

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

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

COMMENTS OF THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

The North Dakota Public Service Commission (“NDPSC”) files these comments in response to the Federal Communication Commission’s (“FCC’s”) three Notices of Proposed Rulemaking (“NPRMs”) released January 29, 2008.¹

The NDPSC is keenly aware of the large role federal universal service plays in providing telecommunication in rural North Dakota. We have a significant interest in each of the three NPRMs and how rules promulgated in these proceedings may affect citizens of North Dakota.

The NDPSC has varying levels of regulatory jurisdiction over the telecommunications industry in North Dakota. Among some of its duties, the NDPSC certifies Eligible Telecommunications Carriers (ETC), regulates intrastate access

¹*High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. Jan. 29, 2008); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision NPRM*) (attached as Appendix A to FCC 08-22); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*).

charges, decides interconnection disputes, and adjudicates consumer complaints filed under state law. Yet beyond the formal duties of the NDPSC, we feel a need to weigh in on matters that substantially impact the welfare, public safety and quality of life of the people of North Dakota.

North Dakota is a very rural state. Over 40 percent of our traditional wireline consumers are served by small rural carriers that collectively serve 96 percent of our land area, and our state does not have large concentrations of low-cost urban customers to help offset the high costs of serving our geographically large and widely dispersed population. Our rural carriers are highly dependent on the universal service funding received in their designated service areas. This funding, in turn, helps provide rural North Dakotans with the telecommunications services that other Americans might take for granted.

Within the wireless space, federal universal service funding has played a key role in helping our consumers receive mobile services they otherwise would not have. While there are still areas, especially in rural North Dakota, that lack adequate wireless coverage those gaps are getting smaller. We believe these advances are due in great part to the availability of universal service dollars for wireless carriers. We note that these advances, not only help North Dakotans, they are a benefit to the great number of Americans who annually share our state's highways and byways as they travel and visit North Dakota.

In preparation for these comments the NDPSC held workshops on March 25, 2008 and April 8, 2008 to obtain additional information from the telecommunications

industry in North Dakota concerning the rulemakings on the identical support rule, the use of reverse auctions, and reform of high-cost universal service support.

The NDPSC believes these proposed rulemakings contain attributes that merit strong consideration as an important first step in the ongoing process of ensuring that our telecommunications networks are supported in a fair and consistent manner. At the same time we have some concerns to share with the FCC.

The NDPSC has several points for your consideration:

The Identical Support Rule NPRM

In the *Identical Support Rule NPRM*, the FCC has tentatively concluded that competitive ETCs (“CETCs”) should receive support based upon their own costs and not based on the costs of the ILECs. We agree with the FCC’s proposed removal of the identical support rule.

We are also encouraged by the approach the FCC has proposed to involve the state commissions in the review of cost-based CETC support. We recommend one change to this proposal. State commissions should have a role in determining the amount of CETC support and the FCC has proposed that state commissions make this determination independently. We recommend the FCC direct the CETCs to submit costs to the federal universal service fund administrator (“USAC”) for initial review of CETC costs. After its initial review, USAC should then make recommendations to state commissions and allow the state commissions to make a final determination of CETC support. This change in process will allow USAC to establish a uniform procedure for CETC cost submissions while at the same time allow state commissions to finalize and direct the distribution of CETC support in a manner consistent with the public interest.

We do not recommend there be a change in procedure for the incumbent local exchange carriers (“ILECS”) as their costs are currently submitted to USAC as well as NECA, independently audited, and subject to USAC audits and review. We recommend the FCC make this change in accounting for CETC support.

Reverse Auctions NPRM

We recommend the FCC not use reverse auctions to distribute federal universal service support. In particular, we strongly oppose the imposition of reverse auctions with regard to traditional ILEC ETCs. There are far too many uncertainties regarding the FCC’s tentative conclusions for us to recommend this approach to distribute federal universal support.

It is difficult to see any efficiencies come out of a reverse auction in the rural wireline space. In North Dakota, there are many areas where it would be economically infeasible for even one wireline carrier to serve an area without support. New entrants simply could not bid against an existing incumbent to overbuild a network in the kinds of low density population areas we have in states like North Dakota. We would not expect that reverse auctions would produce efficiency under such a scenario.

Theoretically a reverse auction of some kind might have some appeal in areas that currently have no services whatsoever, for example, if it were to encourage the construction of new wireless services to an area that currently has no mobile coverage. Yet the NDPSC cannot help but feel that, on the whole, the potential advantages received in using a reverse auction mechanism are far outweighed by more likely disadvantages. The increased uncertainty of funding in capital markets, the increased uncertainties in quality of service standards, the duration of a winning bidder’s claim on

a service area and the establishment of a reserve price that does not artificially cap support as new requirements – such as broadband – are imposed all lead us to make this recommendation. We recommend you change your tentative conclusion regarding the reverse auction proposal.

Joint Board Recommended Decision (RD) NPRM

The Joint Board has recommended the FCC establish three distinct funds for the delivery of future high-cost universal service support: The Provider of Last Resort Fund, The Mobility Fund and The Broadband Fund. The NDPSC applauds the Joint Board for recommending three funds for federal support. We agree that the administrative structure for future funding can provide a clear picture of nationwide goals for telecommunications and provide better targeting of the funding.

We view the RD as offering a plausible and inherently reasonable framework for universal service into the future. While we would need to know more details of how each of the funds would work in practice, we find that the RD represents a significant step forward in the rationale behind the federal universal service fund.

It recognizes what has become readily apparent, that universal service today means more than just a single voice line. Universal service has moved beyond Plain Old Telephone Service (POTS). Today, it encompasses not just POTS, but also broadband and wireless/mobile communications. We believe this is not only good policy, it is also *required* by the act itself, which includes support for advanced services.

The RD also recognizes that mobile and wireline services are sufficiently distinct so as to necessitate separate funding mechanisms. We note this construct works nicely in concert with the ideas envisioned in the Identical Support Rule NPRM.

Within the RD, there are a few topics that we reserve for special comment:

1. Implementation of better targeted, non-discriminatory high-cost support

Any reform of the existing high-cost support mechanisms for voice services needs to improve the effectiveness of that support by better targeting the support to areas where costs to deploy and maintain telecommunications services are significantly above those costs for deploying and maintaining comparable services in more urban areas. A method needs to be established to better identify those high-cost areas and the amount of support necessary to sustain dependable, quality service in those areas.

Nowhere is this problem of the lack of targeted support more evident than in the current mechanism that excludes entire areas from support based solely on the size of the company providing those services in high-cost areas or the average cost per line of the company. If the intent of the fund is to provide support to high cost areas, and it is, then support should go to support service in high cost areas, regardless of the company serving it.

North Dakota provides a vivid illustration of this inequity. Qwest Communications is the largest ILEC carrier in our state, and it is classified as a non-rural carrier. While it primarily serves urban North Dakota, it also happens to serve one of the most remote and lightly populated exchanges in the state, the Belfield exchange. This exchange includes portions of North Dakota's ruggedly beautiful badlands. Because of Qwest's "non-rural" status and the fact they serve some other more urban areas in the state, residents of the Belfield exchange get no benefits of high cost funding. By the same token, there is no incentive for a wireless CETC to expand its service in this area due to the identical support rule. To be clear, we are not advocating that non-rural carriers be

unduly supported in lower-cost urban areas but it is hard to understand why the residents of certain high cost exchanges should be put at a disadvantage relative to other North Dakotans, or Americans, solely because their carrier has been defined as “non-rural.”

2. Reject the proposal to cap the high-cost support

As part of the RD, the FCC seeks comments on the Federal-State Joint Board on Universal Service’s (“Joint Board’s”) recommendation to place a cap of \$4.5 Billion on federal high cost universal service support. We recommend the FCC reject the proposal to cap federal high cost support until the FCC has determined the extent to which federal universal service goals will include mobility and broadband, and has some experience in administering programs to achieve these new goals. In addition, as the RD notes, the FCC must address issues related to the Qwest II decision by the Tenth Circuit Court of Appeals. Any current discussion of a program cap is premature and does not comprehensively address the need to provide sufficient support for all federal universal service goals. If the FCC finds that a cap of some sort is absolutely critical to mitigate an unsustainable level of growth in the fund, then we would support only a targeted, temporary cap to address the immediate needs of consumers. A cap to the CETC fund would relieve pressure from the one portion of the fund that is growing dramatically. We would caution, however, that we make this recommendation with some trepidation. We would not want a temporary cap to evolve into a permanent cap, or become just one more reason to delay action on a more thorough and comprehensive reform of the support mechanism.

3. Ongoing support for operation and maintenance

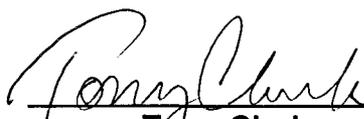
The NDPSC expresses some concern with the tentative conclusion reached in the RD that suggests O&M expenses should be phased out over time for the broadband and mobility funds. While this may be appropriate in some instances, we are well aware that states like North Dakota often do not fit the norm in terms of the cost of providing service. To put it simply, there is rural, and then there is *rural*. For the truly rural areas of America, we are not convinced that there may not be a thoroughly legitimate need for ongoing mechanisms of support for all services, not just the Provider of Last Resort fund.

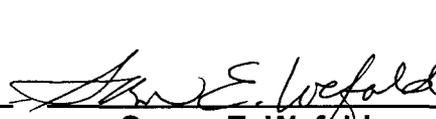
4. Size of the Broadband Fund

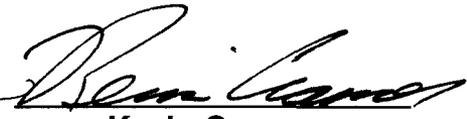
The NDPSC appreciates the first step the Joint Board has taken in recognizing broadband as a critical component of any reformulated high cost support mechanism. We would, however, suggest that the \$300 million envisioned for distribution may be underestimating the investment needed to help make broadband truly accessible to all Americans. Nonetheless, we wouldn't wish the perfect to become the enemy of the good, and support the concept of the fund.

Respectfully Submitted,

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**


Tony Clark
Commissioner


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