

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF  
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

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**I. INTRODUCTION AND SUMMARY**

Texas Statewide Telephone Cooperative, Inc. (TSTCI) offers these comments in response to the Commission’s three Notices of Proposed Rulemaking<sup>1</sup> concerning the Federal-State Joint Board on Universal Service’s (Joint Board’s) recommendation on comprehensive reform of the high-cost Universal Service support mechanism; the elimination of the “identical support” rule; and the merits of using reverse auctions in distributing high-cost support to eligible telecommunications carriers (ETCs). TSTCI is an association representing 40 small, rural incumbent telephone companies and cooperatives in Texas (see Attachment 1).

TSTCI shares the Commission’s concern regarding the seismic growth<sup>2</sup> in the high-cost universal service fund and supports reforms in the universal support distribution methodology that will reign in the growth of this fund, while ensuring that the principles of universal service remain intact.

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<sup>1</sup> *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, Notices of Proposed Rulemakings (NPRMs), WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), FCC 08-5 (Reverse Auctions NPRM), and FCC 08-22 (Federal-State Joint Board NPRM)(rel. January 29, 2008).

<sup>2</sup> The seismic growth of the fund has been caused by use of the identical support rule for providing support to competitive carriers. As Chairman Martin pointed out in Opening Remarks at a Federal-State Board of Universal Service *En Banc* Meeting in Washington, DC on February 20, 2007, “...almost all of the growth in high-cost universal service is largely as a result of CETC access to high cost support.” CETC support has grown from over \$100 million in 2003 to over \$1 billion in 2006.

TSTCI has previously filed comments opposing the use of reverse auctions to determine high-cost universal service funding and recipients of the funding.<sup>3</sup> After reviewing the plethora of comments and studies, both for and against reverse auctions, TSTCI has seen nothing that mitigates its belief that auctions are not a viable alternative for reforming the high-cost universal service support mechanism. The use of auctions for the determination of universal service support is an untested theory that ultimately will adversely affect the principles of universal service and ultimately the rural customers these principles were meant to serve.

Instead, TSTCI believes that the most effective way to bring financial stability to the high-cost fund while upholding the principles of universal service, and ensuring competitive neutrality, is through the elimination of the “identical support rule” for competitive eligible telecommunications carriers (CETCs). Under current rules the CETCs receive universal service support based upon the support received by the incumbent local exchange carrier (ILEC) in whose study area the CETC provides service. Support to ILECs is cost-based and reflective of their cost of providing service; support to CETCs is not. If instead, support to each CETC is based upon each CETC’s own costs, high-cost support will be based upon the actual need relative to the cost of providing service in that particular rural area. This method also does not discriminate against the different technologies used by carriers. Therefore, TSTCI supports the Joint Board’s recommendation and the Commission’s tentative conclusion that the identical support rule be eliminated and support to a CETC be based upon its own costs.

The Commission also seeks comment on other recommendations of the Joint Board for comprehensive long term reform. The Joint Board has proposed that high-cost support be

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<sup>3</sup> Reply Comments of Texas Statewide Telephone Cooperative, Inc. (TSTCI), WC Docket No. 05-337 (filed July 3, 2007); Comments of TSTCI, WC Docket No. 05-337 (filed May 31, 2007); Reply Comments of TSTCI, WC Docket No. 05-337 (filed November 8, 2006); Comments of TSTCI, WC Docket No. 05-337 (filed October 26, 2006); Comments of TSTCI, CC Docket No. 96-45 (filed May 5, 2003).

provided through three new and separate funds: Provider of Last Resort Fund, Wireless Fund, and Broadband Fund. While TSTCI does support a change in the definition of supported services to include broadband, TSTCI does not support establishing separate funds as recommended by the Joint Board. To do so is unnecessary and will only create additional administrative costs, particularly for state regulatory bodies whose responsibilities would greatly increase if the Joint Board's recommendations are adopted.

## **II. REVERSE AUCTIONS ARE NOT THE ANSWER TO UNIVERSAL SERVICE REFORM AND SHOULD BE REJECTED**

In the NPRM on reverse auctions, the Commission tentatively concludes that an auction mechanism should be used to determine high-cost support and seeks comment on a list of questions regarding how best to design and implement this new methodology. TSTCI contends that the Commission has reached the wrong conclusion for a means to curtail the growth in the high-cost fund and reform the universal service system. As TSTCI has stated in previous comments, the use of reverse auctions in this manner is only an untested theory, with no empirical data available regarding the use of auctions under the current market conditions in rural high cost areas.<sup>4</sup> There are too many unanswered questions on the best way to construct and implement reverse auctions, particularly in areas with existing infrastructure. The questions are compounded when service is provided utilizing different technologies, with different quality of service standards, in overlapping service areas, and provided under different regulatory obligations – as is the case currently in most rural areas of the United States.

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<sup>4</sup> Comments of TSTCI, WC Docket No. 05-337, filed October 20, 2006 page 3.

**A. THERE IS NO EMPIRICAL DATA FOR AUCTIONS UNDER THE SAME MARKET CONDITIONS AS IN THE UNITED STATES**

In 2006 the Joint Board asked if auctions had been used for similar purposes elsewhere and if these applications shed any light on the advisability of using auctions for universal service. TSTCI stated in its comments at that time, and reiterates herein that it does not believe there is any compelling evidence based on real-life circumstances that reverse auctions are a viable option for determining and distributing universal service support.

For instance, some parties mentioned spectrum auctions in support of using auctions to determine universal service support,<sup>5</sup> and the Commission in its current NPRM states that a reverse auction design should make use of the Commission's experience with spectrum auctions. While spectrum auctions may have been successfully used to award spectrum licenses, although not without some serious problems, TSTCI believes there is nothing that demonstrates how a reverse auction would be similarly successful for the distribution of universal service support, given the current services and infrastructure provided by the incumbent carriers.

A spectrum auction awards a license to the highest bidder and generates revenue for the Commission as the entity auctioning the spectrum – similar to most competitive bidding processes. With its new license, the winning bidder then begins its network build-out. This build-out can best be described as a “greenfield” build-out where existing “infrastructure” does not exist or where stranded investments will not occur for the current infrastructure provider, unlike the situation when the reverse auctions concept is used to distribute universal service support.

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<sup>5</sup> See Comments of CTIA – The Wireless Associations, WC Docket No. 05-337, CC Docket No. 96-45, page 5; Comments of Verizon and Verizon Wireless, at 14

With a reverse auction for universal support funds, the low-cost bidder(s) is the most likely winner, and the amount of universal service support is not determined by the bidder's actual costs. The great majority of universal service support is provided for high-cost areas that are already being served by existing providers, some of whom have made substantial investments to provide service to existing customers. Winning an auction based upon a low-cost bid will motivate an ETC to do only the minimum required to meet service obligations. Concerns regarding the loss of future auctions and the value of investments going to any future auction winner will contribute to minimum quality and services being available if regulators do not implement aggressive enforcement procedures.

TSTCI believes the Commission should use great caution before using spectrum auctions as a model or proof that reverse auctions are appropriate for universal service support. As noted in the National Telecommunications Cooperative Association's (NTCA's) comments, "...competitive procurement and alternative regulatory mechanisms should be compared under realistic conditions related to the nature of the service that is being provided."<sup>6</sup> TSTCI does not believe the success of spectrum auctions is indicative of the results that might occur when applied to rural service areas of the ILECs.

The same can be said for other examples given of auctions in South America and Africa. As NTCA points out, most of the successful auctions take place in greenfield or underdeveloped areas or involved significant upgrades to the existing infrastructure, and it is unclear how relevant these circumstances are in the United States.<sup>7</sup> The U.S. market is decidedly different than most areas of the world where a successful auction may be measured by increased service

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<sup>6</sup> National Telecommunications Cooperative Association (NTCA) Initial Comments, Attachment A at 2

<sup>7</sup> NTCA Initial Comments, Attachment A at 12, 13.

coverage and stimulation of infrastructure investment. As explained below, in the U.S., reverse auctions may have the opposite effect by discouraging investment.

To use auctions to determine universal service support, when there is no successful track record, is simply too risky. While the Commission may say that with the use of reverse auctions as the methodology for distributing universal service support, it has reformed the universal support mechanism, and even (possibly) that the amount of support has been curtailed, a small mistake in the auction design or implementation can jeopardize the principles of universal service and harm the very rural customers universal service is meant to protect.

#### **B. REVERSE AUCTIONS DISCOURAGE INVESTMENT**

Reverse auctions, in and of themselves, curtail rather than encourage investment in the rural high cost areas. Carriers who are fully committed to serving a rural area and already have substantial investment in that area, such as rural ILECs, will be hesitant to make further investments, including upgrades, because of the uncertainty of cost recovery if future universal service support can be lost due to auctions. Likewise, as noted by the Rural Cellular Association and the Alliance of Rural CMRS Carriers, a winning bidder in an auction makes investments to deploy infrastructure and services during an auction term. However, the incentive for investment is dampened because of the risk that the carrier may not fully recover this investment if it does not win the next auction for a subsequent term.<sup>8</sup> Stranded investment is a very serious problem that would have to be dealt with before reverse auctions are put into place.

Universal service high-cost support has historically been a cost recovery program that promotes network investment in areas where it would otherwise not be feasible to provide quality service at affordable rates. The networks necessary to provide, operate, and maintain quality service in these areas require significant infrastructure investments with regulatory

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<sup>8</sup> Reply Comments of Rural Cellular Association and the Alliance of Rural CMRS Carriers at 17 (filed July 2, 2007).

defined terms for cost recovery. Many states, including Texas, regulate the depreciation schedules of the rural ILECs, and depreciation of the wireline network infrastructure is lengthy. The receipt of universal service support has been and continues to be critical to the continuation of adequate, affordable service to consumers in the rural areas that is comparable to those services offered in urban areas. The need for “predictable and sufficient” universal service support mechanisms to preserve and advance universal service is no less today than when first required by law.<sup>9</sup> TSTCI submits that even if the Commission postpones auction in rural areas, the anticipation of auctions will cause a decline in investment.

Financing will also be more difficult and more expensive to obtain, if lenders believe a carrier’s long-term ability to repay may be in jeopardy. To the detriment of customers, higher financing costs would necessarily be passed on to consumers with the result of unreasonably high rates in rural areas. If rural ILECs lose the ability to continue investing in their networks, or their future existence is at risk, some rural areas will be deprived of affordable, reliable basic service, not to mention advanced services. This could become a national security issue if reliable, ubiquitous telephone service is compromised because maintenance of the telecommunications network infrastructure is no longer viable. Universal service support is critical to encourage the continued infrastructure investment necessary to maintain universal service objectives and provide advanced broadband services. The use of auctions to determine support based upon the lowest-cost provider’s costs would mean the demise of the rural telecommunications industry as we know it, as well as the demise of universal service principles. Auctions are not a logical alternative in the rural service areas.

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<sup>9</sup> See 47 U.S.C. §254(b)(5)

### **C. BROAD DIVERGENCE IN AUCTION DESIGN UNDERSCORES RISK**

The Commission's NPRM asks for comments on at least eight issues related to auctions and their design that must be resolved in order to implement an auction mechanism. These issues are eligibility requirements, single winner versus multiple winners, the method of distributing support, geographic areas, universal service obligations, reserve price, auction design, and frequency of auctions. The issues are complex, and without empirical data based upon current market conditions in the United States, it will be extremely difficult, if not impossible, to develop an auction that will fulfill the goals of the Commission while preserving universal service principles. TSTCI believes that an auction process will put at risk the successful universal service program that has brought quality service at affordable rates to rural America.

Throughout the past several years in which the Joint Board has requested comments on various aspects of reverse auctions for universal service distribution purposes, it is apparent that there is a wide range of opinion. TDS Telecommunications Corp. brought up an interesting observation when it noted "...the varying levels of support for – or opposition to – reverse auctions tend to track the commenter's size rather than its industry type. For instance, rural carriers, smaller wireless providers, and mid-sized local exchange carriers (LECs) express skepticism, while larger carriers (and their trade associations) such as the Regional Bell Operating Companies, NCTA, and CTIA are more supportive." The comments of these carriers and associations seem to support Senator Stevens' concern as reported in Communications Daily on the Hearing of the Senate Committee on Commerce, Science, and Transportation. "Stevens told Martin he had concerns about the reverse auction procedures for rural carriers that get Universal Service Fund money. The auction process could cause incumbent carriers operating in

remote communities to be ‘wiped off the map quick’ in favor of nationwide wireless companies that don’t have a stake in local community needs, Stevens said: ‘You need to appreciate how important it is that they [local operators] don’t get left behind.’ He added that some have been in business for decades.”<sup>10</sup>

Even among supporters of the reverse auction concept there is a wide range of opinion in the way auctions should be designed and implemented. About the only thing that is consistent among the supporters is the caveat that a reverse auction must be “properly” designed or structured to work successfully.

There is little agreement on the structure of reverse auctions – ranging from Verizon’s “winner takes all” approach to Alltel and CTIA’s multiple winners proposal. As the National Exchange Carrier Association said, “There is no agreement on the optimum term for service contracts. There is no consensus on the scope, number of types of services that should be offered, or the regulatory treatment of incumbents, stranded infrastructure, eligibility rules, rules governing bid withdrawals or problems with the auction process itself (e.g. collusion, cherry-picking, etc.).”<sup>11</sup>

It seems an impossibility to choose the correct method in each of the eight areas outlined by the Commission in order to implement a successful auction, particularly without real empirical examples. Yet, mistakes in any of these eight areas can be fatal to an auction. Even more important, as stated previously, a mistake in the auction design or implementation can jeopardize the principles of universal service and harm the very rural customers universal service is meant to protect.

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<sup>10</sup> Reply Comments of TDS Telecommunications Corp, pp. 2-3 (filed November 8, 2006)

<sup>11</sup> See Comments of National Exchange Carrier Association, Inc. pp. 5-6 (filed May 31, 2007).

### **III. THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED AND SUPPORT BASED UPON EACH ETC'S COSTS**

TSTCI supports the Joint Board's recommendation and the Commission's tentative conclusion that the identical support rule be eliminated and support to a CETC be based upon its own costs. TSTCI believes that the most effective way to bring financial stability to the high-cost fund while upholding the principles of universal service, and ensuring competitive neutrality, is through the elimination of the "identical support rule" for CETCs. Under current rules the CETCs receive universal service support based upon the support received by the incumbent local exchange carrier in whose study area the CETC provides service. Providing support based upon each CETC's costs will enable the Commission to provide support based upon the actual need relative to the cost of providing service. This method also does not discriminate against the different technologies used by carriers.

As it stands today, the identical support rule may be providing windfalls for many CETCs who receive immediate per-line universal service support for existing customers based on the unrelated costs and investments of small rural ILECs. Some of the largest wireless carriers in the country (who bear a closer resemblance to the Regional Bell Operating Companies than to the small, rural ILECs), receive per line support amounts that were specifically calculated for small, rural carriers. As described by OPASTCO, "Cost-based support for CETCs in rural service areas would introduce the same rationality and accountability into the mechanism for these carriers that already exists for rural ILECs."<sup>12</sup> This would ensure that all ETCs receive sufficient support for their investment in high-cost areas, but eliminate any windfall amounts that have propagated through the identical support rule.

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<sup>12</sup> Comment of the Organization for the Promotion and Advancement of Small Telecommunications Companies, pp. 10-11 (filed May 31, 2007)

#### **IV. UNIVERSAL SERVICE SUPPORTED SERVICES DEFINITION SHOULD BE EXPANDED TO INCLUDE BROADBAND INTERNET SERVICE**

TSTCI wishes to comment briefly on a few aspects of the Joint Board's Recommended Decision. The Joint Board recommends that the Commission revise the current definition of supported services to include broadband Internet service for the following reasons: it will effectively declare an explicit national goal of making broadband Internet service available to all Americans at affordable and reasonably comparable rates; it will legitimize existing support mechanisms that already provide support for broadband-capable facilities; and it should reduce any tendency of existing support mechanisms to provide incentives for broadband deployment only in selected areas. TSTCI agrees with the Joint Board and supports this recommendation to include broadband Internet service in the definition of supported services. TSTCI's member companies, small rural carriers, are committed to provide their customers with the same high quality services available to customers in non-rural areas. However, a broadband universal service policy needs to be established to assist in the deployment of affordable broadband service in rural high-cost areas. The Commission should take into consideration the financial burdens on small rural ILECs to provide broadband service in many high-cost areas particularly at a time when access revenues continue to diminish, and include broadband Internet service in the definition of supported services.

#### **V. ESTABLISHMENT OF THREE DISTINCT FUNDS IS PREMATURE**

The Joint Board has recommended to the Commission that three distinct funds be established, each with separate distribution mechanisms and separate funding allocations: the Broadband Fund, the Mobility Fund, and the Provider of Last Resort Fund. TSTCI urges the Commission to reject this recommendation, or at least delay consideration of establishing these

distinct funds until the identical support rule has been eliminated and each ETC's universal service support is based upon its own costs. Establishing these separate funds will only increase administrative costs at a time when the Commission is seeking to curtail the growth in the high-cost fund. Also the proposed Mobility Fund and the Broadband Fund recommends shifting responsibilities to the states to administer and manage grant programs at a time when many states lack the staff and resources to properly implement procedures and monitor such block grant systems. These state allocation plans may also be more costly and burdensome to administer by placing the Commission in the role of regulating and auditing the states to ensure accountability and compliance.

## **VI. CONCLUSION**

TSTCI understands the necessity for modifications to the current high-cost universal service program in order to stop the explosive growth. However, any modifications must ensure that the principles of universal service are preserved. Based upon the above stated reasons, TSTCI urges the Commission to reject reverse auctions as a method to determine the amount and recipients of high-cost support. Instead, the identical support rule should be eliminated, and all ETCs should receive support based upon their own costs.

TSTCI also urges the Commission to consider the financial burdens to small carriers seeking to bring broadband to rural high-cost areas and adding broadband Internet service to the definition of supported services is clearly within the public interest.

Lastly, the Joint Board's recommendation to create three separate funds should be rejected, at least until the identical support rule has been eliminated, and all ETCs are receiving

support based upon their own costs. Only then should the Commission consider whether three separate funds are necessary and the additional administrative costs are warranted.

Respectfully submitted,

A handwritten signature in black ink that reads "Cammie Hughes". The signature is written in a cursive, flowing style.

Texas Statewide Telephone Cooperative, Inc.

By: Cammie Hughes  
Authorized Representative

**TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.**

Alenco Communications, Inc.  
Big Bend Telephone Company, Inc.  
Brazos Telecommunications, Inc.  
Brazos Telephone Coop., Inc.  
Cameron Telephone Company  
Cap Rock Telephone Coop., Inc.  
Central Texas Telephone Coop., Inc.  
Coleman County Telephone Coop., Inc.  
Colorado Valley Telephone Coop., Inc.  
Comanche County Telephone Company, Inc.  
Community Telephone Company, Inc.  
Cumby Telephone Coop., Inc.  
Dell Telephone Coop., Inc.  
E.N.M.R. Telephone Coop., Inc.  
Eastex Telephone Coop., Inc.  
Electra Telephone Company  
Etex Telephone Coop., Inc.  
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South Plains Telephone Coop., Inc.  
Tatum Telephone Company  
Taylor Telephone Coop., Inc.  
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