum subsidy they would be willing to accept (since the subsidy they receive does not depend on their actual bid). How are these auction designs affected if the number of bidders is small?[86] Parties are also invited to comment on the specific auction designs used in other countries in which reverse auctions have been used for universal service support.

H. Frequency of Auctions

47. We seek comment on the appropriate length of time between auctions. Currently, each applicant seeking ETC designation by the Commission must submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area.[87] Would five years be an appropriate length of time between auctions, or should auctions be more or less frequent?

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[84] For example, if there are 30 geographic areas in an auction, then there are $2^{30} - 1 = 1{,}073{,}741{,}823$ possible packages to bid for.

[85] Such information can serve to ameliorate the so-called "winner's curse" in which a naïve bidder's bidding strategy is based on his or her own private information, which, for the winning bidder, turns out to be more optimistic than the information available to other bidders. Knowing this, more sophisticated bidders consciously reduce their bids in a common value setting.

[86] With a single bidder, the subsidy would necessarily be determined by the reserve price.

[87] *See supra* para. 29; *ETC Designation Order*, 20 FCC Rcd at 6381-82, para. 23.

48. Auctions for universal service support are closely related to franchise bidding schemes for natural monopoly, which have been extensively studied in economics literature.[88] Bidders in any particular auction require some degree of certainty about future revenues, including subsidies, in order to make informed investment decisions. Williamson[89] discusses some of the less obvious advantages of long term contracting, which, in the reverse auction context, would call for relatively infrequent auctions. On the other hand, new technologies may periodically evolve that would allow lower cost provision of telecommunications services in high-cost areas. In addition, more frequent auctions can allow for more informed bidding decisions, since each bidder would be more able to predict levels of demand and potential competition in the immediate future than in the longer term.

49. To the extent that support levels provided to a winning bidder become an essential source of revenue for the winning bidder, the question of asset transfers must be considered in cases in which a new winning bidder replaces a previously supported carrier. For example, it might be efficient for a cellular carrier that wins an auction to acquire towers and fiber links from a previously supported carrier serving the same region. If asset transfers are determined only through bilateral bargaining between the relevant parties, incumbent LECs might have a significant advantage due to their sunk costs. As a result, there may be fewer bidders in subsequent auctions than would otherwise be desirable. Should there be any oversight or other restrictions on the transfer of assets when a new winning bidder replaces the previous auction winner? We ask parties to comment on this analysis and its importance in assessing the long term viability of reverse auctions for universal service support.

I. Broadband Reverse Auction Pilot Program

50. Finally, in light of the complexities in establishing a reverse auction, we seek comment on whether we should employ a pilot program to test the use of reverse auctions as a method for distributing high-cost support. Specifically, we seek comment on whether we should adopt a pilot program to replace the current high-cost support received in a particular area. We tentatively conclude that, in any pilot program, the reserve price should be based on the current level of support in the particular area. We also tentatively conclude that the states are best situated to implement any pilot program. We seek comment on how such a pilot program should be implemented.

51. We also seek comment on whether a pilot program should be used to disburse high-cost support targeted to broadband Internet access services. We note that Alltel has filed a broadband auction proposal, and we seek comment on that proposal.[90] Similarly, AT&T has proposed its own broadband pilot program.[91] We seek comment on AT&T's broadband pilot program, and whether it would be possible to use a reverse auction approach under that proposal.

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[88] *See, e.g.*, O. Williamson, *Franchise bidding for natural monopolies – in general and with respect to CATV*, 7 Bell J. Econ. 73-104 (1976) (discussing some of the potential difficulties of franchise bidding in the context of cable television monopolies).

[89] *See id.* at 83-90.

[90] *See* Letter from Gene DeJordy, Vice President Regulatory Affairs, Steve R. Mowery, Vice President Public Policy, and Mark Rubin, Vice President Federal Government Affairs, Alltel, to Deborah Taylor Tate, Federal Chair, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service (dated Feb. 16, 2007).

[91] High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Comments of AT&T Inc., WC Docket No. 05-337, CC Docket No. 96-45 (filed May 31, 2007).

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act of 1980, as amended,[92] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice. The IRFA is in the Appendix. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[93] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[94]

B. Paperwork Reduction Act Analysis

53. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[95] Public and agency comments are due 60 days after this notice of proposed rulemaking is published in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[96]

C. *Ex Parte* Presentations

54. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[97] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[98] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[99]

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[92] 5 U.S.C. § 603.

[93] *See* 5 U.S.C. § 603(a).

[94] *Id.*

[95] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

[96] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

[97] 47 C.F.R. §§ 1.1200-1.1216.

[98] 47 C.F.R. § 1.1206(b)(2).

[99] 47 C.F.R. § 1.1206(b).

D. Comment Filing Procedures

55. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[100] interested parties may file comments 30 days after publication of this Notice in the Federal Register, and reply comments 60 days after publication of this Notice in the Federal Register. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington DC 20554.

- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

  In addition, one copy of each pleading must be sent to each of the following:

[100] 47 CFR §§ 1.415, 1.419.

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; website: www.bcpiweb.com; phone: 1-800-378-3160;

(2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: Antoinette.Stevens@fcc.gov.

56. For further information regarding this proceeding, contact Katie King, Special Counsel, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, or katie.king@fcc.gov.

V. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403 and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216, this Notice of Proposed Rulemaking IS ADOPTED.

58. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 55 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition.[4] Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.[5] Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.[6]

3. In the *Universal Service First Report and Order*, the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support, specifically, "its potential as a market-based approach to determining universal service support, if any, for any given area," and "its ability to reduce the amount of support needed for universal service."[7] The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism.[8] Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id.*

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

[5] *See* 47 U.S.C. § 254(b). Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. § 254(b)(1), (3), (5).

[6] 47 U.S.C. §§ 214(e), 254(e).

[7] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8948, para. 320, 8951, para. 325. (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[8] *See id.* at 8949, para. 320.

cost areas in the near future.[9] Nonetheless, the Commission found that competitive bidding warranted further consideration.[10]

4. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support.[11] In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support.[12] The Joint Board received three specific auction proposals in response to the *2006 Joint Board Public Notice* and the *en banc* hearing.[13] In a Public Notice, released May 1, 2007, the Joint Board sought comment on these proposals and invited commenters to file additional auction proposals.[14]

5. In this Notice, the Commission seeks comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to ETCs serving rural, insular, and high-cost areas. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. The Commission tentatively concludes that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. The objective of the Notice is to seek comment on this tentative conclusion and

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[9] *See id.* at 8950, para. 324.

[10] *See id.* at 8948, para. 320. Although the Commission indicated it would issue a further notice of proposed rulemaking specifically examining the use of competitive bidding to determine high-cost support, until now, it has only sought comment in the more limited context of using competitive bidding to identify the carrier(s) best able to provide service to unserved tribal lands. *See id.* at 8951, para. 325; *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21217-24, paras. 93-114 (1999) (*Unserved/Tribal Areas NPRM*).

[11] *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, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006) (*2006 Joint Board Public Notice*). The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941, 1950, para. 20 (Fed.-State Jt. Bd. 2003). The Joint Board currently is reviewing the Commission's rules relating to high-cost universal service support in study areas in which competitive ETCs receive support and the rules relating to high-cost universal service support for rural carriers. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002) (*ETC/Portability Referral Order*); *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*).

[12] *See Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (Wireline Comp. Bur. 2007). The Joint Board also sought comment on various other proposals for long term, comprehensive reform of the high-cost universal service support mechanisms.

[13] *See* Notice, paras. 5-9.

[14] *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023, 9024-25, para.4 (Fed.-State Jt. Bd. 2007). Comments were due May 31, 2007, and reply comments were due July 2, 2007. The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*2007 Recommended Decision*).

on a number of specific issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism.

B. Legal Basis

6. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403 and sections 1.1, 1.411-1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted.[15] The RFA generally defines the term "small entity"[16] as having the same meaning as the terms "small business,"[17] "small organization,"[18] and "small governmental jurisdiction."[19] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[20] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[21] Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[22] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[23] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[24]

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.[25] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial

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[15] 5 U.S.C. § 604(a)(3).

[16] 5 U.S.C. § 601(6).

[17] 5 U.S.C. § 601(3).

[18] 5 U.S.C. § 601(4).

[19] 5 U.S.C. § 601(5).

[20] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register." 5 U.S.C. § 601(3).

[21] 15 U.S.C. § 632.

[22] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

[23] 5 U.S.C. § 601(4).

[24] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[25] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

census categories of Wired Telecommunications Carriers,[26] Paging,[27] and Cellular and Other Wireless Telecommunications.[28] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

1. Wireline Carriers and Service Providers

9. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[29] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[30] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[31] According to Commission data,[32] 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

11. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[33] According to Commission data,[34] 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500

[26] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[27] *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[28] *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[29] 15 U.S.C. § 632.

[30] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[31] 13 C.F.R. § 121.201, NAICS code 517110.

[32] *Trends in Telephone Service* at Table 5.3.

[33] 13 C.F.R. § 121.201, NAICS code 517110.

[34] *Trends in Telephone Service* at Table 5.3.

employees.[35] In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

2. Wireless Carriers and Service Providers

12. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[36] and "Cellular and Other Wireless Telecommunications."[37] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[38] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[39] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[40] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[41] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

13. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[42] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[43] According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.[44] We have estimated that 221 of these are small under the SBA small business size standard.

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[35] *Id.*

[36] 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[37] 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[38] U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

[39] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[40] U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

[41] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[42] 13 C.F.R. § 121.201, NAICS code 517212.

[43] *Id.*

[44] *Trends in Telephone Service* at Table 5.3.

3. Satellite Service Providers

14. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[45] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[46] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[47] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

15. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[48] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[49] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[50] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. In the Notice, the Commission tentatively concludes that, under a reverse auction mechanism, bidders must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area.[51] In the *ETC Designation Order*, the Commission required ETCs designated by the Commission to submit annually certain information regarding their networks and their use of universal service funds.[52] Specifically, every ETC designated by the Commission must submit the following information on an annual basis:

(1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an

[45] U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[46] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[47] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[48] U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[49] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[50] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[51] Notice, para. 12. Section 254(e) states, in relevant part: "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 254(e).

[52] *ETC Designation Order*, 20 FCC Rcd at 6432, Appendix C, para. 22.

explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).[53] An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.[54] Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) the number of complaints per 1,000 handsets or lines;

(5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;[55]

(6) certification that the ETC is able to function in emergency situations;[56]

(7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.[57]

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[53] *See New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

[54] *See Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

[55] *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf.

[56] If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

[57] *ETC Designation Order*, 20 FCC Rcd at 6432-34, Appendix C, para. 23.

In the Notice, the Commission sought comment on whether the Commission's ETC designation requirements should apply to all ETCs participating in and/or winning universal service auctions.[58]

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.[59]

18. This IRFA seeks comment on how reverse auctions could be implemented in a manner that reduces the potential burden and cost of participation by small entities in the auctions. We also seek comment on the potential impact the use of reverse auctions to distribute high-cost universal service support would have on small entities. In the Notice, the Commission offers several alternatives that might minimize significant economic impact on ETCs, some of which might be small entities. For example, the Commission discusses proposals to use relatively small geographic areas as the areas to be auctioned, and specifically seeks comment on how the size of the geographic area affects the ability of small entities to participate in auctions.[60] The Commission also seeks comment on various methods of setting reserve prices based on current levels of high-cost support, and tentatively concludes that the reserve price should be set at disaggregated support amounts if the area to be auctioned is smaller than the incumbent LEC's study area.[61]

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.

[58] Notice, paras. 28-34.

[59] *See* 5 U.S.C. § 603(c).

[60] Notice, para. 20-21.

[61] *Id.*, para. 39.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*).

Today, the Commission adopts several proposals to reform the high-cost universal service program. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive universal service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Joint Board has recognized the problems of maintaining this identical support rule.

I am supportive of several means of comprehensive reform for the universal service program. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive ETCs. And today we adopt a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's own costs in the same way that rural phone companies' support is based. I'm supportive of both measures as a means to contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected.

I continue to believe the long-term answer for reform of high-cost universal service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the fund and ensuring a move to most efficient technologies over time. Accordingly, I am pleased that we adopt today's Notice of Proposed Rulemaking to use reverse auctions to distribute universal service support.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN FCC 08-22
APPROVING IN FCC 08-4
APPROVING IN PART, DISSENTING IN PART IN FCC 08-5

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving in Part, Dissenting in Part).

The Commission adopts and seeks comment on three Notices of Proposed Rulemaking concerning: the Federal-State Joint Board on Universal Service's (Joint Board) recommendation on comprehensive reform of the high-cost Universal Service support mechanism; the elimination of the "Identical Support" rule; and the merits of using reverse auctions in distributing high-cost support to eligible telecommunications carriers (ETCs). I am pleased that the Commission today initiates all three NPRMs simultaneously as I have long believed that Universal Service reform must be done in a comprehensive, systematic manner. I write here to express my views on all three proceedings.

I continue to believe that there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I believe much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on intrastate as well as interstate revenue would be a valuable tool for supporting broadband.

That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. In my view, the most important part of the recommendation is its inclusion of broadband as part of USF for the 21st Century. My views on the recommendation are explained in further detail in my statement that accompanied the Joint Board's recommendation and which is attached as an appendix to the NPRM adopted today. I believe the recommendation merits further action by the Commission, and therefore, I am pleased to support the NPRM initiated today.

Let me briefly take this opportunity to thank the members of the Joint Board who worked tirelessly on the difficult task of developing a comprehensive proposal for the FCC's consideration. I congratulate Chairwoman Tate for her leadership in bringing these recommendations to the Commission. We are all deeply indebted to her co-chair, Commissioner Ray Baum of Oregon, for his tireless and energetic work in shepherding the Joint Board toward consensus on many items. And I want to pay tribute to the always visionary yet practical efforts of the indefatigable Billy Jack Gregg whose endless good counsel is sewn throughout the Joint Board's recommendations.

With regard to the NPRM on the Identical Support rule, it is clear to me that the costs of investing and maintaining wireless and wireline infrastructure are inherently different. I believe that wireless can and should be a part of Universal Service, but the time has come to put an end to the irrational and costly

system of supporting wireless carriers based on the cost of wireline incumbents. I therefore am supportive of the tentative conclusion that we eliminate this rule. The NPRM is particularly important because it seeks comment on how best to replace this rule and in particular the methodologies by which CETCs should be able to recover costs for Universal Service support purposes.

The NPRM on reverse auctions is much more of a mixed bag. On the one hand, I support the Commission's decision to seek comment on the merits of reverse auctions as a method for distributing high-cost Universal Service support. The Joint Board spent a great deal of time examining the use of reverse auctions, but I must say that our review raised in my mind many more questions than it answered. For instance, how do we ensure that the winning bidder provides adequate quality of service? What happens if the winner later decides it is no longer profitable to continue its operation? And who will be responsible for establishing the rules and enforcing them? Ironically, this purportedly market-based approach strikes me as hyper-regulatory. For these reasons, I must dissent from the NPRM's tentative conclusion that the Commission should develop an auction mechanism to determine high-cost support. I believe that the options I outlined above—including broadband as part of Universal Service; elimination of the Identical Support rule; stepped-up accounting oversight; and Congressional action to enable Universal Service collections on an intrastate as well as an interstate basis provide a more effective and less disruptive approach to Universal Service reform.

The good news is that these three items, particularly the Joint Board recommendation, put the urgent need for comprehensive Universal Service reform squarely in front of the Commission. I hope the FCC will deal with these recommendations expeditiously and comprehensively. This is no place for piecemeal actions. We need to think expansively and creatively about implementing the path-breaking broadband decision that has now been presented to us. This country desperately needs a comprehensive broadband strategy. The Joint Board recommendation provides the opportunity for the FCC to move toward such a strategy, working with our own rules and making suggestions to Congress in those areas where legislative action may be required to ensure such a strategy. I am looking forward to working with my colleagues in order to turn these proposals into workable solutions.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
APPROVING IN FCC 08-22
APPROVING IN FCC 08-4
CONCURRING IN PART, DISSENTING IN PART IN FCC 08-5

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Concurring in Part, Dissenting in Part).

Through these Notices, the Commission seeks comment on potentially profound changes to the Universal Service High Cost program. While I am not without reservations about some of the proposals in these items, I am pleased that the Commission is engaging in serious consideration of how to preserve and advance universal service, one of the bedrock principles of U.S. telecommunications policy. I am particularly encouraged that the Commission is seeking comment on the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), and I thank the members of the Joint Board for their considerable efforts to bring us this Recommended Decision.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. In Section 254 of the Communications Act, Congress affirmed the broad principle that "consumers in all regions of the nation . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Implementing universal service as intended by Congress in Section 254 of the Act is among the highest priorities for the Commission.

The task before us – ensuring the continued vitality of universal service – is particularly important as technology and the marketplace continue to evolve. Our choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow with the rest of the country. History has shown that many rural consumers would be left behind if it weren't for the support made available through our universal service policies.

The Joint Board's Recommended Decision for comprehensive reform of the high cost support mechanism – and, in particular, the decision to include broadband as a supported service – is a landmark development. I have long argued that the universal service fund is an integral component of our efforts to meet the broadband challenge. So, the decision to embrace broadband, through the list of supported services and through targeted funding for unserved areas, and the recognition of the effectiveness of the current High Cost Loop Fund in supporting the capital costs of providing broadband-capable loop facilities for rural carriers are encouraging developments.

I must express a degree of reservation over the amount of support allocated to the Broadband Fund, among other limitations on support. Maintaining our commitment to connectivity, particularly in the broadband age, is more important than ever, and the Commission must start to provide realistic

assessments of what will be required. To that end, I am also concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America. For these reasons, I dissent from the tentative conclusions in the separate Reverse Auctions Notice. While I appreciate the majority's willingness to flesh out details of their reverse auction proposal, I cannot support these premature tentative conclusions, and would have preferred a more balanced presentation of the potential disadvantages of such an approach.

There remain many questions about the Recommended Decision and details to be vetted. While I reserve judgment on many of the proposals, there is much here that warrants careful consideration. The Joint Board has wrestled with many difficult issues, including the unique role of providers of last resort, compensation for multiple providers, and the role of the States in fostering universal service, and I look forward to seeking comment on their recommendations. I agree with the Joint Board's recommendation on the identical support rule and support the separate Notice seeking comment on alternative approaches.

As we move forward with these proceedings at the Commission, I would like to express my sincere gratitude to all the members and staff of the Joint Board. The Joint Board, and the many parties who participated in those proceedings, engaged in a long and arduous effort to bring us these recommendations. I know that we will benefit considerably from their expertise and judgment, and I look forward to the coming dialogue on these proposals with our state commission colleagues, consumers, providers, and the many others with a stake in the future of universal service.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving).

As Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board) I am particularly pleased that we are taking this significant step forward in the journey toward comprehensive reform of the high-cost universal service program. This is an important program at the heart of rural America. Its purpose, to connect all Americans to telecommunications at affordable rates, has over the years permitted people to be connected even in rural and remote parts of our nation. Going forward, the Universal Service Fund will continue to play a critical and increasing role in one of our top priorities at the Commission – encouraging broadband deployment to all corners of America.

Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. It is also significant that we also incorporate by reference the *Identical Support NPRM* and *Reverse Auctions NPRM*, including the records to be developed in response to those NPRMs. I look forward to receiving public input and examining these issues.

I would like to thank my Co-Chair, Commissioner Ray Baum of the Oregon Public Utility Commission. I am especially pleased that all eight Joint Board members, large and small/rural and urban/donor and recipient, were able to come to this consensus and hope this will move us forward and provide the basic building blocks for fundamental reform to ensure Fund stability and viability in a fiscally responsible manner. All of the Joint Board members deserve praise for their commitment to the in-depth analysis of these complex issues, their desire to positively affect public policy and to make decisions in the public interest in a thoughtful and deliberative manner. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).

Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving).

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. A number of proposals have been put forth, particularly the Joint Board's recommendations for comprehensive reform sent to the Commission on November 19, 2007.

By adopting these three notices of proposed rulemaking, we are moving forward to advance specific reforms to the way the Universal Service High Cost Fund is administered. I favor a comprehensive approach where we can consider all ideas and options for reform of this important program. This year the Commission has an historic opportunity to implement meaningful and lasting fiscal reform that balances stakeholders' concerns and promotes the interests of consumers. We should seize this opportunity and take a bold step forward.