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
	)	

TO: Federal-State Joint Board on Universal Service

INITIAL CONSOLIDATED COMMENTS OF THE WESTERN TELECOMMUNICATIONS ALLIANCE

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SUMMARY

The Western Telecommunications Alliance ("WTA") supports comprehensive review and modification of federal High-Cost support programs that conforms to the universal service principles and requirements of Section 254 of the Communications Act and that preserves those existing High-Cost programs that have been successful and effective.

WTA agrees with the Joint Board that the current High-Cost programs for rural incumbent local exchange carriers ("ILECs") have been a major success and should be left intact. The High Cost Loop Support, Local Switching Support and Interstate Common Line Support programs have enabled small carriers with limited financial resources and limited access to capital to make the infrastructure investments needed to bring quality, affordable and urban-comparable services to their rural customers. These programs will be even more important during the future as the transition to a national broadband network requires major investments in fiber facilities and other upgraded rural infrastructure, while changes in access revenue streams force rural ILECs to rely more and more upon sufficient and predictable high-cost support for the repayment of their investment loans and the operation of their networks.

WTA supports the Joint Board's proposal for the operation of separate High-Cost support programs for Providers of Last Resort ("POLRs"). Separate POLR programs are wholly reasonable and justified because POLR requirements and associated regulations require ILECs to disregard normal business and economic considerations to serve high-cost and/or low-revenue customers who are generally ignored by profit-maximizing carriers, and to incur substantially increased plant, operating and maintenance costs to do so. However, WTA opposes a unified

POLR program or mechanism encompassing both rural ILECs and non-rural ILECs. Rather, it believes that major differences between the service areas, financial resources, investment incentives and support needs of rural ILECs and non-rural ILECs warrant the continued maintenance of separate POLR mechanisms and programs.

WTA supports the inclusion of "broadband" services as supported universal services, and urges that the definition of "broadband" be revisited frequently as world-wide and national standards and service needs evolve. However, WTA understands that the deployment of broadband infrastructure is very expensive, and asks the Commission to be very sensitive to the impacts that its future definitions of "broadband" and its broadband implementation requirements will have upon the costs of carriers and upon their high-cost support needs.

WTA supports the concept of a new Broadband Program within the Universal Service Fund that would be modeled after AT&T's Rural Broadband Pilot Program and that would provide grants for the construction of Commission-defined "broadband" facilities in "unserved" and/or "underserved" rural pockets within larger study or service areas that would not otherwise qualify for High-Cost support.

WTA supports the establishment of a separate Mobility Program within the Universal Service Fund that would provide support to wireless carriers in high-cost rural areas. A separate program is necessary because wireless carriers provide services that are predominately complementary or supplementary to (rather than competitive with) the services of wireline POLRs, and because wireless carriers and wireline POLRs have significantly different technologies, costs and regulatory requirements. A separate Mobility Program eliminates the

basis and need for the "identical support rule" [47 C.F.R. §54.307(a)]. Rather, wireless High-Cost support should be based upon the actual costs of wireless carriers. It can and should be calculated on the basis of each wireless recipient's state or regional service (or study) area, using a reasonably available accounting system or method.

WTA opposes the imposition of an integrated cap on all existing and proposed High-Cost support programs. An overall cap, which is essentially a "zero-sum" game, would subject rural ILEC POLRs (who have receiving stable or declining high-cost support in recent years) to substantial and virtually automatic reductions in their support as new and increasing amounts of High-Cost support are provided to non-rural ILECs, wireless carriers and broadband providers. Rural ILECs lack deep pockets or access to capital markets, and will not be able to continue what the Joint Board has recognized as their "commendable job" of serving their rural customers if their critical high-cost support is cut substantially by an overall cap.

Finally, WTA opposes the use of reverse auctions because they will produce investment disincentives, gaming opportunities and design complexities that will result in unintended and unwanted adverse consequences affecting both rural telecommunications service and competition.

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INITIAL CONSOLIDATED COMMENTS OF THE WESTERN TELECOMMUNICATIONS ALLIANCE

The Western Telecommunications Alliance ("WTA") submits its initial consolidated comments in response to the *Joint Board Comprehensive USF Reform NPRM*[1], the *Identical Support Rule NPRM*[2] and the *Reverse Auctions NPRM*[3]. These comments are filed pursuant to the deadline specified in the Commission's Public Notice (*Comment Cycles Established for Commission's Notices of Proposed Rulemaking Regarding the Identical Support Rule, the Use of Reverse Auctions to Set High-Cost Universal Service Support, and the Federal-State Joint Board on Universal Service's Recommendations for Comprehensive Reform of High-Cost Universal Service Support*), DA 08-499, released March 4, 2008.

WTA supports comprehensive review and modification of High-Cost support programs that will continue to implement the Universal Service principles and

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[1] *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) (*Joint Board Comprehensive USF Reform NPRM*)
[2] *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*)
[3] *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*)

requirements of Section 254 of the Act, and that will preserve the present High-Cost programs that have proven successful and effective.

As indicated repeatedly by the Joint Board in its *Recommended Decision*[4] attached as Appendix A to the *Joint Board Comprehensive USF Reform NPRM,* the current High-Cost programs for rural incumbent local exchange carriers ("ILECs") have been very effective in maintaining the essential networks of these small Providers of Last Resort ("POLRs") and in deploying broadband to their rural customers. These programs comprise 25-to-50 percent of the revenue stream of the typical WTA member and rural ILEC, and must remain predictable and sufficient if these small carriers are to be able to continue to finance the essential infrastructure investment necessary to provide quality, affordable and reasonably comparable telecommunications and information services to their rural customers.

WTA applauds the Joint Board's recognition that POLRs incur substantial and continuing obligations and expenses to make investments and serve customers not warranted by normal economic considerations, and that these additional obligations and costs warrant specific POLR support programs. It agrees with the Joint Board's initial recommendation that the existing programs for rural ILEC POLRs should be left intact. However, WTA opposes subsequent Joint Board proposals that the rural ILEC and non-rural ILEC POLR programs be unified, and that the POLR programs be placed under an integrated cap with the proposed new Broadband Program and Mobility Program. Because rural ILEC support has not grown during recent years (and has even declined

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[4] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (rel. Nov. 20, 2007) (*Recommended Decision*)

during some years), an integrated cap looks like a "zero-sum game" in which the substantial increases in support likely to be provided to non-rural ILECs and wireless carriers will automatically reduce the critical support depended upon by rural ILECs.

WTA supports the designation of "broadband" as a supported universal service so long as the Commission recognizes that "broadband" implementation is very expensive and will continue to require substantial and increasing levels of support as the definition of "broadband" evolves to larger and larger bandwidths. WTA also supports a separate Broadband Program to support construction of broadband facilities in rural pockets of study areas that do not otherwise qualify for High-Cost support, as well as a separate Mobility Program for wireless carriers.

Finally, WTA opposes reverse auctions because they will discourage investment, encourage "gaming" and be vulnerable to design complexities likely to produce unintended and unwanted adverse consequences upon service and competition.

I

The Western Telecommunications Alliance

The Western Telecommunications Alliance is a trade association that represents more than 250 rural telephone companies operating within the twenty-four states located west of the Mississippi River, including Alaska and Hawaii.

WTA members are generally small rural telephone companies serving sparsely populated rural areas. Most members serve fewer than 3,000 access lines in the aggregate, and fewer than 500 access lines per exchange.

WTA members serve remote and rugged areas where loop, transport and switching costs per customer are much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these areas, the WTA member not only is the POLR (also known as the carrier of last resort), but also is often the sole telecommunications provider that has shown a sustained commitment to invest in and serve the area. WTA members have made significant progress installing broadband facilities and making advanced services available to their rural customers, but still have a long way to go to achieve the goal of ubiquitous broadband availability (particularly as bandwidth demand continues to increase).

WTA members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Most WTA members generate customer revenues much smaller than the national telephone industry average. Because of this and because they serve high-cost rural areas, typical WTA members presently rely upon federal High-Cost support dollars for approximately 25-to-50 percent of their revenues.

Predictable and sufficient revenue streams and cost recovery are essential to WTA members if they are to continue investing in and operating essential telecommunications

facilities in high-cost rural areas, while providing their rural communities and customers with quality and affordable services reasonably comparable to those available in urban areas. Therefore, WTA has found it necessary to participate in this and other proceedings that may affect federal high cost support and the economic development of rural areas.

II

WTA Supports Designation of "Broadband" as Supported Service

WTA supports the Joint Board's recommendation that the Commission revise the current definition of supported services to include broadband Internet service. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 56. In fact, given that packets carrying voice, data and video traffic are indistinguishable and increasingly intermixed (a bit is a bit is a bit), WTA believes that the Commission should designate "broadband" services in general that exceed a Commission-specified (and evolving) minimum bandwidth or speed as supported services, so that High-Cost Support can and will continue to be used to encourage investment in "broadband" infrastructure in rural areas.

WTA is aware that the Commission previously has declined to designate Internet access service[5] and advanced services[6] as supported services. However, since 2001, the United States public switched telephone network has moved well down the path of transformation from a circuit-switched network to a public "broadband" network. Urban

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[5] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) at par. 82.

[6] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) ("*Rural Task Force* Order") at par. 198-201.

and rural carriers are offering integrated voice, data and video services to more and more of their customers over "broadband" facilities. As the Joint Board indicates, more than half of the households in the United States currently subscribe to "broadband" Internet service, and "broadband" Internet access is being deployed in public telecommunications networks by telecommunications carriers. *Joint Board Comprehensive USF Reform NPRM,* Appendix A at par. 59-60.

WTA has placed the term "broadband" in quotes in the foregoing paragraphs to emphasize the fact that the definition of "broadband" has been changing rapidly, and will continue to evolve during the foreseeable future. Upstream and downstream transmission speeds of 200 kilobits per second ("kbps"), which were employed by the Commission as recently as 2007 to define "advanced telecommunications capability" and "advanced services,"[7] are now deemed to be slow and unsatisfactory by more and more end users. Some cutting-edge service providers are presently offering bi-directional transmission speeds as high as 100 megabits per second ("Mbps") in limited areas.[8] The Wireline Competition Bureau has recognized the changing nature and definition of "broadband" in its presentation at the Commission's March 19, 2008, Open Meeting regarding the current Section 706 Report and the Commission's proposed new broadband data gathering procedures. The Bureau presentation refers to speeds from 200 kbps to 768 kbps as "1st Generation Data" and posits the following seven evolving higher-speed broadband tiers: (1) Basic Broadband Tier 1 (768 kbps to 1.5 Mbps); (2) Broadband Tier 2 (1.5 Mbps to 3 Mbps); (3) Broadband Tier 3 (3 Mbps to 6 Mbps); (4) Broadband Tier 4

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[7] Notice of Inquiry (*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*), GN Docket No. 07-45, FCC 07-21, released April 16, 2007, at par. 12.

[8] For example, see *Comments of OpenBand Multimedia, L.L.C.*, MB Docket No. 07-51 (filed July 2, 2007).

(6 Mbps to 10 Mbps); (5) Broadband Tier 5 (10 Mbps to 25 Mbps); (6) Broadband Tier 6 (25 Mbps to 100 Mbps); and (7) Broadband Tier 7 (greater than 100 Mbps). WTA believes that the rapidly growing demands and needs of business and residential customers in urban and rural areas for more and more advanced services and higher and higher transmission speeds will result in both the industry standard and the Commission definition of "broadband" moving upward through these tiers during the next 5-to-10 years or so.

WTA is aware of the strong support in the Bush Administration and in the Congress for widespread or ubiquitous "broadband" availability, and of their desire that the United States be a world leader in the deployment of "broadband" infrastructure and the use of advanced telecommunications and information services. WTA has repeatedly emphasized to this Commission, the Bush Administration and the Congress the increasingly critical role played by broadband infrastructure and advanced services in the economic growth and development of the rural communities served by its members.

The developing broadband network will continue to depend substantially upon wireline facilities for at least the next few decades. Wireline networks will continue to offer significantly greater bandwidth and capacity than other technologies during the foreseeable future. Even more important from a public safety standpoint during these dangerous and turbulent times, the increasingly buried wireline networks are less vulnerable and more reliable in times of local, regional and national emergency. It is notable that wireless carriers continue to be dependent upon wireline networks: (a) to connect their cell sites with each other and with their mobile telephone switching offices ("MTSOs"); and (b) to connect their customers with wireline and wireless phones

throughout the nation and the world via the public telecommunications network. It is very probable that the majority of higher-capacity "broadband" services will be provided by wireline carriers during the next 5-to-10 years or more.

WTA is also aware of the fact that broadband deployment is very expensive, and that the goal of ubiquitous broadband deployment is likely to conflict with the goal of reducing the growth of the Universal Service Fund. Many rural ILECs have utilized transitional digital subscriber line ("DSL") technology to provide advanced services to their customers without replacing major portions of their existing copper loop plant. Some rural ILECs have combined fiber optic trunks with DSL to extend access to advanced services further and further out into their networks. However, substantial future increases in bandwidth demand by rural customers are going to require the extension of fiber optic loops and electronics to the pedestal, and then to the curb and finally to the home.[9] A 2006 NECA study[10] estimated that an additional investment of $11.902 billion would be necessary to upgrade 5.883 million lines[11] of its rural ILEC members to an 8 Mbps bandwidth that could accommodate voice service, two standard digital video streams and one 1.54 Mbps Internet connection. Major additional investments for more extensive fiber optic loop plant and associated electronics, as well as for network and switching/routing equipment, will be necessary for rural ILECs to increase bandwidth above 8 Mbps as their customers demand higher bandwidths (toward 100 Mbps or greater speeds) and more and more advanced services.

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[9] In rural exchanges in the western United States, the distance from the central office to some customer homes is frequently 10 to 50 miles, and in some instances reaches 90 to 110 miles.

[10] National Exchange Carrier Association, *The Packet Train Needs to Stop at Every Door* (June 2006) at pp. 30-2.

[11] The NECA study excluded from its cost estimate the approximately 660,000 lines of NECA's ILEC members that were already committed to be upgraded to 8 Mbps capability.

WTA emphasizes that the broadband cost estimates in the foregoing paragraph are limited to rural ILECs that are NECA pool participants, and constitute only a fraction of the cost of deploying "broadband" in rural America. Rural ILECs that are not NECA pool participants (for example, mid-sized ILECs such as Embarq), as well as non-rural ILECs, will also need to invest tens of billions of dollars to upgrade the rural portions of their networks to meet evolving needs for "broadband" infrastructure and advanced services. Overall, ubiquitous or near-ubiquitous rural "broadband" deployment will be a very expensive investment. Whereas such an undertaking will produce many economic benefits as it enables struggling rural communities to retain existing businesses and residents as well as to attract new companies and jobs, it is extremely unlikely that rural broadband deployment will be encouraged and accomplished by high-cost support programs capped at $4.5 billion or so per year.

In sum, WTA believes that the Commission should revise the current delineation of supported services to include "broadband" services, and to define and re-define "broadband" at annual or bi-annual intervals to keep abreast of the rapidly evolving demands and needs for greater bandwidth and more advanced services. However, the Commission should take these actions with the recognition that broadband deployment will be very expensive, and that such expenses will increase as the definition of "broadband" evolves to higher and higher bandwidths and as the required schedules for "broadband" deployment become more rapid and stringent. It will not be good public policy to make broadband deployment an unfunded mandate; rather, the Commission will need to make very hard choices between broadband deployment and the size of high-cost support programs.

III

WTA Supports Provider of Last Resort Programs

WTA supports the Joint Board's proposal for continuation of existing high-cost support programs for Providers of Last Resort (also known as carriers of last resort). *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 19. However, WTA does not believe that the Commission should develop or adopt a unified "one-size-fits-all" POLR mechanism for both rural and non-rural carriers. *Id.* at par. 20. Rather, major differences between service areas, financial resources, investment incentives and support needs of small and large ILECs warrant the continued maintenance of separate POLR mechanisms and programs for rural and non-rural carriers.

WTA believes that the primary and overriding purpose of all high-cost support is the encouragement and facilitation of investment in essential telecommunications infrastructure in rural and other high-cost areas in order to provide services comparable in price and quality to those in urban areas. Section 254 of the Act established the Universal Service principles and obligations for high-cost areas as: (a) the availability of quality services at just, reasonable and affordable rates [47 U.S.C. §254(b)(1)]; (b) access to advanced telecommunications and information services in all regions of the nation [47 U.S.C. §254(b)(2)]; (c) reasonable comparability of rural services and rates vis-à-vis services and rates in urban areas [47 U.S.C. §254(b)(3)]; and (d) specific, predictable and sufficient universal service support [47 U.S.C. §§254(b)(5) and 254(d)]. The encouragement and facilitation of investment in essential telecommunications infrastructure for high-cost areas is the keystone that links and satisfies all four of these statutory Universal Service requirements. State-of-the-art infrastructure is necessary to

make available to rural residents and businesses quality telecommunications and information services (including traditional voice services and advanced broadband services) that are reasonably comparable to the telecommunications and information services available in urban areas. Specific, predictable and sufficient federal High-Cost support provides the assurances of loan repayment necessary to convince lenders, owners and managers to make rural infrastructure investments, and enables investment and related operating costs to be recovered while keeping the local service rates of rural customers affordable and reasonably comparable with urban rates.

Providers of Last Resort bear substantial obligations and responsibilities over and above those of other carriers to invest in, construct, operate and maintain telecommunications facilities to serve **ALL** customers located within their certificated exchange boundaries who request service. The essence of POLR status is the requirement to disregard normal business and economic considerations, and to construct facilities and extend service anyway to customers whose remote locations, high costs of service and/or minimal profit potentials would mean that they would not otherwise have access to telecommunications and information services at affordable rates.

A major portion of the above-average costs of ILECs that serve rural areas are the direct result of Provider of Last Resort and associated regulatory requirements. Rural ILECs have been required to make many and substantial investments to expand their networks to serve remote customers and communities located miles or tens of miles beyond existing facilities, and have often had to construct or bury such lines through difficult mountain, desert or forest terrain. For example, the construction of a thirty-mile loop or trunk to serve an isolated rural household or cluster of households is frequently

not a rational economic decision, but rather a Provider of Last Resort requirement that significantly increases the ILEC's plant, operating and maintenance costs for many years.

In addition, Providers of Last Resort are normally subject to stringent quality of service requirements that increase their plant and operating costs, as well as to substantial and expensive federal and state regulation of their rates, costs, accounting methods, record keeping and customer relationships. It is important to note that the POLR obligations of rural ILECs come not only from state POLR statutes and regulations, but also from the bylaws of telephone cooperatives, from covenants in loan agreements with the Rural Utilities Service and other lenders, and from federal and state Eligible Telecommunications Carrier ("ETC") certification requirements. Accordingly, the Commission should allow all rural ILECs that are subject to any type of POLR obligations to receive support from the POLR programs.

WTA agrees that the substantial and continuing additional obligations and costs imposed upon Providers of Last Resort mandate separate and specific high-cost programs or funds for their support. However, WTA believes that there should continue to be separate Provider of Last Resort programs for rural ILECs and for non-rural ILECs.

A. Rural ILEC Provider of Last Resort Programs

The rural ILEC high-cost support program is a major success story that has helped small carriers with limited financial resources and limited access to capital markets to bring quality and affordable telecommunications and information services to their rural service areas, and to make major contributions toward sustaining and stimulating the economies of such areas. USF support has helped WTA members and other rural ILECs to install and operate digital switches and soft switches, to implement Signaling System

7, to construct and maintain fiber optic cable and DSL capabilities, to bury lines to limit weather damage and outages, to provide local or centralized equal access, to offer custom calling options, to comply with Emergency 911 ("E911") and Communications Assistance for Law Enforcement ("CALEA") responsibilities, and to provide access to the Internet and information services.

However, the job is far from completed. The long fiber and/or copper lines necessary to serve remote customers and clusters pursuant to POLR obligations not only are expensive to construct and upgrade, but also are expensive to monitor, maintain and repair. Likewise, whereas some rural ILECs have made impressive starts in upgrading their networks to offer access to advanced services to more and more customers, much more investment will be necessary to offer broadband services to remote communities and customers, to extend existing DSL and fiber optic facilities closer and closer to customer homes, and to install and upgrade the electronics necessary to increase bandwidth to greater and greater levels in response to consumer demands. The 2006 NECA study referenced above estimated that an additional investment of $11.902 billion would be necessary to upgrade 5.883 million lines of its rural ILEC pool participants to an 8 Mbps bandwidth that could accommodate voice service, two standard digital video streams and one 1.54 Mbps Internet connection.[12] Even larger investments for fiber lines and electronics will be necessary for rural ILECs to increase bandwidth above 8 Mbps (as national broadband standards move further toward 100 Mbps or greater speeds) in order

[12] National Exchange Carrier Association, *The Packet Train Needs to Stop at Every Door* (June 2006) at pp. 30-2.

to achieve ubiquitous or near-ubiquitous access to future advanced services reasonably comparable to those that will be available in urban areas.

If the high-cost support that comprises a critical portion of their revenue streams becomes unpredictable and/or insufficient, most rural ILECs will be unable to maintain their existing POLR networks, much less to make the substantial future broadband infrastructure investments that will be required to provide reasonably comparable services. Rural ILECs are generally small companies that have neither large cash reserves nor ready access to capital markets. Most have no viable and practicable option for the financing of significant infrastructure investments other than loans from relatively limited sources, such as the Rural Utilities Service ("RUS"), the Cooperative Bank ("CoBank"), the Rural Telephone Finance Cooperative ("RTFC") and some small local banks. Unless rural ILECs have probable future revenue streams sufficient to service and repay their investment loans (as well as to operate and maintain their networks), their owners and managements will not approve investment projects and their lenders will not make the requisite loans.

Federal high-cost support has become a crucial revenue stream for most rural ILECs. As arbitrage schemes, phantom traffic, regulatory exemptions, toll migration and/or intercarrier compensation rule changes continue to reduce interstate and intrastate access revenues, rural ILECs will depend upon federal high-cost support for even more than the current substantial portions of their revenue streams (*e.g.* 25-to-50 percent for WTA members). Whereas WTA members and other rural POLRs would prefer to rely more extensively upon customer revenues from existing and new services, there are simply not enough potential additional customers and potential additional customer

revenues (unless local service rates are set at levels far above those for comparable services in urban areas) in many of the high-cost rural areas they are required to serve.

The Joint Board has recommended that existing POLR programs be left intact for the present. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 19. WTA concurs with this proposal with respect to the High Cost Loop ("HCL"), Local Switching Support ("LSS") and Interstate Common Line Support ("ICLS") programs which the Joint Board explicitly recognized have been "effective[] in maintaining an essential network for POLRs and in deploying broadband" in areas served by rural ILECs. *Id.* at par. 30. These successful rural ILEC programs should continue to be based upon reasonable and prudent embedded costs.

WTA notes that the Joint Board has indicated that support to rural ILECs for transport costs should be considered. As the Joint Board stated, "[o]verlooking transport costs can harm remote carriers, and the problem worsens when those carriers must purchase special access facilities to connect their customers." *Id.* at par. 21. WTA believes that the transport costs of some rural ILECs will increase substantially and threaten affordable service for their rural customers as broadband service and usage increase. WTA therefore proposes that the transport costs of rural ILEC Providers of Last Resort that exceed a calculated national average or standard transport cost be included within the costs supported by the high-cost POLR programs for rural ILECs.

As will be discussed in more detail in Section VI below, WTA objects to the placement of the POLR programs for rural ILEC under an integrated cap with programs for non-rural ILEC POLRs, other broadband providers and wireless carriers. The Joint Board explicitly states that it intends and expects the latter groups to receive significant

additional funding. *Id.* at par. 24. Hence, an integrated cap is a zero-sum game that will automatically reduce the federal high-cost support that is so critically needed by rural ILEC POLRs on a dollar-by-dollar basis as the support for non-rural ILEC POLRs, other broadband providers and wireless carriers increases. Support decreases and the threat of future cap-imposed decreases will not only impair investment incentives at a time when substantial additional rural ILEC infrastructure investments are necessary, but also will have adverse impacts upon the economic development of the rural communities that depend upon such infrastructure.

B. Non-Rural ILEC Provider of Last Resort Programs

In stark contrast to rural ILECs, non-rural ILEC Providers of Last Resort typically are very large international or national corporations that have financial resources which dwarf those of rural ILECs, and that have ready access to financing from stock, bond and other capital markets as well as from a variety of international, national, regional and local banks.

Although they have sold significant numbers of their rural exchanges to smaller carriers during the last two decades, non-rural ILEC POLRs still serve substantial portions of Rural America. Their record of providing state-of-the-art infrastructure and quality traditional and advanced services to their rural exchange areas is uneven. Some of their rural exchanges have been upgraded during recent years; others have not.

The major barriers to investment in rural infrastructure by non-rural ILEC POLRs have no similarity to the limited financial resources and limited access to capital markets of rural ILECs, but rather consist of: (1) a surfeit of opportunities to invest in more profitable urban, suburban, national and international projects; and (2) urgent needs to

compete with cable operators and competitive local exchange carriers ("CLECs") that are aggressively trying to take away customers in their larger and more profitable urban and suburban exchanges. Most non-rural ILECs are publicly traded, and are required to invest in projects and ventures with the greatest profit potential in order to maximize their dividends to their shareholders as well as their stock prices and bond yields. Rural exchange upgrades generally lack potential profits large enough to compete with the other investment alternatives available to non-rural ILECs. And even among the local exchange investment alternatives available to non-rural ILECs, rural exchange upgrades have much less profit potential than urban and suburban exchange upgrades, as well as much less urgency to respond to aggressive competition from cable operators and CLECs who are competing with non-rural ILECs primarily in urban and suburban areas.

WTA is not aware of any data or studies regarding the effectiveness of the High Cost Model Support program and/or the Interstate Access Support program in stimulating investment by non-rural ILECs in their rural exchange areas.[13] WTA has no objection to the continuation of these programs at their present levels, to the modification of these programs in response to the Tenth Circuit's *Qwest II* remand,[14] or to their expansion if the Commission and/or the Congress determine that larger non-rural ILEC POLR programs will be effective in encouraging additional investment and improving the quality of service in the rural areas served by non-rural ILECs.

WTA asks only that any such increases in non-rural ILEC POLR support not be paid for by decreases in the POLR support that is critically needed by rural ILECs. Rural

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[13] Some state commissions have required non-rural ILECs to upgrade their rural exchanges by imposing quality of service requirements and conducting compliance audits.
[14] *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

ILEC POLRs are much smaller companies serving the much more high-cost and sparsely populated rural areas that the former Bell System companies did not want to serve. Rural ILEC POLRs continue to differ significantly from non-rural ILEC POLRs in a host of other ways, including economies of scope and scale, financial and technical resources, and access to capital. Finally, and perhaps most important, rural ILEC POLRs have an excellent record of investing in their networks but need continued sufficient and predictable High-Cost support to obtain and repay the necessary investment loans and to operate their networks, whereas non-rural ILEC POLRs have plenty of financial resources but little incentive to invest in their rural exchanges because of the plethora of profitable business opportunities and competitive priorities facing them. Because of these critical and substantial differences, high-cost support for rural ILEC POLRs and non-rural ILEC POLRs should not be calculated and distributed by the same program, mechanism or standard.

C. Conclusion

WTA agrees that the substantial additional obligations and costs imposed upon Providers of Last Resort mandate separate and specific high-cost programs for their support. It believes that the critically needed and highly successful Provider of Last Resort programs for rural ILECs should be continued so that these small carriers can continue to invest in their networks as rural service needs and demands grow. WTA also supports the continuation, modification or growth of separate Provider of Last Resort programs for non-rural ILECs as long as such programs are not funded at the expense of the POLR programs of rural ILECs.

IV

WTA Supports a New Broadband Program

WTA supports the concept of a new Broadband Program within the Universal Service Fund that would provide grants for the construction in areas with no existing "broadband" service ("unserved areas") of state-of-the-art "broadband" facilities under the Commission's definition of "broadband" at the time of grant. At such time as there are no further unserved areas, WTA would also support grants for the upgrade of outmoded and inadequate "broadband" facilities to the state-of-the-art definition of "broadband" in areas with substandard broadband service ("underserved areas"). *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 12.

WTA believes that the two-year Rural Broadband Pilot program proposed by AT&T in the present dockets in July 2007[15] serves as a good blueprint for implementing this concept. The AT&T pilot program contemplates a potential funding level of $1.0 billion per year for one-time grants to technically qualified providers to construct new "broadband" infrastructure in rural areas. The Commission would need to define periodically the eligible "unserved" or "underserved" areas, as well as the bandwidths and transmission speeds that would constitute "advanced telecommunications capability." It would also need to establish and monitor financial qualifications, deployment schedules and service commitments. One or more delegated authorities (*e.g.*, USAC or state commissions) could process and review applications, and the Commission could then rank qualified applications and select the grant recipients.

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[15] Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc. to Chairman Kevin J. Martin et. al., WC Docket No. 05-337 and CC Docket No. 96-45, dated July 16, 2007 Initial Consolidated Comments of the Western Telecommunications Alliance, WC Docket No. 05-337 and CC Docket No. 96-45, April 17, 2008

Whereas any qualified wireline or wireless carrier should be eligible to apply for and receive grants to construct Commission-defined state-of-the-art "broadband" facilities in designated "unserved areas," WTA believes that the new Broadband Program should be focused and used primarily to encourage non-rural ILECs, mid-sized rural ILECs and wireless carriers to invest in broadband infrastructure in unserved rural pockets of larger study areas that do not qualify for support from the Provider of Last Resort and Mobility programs. It is WTA's understanding and belief that there are a substantial number of rural pockets without any "broadband" service or with substandard broadband service within the study areas of larger ILECs. Given that the construction of rural broadband infrastructure is and will continue to be very expensive, it is likely that the construction of state-of-the-art "broadband" infrastructure to serve "unserved" and "underserved" rural pockets within non-rural and mid-sized ILEC study areas will cost tens (or possibly hundreds) of billions of dollars. If these costs were imposed upon the federal high-cost support programs or upon the entire Universal Service Fund within a relatively brief period, the resulting expansion of the Fund and increase in the contribution factor would be unsustainable. However, by giving large and mid-sized ILECs and wireless carriers access to a grant program that can prioritize and schedule new broadband infrastructure construction at a pace and budget acceptable to the Commission and Congress, steady progress can be made toward ubiquitous broadband service in high-cost rural portions of large urban-rural study or service areas at an annual level of additional high-cost support that is acceptable, sustainable and controllable. In other words, the Broadband Program constitutes a promising opportunity to advance the

goal of more ubiquitous broadband service throughout the United States, while maintaining control over the size and rate of growth of high-cost programs.

Whereas state commissions are fully capable of identifying "unserved" and "underserved" areas within their states and evaluating the sufficiency of proposals to construct broadband facilities to serve such areas, WTA strongly believes that the Commission rather than the states should administer the new Broadband Program. This determination is based upon the fact that the number and cost of proposals to construct new "broadband" facilities in "unserved" and "underserved" areas is certain to exceed the amount of money available for grants, at least during the early years of the Broadband Program. A national administrator like the Commission will be necessary to evaluate needs and priorities, and to determine in a reasonable and equitable manner how each year's grants should be distributed among carriers, unserved and underserved areas, states and regions.

In sum, WTA agrees with the Joint Board's recommendation for a new Broadband Program, and proposes that it be implemented along the lines of the Rural Broadband Pilot grant program proposed by AT&T. The key here is to begin making progress toward ubiquitous broadband service throughout the United States without placing sudden or massive new funding demands upon high-cost programs that would render them unsustainable and/or threaten continuation of the existing support relied upon by smaller carriers.

V

WTA Supports a New and Cost-Based Mobility Program

WTA supports the establishment of a separate Mobility Program within the overall Universal Service Fund to support investment in wireless infrastructure and services in rural and other high-cost areas. WTA is aware that the Joint Board proposes to limit its proposed Mobility Fund primarily to support for the construction of new facilities for the provision of wireless voice services in "unserved" areas. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 16. WTA believes that the Mobility Program should support both wireless infrastructure investment and operations in high-cost rural areas.

Wireless carriers offer services that are predominately complementary or supplementary to, rather than competitive with, the services of wireline ILECs. The substantial majority of American households (both in urban and rural areas) subscribe to both wireline and wireless services. As the Commission has recognized, "wireless competitive ETCs ["CETCs"] do not capture lines from the [ILEC] to become a customer's sole service provider, except in a small portion of households… [but rather] largely provide mobile wireless telephony service in addition to a customer's existing wireline service." *Identical Support Rule NPRM* at par. 9. The typical American household subscribes to wireline service for its basic voice service and Internet access, while individual household members (including adolescents and increasingly younger children) often have their own wireless phones.[16] Likewise, virtually all businesses

[16] One reason for the recent rapid growth of wireless CETC support is that some wireless CETCs in high-cost rural areas have been claiming and receiving portable support under the "identical support rule" for

subscribe to single-line or multi-line local exchange telecommunications service from a wireline carrier, while many of their employees carry business or personal wireless phones.

Wireline POLRs and wireless carriers should receive high-cost support from different programs because they provide complementary services that serve different consumer needs with different networks and technologies subject to different costs and pricing patterns and different regulatory regimes. The current portable support mechanism based upon the "identical support rule" [47 C.F.R. §54.307(a)] has resulted in the receipt by wireless CETCs of portable high-cost support bearing no perceptible relation whatsoever to their actual costs, has distorted the economic incentives of wireless carriers regarding market entry and investment, and has contributed significantly to the skyrocketing recent growth of high-cost support programs.

The establishment of a separate Mobility Program for wireless infrastructure investment and services in high-cost areas will eliminate the reason for and basis of the existing "identical support rule." Future high-cost wireless support from a separate Mobility Program can and should be calculated and distributed on the basis of the actual costs of wireless networks rather than unrelated wireline ILEC costs.

WTA believes that the major design issue for a separate Mobility Program will be the number of competing wireless carriers that will be supported in each particular high-cost wireless market. Unfortunately, a primary legacy of the "identical support rule" is the existence of multiple wireless CETCs in many rural ILEC study areas who have

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multiple members of the same rural households. Whereas a rural ILEC might receive $25 in monthly per-line support for the single wireline it provides to a rural household, a rural wireless CETC might receive $100 in monthly portable support for the four "lines" in furnishes to the mother, father and two children living in the same rural household.

entered such markets, among other potential reasons, to obtain the portable high-cost support of the rural ILEC. For example, there are 16 North Dakota study areas with six or more designated CETCs, 26 Wisconsin study areas with five or more designated CETCs, and 50 Iowa study areas with four or more designated CETCs.[17] In such markets served by multiple wireless CETCs, the receipt of Mobility Program support by some wireless competitors, but not others, is likely to have a substantial adverse impact upon competition. At the same time, the Commission may not be able to justify the provision of Mobility Program support to more than a certain number of wireless ETCs in the same high-cost rural market. WTA does not have a specific proposal at this time for resolving this difficult and sensitive issue.

WTA does believe that reasonable and accurate accounting principles and methods can and should be developed and implemented to substantiate the actual wireless costs that will be necessary to calculate and distribute Mobility Program support. Recipients of virtually all types of federal, state or local governmental aid are required to state and justify their finances, costs or other bases why they should be deemed eligible to receive such support. Moreover, Section 254(e) of the Act requires recipients of universal service support to use it only for the provision, maintenance and upgrading of facilities and services for which the support is intended. None of such needs and uses can be substantiated without detailed and accurate financial and/or cost accounting statements and supporting data. Virtually all wireless carriers maintain financial accounts and

[17] McLean & Brown, *Universal Service: Rural Infrastructure at Risk*, Release 3.0 (October, 2007) at Appendix B.

prepare financial statements for their owners, shareholders and/or lenders pursuant to Generally Accepted Accounting Principles ("GAAP").

If more substantial and uniform cost accounting methods are desired, there are a number of alternatives available to the Commission and the industry. For example, the Wireless Carrier Actual Cost ("WiCAC") accounting proposal advanced by GVNW Consulting and several rural carriers is a cost-based system that employs 23 accounts to calculate wireless "loop" costs in rural areas.[18] In addition, Panhandle Telecommunications Systems, Inc. ("Panhandle"), a rural wireless carrier, CLEC and Internet service provider (and subsidiary of a rural ILEC), has proposed tiered formulas for the calculation of wireless costs and high-cost support on the basis of a national average cost per wireless minute.[19]

Wireless ETCs should be required to maintain their Mobility Program accounts and calculate their costs on the basis of their state or regional service or study areas. For example, accounts and costs can be based upon: (a) the areas served by a wireless carrier within a state; (b) the areas served by a wireless carrier within a licensed Metropolitan Service Area, Rural Service Area, Major Trading Area or Basic Trading Area; or (c) the areas served by a wireless carrier from a single Mobile Telephone Switching Office. Such costs should then be compared with the relevant national average in order to determine how much support (if any) the wireless ETC should receive for the particular service or study area.

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[18] See Letter of Jeffry H. Smith to Marlene Dortch, Secretary, regarding Ex Parte filing in WC Docket No. 05-337 and CC Docket No. 96-45, dated November 7, 2007.

[19] See "Federal USF Distribution Proposal for Multiple ETCs" submitted by Panhandle Telecommunications Systems, Inc. in CC Docket No. 96-45 on January 11, 2008.

WTA notes that some larger wireless carriers may have "unserved" or "underserved" rural pockets within larger service or study areas that do not qualify for high-cost support. When such wireless carriers desire to construct wireless broadband facilities to serve these high-cost rural pockets, they should be eligible to apply for and receive grants from the Broadband Program.

In sum, WTA agrees that the Commission should establish a separate Mobility Program within the Universal Service Fund to provide support to wireless carriers with high-cost service areas. The proposed new Mobility Program should then distribute support on the basis of the actual costs of wireless carriers in qualifying high-cost wireless service or study areas.

VI

WTA Opposes an Integrated Cap on High-Cost Programs

WTA understands that universal service support is not an unlimited resource, and cannot grow indefinitely. At the same time, if the Bush Administration, the Congress and the Commission really want the United States to become a world leader in the deployment of broadband networks and advanced services, they need to recognize that the construction and upgrading of broadband infrastructure in rural areas is going to be very expensive and will require significant increases in high-cost support.

As the Joint Board recognized, high-cost support for rural ILECs has been flat or declining since 2003. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 39. High-cost support to all ILECs has remained at approximately $3.0 billion since

2002, and has been declining recently due to the increasing bite of the cap on the high-cost loop support received by rural ILECs.[20]

The Joint Board properly recognized that it is in the public interest to maintain intact the existing rural ILEC support mechanisms within the proposed POLR programs, and to continue basing support from these mechanisms upon embedded costs. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 19 and 39. It applauded rural ILECs for doing "a commendable job of providing broadband to nearly all of their customers," and recognized the effectiveness of the existing rural ILEC support mechanisms "in maintaining an essential network for POLRs and in deploying broadband." *Id.* at par. 30.

WTA believes that the existing POLR programs for rural ILECs should be maintained at approximately their present levels during the immediate future, but that they will need to be increased as the definition of "broadband" evolves and as infrastructure upgrades and expansions become necessary to meet demands for greater bandwidth and more advanced services.

However, WTA is very concerned that the Joint Board stated its intention that the new Broadband Program and the new Mobility Program will each receive significant funding, and then recommended an overall cap of $4.5 billion (approximately equal to the 2007 level) on total high-cost funding. *Joint Board Comprehensive USF Reform NPRM, Appendix A* at par. 24 and 26. WTA believes that a major impact of an overall cap on high-cost support will be to reduce high-cost POLR support for the rural ILECs

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[20] *High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 and CC Docket No. 96-45, Recommended Decision, FCC 07J-1, released May 1, 2007 at Appendix A.

that need it the most and that have used it most productively and successfully. The existing caps on High Cost Loop and Local Switching Support have already reduced support for many rural ILECs below the "sufficient" levels required by Section 254(b)(5) and 254(d).

An overall High-Cost support cap is essentially a "zero-sum" game. To place rural ILECs receiving recently stable or declining high-cost support under an overall cap with non-rural ILECs, wireless carriers and broadband providers (that are scheduled to receive new and increasing amounts of high-cost support) guarantees that the rural ILECs will be subjected to substantial and virtually automatic reductions in their high-cost support. WTA members and other rural ILECs are small companies that do not have deep pockets or access to capital markets, and that have come to depend upon federal high-cost support for critical portions of their revenue streams. They will not be able to continue their "commendable job" of serving their rural customers if their high-cost support is cut substantially by an overall cap.

Finally, WTA notes that a modification of the Universal Service Fund contribution mechanism to a numbers-based or connections-based system (or to a hybrid numbers-bandwidth or connections-bandwidth system) may relieve some of the conflict between the goal of ubiquitous rural broadband deployment and the goal of relieving the pressures on the existing interstate revenues contribution mechanism. It is WTA's understanding and belief that sufficient High-Cost support programs (as well as the Schools and Libraries, Rural Health Care and Lifeline/Link-up programs) can be funded by a contribution of approximately $1.00 to $1.50 per month per number (or about $12.00 to $18.00 per year per number). This annual cost is roughly the range of the cost

of a single large pizza without or with toppings, and should not affect the affordability of telecommunications service for more than a very small handful of customers. In fact, it would replace current Federal Universal Service Fund pass-throughs that are greater than $1.00 to $1.50 per month for many telecommunications customers.

VII

WTA Opposes Reverse Auctions

WTA opposes the use of reverse auctions because they are replete with investment disincentives, gaming opportunities and design complexities that are likely to produce unintended and unwanted adverse consequences upon service and competition. Any potential high-cost support reductions that might be produced by reverse auctions will be greatly outweighed by the harm they will cause.

A. Investment Disincentives

As indicated above, the primary and overriding purpose of all High-Cost support is the encouragement and facilitation of investment in essential telecommunications infrastructure in rural and other high-cost areas. Because rural infrastructure construction projects and upgrades do not serve large numbers of customers and do not have large revenue or profit potentials, rural service providers and their investors and lenders require reasonable assurances of cost recovery before they can make such investments. This is particularly true for rural ILECs and other small carriers that lack substantial financial resources, that rely upon high-cost support for major portions of their revenue streams, and that cannot afford uncertainty or revenue shortfalls if they are to obtain and repay investment loans.

The very prospect of a "single winner" auction in a rural area served by multiple high-cost support recipients will halt further infrastructure investment in the market until the "winner" is selected and the amount of future support is determined. Once the prospect of a reverse auction renders future high-cost support uncertain, no rational lender, investor or owner will advance investment capital to a carrier that depends upon high-cost support for a substantial portion of its cost recovery until the existence and amount of such support again becomes reasonably predictable. Even after the auction is completed, the "winner" may have been forced to participate in a "race to the bottom" in which it bid for a low and insufficient amount of support in order to avoid losing all of its support. During the remaining years of the auction term, such an insufficient "winning bid" will require the "winner" to cut back significantly upon its investment projects and service quality. Meanwhile, the auction "losers" and their investors and lenders will have to determine whether they can continue to operate and compete in the market against the "winner" without any high-cost support until the next auction. Few auction "losers" will remain, and the few that do so will be likely to operate on shoestring budgets and to try to squeeze as much remaining revenue as possible out of the existing networks while minimizing operating and maintenance expenses and making no further investments. For the rural ILEC that loses a "single winner" auction and sees 25-to-50 percent of its revenue stream disappear, the most likely result will be a bankruptcy petition.

The alternative "multiple winners" auction format does not represent a substantial improvement, and is also likely to reduce investment incentives and service quality in high-cost areas. Prior to such auction, the uncertainty regarding the "winner" and the future amounts of support for the "winner" and the "losers" will discourage infrastructure

investment and financing. In a "winner gets more" auction, the "winner" will have the incentive to reduce the amount of its bid below the amount sufficient to support its investment and operating needs in order to obtain more support than its competitors. Whereas a "multiple winners" auction will not have the same stark impact as the "single winner" version, it will still result in at least those not finishing in first place receiving less than sufficient high-cost support, and encourage them to reduce their investment plans and/or service quality. In addition, it is not clear whether a "multiple winners" auction will reduce the overall amount of high-cost support by an amount sufficient to justify the investment disincentives, service quality reductions, and auction costs.

The term or frequency of auctions will also produce major disruptions in investment incentives and financing. The critical defect of the five-year auction term under consideration, *Reverse Auctions NPRM* at par. 47, is that most telecommunications equipment has much longer useful lives, depreciation or cost recovery periods and loan repayment schedules. The very fiber optic cable that is the bedrock of evolving wireline broadband networks has a useful life/depreciation period of 25-to-30 years.[21] No reasonable rural carrier is going to make a substantial investment to purchase and install new fiber trunks or loops, and no investor or bank is going to provide the loan for such investment, if the high-cost support revenue stream needed by the carrier to repay the investment loan may be lost or significantly reduced in a reverse auction every 5 years (or even every 10 years) during the 25-to-30 year cost recovery and loan repayment period for the investment.

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[21] *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, Report and Order in CC Docket No. 98-137, Memorandum Opinion and Order in ASD 98-91, FCC 99-397, released December 30, 1999, at Appendix B. Whereas smaller ILECs are not subject to the Commission's depreciation prescription process, they generally use comparable depreciation lives.

B. Gaming Incentives and Dangers.

Subsidy auctions have been used in some "green field" situations, primarily in Latin America, to select individual carriers to provide defined packages of payphone or other telecommunications services to previously unserved areas. They are more practicable and equitable in such situations because none of the participants have substantial existing infrastructure investments in the subject auction areas that will be de-valued or become worthless if they lose the auctions. Rather, "green field" auctions focus predominately upon the valuation of future business and investment opportunities, and entail minimal downsides for the losing bidders.

In contrast, the portions of Rural America likely to be subject to reverse auctions are generally served by multiple wireline and/or wireless carriers that have substantial existing network investments and business operations to defend. Moreover, these existing carriers employ differing technologies and facilities; serve areas of differing sizes, terrains and populations; and offer differing types, qualities and packages of services pursuant to differing prices and pricing plans. These conditions and circumstances will create virtually unavoidable temptations and incentives to "game" reverse auctions by saying or doing whatever is necessary to win now and trying to avoid or ameliorate the consequences later.

As indicated above, in "single winner" auctions, carriers will be tempted to bid for low and insufficient support amounts in order to receive something rather than nothing. Even in "multiple winners" auctions, carriers will have significant incentives to bid for low and insufficient support amounts in order to gain competitive advantages over other bidders and to drive out smaller carriers lacking the financial resources to withstand

substantial support decreases. These situations will be exacerbated where carriers of differing sizes and differing service areas compete in the same reverse auction, and the larger carriers with operations elsewhere can make predatory low bids in order to treat the auction area as a temporary loss leader while they drive out their smaller competitors.

WTA does not believe that the Commission will be able to prevent reverse auctions from turning into "gaming" and anti-competitive opportunities in many markets, or that it will be able to punish or mitigate the effects of such tactics after the auctions. Once a bidder has won a reverse auction with an unreasonably low bid and weakened or driven out its competitors, the Commission will have little or no leverage to stop the "winner" from postponing or cutting back on investment projects or reducing its services or service quality. If the "winner" has become the only or dominant carrier in the market, there will be little that can be done to punish it without adversely impacting the customers in that market who now have significantly reduced service alternatives. In fact, the Commission and state commissions are likely to be faced with subsequent petitions from some low-bidding auction "winners" for increases in high-cost support and/or local service rates on the grounds that they cannot continue providing adequate service to their customers (who now have fewer service alternatives) without additional money.

Neither this Commission nor state commissions have the resources to monitor the investment and service decisions of service providers in hundreds or thousands of rural auction areas, and to take effective enforcement actions against "winners" who won such auctions by employing provably unreasonable low bids for provably improper purposes. As the litigation following the C Block PCS auction demonstrated, the courts are

reluctant to allow the Commission to assess substantial penalties and forfeitures against entities that it believes have misused or failed to comply with its auction processes. *NextWave Personal Communications, Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. June 22, 2001).

C. Auction Design Complexities

The design of equitable and effective reverse auctions is extremely difficult and complicated due to the variety and complexity of the existing rural telecommunications industry and network. Existing carriers serving rural areas employ differing technologies and facilities; serve areas of differing sizes, terrains and populations; and offer differing types, qualities and packages of services pursuant to differing prices and pricing plans. Design flaws and omissions can have very serious unforeseen and unwanted consequences.

Size of Auction Area. The appropriate geographic area or areas for reverse auctions is an extremely difficult and complex design decision. The service areas of existing rural carriers are very different in size and scope, and generally overlap only partially with one another. Rural and non-rural ILEC networks serve study areas that vary in size from a single exchange to most of a state. Wireless networks serve a variety of large and small regions that may cross one or more state boundaries such as Metropolitan Statistical Areas ("MSAs"), Rural Service Areas ("RSAs"), Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs"). Wireline CLECs have substantial discretion to select and design their own networks and service areas.

Some have suggested that the Commission employ small auction areas such as wire centers, ZIP codes, census tracts, census block groups or counties. Whereas the

Commission believes that an advantage of such small areas is that they do not necessarily correspond with any wireline or wireless service area, *Reverse Auctions NPRM* at par. 20, it can also be a major disadvantage. Carriers construct and operate integrated networks, and do not generally make investment and service decisions, or keep records, for separate zip codes or census tracts within those networks. How will a carrier be expected to make infrastructure investments, operate and maintain its network, and set rates for its customers if it wins reverse auctions for some of the zip codes or census tracts within its network, and loses those for others? Moreover, even for the zip code or census tract auctions that it wins, how will the carrier invest, operate and charge for its services if it has to bid (and then receives) significantly different amounts of high-cost support for each zip code or census tract?

Some small areas may be so high-cost, and/or so sparsely populated and devoid of scope and scale economies, that no carrier will bid to serve them or that the only potential bidder may request a very large amount of high-cost support to do so. The setting of "reserve prices" will not solve this problem, because costs and high-cost support have not previously been allocated or calculated on a zip code or other small area basis. If reserve prices are established on the basis of averaged per-line support for carrier networks or even current disaggregated areas, small high-cost areas will become extremely unattractive. Hence, small auction areas can have the unintended consequence of eliminating or reducing service to certain high-cost areas, or of substantially increasing the high-cost support provided to such areas.[22]

[22] Small auction areas will also eliminate the cost averaging that presently precludes many large study areas from qualifying for high-cost support. For example, determining high-cost support on a wire center basis

At the other extreme, the designation of large auction areas such as Economic Areas, MSAs, MTAs and BTAs would ensure domination of reverse auctions by the large national or regional ILECs and wireless CETCs that would likely be the only entities capable of serving most or all of such areas. The likely result would be very similar to the current service patterns of the large wireline and wireless carriers – excellent service in urban and suburban areas, with declining service and quality as population density decreases and distances and costs increase.

Services Covered. Prospective reverse auction participants provide very different types, qualities and packages of services pursuant to different prices and pricing plans. WTA does not see any viable way for the Commission to superimpose equitable auction bid evaluation standards upon this existing market place.

The Commission could allow each bidder to propose a level of USF support for its own unique existing configuration of services, quality and rates, and then try to make a reasonable and legally sustainable choice among the resulting different bids for different configurations. The end result would be likely to resemble the subjective "beauty contests" that used to be employed to select the initial winners of comparative broadcast and comparative cellular hearings, and would almost certainly end up in appellate court with equal frequency.

In the alternative, the Commission could specify a common set of services and rates which the winning bidder would be required to offer. This set of services could be: (a) an ideal set of desired services; (b) a "best practices" set of services; (c) an averaged

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would permit non-rural ILECs to receive support in hundreds or thousands of additional wire centers located in study areas where they do not presently qualify for such support.

set of services; or (d) a lowest common denominator set of services. It could be determined on a national, state or local basis. This approach would enable reverse auctions to function more like eBay and spectrum auctions where all bidders are valuing and bidding for the same item (although this would also require the problem of differing service areas to be resolved). However, it would force the Commission or state commissions to involve themselves extensively in service, marketing and pricing oversight from which they have been trying to withdraw. It could also encounter substantial consumer resistance and complaints, particularly if winning bidders were required to modify their existing rates, rate plans and/or service packages.

Bidding for service configurations is also complicated by the fact that ILECs have significantly higher costs because they are forced to comply with more onerous and expensive regulatory requirements. For example, POLR obligations have long saddled ILECs with higher costs than CLECs and wireless carriers by requiring them to serve high-cost, low-revenue customers and communities that would not be likely to be served if ILECs were free to make purely economic investment and service decisions. In contrast, CLECs can design their own service areas, while cellular and PCS build-out requirements permit wireless carriers to leave many sparsely populated and high-cost portions of their license areas unserved. ILECs must also comply with many other federal and state regulatory requirements not applicable to CLECs and wireless carriers, including equal access, rate regulation, accounting and recordkeeping requirements, and reporting obligations.

VIII

Conclusion

WTA supports High-Cost support reforms that comply with Section 254 and that preserve successful and effective existing programs.

In particular, WTA urges continuation of the cost-based POLR programs that have enabled rural ILECs to invest in the infrastructure necessary to provide quality, affordable and reasonably urban-comparable services and rates to their rural customers, and that remain essential for the future infrastructure upgrades needed to continue bringing more and more advanced services to Rural America. These POLR programs are not broken or in need of fixing, but rather have been very successful and effective.

WTA supports the inclusion of "broadband" services as supported universal services. However, WTA is very aware of the fact that the deployment of broadband infrastructure is very expensive, and asks the Commission to be very sensitive to the impacts that its future definitions of "broadband" and its broadband implementation requirements will have upon the costs of carriers and upon their high-cost support needs.

WTA supports separate programs within the Universal Service Fund: (1) for non-rural POLRs; (2) for providers of new broadband facilities in "unserved" or "underserved" pockets within service areas that do not otherwise qualify for High-Cost support (Broadband Program); and (3) for wireless carriers (Mobility Program). However, WTA opposes the inclusion of rural ILEC POLR programs (which have not grown during recent years) under an integrated cap with these other programs that are likely to require substantial additional funding.

Finally, WTA opposes reverse auctions because they are replete with investment disincentives, gaming opportunities and design complexities that will produce unintended and unwanted adverse consequences upon infrastructure investment, service and competition.

Respectfully submitted,
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