

**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 |

**COMMENTS OF
THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES
ON USING REVERSE AUCTIONS TO DETERMINE HIGH-COST UNIVERSAL
SERVICE SUPPORT**

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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I. INTRODUCTION AND SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ submits these comments on the issues regarding the use of reverse auctions to determine high-cost universal service support, pursuant to the Notice of Proposed Rulemaking (“*Reverse Auctions NPRM*”) issued in the above-captioned dockets.² As the Federal Communications Commission (“FCC” or “Commission”) states, “[I]n a reverse auction,

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

² FCC 08-5 (rel. January 29, 2008). Unless otherwise noted, all further citations are to orders and filings *In the Matter of High-Cost Universal Service Support*, WC Docket 05-337 and/or *Federal-State Joint Board on Universal Service*, CC Docket 96-45 (“05-337/96-45”).

support generally would be determined by the lowest bid to serve the auctioned area.”³

In the introduction to the *Reverse Auctions NPRM*, the FCC announces its conclusion that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms.⁴ The Commission is seeking comment on numerous specific issues regarding auctions and auction design. NASUCA would initially state that the record supports the possible use of auctions for high-cost funding only in currently unserved territories. Auctions would be particularly appropriate as pilot programs for broadband or mobility service in such areas.

On the other hand, the redistribution of the current \$4.3 billion high cost fund⁵ using a reverse auction process is rightly opposed by a substantial and significant majority of commenters. This is based in part on the numerous comments received to date, including comments by NASUCA, that demonstrate the shortcomings of using an auction process to distribute existing high-cost support.

NASUCA’s position is simple. It is unreasonable to think that the FCC can orchestrate the auction of existing high-cost rural territories currently served by incumbents who have invested billions of dollars to provide quality services to their customers, and have carrier of last resort (“COLR”) (also referred to as “provider of last resort” or “POLR”) responsibilities in those areas, without causing irreparable harm to the rural customers who were promised universal availability of quality communications services at affordable and reasonably comparable rates by the 1996 Telecommunications Act. NASUCA opposes the “replacement” auction process -- as opposed to a pilot

³ *Reverse Auctions NPRM*, ¶ 1.

⁴ *Id.*

⁵ Universal Service Administrative Company 2007 Annual Report, at 43.

program for unserved areas -- as unworkable, and the following comments will amplify our objections.

II. THE HISTORY OF THIS ISSUE

A. INTRODUCTION

In providing background for this Notice, the FCC points out that the *First Report and Order* released in 1997 stated that the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support.⁶ At that time, however, the Commission found it unlikely that competitive bidding mechanisms would be useful because of the lack of competition in a significant number of rural, insular or high cost areas. The Commission and the Joint Board both confirmed that it was their expectation at that time that competitive carriers and incumbents would be engaged in an active struggle to serve customers with their basic telecommunications needs.⁷

Of course, “competition,” especially competition that is relevant to the universal service fund (“USF”), has developed in ways that neither the Commission nor the Joint Board could have anticipated. Traditional wireline competition has failed to develop, and what wireline competition did occur was squelched by regulatory and court action. As the Commission knows, the current wireline competitive eligible telecommunications carrier (“CETC”) take from the USF is minimal. Some wired competition has come, however, from cable companies that do not attempt to secure universal service funding.

⁶ Id., ¶ 3, citing Report and Order, 12 FCC Rcd 8776, 8948, ¶ 320 (1997) (“*First Report and Order*”).

⁷ See FCC 08-4, ¶ 12.

The vast majority of CETC funding goes to wireless carriers. But wireless carriers have not replaced wireline carriers; the spectacular growth of cellular services has been not as a substitute for wireline services, but as an addition or complement to existing wireline services. Therefore, NASUCA believes that consideration of the auction of USF high-cost support is inadvisable today, for the very same reasons that were accepted in 1997 by the FCC.

The FCC states that it takes notice of the record that has already been established since 2006 regarding reverse auctions of high cost funding.⁸ The FCC, however, appears to have actually ignored the significant and substantive record that shows the lack of merit to an auction process if applied to currently-served geographical areas.⁹ The existing record would suffice to reject the reverse auction proposals, unless, without so stating, the Commission proposes to develop an auction mechanism so that it could trial the application in remote, unserved territories.

B. FIRST EXAMINATION

As noted, the Commission examined the issue -- under significant time pressure -- in the 1996-1997 rulemaking that led to the *First Report and Order*.¹⁰ The Commission said it would be looking at the issue again,¹¹ but has not, until the current NPRM.

⁸ *Reverse Auctions NPRM*, ¶ 4.

⁹ See, e.g., Initial Comments (filed May 5, 2003): Alaska Telephone Association Comments at 18-20; Fred Williamson and Associates Comments at 27-29; GVNW Comments at 10-11; Nebraska Rural Independent Companies Comments at 16-17; NTCA Comments at 17-19; OPASTCO Comments at 28-31; Texas Statewide Telephone Cooperative Comments at 10. See also Reply Comments (filed June 3, 2003): Alaska Telephone Association Reply Comments at 2; GNVW Reply Comments at 7-8; Minnesota Independent Coalition Reply Comments at 10-11; NTCA Reply Comments at 22; OPASTCO Reply Comments at 18-19; RICA Reply Comments at 11; South Dakota Telecommunications Association Reply Comments at 6.

¹⁰ *First Report and Order*, ¶ 320.

¹¹ *Id.*, ¶ 325.

C. SECOND LOOK

Then in 1999, the Commission sought comment on the targeted question of using auctions for tribal and unserved areas.¹² Indeed, in the *Unserved/Tribal Areas NPRM*, the Commission included an extensive discussion of methodologies and an appendix that described a number of the auction proposals and actual uses of auctions in telecommunications.¹³ Yet in 2000 the Commission did not resolve the issues related to auctions raised in that Notice when it adopted measures to promote subscribership and infrastructure deployment on tribal lands.¹⁴

D. 2003 JOINT BOARD REVIEW

Then in 2003, the Joint Board asked for comment on, *inter alia*, reverse auctions.¹⁵ At that time, NASUCA opposed the use of auctions for universal service purposes.¹⁶ The subject of auctions was one of a multitude of issues included in the *2003 Public Notice*,¹⁷ however, so it is understandable that no party spent a lot of time on the issue. But no commenting party supported the use of auctions at that time, and a wide variety of parties outright opposed the concept.¹⁸

In the NASUCA 2003 Reply Comments in response to the Joint Board's request, NASUCA summarized the issues as follows:

¹² *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21217-24 (1999) (“*Unserved/Tribal Areas NPRM*”), ¶¶ 93-114.

¹³ *Id.*, and Appendix D.

¹⁴ See generally Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

¹⁵ See Public Notice, 18 FCC Rcd 1941 (2003) (“*2003 Public Notice*”), ¶ 20.

¹⁶ NASUCA Reply Comments (June 3, 2003) (“NASUCA 2003 Reply Comments”) at 35-37.

¹⁷ *2003 Public Notice*, ¶¶ 8-9, 11-19, 21-25, 27-35.

¹⁸ See footnote 9.

An auction mechanism would be worthy of consideration only if there existed multiple ETCs already capable of providing interchangeable “carrier of last resort” service to all persons in a service area. Regardless of policies that aim to create competitive neutrality with respect to high-cost support, the telecommunications market in most of the U.S. is not yet at the point [that] any single provider is available to, or required to, provide ubiquitous service as reliably as the ILEC. NASUCA agrees with OPASTCO that services of different types of ETCs are not necessarily substitutable for one another. Moreover, if an auction were to be won by a non-ILEC, there would be substantial and sudden shifts of revenues that would require undue regulatory intervention.

Even if multiple qualified carriers were available to bid in an ETC auction, NASUCA believes that the service being bid upon -- long-term reliable service -- is not amenable to an auction mechanism which is better suited to relatively short term contracts. ... NASUCA agrees with OPASTCO that provision of reliable and ubiquitous service requires long-term investment decisions. While ILECs should be subject to competitive losses under changing industry circumstances, auctions have the potential to create sudden artificially induced winners and losers. Therefore, an auction system would not be likely to bring simultaneous viable choices to rural customers comparable to those in urban areas, as intended by Congress.

Any winner of an ETC auction would not have incentives to make long-term investments in facilities or to provide good customer service, if that carrier’s obligations were subject to elimination after a short period of years. Similarly, any long-term contract awarded to a single firm would detract from competitive opportunities that could develop during the term of the contract. Assuming the ILEC is the likely winner of an auction, the expected result will be a reversal of recent policies to enhance competition in rural areas and to provide support in a competitively neutral manner. On the other hand, it is difficult ... to imagine a wireless provider being designated as a provider of last resort. In either case, [the] potential harm is greater than the potential benefit that could be expected by limiting costs through an auction process.

NASUCA agrees with those commenters that expressed concern about the incentives for degradation of quality by any entity that wins an ETC auction. An entity offering the lowest bid may have a direct incentive to decrease service quality. MTA warns of a “race to the bottom” with respect to quality and availability of services that could result from an auction process. By awarding the right to receive support to one entity, the incentive to compete for support would be eliminated. NASUCA cited the benefits of competition over each primary line designation in its initial comments. Auctions, however, fail to provide any of the most important

incentives, as noted by commenters such as ATA, GVNW and OPASTCO.¹⁹

These were all good reasons not to adopt an auction process. They remain true today, and no one has adequately rebutted them.

E. 2007 JOINT BOARD REVIEW

Then in 2007, as part of its inquiry into long-term solutions for the USF, the Joint Board again requested comments on reverse auctions, again along with a wide range of other issues.²⁰ NASUCA's comments in response to the Joint Board's request on reverse auctions pointed out the history just discussed, and noted the consensus that reverse auctions are not a solution for universal service.²¹ In that context, NASUCA proposed that the best use of a reverse auction would be in the form of a pilot program for bringing broadband service to currently unserved areas.²² That proposal is repeated here.

III. PROPOSALS AGAIN DISCUSSED HERE

In the *Reverse Auctions NPRM*, the Commission identifies three specific reverse auction proposals, and asks for comment on those proposals. The Joint Board had already received comment on those three proposals.

A. CTIA

The CTIA Proposal is for an auction process that would give the auction winner

¹⁹ NASUCA Reply Comments (June 3, 2003) at 35-37 (footnotes and citations omitted).

²⁰ FCC 07J-2 ("Public Notice"). It is not clear why the Commission has singled out reverse auctions for separate treatment here -- like CETC support in 08-4 -- while combining the rest of the Joint Board's issues into 08-22.

²¹ Comments of the National Association of State Utility Consumer Advocates on Long-Term, Comprehensive High-Cost Universal Service Reform (May 31, 2007) ("NASUCA 2007 Comments") at 6-13.

²² *Id.* at 12-13.

more support and the losers a lesser amount of support.²³ NASUCA incorporates here its views on the CTIA Proposal expressed in the NASUCA 2007 Comments.²⁴ The CTIA Proposal totally ignores the problem with continuation of subsidies of multiple networks in the same geographic area, even when it has been demonstrated that the area cannot be served by a single carrier without a subsidy. The Joint Board as a whole has publicly stated opposition to this concept.²⁵

Further, in its discussion of the purpose of the *Reverse Auctions NPRM*, the Commission states its goal of using the reverse auction process to eliminate the support of multiple networks in high cost areas.²⁶ Yet the Commission has included the CTIA Proposal in this notice, which contemplates continued funding of multiple networks in high cost areas. Without question, numerous stakeholders in the CETC category will continue to push for duplicate network support. NASUCA supports USF reform that improves the targeting to truly high cost areas in need of support, coupled with the concept that there should not be funding for multiple networks in high-cost areas that cannot support a single network without USF assistance.

B. VERIZON

In contrast to the CTIA proposal, the Verizon Proposal would lead to a single wireline and a single wireless ETC that receive support in a geographical area.²⁷

²³ *Reverse Auction NPRM*, ¶ 5. See CTIA Reply Comments, 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 Proposal”).

²⁴ NASUCA 2007 Comments at 8-9.

²⁵ Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. November 20, 2007) (“*Comprehensive Reform Recommended Decision*”), ¶ 43.

²⁶ *Reverse Auctions NPRM*, ¶¶ 10-11.

²⁷ *Reverse Auctions NPRM*, ¶ 6-7. 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 (dated Feb. 9, 2007) (“Verizon Proposal”).

NASUCA incorporates here its views on the Verizon Proposal expressed in the NASUCA 2007 Comments.²⁸ Like all of the other auction proposals, however, the Verizon Proposal fails to deal with the threshold problems of auctions, including concerns about how to maintain quality of service, dealing with the stranded cost issue and the impact on a winning wireless provider that depends on the availability of a wireline network for its network access, among others.

C. ALLTEL

The Alltel Proposal is really a broadband proposal that is not unlike that proposed by the Joint Board in its recommended decision released November 20, 2007.²⁹ NASUCA incorporates here its views on the ALLTEL Proposal expressed in the NASUCA 2007 Comments.³⁰ The Alltel Proposal does not deal with voice grade, narrowband services that would be targeted in the reverse auction proposals that the Commission is considering in this Notice.

IV. ANY AUCTION SHOULD HAVE ONLY A SINGLE WINNER.

Despite its announced preference for elimination of support for duplicate networks, the Commission still seeks comments on whether it is wise to support multiple winners of auctions or single winners.³¹ NASUCA believes that, if an auction program is adopted, the single-winner approach is the only viable proposal that will reform the

²⁸ NASUCA 2007 Comments at 10-11.

²⁹ *Reverse Auctions NPRM*, ¶¶ 8-9. 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) (“Alltel Proposal”).

³⁰ NASUCA 2007 Comments at 11-12.

³¹ *Reverse Auctions NPRM*, ¶ 13.

existing fund and maintain its sustainability into the future.

Regarding the advantages and disadvantages of a single-winner auction,³² the objective in a USF auction process would be to minimize the public support that is currently being expended to satisfy the directives of § 254 of the 1996 Act. The advantages of a single-winner auction would be to better target the funding to the most efficient supplier, and to eliminate the waste inherent in the duplicate funding that is available today under existing rules. Unless the Commission takes immediate action to alleviate the current CETC drain on USF funds, the future viability of the fund will be at risk. NASUCA strongly agrees that the factors pointed out by the Commission make multiple-winner auctions unworkable and inadvisable.³³

The Commission also poses questions regarding the impact on competition.³⁴ NASUCA would point out that the 1996 Act contains no requirement that universal service policies should promote competition or that funding mechanisms be technology-neutral. Indeed, the universal services policies were necessitated by a recognition that competition **would not be sufficient** to meet the goals of making affordable and reasonably comparable services available to all Americans, urban and rural alike. Yet the technology-neutral pro-competition policies adopted by the Commission for achieving the universal service goals of the Act prompted adoption of the identical support rule, which is condemned today as a threat to the sustainability of the Fund.³⁵ NASUCA considers most of the comments supporting multiple winner auctions as self-serving. The

³² Id. ¶ 14.

³³ Id., ¶ 15.

³⁴ Id., ¶ 16.

³⁵ See, e.g., *Comprehensive Reform Recommended Decision*, ¶ 9.

end result of a multiple winner auction, in any form, would not be reform, but would represent preservation of the status quo.

But the disadvantages inherent even in a single-winner auction process are why NASUCA opposes auctions for broad universal service purposes. Even now, twelve years since the passage of the 1996 Act, incumbent local exchange carriers (“ILECs”) continue to have the only viable network that can deliver universal service to rural communities and the country at large. The growth and expansion of multiple physical networks and the creation of a hotly-contested market for the services that qualify for USF support, as envisioned when the Act was passed, have not materialized.

American consumers are faced with a fragmented telecommunications infrastructure. The growth and expansion of wireless networks has surpassed the incumbent wireline networks in terms of customers, most of whom opt for wireless capabilities **in addition to** their traditional wireline service. Only about 13.6 percent of American wireless households have “cut the cord” (or never had a cord to begin with)

based on the latest data from the Centers for Disease Control, which perform surveys to collect information on health status, health-related behaviors, and health care utilization.³⁶

It was also forecasted in 1996 that adjacent wireline companies would challenge each other's territories in the contested telecommunications markets of the future. That hasn't happened either.

There is overwhelming evidence in this docket that suggests that today there is a broad public demand for mobility services, coupled with an equally broad public demand for reliable, quality, affordable wireline services. The result is an interdependent network that requires both wireless and wireline facilities that have the capability of providing a seamless product in the future, that should be coupled with an evolutionary concept to achieve high quality, ubiquitous, affordable broadband mobility services in addition to a high quality, ubiquitous, affordable and broadband wireline services.

A single winner of a universal service auction would likely fail to satisfy tomorrow's needs for telecommunications services. For example, having a single-winner wireless company for most auctions of existing territories would be unworkable, because wireless companies rely on the presence of an efficient backbone wireline network to deliver their services. The award of a single-winner auction to a wireless company would create substantial concerns regarding the viability of the incumbent wireline company serving the territory that is essential for wireless access to and from the public switched network.

³⁶ Stephen J. Blumberg, Ph.D., and Julian V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2007," Division of Health Interview Statistics, National Center for Health Statistics (rel. December 10, 2007), accessible at www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf.

Such an award would also likely produce other unintended consequences. For example, the wireless companies' dependence on the wireline companies for their special access services would make the wireline companies' special access rates even more important than they are today. Yet those special access rates would be prone to substantial rate increases (to put it mildly) if the wireline carriers were forced to use special access as their only vehicle for collecting their costs.

On the other hand, if wireless companies were unable to mount successful auction bids for a specific territory, then the incumbent LEC would be a shoo-in to win what would basically be an uncontested auction. In that scenario, an auction would be unlikely to produce the cost savings that are sought from adoption of an auction mechanism.

V. OTHER AUCTION ISSUES RAISED IN THE NPRM

To begin, NASUCA agrees with the FCC suggestion that a reverse auction process, if conducted, should be open only to certified ETCs in the specific area where the ETC is authorized to receive support.³⁷ As is the case today, auction participants should, at a minimum, be required to clear the same hurdles that are required today in order to gain ETC status.

A. WIRELINE AND WIRELESS? WIRELINE OR WIRELESS?

The Commission questions whether the Act requires that consumers have affordable access to both wireline and wireless services.³⁸ The answer to that is shown in the Joint Board's November 2007 recommendation that mobility be recognized as a

³⁷ *Reverse Auctions NPRM*, ¶ 12.

³⁸ *Id.*, ¶ 16.

supported service in the future.³⁹ If the Commission adopts the Joint Board recommendation, the future goal of universal service would be to provide mobility at comparable and affordable rates in all areas of the country. Similarly, the Joint Board recommends a separate broadband fund. The Joint Board envisioned single-winner auctions, conducted **separately** for both wireline and broadband providers, directed first to unserved and underserved territories that are uneconomical to serve without support.⁴⁰ By contrast, very little of the country does not have wireline service.⁴¹

Further, as discussed above, the Commission seeks comments on a Verizon proposal that would allow for a single winner of a wireless auction and a single winner of a wireline auction within the same territory.⁴² While the Verizon concept is more acceptable than the multiple winner options, the difficulties one can envision by the auction of existing telecommunications service territories does not go away with the Verizon proposal. For those reasons, in any form one would choose, NASUCA opposes auctions of existing wireline service territories as an unrealistic, reckless and inadvisable mechanism to satisfy the mandates for universal service that are spelled out in the Telecommunications Act.⁴³ Since NASUCA is of the opinion that the auction of an existing telecommunications service area will not work, we are equally convinced that it is impossible to develop an effective distribution formula that will adequately protect

³⁹ *Comprehensive Reform Recommended Decision*, ¶¶ 16-18.

⁴⁰ *Id.*, ¶¶ 15, 18. The “single network” concept is inherent in the Joint Board’s recommendation not to support multiple networks in any one area. *Id.*, ¶¶ 35, 38.

⁴¹ If the Commission wishes to undertake a pilot wireline auction, it could be held for one of the areas currently without wireline service.

⁴² *Reverse Auctions NPRM*, ¶ 17.

⁴³ See discussion in Section IV., above.

consumers.⁴⁴

B. AUCTION FUNDAMENTALS

As previously proposed by NASUCA, if the Commission moves forward with a reverse auction plan, it should begin with unserved territories.⁴⁵ Assuming that the FCC decides to conduct auctions for all of the high cost service areas in the country, then the FCC should anticipate the budgetary implications of such a daunting task. However, after considering the budgetary challenge, if the FCC is still determined to move forward, then any auction for less than the existing study area territories would appear to be an administrative impossibility. Because the states have more expertise and knowledge regarding service quality, local prices, and customer preferences, the logical regulatory agency to conduct a universal service auction would be the state, not the federal government. Should the states conduct the auction, then wire center auctions as opposed to study area auctions might be practical, assuming that multiple wire center local calling areas would be combined into a single auction. If the FCC decides to auction off the universal service obligations of incumbent LECs, then the obvious geographical unit should be an overlay of the current network that provides the existing universal service to customers.

C. UNIVERSAL SERVICE OBLIGATIONS

The FCC also seeks input regarding the universal service obligations of an auction winner.⁴⁶ NASUCA strongly supports the concept that an auction process awarding universal service funding to a winning bidder carries with it the obligation to provide

⁴⁴ Id., ¶ 18.

⁴⁵ A specific proposal for an auction for the Mobility Fund is included in NASUCA's comments responding to the *Comprehensive Reform Recommended Decision*.

⁴⁶ Id., ¶ 23.

quality services at affordable and comparable prices for all of the supported services as determined by the Commission, including the carrier of last resort obligation for both intrastate and interstate services. Such a requirement should not only cover existing services offered by incumbents, but should also recognize that network evolution may require future delivery of more expansive service capabilities should the Commission change or modify its definition of supported services.

Further, NASUCA would remind the Commission that the current minimum requirements for delivery of telecommunications services that meet the definition of supported services contain no provisions for the continued delivery of vertical and optional services that individual customers, businesses, state and local governments rely upon. These include, for example, broadband data, multi-line services, directory services, private line services and many, many more capabilities that are covered by the tariffs of incumbent local service providers. The auction process should also require the winner to have a continuing obligation to provide such optional services that are vital to the telecommunications needs of states and localities throughout our nation.

The Commission asks for comments on the build-out requirements the FCC would impose on winners of the auction process.⁴⁷ It assumes that the existing obligations it passes on to ETC applicants are satisfactory in meeting the overall expectations for quality telecommunications services.

The FCC has missed the point here. For the most part, local telecommunications customers have rejected the concept that wireless services can be substituted for existing wireline services. That customer preference cannot be wiped away by an auction process

⁴⁷ Id., ¶ 28.

without severe and irreversible harm to local customers, business entities and state and local governments that constitute the basic fabric of the American economy. The failure of wireless companies to achieve ubiquitous coverage that is comparable to existing wireline networks is but one of the many shortcomings that would shortchange customers whose only alternative in the future might be an auction winner that is a wireless company.

On a related note, the Commission seeks comment regarding the local usage obligations of an auction winner.⁴⁸ An adequate auction methodology would leave consumers no worse off, and hopefully better off, at the conclusion of an auction mechanism, than they are today. Should the FCC decide to replace existing telecommunications providers with wireless services through an auction mechanism, then the wireless prices should be no higher than -- and include the same unlimited usage as -- the services of incumbent providers. In order to ensure that customers are no worse off, no services provided by incumbent providers should be discontinued by auction winners without specific approval by state or federal regulators. Existing customer preferences for flat rate, unlimited usage calling plans should not be at risk as a result of the auction process. Likewise, consistent with NASUCA's previously-expressed positions,⁴⁹ all equal access requirements that apply to incumbent LECs should apply to all CETCs that receive universal service support. This would be especially true with a single-winner auction.

The Commission also seeks comments on use of the CTIA Consumer Code for

⁴⁸ Id., ¶ 30.

⁴⁹ See NASUCA ex parte (April 6, 2007), Appendix A at 10.

Wireless Service as a substitute for ILEC service quality obligations that would apply to auction winners.⁵⁰ Consistent with the preceding discussion, NASUCA believes that all current obligations for service quality that apply to incumbent recipients of universal service funding should apply to future auction winners, in addition to the minimal protections provided by the wireless consumer code.

The Commission proposes an additional broadband requirement for winners of auctions.⁵¹ This would be an initial minimum transfer rate of 768 kbps (one way) for broadband services subject to the auction process and that the minimum rate would be increased to 1.5 kbps half way through the contract period.⁵² If there is to be a single USF auction winner, that winner should be required to provide broadband service that is an advance upon the existing Commission USF requirements.

Likewise, the *Reverse Auctions NPRM* also seeks comment regarding the use of the auction process for broadband Internet access.⁵³ But this suggestion represents another conflict with the Joint Board's recommendation for a separate broadband fund. NASUCA would remind the Commission that broadband Internet access service is not a supported service under the existing rules of the Commission, and USF funds cannot be directly used for that purpose. The Joint Board's recommendation to make broadband a supported service and create a separate broadband fund -- possibly subject to an auction process -- makes more sense than attempting to mix the COLR or POLR and broadband requirements in a single auction, as the FCC's proposal apparently does. The

⁵⁰ *Reverse Auctions NPRM*, ¶ 33.

⁵¹ *Id.*, ¶ 35. Again, this assumes that a separate Broadband Fund is not created.

⁵² *Id.*

⁵³ *Id.*, ¶¶ 50-51.

Commission should consider broadband issues within the context of its review of the Joint Board Recommended Decision.

D. AUCTION PROCESS: RESERVE PRICES, FREQUENCY

The Commission seeks comment on the appropriate reserve prices that would apply as the upper limit in a reverse auction process.⁵⁴ NASUCA submits that the upper limit of any auction should be the model cost or the embedded costs, whichever is lower, within individual wire centers or local calling areas, for both rural or non-rural carriers' territories. To the extent that the model costs may not be available for rural carriers' areas, as suggested in ¶ 38 of the NPRM, then a forward-looking process that includes customer density could be developed and used for rural areas. However, the use of model costs as the upper limit or reserve price for an auction is only appropriate when the resulting cost is less than the existing embedded cost per line of the incumbent.

In addition, the Commission seeks comment on the optimal frequency to conduct auctions.⁵⁵ The most commonly proposed frequency of auctions has been five years, based on prior input. However NASUCA has two major concerns in this area. First, it seems improbable that the contractual period for an auction would produce optimal results for assets that typically have a 15 to 25 year life. Any intelligent bidder would want to recover its sunk costs by the end of the period, or have alternatives for recovery of stranded costs. Either concept, in the opinion of NASUCA, would create pressure for increased and/or expedited cost recovery on the part of winning auction bidders. Nowhere in this Notice does the Commission consider stranded costs that could be significant for winning auction bidders, as well as losing incumbent providers. These

⁵⁴ Id., ¶¶ 36-40.

⁵⁵ Id., ¶¶ 47-49.

concerns simply confirm the opinion of NASUCA that the auction of existing study area USF obligations is unwise and unworkable.

E. TRANSLATION OF OTHER AUCTION RESULTS

The Commission appears to improperly assume that the auction of the universal service obligations in existing telecommunications service territories is analogous to the sale of unused or abandoned spectrum through the auction process.⁵⁶ There is a vast difference between the two concepts. The positive results of spectrum auctions involving unserved or abandoned spectrum will not necessarily translate to a favorable result in the auction of existing telecommunications service territories.

F. WHAT WILL BE AUCTIONED?

Regardless of the specifics of what the Commission does with reverse auctions, one thing should be crystal-clear: The process must include absolute clarity on what is being auctioned. The bidders need to know exactly what they will be responsible for providing if they win, and consumers deserve to know exactly what their USF dollars will be buying. Ambiguity will only lead to confusion and/or disappointment on either or both sides.

VI. CONCLUSION

As NASUCA has previously stated, consideration of the adoption of reverse auctions to replace the current high-cost fund need not be a high priority for the Commission. The many problems involved with the process and results of reverse

⁵⁶ Id., ¶¶ 41-46.

auctions make them problematic for replacing the incumbent carriers with their COLR responsibilities.

On the other hand, reverse auctions may have usefulness for determining support for broadband or mobility in currently-unserved areas, or even for COLR responsibility in currently-unserved areas. Such auctions would be undertaken as a pilot program for such areas.

Respectfully submitted,

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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