

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

**FEDERAL-STATE JOINT BOARD
FOR UNIVERSAL SERVICE**

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**WC DOCKET NO. 05-337
CC DOCKET NO. 96-45**

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

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975 F Street, NW, Suite 550
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SUMMARY

The Independent Telephone and Telecommunications Alliance (ITTA) files these comments in response to the Notices of Proposed Rulemaking issued by the Federal Communications Commission (FCC) seeking comment on proposals for comprehensive reform of the high-cost universal service support mechanisms. ITTA supports the establishment of separate universal service programs within a single unified Fund to support (a) providers of last resort and their wireline networks that provide essential voice service and backbone functions for mobile and advanced services, (b) mobile wireless voice services (MWVS), and (c) broadband. ITTA also supports elimination of the identical support rule, as well as higher public interest standards to govern the designation of CETCs. Together, these recommendations will achieve intended outcomes more rationally than reverse auctions, which ITTA generally opposes.

ITTA recommends that USF reformation:

1. Affirm the purpose of USF.
2. Address the cause of recent Fund growth.
3. Ensure the viability of a wireline network necessary to support the delivery of voice and high-capacity advanced services.
4. Establish clear guidelines for mobile wireless voice service providers that receive USF support.
5. Promote broadband deployment.
6. Eliminate the “identical support” rule.
7. Impose higher equitable public interest standards for CETC certifications.

USF reform consistent with these goals will ensure fulfillment of public policy and the viability of backbone networks while furthering the deployment of mobile wireless voice services and advanced services throughout the Nation.

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To the Commission:

I. INTRODUCTION

The Independent Telephone and Telecommunications Alliance (ITTA) files these comments in response to the Notices of Proposed Rulemaking (NPRMs) issued by the Federal Communications Commission (FCC) seeking comment on proposals for comprehensive reform of the high-cost universal service support mechanisms. ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 26 million customers in 44 states.

Recent growth in the high-cost program of the Universal Service Fund (USF or Fund) has focused increased Congressional and regulatory scrutiny of the Fund. ITTA's comments propose a template for more rational network support, wider deployment of

broadband and meaningful mobile wireless voice services (MWVS). These comments incorporate by reference prior ITTA filings in the instant dockets.¹

The Commission seeks comment on three NPRMs, each of which addresses different aspects of USF. Specifically, the Commission seeks comment on: elimination of the “identical support” rule;² the use of “reverse auctions” for allocating high-cost support;³ and, a November 2007 comprehensive recommendation of the Federal-State Joint Board on Universal Service (Joint Board recommendation).⁴ ITTA supports USF reformation that:

1. Affirms the purpose of USF.
2. Addresses the cause of recent Fund growth.
3. Ensure the viability of a wireline network necessary to support the delivery of voice and high-capacity advanced services.
4. Establishes clear guidelines for mobile wireless voice service providers that receive USF support.
5. Promotes broadband deployment.

¹ *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe LLC, on Behalf of the Independent Telephone and Telecommunications Alliance*, WC Docket No. 05-337, CC Docket No. 96-45 (filed Oct. 10, 2006) (ITTA Reverse Auctions Comments); *see, also*, comments and reply comments filed by ITTA in the instant docket, including: comments, May 31, 2007 (comprehensive USF reform); comments, June 6, 2007 (interim cap on support for CETCs); reply comments, June 21, 2007 (interim cap on support for CETCs); reply comments, July 2, 2007 (comprehensive USF reform).

² *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (rel. Jan. 29, 2008) (Identical Support NPRM).

³ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (Reverse Auctions NPRM).

⁴ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22 (rel. Jan. 29, 2008) (Joint Board NPRM). The Joint Board NPRM contained as an appendix the November 2007 Recommended Decision of the Joint Board, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (2007) (Joint Board RD).

6. Eliminates the “identical support” rule.
7. Impose higher equitable public interest standards for CETC certifications.

USF reform consistent with these goals will ensure fulfillment of the public policy objectives of universal service by ensuring the viability of backbone networks while furthering the deployment of MWVS and advanced services throughout the Nation.

II. MEANINGFUL REFORM SHOULD FIX CURRENT PROBLEMS AND CONTINUE SUCCESSFUL ELEMENTS

A. THE UNIVERSAL SERVICE FUND IS INTENDED TO SUPPORT NETWORKS WHERE NATURAL ECONOMIC FORCES WOULD NOT BE SUFFICIENT

As discussed in comments filed previously by ITTA, the current concerns with USF can be resolved only by identifying the underlying causes of each concern and addressing those factors directly. At the same time, every effort should be made to avoid disruption of sound policy programs.⁵ Cost-based programs have enabled successful investment and network deployment. Radical changes to those mechanisms would serve no constructive purpose and moreover would cause inappropriate risk. Modifications to any USF mechanisms must be considered in light of Congressional directives to provide comparable services, including access to advanced services, in rural areas at rates that are reasonably comparable to rates charged for similar services in urban areas.⁶

The purpose of universal service is to ensure the provision of telecommunications service in areas where an economically rational carrier would otherwise not provide service, or in which service would be too costly for consumers, or of lesser quality. The

⁵ The Joint Board recognized this approach in its tentative conclusion regarding incumbent carriers, *see* Joint Board RD at para. 39.

⁶ *See* 47 U.S.C. § 254(b).

high-cost program supports networks and operations that ensure for rural and high-cost regions rates and products comparable to those offered in urban areas. Congress ordered that USF support be “specific, predictable and sufficient.”⁷ The policy of universal service continues to work, resulting in a Nationwide telephone service penetration rate of 94.9 percent.⁸ Citizens benefit from a near-ubiquitous communications network that connects markets, communities, health care facilities, and educational centers across the Nation. The work of universal service however, is not complete. As networks and services evolve, and as broadband and mobility become increasingly important to economic development and society as a whole, universal service funding will be necessary to guarantee the “comparability” promised by the Telecommunications Act of 1996.⁹

Successful reform demands establishing the purpose of USF, identifying flawed outcomes, and refining mechanisms to ensure that all aspects of the USF can foster achievements as successful as those being realized by incumbent local exchange carriers (ILECs). The Commission must craft policies that assure specific, predictable, and sufficient support to networks serving rural areas, promote deployment of MWVS services in unserved areas, and facilitate further deployment of advanced services.

⁷ 47 U.S.C. § 254(b)(5).

⁸ *Telephone Subscribership in the United States (Data Through November 2007)*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 1, Federal Communications Commission, Washington, DC (Mar. 2008) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280980A1.doc) (last viewed March 25, 2008).

⁹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1996, as amended by the 1996 Act, will be referred to as “the Act,” and citations to the Act will be to the Act as it is codified in the U.S. Code.

B. CURRENT MECHANISMS HAVE BEEN SUCCESSFUL FOR MANY CARRIERS

The primary goal of the Commission must be to provide network operators in high-cost areas with sufficiently reasonable expectation that they will be able to recover the investments necessary to deploy the networks required to provide the quality of service that is comparable to that which is available in urban areas. Rural areas lack economies of scale and a minimum of supporting business services. Accordingly, the uncertainties of rapidly-evolving technologies and consumer needs can impose a profound burden on carriers serving rural areas. Therefore, the infusion of external, *i.e.*, non-customer-derived, support is necessary to ensure network deployment and maintenance. As described in a recent study,

Efficient capital markets require that risk-based business activities earn a rate of return sufficient to justify claims on society's resources (workers, trucks, copper wire, etc.). If a business fails to earn a rate of return that an economically rational investor demands, over time that investor will withdraw support for the activity and shift his or her funds to higher return activities. In the telecommunications sector rates of return of 10 to 12 percent are generally considered to be normal for the risks involved. If rural telecommunications carriers could earn rates of return higher than 10 to 12 support without USF support, it could be argued that they could absorb lost USF payments and still maintain their existing prices to their consumers. If rural carriers could not earn rates of return on this order without USF support, they would be expected to pass along the cost of lost USF support to consumers, and over time their consumers would face higher monthly bills.¹⁰

The existing Federal regulatory framework has generally functioned well for many rural ILECs to ensure that reasonable rates can be maintained for consumers in areas with high costs and low population density. Alternatives such as reverse auctions

¹⁰ Robert Cohen, Mark W. McNulty, Robert F. Wescott, "Consumers at Risk: The Impact of Reduced Universal Service Fund Support on Telephone Service Affordability in Rural America," at 4, 5 (Keybridge Research LLC, Washington, DC) (Oct. 2007). The study concluded, "as many as 2.7 million households would be at risk of losing access to affordable telephone service" in the absence of high-cost support. *See, id.*, at 14.

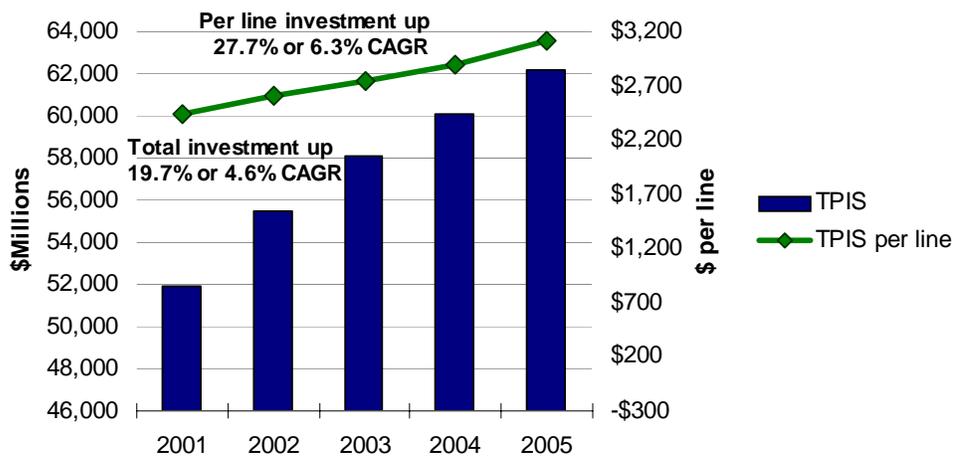
that fail to meet statutory standards of “sufficient” and “predictable” must be rejected (as described below, auctions generally portend hazards for incumbent areas, and accordingly may be a useful tool only in certain limited circumstances). Continuation of the existing mechanisms for many carriers makes sense for several reasons. First, the USF is a remarkably cost-efficient program: USF for incumbent rural wireline carriers supports only costs that have been incurred and accounted for under regulatory scrutiny. The program boasts built-in accountability, as costs must be supported by the audited financials of the entity incurring the costs and are reconciled to all other regulatory reported costs through the elaborate and effective control mechanisms implemented by the National Exchange Carrier Association (NECA), the Universal Service Administration Company (USAC), and often state commissions. For many carriers, the existing mechanisms provide incentives necessary for the deployment of infrastructure in the most remote rural areas of the country. By contrast, these types of accountability standards do not apply to CETCs and, as stated by the Joint Board, “the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act’s universal service goal of improving the access to telecommunications in rural, insular, and high-cost areas.”¹¹ The Commission must address current infirmities, but must not abandon successful policies.

As stated by the Joint Board, “[s]upport to most if not all RLECs has been flat or has even declined since 2003. Under existing support mechanisms, RLECs have done a

¹¹ Joint Board RD at para. 10, *citing* 47 USC § 254(b)(3).

commendable job of providing voice and broadband services to their subscribers.”¹² The achievements of incumbent carriers during periods of flat or declining USF support is illustrated by the following graph, which is reproduced here from ITTA’s October 2006 comments on reverse auctions.¹³ Drawn from USAC appendices and data assembled by Balhoff & Rowe, LLC, it demonstrates that rural LECs increased investment during the same period that their USF support remained flat or declined:

Figure 1: RLECs increasing investment to provide more service



Source: USAC appendices HC04; Balhoff & Rowe, LLC.

Current interest in reforming USF arises out of rapid and unprecedented growth caused by certification of a number of competitive eligible telecommunications carriers (CETCs) whose level of support, as determined by the Commission, “bears no

¹² Joint Board RD at para. 39 (internal citation omitted). The Joint Board then recommended that existing support mechanisms be used, for the present, to distribute support through a new “provider of last resort” (POLR) fund; the POLR program is addressed further in these comments.

¹³ See, *Comments of Balhoff & Rowe, LLC, on Behalf of the Independent Telephone & Telecommunications Alliance*, CC Docket Nos. 96-45, 05-337, at 17 (filed Oct. 10, 2006).

relationship” to their actual costs.¹⁴ ITTA recommends that innovative reforms be applied to correct dysfunctional CETC processes, while ILEC mechanisms that have operated successfully continue.

III. COMMENT ON JOINT BOARD RECOMMENDATION

A. USF SUPPORT SHOULD BE FOCUSED TO ADDRESS THE DISTINCT PUBLIC INTEREST IMPERATIVES OF EACH PROGRAM

ITTA supports a single USF supported through a common contribution mechanism. This approach is rational because the primary goal of USF, specifically, supporting the availability of comparable telecommunications and access to information services for all Americans, is common to all providers. Therefore, the burden of support should be assessed in as common a manner as possible on the broadest base of network beneficiaries. Although a common contribution mechanism is accordingly consistent with USF policies, a common *distribution* mechanism cannot accomplish desired USF objectives because support must be based on characteristics specific to the supported network or service.

The use of separate programs in the current USF focuses appropriate funding toward each supported service. As with the other USF programs—Schools and Libraries, Rural Health Care, High Cost Fund, and Low Income—the contribution mechanism should be unified to maintain the broadest possible base over which to spread universal service costs, but the distribution should reflect the intent to accomplish discrete policy goals through focused programs. The Joint Board’s recommendation for separate components for providers of last resort (POLR), mobility, and broadband recognizes the unique benefits and public interest imperatives offered by each product. As articulated in

¹⁴ Identical Support NPRM at para. 5.

a recent policy paper, “[t]he question should not be whether to invest in fiber or wireless any more than one would ask whether shoes are ‘better’ than hats. Ultimately, they solve different problems and neither one offers a one-size-fits all solution.”¹⁵ Accordingly, ITTA supports in principle the Joint Board’s recommendation to establish separate programs to provide support to (a) providers of last resort, (b) providers of mobile wireless voice services (MWVS), and (c) broadband.

B. THE PROVIDER OF LAST RESORT IS THE BACKBONE OF THE NETWORK

1. Incumbent LECs Serving as Providers of Last Resort Deploy Facilities and Provide Services to the Far Reaches of the Nation

ITTA supports in principle the Joint Board recommendation to establish a program to address providers of last resort (POLR). This approach is consistent with ITTA’s call for more rational CETC processes. A POLR program would refocus the operation of the USF to its historic intent, specifically, to support networks in areas where consumer revenues are not sufficient to deploy and maintain networks. The Joint Board was exceedingly clear in describing its vision for a POLR program that is overwhelmingly consistent with existing rural ILEC mechanisms:

Support to most if not all RLECs has been flat or has even declined since 2003. Under existing support mechanisms, RLECs have done a commendable job of providing voice and broadband services to their subscribers. Therefore, the Joint Board believes it is in the public interest to maintain, for the present, the existing RLEC support mechanisms, distributed through the proposed POLR Fund. Funding for RLECs will continue to be based, for the present, on the provider’s embedded costs as supported by modeling, but may be subject to a competitive bid approach

¹⁵ Christopher Mitchell, “Municipal Broadband: Demystifying Wireless and Fiber-Optic Options,” at 3 (New Rules Project, Minneapolis) (March 2008) (<http://www.newrules.org/info/munibb.pdf>) (last viewed Mar. 31, 2008).

at a later date.¹⁶

(ITTA addresses the issue of competitive bids more fully below; briefly, the application of competitive bidding for areas served by incumbent carriers, as described herein and in previous ITTA filings, is fraught with hazards that should be avoided by utilizing alternative approaches that will fulfill the Commission's goals without unnecessary risks.)

The Joint Board's POLR findings are well-founded. ILEC recipients of USF continue to construct networks in high-cost, low-density areas and provide basic and advanced services that are comparable to those offered in urban areas. The "social compact" that ILECs struck with regulators and consumers ensures that rates for these services that are provided over high-cost facilities are just, reasonable, and affordable. USF is used by these carriers not only for the initial investment and deployment, but also for ongoing maintenance and upkeep. The provision of USF for only initial investment would be akin to purchasing a house and then refraining from maintenance: constant attention to the network and back-office operations assure technological and customer service that is a necessary aspect of a carrier's ongoing activities.

Allegations that ILEC recipients of USF engage in unnecessary deployment (so-called "gold plating") evidence a misunderstanding of the USF process: USF is provided only for verifiable costs subject to intense scrutiny for adherence to NECA, USAC, and often state commission requirements. The current USF process imposes caps on corporate expenses¹⁷ and the high-cost loop fund,¹⁸ and NECA, USAC, and state

¹⁶ Joint Board RD at para. 39.

¹⁷ See 47 CFR § 36.621.

commissions can and do audit ILEC USF recipients. In addition to the many regulatory safeguards, many mid-sized carriers are publicly-traded companies that are subject to the rigorous standards of Sarbanes-Oxley,¹⁹ as well as comprehensive internal audits demanded by Wall Street and investors. Existing safeguards provide comprehensive layers of protective redundancy to ensure that USF is received in a manner consistent with the law. And, while complying with both regulatory and investor-driven safeguards, ILEC USF recipients have leveraged their networks to take full advantage of their capabilities to act as a base platform for advanced services. Hence, the Joint Board noted the “commendable” achievements of rural LECs in providing voice and broadband to their subscribers.²⁰

Going forward, the POLR program should be limited to entities that meet exacting standards, as incumbent ILEC recipients of USF do today. POLRs should be required to provide reasonably adequate service and facilities to all customers in the study area;²¹ offer non-usage sensitive basic local calling plans; abide by defined customer service standards, including E-911 capabilities, local number portability, call

¹⁸ See 47 CFR § 36.604 (discussion of Rural Growth Factor adjustments to cap).

¹⁹ Public Company Accountability Reform and Investor Protection Act of 2002, Pub. L. 107-204, 116 Stat. 745 (2002) (Sarbanes-Oxley).

²⁰ Joint Board RD at para. 39.

²¹ By way of example, Indiana Code § 8-1-2-4 requires “Every public utility is required to furnish reasonably adequate service and facilities.”); compare Indiana Code 8-1-32.4-9(2) (“‘provider of last resort’ means a provider that . . . is required to offer local exchange service throughout a defined geographic area.”) Within the context of a proposed Federal POLR program, the qualifier “reasonably” could be used to create a rational standard. RUS loan guidelines contemplate a similar test: “Borrowers must make adequate telephone service available to the widest *practical* number of rural subscribers during the life of the loan. Both the nature of the service area and the cost per subscriber must be fully considered.” 7 CFR § 1735.11 (emphasis added). See, also, Iowa Code Section 476.29 (“Each local exchange utility has an obligation to serve all eligible customers with the utility’s service territory unless explicitly excepted from this requirement by the Board”).

completion rates, and repair times; equal access obligations; and, verifiable and accountable investment in infrastructure.

2. The Nation's Broadband Future Depends Upon a Reliable National Wireline Network

The Nation's broadband future depends upon a reliable National wireline network. The wireline network already serves as the backbone for wireless mobile services, and most, if not all, of Internet protocol (IP) technology, including video and emerging services, depend upon a backbone wireline infrastructure. Moreover, the wireline network provides backbone functions for broadband services with the highest available capacities; wireline and fiber networks deliver the greatest broadband capacity necessary to meet growing demands for increased speed and capacity. For example, 56 kbps is required for low-quality, streaming audio; 1 mbps is required to streaming video; 2.5 mbps for high-resolution neurological testing; 4 mbps for standard TV; 6 mbps for video-conferencing; and, 20 mbps for high-definition TV. Fiber, ADSL, and DSL can provide all of these services.²² By contrast, Verizon's wireless service offers average download speeds of 400-700 kbps;²³ T-Mobile claims that its 1.5 mbps is "the fastest wireless Internet access available."²⁴ As described in a recent white paper, "[t]hose who expect a future without wires are sadly mistaken. Existing wireless networks are perfectly adequate for voice, email, or Internet surfing, but their limitations preclude

²² "Speed Matters: Affordable High Speed Internet For All," Communications Workers of America, at 6 (Wash. DC, Oct. 2006), *citing* S. Derek Turner, Broadband Reality Check, Free Press (Aug. 2005).

²³ Verizon notes also that download speeds are "capable of reaching up to 2.0 Mbps," though it is not clear whether that is available in isolated areas or occasional "bursts."
<http://b2b.vzw.com/broadband/serviceoverview.html> (last viewed Mar. 26, 2008, 12:46).

²⁴ http://www.t-mobile.com/shop/addons/services/information.aspx?tp=Svc_Tab_HotSpot (last viewed Mar. 26, 2008, 12:47).

high-quality videophone application and other bandwidth intensive applications.”²⁵

Stability of the USF is therefore important not only to provide essential voice communications services, including MWVS, but also to assure the viability of the wireline network that provides the backbone for wireless and advanced services. This imperative is greater in rural areas that depend upon adequate telecommunications and information services to ensure economic, educational, and health-care standards that promote commercial success and communities’ viability.

3. The Commission Must Ensure That The Underlying Network Is Viable Throughout The Nation

The Commission has established a model that enables the deployment of “dual use” facilities that can support “commendable” broadband deployment. The results evidence incumbent carriers’ ability to leverage network assets and maximize use of investment. Consumers in many rural areas enjoy access to advanced services that would be unobtainable absent USF support. What must be recognized, however, is that these building blocks of a broadband future rest upon the foundation of a stable, viable wireline network that is supported by the USF. Although many areas of the Nation have been served well by the USF mechanism, others have not enjoyed adequate support due to a gap between broadly applicable regulations and circumstances unique to particular types of carriers. The Commission must address these shortfalls within the instant effort to implement comprehensive reform.

²⁵ Christopher Mitchell, “Municipal Broadband: Demystifying Wireless and Fiber-Optic Options,” at 2 (New Rules Project, Minneapolis) (March 2008) (<http://www.newrules.org/info/munibb.pdf>) (last viewed Mar. 31, 2008).

(a) An alternative to averaging is necessary

There are a significant number of study areas in the United States served by providers that do not receive adequate USF support either as a result of study area averaging, failure of disaggregation to identify particularly high cost areas, or regulatory classification that does not address fully the needs of the carrier. Today, rate averaging in some rural study areas does not produce enough contribution margin to cover the cost of service in the less densely-populated parts of those study areas. Instead, averaging creates the incentive to “cherry pick” whereby competitors not subject to carrier of last resort obligations can target the customers in low-cost areas and still receive support. Accordingly, while study area averaging often is an effective tool, it does not always work as a methodology for calculating the need for high-cost support. Therefore, the Commission must make available the option of using a more granular approach to demonstrate the need for support. Otherwise, the Commission will continue to fail to direct specific, predictable, and sufficient support to all areas that are truly uneconomic to serve, harming consumers by inhibiting network investment in high-cost areas and perpetuating implicit subsidies in lower-cost areas.

These regulatory gaps can be addressed by identification and targeting of support at the sub wire-center level either through census block level high cost characteristics, the identification of high cost areas through GIS mechanisms, or the use of models which are granular enough to identify just those areas requiring support. Unlike models used during the time of the rural task force proceeding, current cost models are increasingly capable of producing cost estimates anywhere in the country at an extremely precise level, such as a single census block, using real-world engineering practices and real-world network

characteristics (such as road systems), as well as geo-coded customer locations in their forward-looking costing methodology.

The cost of deploying and supporting telecommunications networks generally varies significantly depending on population density, the distance over which infrastructure must be deployed, and topography.²⁶ First, a large part of the cost of the network is shared and subject to significant economies of density and/or scale. As the Commission has noted repeatedly, “a lower population density generally indicates a higher cost area.”²⁷ The fixed costs associated with the deploying telecommunications are generally high in comparison to the incremental (marginal) costs; therefore, each customer in an area where there are fewer consumers must bear a higher portion of the network’s fixed cost. The Government Accountability Office (GAO) found that “[t]he most frequently cited cost factor affecting broadband deployment was the population density of a market,” and that “the cost of building a broadband infrastructure in areas where people live farther apart is much higher than building infrastructure to serve the same number of people in a more urban setting.”²⁸

Second, sparsely settled areas will also result in higher costs because facilities must be constructed over far longer distances to reach end users. The distances between individual end users and the carrier’s need to aggregate a critical mass of traffic in a switch together often necessitate the use of particularly long loops, increasing costs

²⁶ This is true for all technologies, although the actual investments needed and the relative efficiencies of different technologies may differ from place to place.

²⁷ *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina: Order*, CC Docket No. 96-45, DA 06-1628, 21 FCC Rcd 9151, at para. 23 (2006).

²⁸ GAO, *Broadband Deployment Is Extensive throughout the United States, But it is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, at 19 (May 2006) (“GAO Report”).

dramatically. Accordingly, the Commission has stated that “for universal service purposes ... cost differences caused by differing loop lengths are the most significant cost factor.”²⁹

Finally, the topography of an area can also make it difficult to provide affordable service by making it more costly to deploy networks (whether wired or wireless), as the Commission has also noted.³⁰ Accordingly, the GAO found that “terrain was also frequently cited as a factor affecting broadband deployment decisions,” because “infrastructure build-out can be difficult in mountainous and forested areas because these areas may be difficult to reach or difficult on which to deploy the required equipment.”³¹

Certain larger rural carriers have similar characteristics to smaller rural carriers in that the substantial costs of deploying and operating telecommunications networks are directly observable in the average costs they report to regulators. Others, however, serve mixtures of higher- and lower-cost areas, often within the same study areas. For many of these latter carriers, the cost problems that accompany their carrier-of-last-resort obligations in high-cost areas are often masked from universal service support mechanisms because the need for support is calculated based on study area averages. This is because serving both low-cost and high-cost wire centers within the same study area will yield a lower reported average cost calculation. Serving the low-

²⁹ *Federal-State Joint Board on Universal Service (Forward-Looking Mechanism for High Cost Support for Non-Rural LECs): Fifth Report and Order*, CC Docket No. 96-45, FCC 98-279, 13 FCC Rcd 21,323, at para. 75 (1998).

³⁰ See, e.g., *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers: Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, FCC 96-488, 11 FCC Rcd 21354, at para. 28 (1997).

³¹ *GAO Report* at 19. Topographical concerns also impact the costs of terrestrial wireless providers and hinder the use of satellite communications. *Id.*

cost areas does not help in any way to cover the cost of deploying telecommunications services in the high-cost areas, however, because competition in the low-cost areas forces prices, and thus revenues, to reflect the lower costs. Therefore, there is no margin with which to cover the higher costs in other areas.

Support for carriers that require “targeted” funding can be obtained through independently-occurring declines in other programs, such as those that occur as more efficient CETC funding is implemented. Targeted support should not necessarily cause an increase in total universal service support disbursement; duplicative support to multiple CETCs should be redirected to networks that truly require support.

Carriers seeking support would have to demonstrate that significant variation in the density of areas served by the carrier causes the carrier to experience significant variation in costs. As companies’ actual cost records do not generally exist at granular levels, companies seeking targeted support would *voluntarily* submit to the use of a Commission-selected model to estimate the cost of providing service of companies that choose to submit the above-referenced data. Targeted support would be calculated at the individual wire center, or sub-sire center level, which would yield an independently-identified list of high-cost areas that are currently unrecognized by study-area averaging and, consequently, unsupported. This would give the Commission an accurate compilation of new high-cost areas—in some cases entire study areas, in some cases individual wire centers (or possibly zones)—all of which are truly uneconomic to serve and therefore in need of explicit support. It would also provide estimated per-line costs in those areas, which could be compared with a revenue benchmark to establish the need for support.

(b) The “parent trap” rule must be eliminated

The Commission must eliminate the “parent trap” rule.³² Unintended negative effects of the “parent trap” are a significant issue as some of the largest carriers rationally focus on their largest urban markets, while deferring investment in smaller service areas. Meanwhile, comparatively smaller carriers, such as ITTA members, have established premier telecommunications and broadband services, yet are unable to obtain adequate high-cost funding or other policy-based support when they acquire properties and invest to improve services in acquired exchanges. The condition chills acquisition activity and perpetuates circumstances in which consumers in certain areas struggle with service that lags behind that which is available in urban areas. The record in this docket is ample.³³ It is time for the issue to be resolved and for the “parent trap” to be eliminated.

(c) An overall cap should not be imposed

The Commission must reject the Joint Board’s recommendation to impose an overall cap on high-cost funding.³⁴ An overall cap conflicts with the statute’s directive that support be “sufficient.” An overall cap is a “top down” approach that does not accommodate actual needs or costs. Moreover, an overall cap would eviscerate rate-of-return regulation by failing to assure carriers their authorized rate of return. Rather, standards for USF recipients must be established, and support provided in an ongoing manner in which contributor and recipient needs are balanced. Although rural LECs have

³² 47 CFR § 54.305.

³³ See *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe, LLC*, CC Docket No. 96-45, at 39-42 (filed Sep. 30, 2005), describing why existing safety valve mechanism is insufficient, likelihood of seller reducing investment in period leading to sale, and typical characteristics of purchasers.

³⁴ See Joint Board NPRM at para. 26. This position is not inconsistent with ITTA’s position on a temporary cap for CETC support, since the latter is an interim measure to be imposed while an overall long-term solution is developed.

done a “commendable” job in a capped environment, the Commission should refrain from implementing a top-down solution, and use the instant proceeding to create a mechanism that can provide support rationally.

The current caps on incumbent high-cost support cause unintended consequences. Currently, high-cost loop support (HCLS) for incumbent rural carriers is provided where the average line costs in a study area are more than 115 percent of the National average cost per loop (NACPL).³⁵ The total amount of HCLS available to all carriers is capped,³⁶ and adjusted annually by the Rural Growth Factor.³⁷ Upward adjustment in the NACPL however, can have the effect of eliminating some carriers from eligibility for support, since the threshold of “greater than 115 percent of the NACPL” consequently increases. From 2002 to 2006, the “115 percent of NACPL” threshold rose from \$295.08 to \$407.59.³⁸ Accordingly, if a carrier’s cost-per-line did not increase nine and one-half percent annually during those years (or 38 percent over the five years), it lost support. Moreover, since the Rural Growth Factor can take the form of a negative number, the total amount of HCLS to rural LECs can decrease. This is particularly potentially damaging since not all carrier costs are directly proportional to the number of loops served.

³⁵ 47 CFR § 36.631.

³⁶ Carriers may receive “safety net additive” where a carrier’s per loop investment exceeds 14 percent, *see* 47 CFR § 36.605.

³⁷ 47 CFR § 36.604.

³⁸ The 2002 NACPL as calculated from 2002 data was 256.69, yielding a 115 percent threshold of. 295.08. *See* “National Exchange Carrier Association, Inc., Overview and Analysis of 2003 USF Submission” (Oct. 2002), <http://www.fcc.gov/wcb/iatd/neca.html> (last viewed Apr. 16, 11:38).. In 2006, the NACPL was \$354.43, yielding a 115 percent threshold of \$407.59. *See*, “National Exchange Carrier Association, Inc., Overview and Analysis of 2007 Data Submission,” at 4 (Sep. 2007), <http://www.fcc.gov/wcb/iatd/neca.html> (last viewed Apr. 16, 2008, 11:42).

The current cap and its adjustable components can, and do, exclude carriers from support on an annual basis. The Commission must take care as it revises incumbent rural high-cost mechanisms to ensure that carriers do not experience decreased support in circumstances where their costs have remained constant. At the least, the NACPL should be reinitialized to current actual levels. This would be consistent with prior Commission practice, specifically, the rebasing of HCLS in 2001.³⁹ In that instance, the Commission found “the indexed cap on the high-cost loop fund increasingly has limited the amount of high-cost loop support for rural carriers;” the Commission identified a gap of at least \$83.9 million.⁴⁰ The Commission found that re-basing the cap was “reasonable . . . to ensure that rural telephone companies have incentives to maintain existing facilities and make prudent investments in facilities upgrades.”⁴¹ Those concerns are equally applicable in the current environment where interest in broadband and advanced services that rely upon underlying incumbent networks is growing. Accordingly, if a cap is retained, it should be re-based to reflect current actual costs.

In any event, the Commission should avoid the imposition of an overall cap. Inflexible caps fail to contemplate evolving needs in a dynamic environment; rather than impose artificial constraints on network deployment and maintenance, the Commission should instead establish targets that can be adjusted to meet changing needs. As noted

³⁹ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers: 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 00-256, CC Docket Nos. 96-45, 00-256, FCC 01-157, 16 FCC Rcd 11244, at para. 37 (2001) (2001 MAG Order).*

⁴⁰ 2001 MAG Order at para. 41. The Commission also noted that removal of the cap on corporate operations expense would have opened up an additional \$34.6 million for rural carriers. *Id.* (internal citations omitted).

⁴¹ 2001 MAG Order at para. 42.

above, sufficient rates of return are necessary to ensure the participation of entities in a market.⁴²

(d) The FCC should permit price cap carriers to make a one-time election to use the HCPM model

The rural mechanism is a valid methodology for computing universal service costs for the typical rate of return high cost company. However, as ITTA has stated previously, a “one-size-fits-all” approach cannot be applied to USF. The rural formula or safety valve rule simply does not account for the differing investment incentives that price cap carriers have compared to the investment incentives that rate of return high cost companies have.

A rural price cap carrier should be able to make a one-time election to opt into a non-rural like mechanism and receive high cost loop support using the Hybrid Proxy Cost Model like other price cap carriers, even though it remains a “rural designated” carrier. Increasing the flexibility of these companies to use a universal service mechanism that provides the needed relief would ensure that similarly situated carriers are not artificially excluded from the rural high cost fund support because the rural USF mechanism does not address their needs

C. MOBILE WIRELESS VOICE SERVICES

ITTA supports the establishment of a separate mobility program to focus support more precisely, based on the unique goals, costs, coverage, and other aspects of mobility services. The support of MWVS will enable consumers to enjoy more broadly the convenience and benefits offered by mobile voice services, and will bring greater

⁴² Robert Cohen, Mark W. McNulty, Robert F. Wescott, “Consumers at Risk: The Impact of Reduced Universal Service Fund Support on Telephone Service Affordability in Rural America,” at 4, 5 (Keybridge Research LLC, Washington, DC) (Oct. 2007).

rationality to the bundle of universal services than does the current practice of attempting to squeeze two disparate services into one program.

ITTA supports the Joint Board recommendation that MWVS be supported through a mechanism separate and apart from POLR;⁴³ specifically, and consistent with the Joint Board recommendation, ITTA favors a program that would advance the “disseminati[on of] wireless voice services.”⁴⁴ Mobile voice services are uniquely situated. As the Commission explains, it and the Joint Board,

did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC’s supported service . . . wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer’s sole service provider, except in a small portion of households. Thus, rather than providing a complete *substitute* for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service *in addition to* a customer’s existing wireline service.⁴⁵

Despite the Commission’s finding that consumers do not necessarily view MWVS as a *per se* substitute, MWVS are capable of exerting competitive pressures on wireline services. MWVS might accordingly be categorized as n “imperfect substitutes” for wireline service that are capable of exerting pricing and service pressure on wireline while not wholly substituting for all the qualities offered by wireline service.⁴⁶ Conversely, wireline does not offer the benefit of mobility, a feature inherent to MWVS. Consequently, there exists justification to support

⁴³ See, Joint Board RD at paras. 11, 16-18.

⁴⁴ Joint Board RD at para. 16.

⁴⁵ Identical Support NPRM at para. 9 (emphasis added) (internal citations omitted).

⁴⁶ See, *i.e.*, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers: Order on Remand*, WC Docket No. 04-313. CC Docket No. 01-338, FCC 04-290, 20 FCC Rcd 2533, at para. 193, n.512 (2005) *citing ex parte* of Cbeyond explaining differences between hybrid fiber coax and DS1 loops.

both types of services, since each offers an important public benefit that, while exerting competitive pressure, does not wholly substitute for the other.

Support for MWVS providers should be based upon fulfillment of defined policies relating to public interest in supporting mobile voice services. Standards for carriers receiving MWVS support may include (1) goals for carrier investment, (2) coverage issues, (3) quality of service standards and other obligations, (4) accountability mechanisms, and (5) appropriate “support” calculations based on investment or other cost-based approach. These parameters have provided a sensible framework for ILEC high-cost support, and likely would provide an appropriate framework for mobile carriers.

The MWVS program should include a cost based mechanism whereby support is based on each participant’s own individual costs. The issues of supporting MWVS on their own costs is separate from elimination of the identical support rule for CETCs, generally, but would inherently eliminate a significant amount of “identical support.” The issue of identical support is discussed fully, below; also as described below, as a transitory measure, until MWVS costs can be ascertained, the provision of access replacement support to mobile carriers should be suspended. Restraints on CETC support should not affect inequitably support to qualifying MWVS providers.

In this discussion it is critical to distinguish between an MWVS provider and a CETC. Debate during the past year over the proposed interim cap on support to CETCs was muddled by insinuations that a “wireline vs. wireless” battle was at hand. While it is true that the vast majority of CETC support flows toward wireless carriers, the CETC cap is not tied only to wireless carriers. By contrast, the Joint Board’s recommendation

delineates the role of MWVS providers, distinguished from CETCs. MWVS providers offer services that inure to the public interest in ways that are different than those provided by wireline providers. MWVS does not substitute for either the reliability or capacity offered by wireline networks,⁴⁷ while MWVS offer benefits that are tied directly to the inherent nature of mobile voice capabilities. The Joint Board's recommendation is consistent with the voice-oriented services for which support is provided in rural, insular, and high-cost areas: voice grade access to the public switched network; local usage; dual-tone multi-frequency signaling; single party service; access to emergency, operator, and interexchange services and directory assistance; and toll limitation for qualifying customers.⁴⁸ Accordingly, ITTA supports development of a program to provide support to carriers providing MWVS where such support is necessary to ensure in rural areas network deployment and provision of services that are reasonably comparable to those available in urban areas, and at reasonably comparable rates.⁴⁹

D. BROADBAND

Broadband is rapidly achieving a greater role in education, commerce, health and public safety. Broadband subscription has increased dramatically in recent years, although this measurement is tempered by the low speed at which "broadband" is measured under current Commission standards. Nevertheless, it is clear that Congressional, Commission, and public interest in wider broadband deployment must be

⁴⁷ A Verizon-sponsored study found that for many users, voice-quality and power back-up override the convenience offered by mobility. *See* "Verizon Survey Points to Enduring Landline Strengths as Key," Doug Allen, Telecommunications Online (Apr. 7, 2008) (http://www.telecommagazine.com/article.asp?HH_ID=AR_4079) (last viewed April 9, 2008).

⁴⁸ *See* 47 CFR § 54.101(a).

⁴⁹ *See, i.e.*, 47 U.S.C. § 254(b).

met. Accordingly, ITTA supports a broadband program within the USF that would enable providers to deploy broadband to unserved areas. ITTA notes that in addition to deployment, meeting consumer demand for increasing speed must be met. As described earlier in these comments, various applications require varying (and increasing) levels of broadband service. Consumers accustomed to speeds of 1.5 meg today will soon demand 6 megs in order to remain capable of enjoying the evolving benefits broadband services offer. Accordingly, in any discussion of a broadband program, the Commission must recognize the dynamic process that is endemic to broadband, and not constrain a broadband program with static standards that will be eclipsed by developments that occur soon after promulgation of the rules.

IV. IDENTICAL SUPPORT

A. THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED

1. The Identical Support Rule is Antithetical to The USF

The identical support rule has engendered unintended consequences . It is not cost-based, nor designed properly to encourage network investment in unserved areas; it is not grounded in fundamental USF principles that are intended to provide necessary support for the network, and instead favors one class of providers over another. Its operative functions violate the principles of competitive neutrality that it was intended to support. The identical support rule should be eliminated and replaced with cost-based mechanisms. As a transitory measure, access replacement support should be removed from the support paid to mobile wireless carriers.

The identical support rule should be eliminated. In the original wireline context, USF “support” is *cost recovery* for investments already made. Incumbent local exchange carriers receive support on a post-hoc basis after investments have been undertaken. The

cost recovery process includes scrutiny at the Federal and state level of “support” provided to carriers in building and operating networks. The standards are consistent with the principles of supporting the fixed costs of a network in low-density regions. By contrast, the “identical support” rule⁵⁰ provides CETCs with revenue on a per subscriber basis, which is essentially different from “support,” since it is not based on the carrier’s needs. In fact, competitive carriers receiving “identical support” have their support calculated on the basis of another carrier’s - the wireline carrier - universal service receipts divided by that other carrier’s loops, which are almost certainly very different from those of the competitor (nearly always a mobile provider). This approach is opposed diametrically to the notion of supporting a carrier’s costs, since it promotes circumstances in which providers receive recovery on the basis of costs they did not incur.⁵¹

The identical support rule was justified by the proposition that USF support should be technologically and competitively neutral. “Competitive neutrality,” which underpins the “identical support rule,” was a creation of the Joint Board and the Commission, which introduced the concept under the rubric of “additional principles” that the Commission is permitted to apply.⁵² Importantly, the principle is not a

⁵⁰ 47 C.F.R. § 54.307(a)(1).

⁵¹ Mobile carriers can and should provide information describing how their costs justify the public interest expenditures of USF support. Publicly-traded mobile carriers should be able to demonstrate this information with fair precision in same manner as would be presented in publicly-available financial filings.

⁵² See 47 U.S.C. § 254(b) and *Federal-State Joint Board on Universal Service: First Report and Order*, CC Docket 96-45, FCC 97-157, 12 FCC Rcd 8776, 8932-34, 8944, 45 (1997). The Act sets forth several principles, and then provides for, “[s]uch other principles as the Commission and the Joint Board determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with [the] Act.” The enumerated statutory universal service principles include: quality and rates; access to advanced services; access in rural and high-cost areas; equitable and nondiscriminatory

Congressional mandate and the specific mechanism—identical revenue distributions per-line—is certainly not a statutory approach. Further, the identical support rule must be squared with the explicit Congressional mandate that a public interest finding be part of the CETC designation process.⁵³

In practice, “identical support” is more anti-competitive than competitively neutral, since it provides support for one provider based on that provider’s network costs and then artificially divides that support into “per line” amounts and metes it out to another provider based on how many handsets are receiving bills in the first provider’s service territory. The underlying principle of “competitive neutrality” should be applied more thoughtfully, based on experience since its adoption, so that it reflects the fact that different technologies are based on different architectures, achieve different policy objectives, are based on different regulatory regimes, and can be directed to serve different segments of the market.⁵⁴ As the Joint Board articulated, “[f]undamental differences exist between regulatory treatment of competitive ETCs and incumbent ILECs.”⁵⁵ The Joint Board cited equal access, rate regulation, and COLR obligations as examples.⁵⁶ CETC support mechanisms fail the purpose of being competitively neutral.

contributions; specific and predictable support mechanisms; access to advanced telecommunications services for schools, health care, and libraries.

⁵³ 47 U.S.C. § 214(e)(2).

⁵⁴ Verizon characterized the variances as “fundamentally different cost structures” of wireline and wireless carriers. Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 7 (Feb. 9, 2007).

⁵⁵ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1, 22 FCC Rcd 8998, at para .6 (2007).

⁵⁶ *Id.*

The “identical support” rule originally was justified as consistent with the rationale that support should be technologically agnostic and competitively neutral. However, when industries use different technologies, deploy different architectures, have different regulatory regimes and expectations, continue to serve both differing (whether complementary or competing) and to some extent overlapping functions, the resulting cost structures necessarily will be very different. As a result, paying identical HCF dollars to carriers with fundamentally different cost structures and different universal service goals results in disparities that can be profoundly anti-competitive. Providing identical support to carriers with asymmetric obligations, especially COLR responsibilities, is not “competitively neutral.”

The “identical support” rule is not grounded in the investment goals that are core to legacy USF approaches. The problematic CETC approach, coupled with confused and uncertain policy goals and practices, is producing unintended consequences that frustrate a clearly-stated public policy oriented toward ensuring network stability and expansion.⁵⁷ The Commission should ensure that carriers receive support on the basis of their cost, and consistent with the goals of their program, however those are determined.

2. As a Transition, Access Replacement Support Should Not Be Provided to Mobile Wireless Carriers

A separate component of USF “growth” emerged when the Commission ordered reductions in access charges in the MAG and CALLS proceedings.⁵⁸ Carriers (ILECs)

⁵⁷ See, e.g., 47 USC § 254(b)(3).

⁵⁸ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service: Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, 15 FCC Rcd 12,962 (2000); Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local*

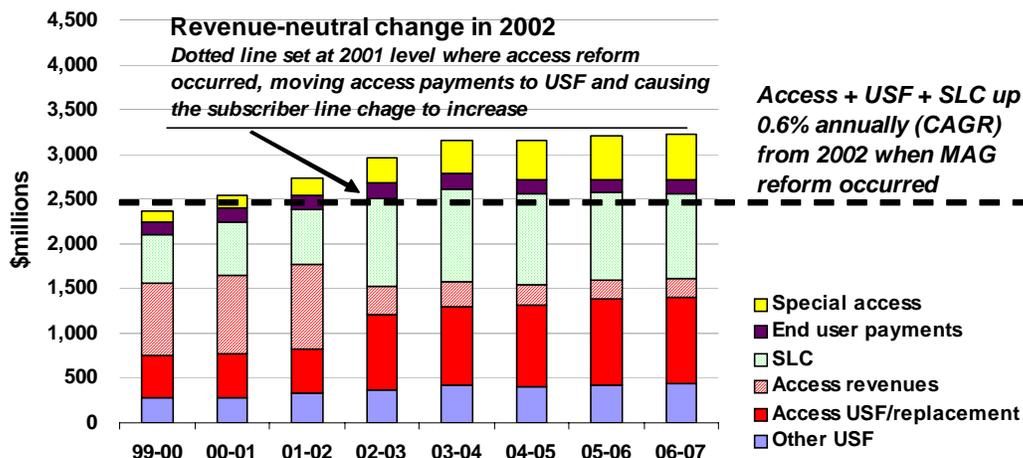
whose access revenues (typically acknowledged to include some component of implicit high-cost network support) were reduced as a result of the proceedings were compensated for these reductions by increased receipts of explicit USF support. That particular component of USF support, known as “access replacement,” represents growth in the Fund that should have had no net impact on either affected incumbent carriers or customers. The reform was structured so that incumbent carriers would receive virtually the same level of compensation they received before the reform of access charges, and consumers would pay approximately the same amount in higher subscriber line charges (SLCs) and higher explicit USF, which were offset by reduced access revenues. The result for the incumbent wireline carriers was “zero-sum.” Under the “identical support rule,”⁵⁹ of course, access reform was not “zero sum” for mobile CETCs, which benefited both from reduced access payments and from “identical” access-replacement payments, even though they generally had not previously received access revenues.

The Commission must be careful to recognize that “growth” in USF funding is not due to access replacement support received by ILECs. Access replacement is a *transfer* of funding from access charges to explicit funding in USF; it is not an incremental increase. As explained in the ITTA Reverse Auctions Comments, the support payments to ILECs are virtually flat since the time of the USF and access reforms. ITTA includes Figure 2 (which was presented in the ITTA Reverse Auctions Comments) to illustrate that funding for incumbent carriers is not expanding.

Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-777 and 98-166, FCC 01-304, 16 FCC Rcd 19,613 (2001).

⁵⁹ 47 C.F.R. § 54.307(a)(1).

Figure 2



Source: NECA Pooled-Company data; Balhoff & Rowe, LLC.

Inasmuch as access replacement support is a substitute for access revenues that mobile carriers would not realize, access replacement support should be eliminated from support provided to mobile CETCs as a first step toward implementing cost-based recovery for mobile providers. The Commission is fully authorized to undertake this type of “interim step” approach. As the Commission itself has described, it may address comprehensive reform on step at a time: citing several cases, the Commission noted “agencies need not address all problems in one fell swoop,” and that, “[a]n agency does not have to ‘make progress on every front before it can make progress on any front.’”⁶⁰

⁶⁰ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992: Report and Order and Further Notice of Proposed Rulemaking*, MB Docket No. 05-311. FCC 06-180, 22 FCC Rcd 5101, at note 2 (2006) (“See *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 86 (D.C. Cir. 2001) (“agencies need not address all problems in one fell swoop”) (citations and internal quotation marks omitted); *Personal Watercraft Industry Assoc. v. Dept. of Commerce*, 48 F.3d 540, 544 (D.C. Cir. 1995) (“An agency does not have to ‘make progress on every front before it can make progress on any front.’) (quoting *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 434 (1993)); *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1207 (D.C. Cir. 1984) (“[A]gencies, while entitled to less deference than Congress, nonetheless need not deal in one fell swoop with the entire breadth of a novel development; instead, ‘reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the [regulatory] mind.’”) (citations and internal quotation marks omitted, alteration in original).”

The elimination of access replacement support paid to mobile carriers would instantly restore approximately a half-billion dollars annually to the USF that could be used for efforts more consistent with the public interest.

B. THE COMMISSION MUST IMPOSE A COMPREHENSIVE PUBLIC INTEREST ANALYSIS AND MEANINGFUL CETC OBLIGATIONS.

The Act demands that CETC designation proceedings include a public interest analysis.⁶¹ Although the Commission's public interest analysis has developed since initial designations, it must develop further. The process of reviewing CETC applications is mandatory, but designation of a CETC is not. The Commission must establish a CETC process that includes a comprehensive and meaningful public interest analysis, as well as rigorous post-designation review to ensure that public funds are being utilized properly. These steps are necessary to ensure that the USF does not careen out of control: as described above, support to CETCs represents the largest portion of recent USF growth. The use of a more robust public interest standard will control funding disbursements and ensure that monies are being used properly. In addition, revised public interest guidelines will increase public confidence in the USF. In an environment in which USF supports both POLR and MWVS, exacting public interest standards must be met to justify support an additional provider in a market. The public interest finding required by the Act should be a dynamic test that reflects current circumstances, reflecting Congress's similar determination that USF supports an "evolving" set of services.⁶² The Commission's public interest standard, in fact, has historically evolved; it must now evolve further.

⁶¹ 47 U.S.C. § 214(e)(2).

⁶² See 47 U.S.C. § 254(c)(1).

In Federal-State Board on Universal Service - Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier: Memorandum Opinion and Order, CC Docket No. 96-45, DA 00-2895, 16 FCC Rcd 39 (2000) (*Cellco*), the Commission determined that, “for those areas served by non-rural telephone companies . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. *The carrier need make no further showing to satisfy this requirement.*”⁶³

In March 2005, the Commission recognized tacitly that the facts on the ground changed and, accordingly, revised its approach.⁶⁴ Citing *Federal-State Board on Universal Service – Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338, 19 FCC Rcd 1563 (2004) (*Virginia Cellular*), the Commission stated that “merely showing that a requesting carrier in a non-rural area study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.”⁶⁵ *Virginia Cellular*, along with *Federal-State Board on Universal Service – Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 04-37, 19 FCC

⁶³ *Cellco* at para. 14 (emphasis added).

⁶⁴ See *I/M/O Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2006) (*ETC Order*).

⁶⁵ *ETC Order* at para. 42.

Rcd 6442 (2004) (*Highland Order*), were instances in which the Commission granted ETC designation conditioned, in part, upon then-new commitments by the carriers.

Certain of those standards were later formalized in the *ETC Order*.⁶⁶

The Commission, however, “decline[d] to mandate that state commissions adopt [the Commission’s] requirements for ETC designations.”⁶⁷ In doing so, the Commission missed an opportunity to add control to the CETC designation process. The Commission also “decline[d] to adopt a test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund,” reasoning that “it is unlikely that any individual ETC designation would have a substantive impact on the overall size of the fund.”⁶⁸ Although an “individual ETC designation” may have had a negligible impact, the *aggregate* of CETC designations has produced sobering results:

High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal universal service fund. In 2006, the universal service fund provided approximately \$4.1 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately \$2.6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs’ own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under \$17 million to \$980 million – an annual growth rate of over 100 percent. Competitive ETCs received \$557 million in high-cost support in the first six months of 2007. Annualizing this amount projects that they will receive approximately \$1.11 billion in 2007.⁶⁹

⁶⁶ See, i.e., *ETC Order* at paras. 14, 15, 22, 28, 77-79.

⁶⁷ *ETC Order* at para. 61.

⁶⁸ *ETC Order* at para. 54.

⁶⁹ Identical Support NPRM at para. 4 (internal citations omitted).

It is time for the Commission to craft more rigorous public interest analyses, and to require that all CETCs, including those certified by states, meet those requirements before support is tendered. The 1996 Act describes benefits of competition as including lower prices.⁷⁰ The introduction of supported CETC-based competition tends to raise consumer prices through larger USF assessments. Most recently, the USF assessment increased from 10.2 percent⁷¹ to 11.3 percent.⁷² Those increases must engender a concomitant public benefit. The evidence, however, indicates that an alarming amount of CETC support has not resulted in any public benefit, particularly when funding has been used to support multiple competitive carriers in a single market. According to Criterion Economics, LLC, of the 103.2 million people with coverage from wireless CETCs, more than 52 percent have coverage from more than one supported CETC.⁷³ And, of the 144 million people covered by unsupported carriers, 103 million have coverage from three or more different unsupported carriers.⁷⁴ And, of the 103.7 million people covered by wireless CETCs, only 3.2 million people, or roughly 1.5 million households, receive coverage from supported carriers that is not duplicated by at least one unsupported carrier.⁷⁵

⁷⁰ See Preamble to 1996 Act. The 1996 Act was intended to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage rapid deployment of new telecommunications technologies” (emphasis added).

⁷¹ “Proposed First Quarter 2008 Universal Services Contribution Factor,” FCC Public Notice DA 07-5007 (rel. Dec. 14, 2007).

⁷² “Proposed Second Quarter 2008 Universal Service Contribution Factor,” FCC Public Notice DA 08-576 (rel. Mar. 14, 2008).

⁷³ “The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds,” Nicholas Vanzelfde, Criterion Economics, LLC, at 12 (2007) (Vanzelfde/Criterion).

⁷⁴ Vanzelfde/Criterion at 13.

⁷⁵ Vanzelfde/Criterion at 15.

The phenomenon of CETC support that does not result in public benefit has been presented to the Commission in other contexts: in June 2007, TDS Telecommunications Corp. (TDS), FairPoint Communications, Inc., and Burkes Garden Telephone Company, Inc. (collectively, Petitioners) requested the Commission to revoke CETC status granted to Sprint/Nextel.⁷⁶ The Commission has warned that a CETC's eligibility can be revoked if that carrier fails to comply with applicable standards. The *ETC Designation Order* provides that “[i]f a review of the data . . . indicates that the ETC is no longer in compliance with the Commission’s criteria for ETC designations, the Commission may suspend support . . . or revoke the carrier’s designation[.]”⁷⁷ The Petitioners seek revocation of Sprint/Nextel’s designation as an eligible telecommunications carrier (ETC) in Virginia or, in the alternative, to require Sprint/Nextel to show cause why it should retain its ETC status in Virginia.⁷⁸ At the heart of the Petition is the assertion that Sprint/Nextel has not fulfilled obligations to build out its network and expand into rural areas in accordance with commitments made in its CETC application process. The petition has provided the Commission with a litmus test (at present not completed) that can be used to govern how CETCs will be held accountable.

⁷⁶ *Federal-State Joint Board on Universal Service: Petition for Revocation of Sprint/Nextel’s Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45 (filed Jun. 4, 2007). See also, “Comment Sought on a Petition by TDS Telecommunications Corp., FairPoint Communications, Inc., and Burke’s Garden Telephone Company for Revocation of Sprint/Nextel’s ETC Designation in Virginia or, Alternatively, Motion to Show Cause,” FCC Public Notice DA 07-3068 (rel. Jul. 9, 2007).

⁷⁷ *ETC Designation Order* at para. 72.

⁷⁸ Sprint/Nextel was granted ETC status in 2004. See, *Federal-State Joint Board on Universal Service, NCPR Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier: Order*, CC Docket No. 96-45, 19 FCC Rcd 16530 (2004).

A successful CETC mechanism will include meaningful public interest standards coupled with proper incentives for cost-based support that is subject to equitable accountability.

V. REVERSE AUCTIONS

The Commission's Reverse Auctions NPRM appears to steamroll over filed oppositions to reverse auctions by declaring that the Commission has "tentatively conclude[d]" that auctions are advantageous. The Reverse Auctions NPRM states,

. . . the Joint Board sought comment on various proposals for long-term, comprehensive reform of the high-cost universal service mechanisms, including the use of reverse auctions. The specific auction proposals filed during the course of this proceeding are briefly described below.⁷⁹

Notwithstanding the Commission's tentative conclusion, numerous oppositions to auctions were filed in 2006 and 2007.⁸⁰ Although ITTA has acknowledged that there may exist limited circumstances in which auctions may be appropriate, ITTA finds troubling the Commission's apparent preference for auctions in the face of great

⁷⁹ Reverse Auctions NPRM at para. 4 (internal citation omitted).

⁸⁰ *See, i.e.*, comments filed October, 10, 2006, in Docket 05-337: CenturyTel (ILEC loop and transport facilities are integral to USF; a reverse auction mechanism applied to all carriers in a specific market is unlikely to provide adequate support) (CenturyTel at 4); CoBank ("Reverse auctions present more uncertainty because they are a risky approach to high cost support, which will cause the cost of debt to increase. CoBank respectfully urges the FCC to pursue a path of determining high-cost universal service support without undermining the viability of the incumbent.") (CoBank at 2); Fairpoint (a carrier could underbid the needed support and construct an inferior network that would not deliver the intended services . . . a risk would be that a carrier could lower its cost by not serving the most remote and costly areas, leaving rural consumers without any viable provider; instead, the FCC should fix the broken CETC designation system) (Fairpoint at 2, 8, 9); Frontier Communications (auctions would also reduce rural investment because if a carrier cannot expect a return on its investment, it will not make the investment in the first place) (Frontier at 4); NASUCA (An auction process would be as complex if not more so than the current system) (NASUCA at 2); NTCA: Reverse auctions would be "a serious mistake . . . the track record of reverse auctions utilized in new service areas is of limited relevance to the U.S., theoretical evidence of reverse auctions in areas with existing infrastructure has not been studied, and scant empirical evidence of their usefulness exists" (NTCA at 2, 7, 8); Oklahoma Corporation Commission (OCC) ("reverse auctions would likely not be viable mechanisms to lower USF support in high cost markets where there is little or no competition") not the best solution to tempering the growth and size of the Universal Service Fund) (OCC at 4); OPASTCO: "The use of reverse auctions in rural service areas would jeopardize this record of success and place at significant risk the continued availability of "reasonably comparable" services and rates to rural consumers") (OPASTCO at 4).

opposition; the NPRM fails to justify the Commission's tentative conclusion in light of the rich and varied record established in opposition to reverse auctions.⁸¹

As discussed in the ITTA Reverse Auctions Comments, the Joint Board must account for significant implementation issues when considering the use of auctions. Even if auctions are determined to have merit in certain instances, it is unlikely that auctions for ILEC areas would yield benefits outweighing the significant risks. Auctions are intended result in funding for fewer, rather than more, eligible carriers. Yet, there are approaches to that goal that entail far less risk, and invoke far more common sense. As described above, the data reveal that growth in CETC funding is precipitating sharp increases in USF payments with no apparent effective controls on that growth. Rather than assume the risk of auctions, the Commission should first rein in Fund growth by adopting rational controls on CETC support. Implementation of auctions to replace mechanisms that have worked well to-date are inappropriate: USF distributions to incumbent carriers are based on appropriate costs and have resulted in the efficient deployment of networks that bring not only plain old telephone service, but also

⁸¹ For example, in comments filed May 31, 2007, CenturyTel noted, "IP-enabled services and wireless services are very much dependent upon the availability of a ubiquitous PSTN." CenturyTel at 3. And, as the National Exchange Carrier Association (NECA) observed, "if universal service support amounts are fixed, as auctions advocates propose, revenue shortfalls are likely to occur, thus putting rural telecommunications infrastructure at risk." NECA at 6. The National Telecommunications Cooperative Association (NTCA) noted that all auctions proposals "fail to address the critical issue of stranded investment," NTCA at 4, while OPASTCO warned that auctions "would place at significant risk" reasonably comparable rates and services in rural areas, OPASTCO at 12. Mechanisms that would undercut rural ILEC ability to invest in and maintain critical infrastructure would also have an impact on the provision of mobile services. As introduced by ITTA in its May 31, 2007, Comments, mobile services should be supported on the basis of specific defined principles, but not at the expense of the underlying network upon which those services rely. CenturyTel acknowledged that auctions may be useful in markets in which there are multiple CMRS carriers seeking support, or in "isolated, sparsely populated places that are not served by any telecommunications carrier." CenturyTel, however, also identified a raft of questions left unresolved by any of the auctions proposals. *See, See* CenturyTel at 17. These include determining uniform criteria for a bid, determining the feasibility of the bid, and enforcing performance of the bid. Indeed, the Consumers Union, Consumer Federation of America, and Free Press summed succinctly the prospect of reverse auctions: "appealing in theory but implementation may not achieve the desired result of stabilizing the Fund while maintaining the principles of universal service." Consumers Union, et al. at 51.

transmission components that support advanced services for consumers across the Nation. At best, auctions could be considered only for limited and tightly focused contexts that are relatively lower-risk, such as a pilot program for allocating support for unlicensed or abandoned areas; this would be a more appropriate initial step than widespread implementation.

Applied to incumbent LEC areas, reverse auction would encourage diminished network investment, since winners would achieve ETC designation solely by offering services at the lowest cost. A “lowest cost” basis likely would not enable a winner to grow to provide services reasonably comparable to those provided in urban areas during the auction term. Moreover, investor relationships must be considered. To the extent the Commission desires to avoid increasing the cost of capital and deterring investment, auctions would have to be designed and implemented accordingly. High-cost support is a significant revenue source for many rural carriers, and for rural wireline carriers is tied directly to investment. Investors (debt and equity) are very sensitive to uncertainty and disruption of this revenue source, as it is intended to assist in providing required rates of return for otherwise uneconomic investment. As stated by the Rural Telephone Finance Cooperative, “[a]s a lender that is closely engaged with the rural local exchange carrier (RLEC) industry, we can say unequivocally that imposition of reverse auctions on RLECs would significantly impair their ability to borrow funds for capital improvements.”⁸² The Commission must not encourage this type of risk.

Moreover, auction winners bound to provide service at low-end costs could well be encouraged to undertake inappropriate measures to preserve their pre-determined

⁸² See, *i.e.*, Comments of the Rural Telephone Finance Cooperative, WC Docket No. 05-337, CC Docket No. 96-45, at 1 (filed Apr. 15, 2008).

business models. By contrast, rural ILEC ETCs are required to account for costs, but with the understanding that rational investment is supported as it grows to meet new network needs based on defined public policy and consumer demands, while non-rural ILEC ETCs are held to an objective forward-looking standard. The prospects of underinvestment are complicated by the threat of stranded investment that might loom toward the end of an auction term, when the prospect of transferring assets to a new auction “winner” emerges. The creation of stranded investment also raises investors’ concerns about policymakers’ willingness to support a financially-sound long-term rural telecommunications business model.

In addition to legal and investor-related concerns, there are valid considerations related to customer service. Commission rules for conducting and implementing the results of auctions would also most likely need to address the significant risk of deteriorating service, especially in the final years of the “bid” (these risks might be compared with the insufficient capital and expense budgets that typically unfold before a company – in any sector – is sold). Moreover, the possibility of replacing the auction “winner” looms: what party would stand ready to assume COLR obligations in such a case? Customers who receive service from the supported entity could be faced with the potential of forced change of service providers every set number of years. There is also the possibility of no access to new advanced or evolving services, unless an enforceable framework related to new services is factored into the bidding; presumably a corresponding bid price adjustment would have to be allowed, as well.

Further, Commission auction rules would most likely have to consider other carrier-related issues. For example, there is a poor correlation between investment and

depreciation cycles. A longer investment term is better than a shorter term, but the longer term may not be as attractive when measured by policy and consumer expectations for the deployment of new features and services. Additionally, an auction process would need to accommodate the reality that plant typically is replaced on an orderly cycle and with different depreciation lives, rather than “all at once.” For example, as the Commission has noted, small, rate-of-return carriers often have “lumpy investment patterns, and fluctuating operating expenses.”⁸³ An auction process, therefore, does not coincide with the normal and ordinary course of business in providing telecommunications services. In fact, a rational bid winner could not justify investment that outlived the auction.

The Commission appears to pursue these risks while abandoning less onerous mechanisms that would quite effectively limit Fund growth. As described above, USF growth that has generated concern is linked directly to CETC support that has ballooned while support to ILECs has remained static or declined. Incumbent landline carriers have built networks and incurred ongoing costs to meet a defined set of regulatory mandates, including COLR, rate regulation, network capacity, network reliability, and customer service. They have also been required to develop and maintain complicated cost allocation, rate design, and reporting systems. None of these systems and costs may be shed easily. Much as in the electric industry, this scenario creates a set of costs that were incurred in order to achieve legal and regulatory requirements, but which likely put the

⁸³ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-777 and 98-166, FCC 01-304, 16 FCC Rcd 19,613, at para. 86 (2001).*

incumbent at a significant disadvantage at the outset of the auction. Further, losing the auction while retaining the cost-overhang could exacerbate the incumbent's disadvantage. If so, it could lead to a negative ripple-effect or even failure that profoundly harms the carrier, its lenders, its employees, and its customers. That risk is not justified when auctions are proposed to remedy growth that is not caused by a segment of the market to be subject to auctions. The Commission should overhaul mechanisms that have failed, and maintain those that are successful.

The various auction scenarios upon which the Commission seeks comment reveal significant hazards that would not be occasioned by selection of more rational alternatives. For example, the Commission explores the issue of "winner takes more" auctions.⁸⁴ The Commission tentatively concludes, logically, that an effort intended to control Fund growth would be deflated by an approach that would continue to offer support to multiple providers in a single market.⁸⁵ In a similar vein, the Commission asks, "[t]o what extent should the Commission's universal service policies be directed at promoting competition in rural, high-cost markets?"⁸⁶ As described above, the balance between promoting competition and ensuring that USF mechanisms survive to provide "specific, predictable and sufficient" support can be achieved by applying a more comprehensive public interest analysis during the CETC designation process; subsidized competition in markets unable to support a single carriers rips reason from the statute.

Auctions are a very problematic solution to a problem that can be addressed with

⁸⁴ Reverse Auctions NPRM at para. 13.

⁸⁵ See Reverse Auctions NPRM at para. 14.

⁸⁶ Reverse Auctions NPRM at para. 16.

less hazardous, less complicated, and more rational measures. The Commission should set aside the notion of applying reverse auctions and instead focus efforts on establishing public interest standards for CETCs and service standards for providers of MWVS that receive USF support.

VI. CONCLUSION

As described herein, USF reform should preserve successful mechanisms while dysfunctional processes are refined. Since existing ILEC support mechanisms have worked successfully for many carriers, those devices should be maintained. At the same time, the Commission should correct processes that preclude proper and adequate support from reaching wireline carriers that need such support. A POLR program must recognize the backbone function the wireline network serves supporting wireless and advanced broadband communications. All carriers, including MWVS and CETCs, should be supported on the basis of their own costs; the identical support rule should be eliminated. Rational public interest standards should underlie support paid to MWVS and CETCs. Finally, the Commission should support measures intended to deploy broadband to unserved areas.

Respectfully submitted,
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