

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (TracFone) by its attorneys, hereby submits its comments on the three notices of proposed rulemaking (NPRMs) released January 29, 2008 in the above-captioned docketed proceedings.¹

Introduction

In the three NPRMs, the Commission has sought comment on a series of proposals which, in their aggregate, would bring about significant and timely changes in the Universal Service Fund (USF) in general, and in the high cost support mechanisms in particular. TracFone has long been a proponent of USF reform. As a provider of prepaid wireless services, TracFone's business model focuses on serving low volume, often low income, consumers who desire and often need the security and convenience of wireless telephone service, but who are

¹ In the first notice of proposed rulemaking (FCC 08-22), the Commission invites comment on a recommended decision of the Federal-State Joint Board which proposes several major reforms of the high cost programs of the Federal Universal Service Fund. See High-Cost Universal Service Support and Federal State Joint Board on Universal Service (Recommended Decision), FCC 07J-4, released November 20, 2007. In the second NPRM (FCC 08-4), the Commission proposes elimination of the so-called "Identical Support Rule" - a rule which provides high cost support to competitive Eligible Telecommunications Carriers based on the costs of the incumbent local exchange carrier ETCs serving the same areas, irrespective of the competitive ETCs' actual costs ("Identical Support Rule NPRM"). In the third NPRM (FCC 08-5), the Commission seeks comment on use of reverse auctions as a means to distribute high cost support ("Reverse Auctions NPRM").

unable to meet the commitment and credit requirements for traditional post-paid wireless service plans. As a provider of interstate telecommunications service, TracFone contributes to the USF and has seen its contributions grow as the size of the USF continues to grow. Ultimately this growth is financed by telecommunications service consumers either in the form of monthly USF pass through charges or, in the case of TracFone and other prepaid service providers who have no mechanism for recovering their USF contributions through separately-identified charges on customer invoices, through higher charges for service.

For that reason, TracFone supports responsible proposals to utilize USF resources in a more efficient manner. With the overall USF generating well in excess of seven billion dollars per year, and with the high cost portion of the USF utilizing the largest amount of the USF's resources, the time has come for the Commission to implement the reforms necessary such that the goals of the universal service program can be achieved without unduly imposing costs on the ultimate sources of funding -- the consuming public. The impact of USF growth on the public was articulately stated by the Federal-State Joint Board on Universal Service as follows:

Any possible benefit anticipated from increased universal service fund distributions must be weighed against the added burden on consumers of telecommunications services. Larger USF contributions increase the risk that telecommunications services will become unaffordable for some, or even a substantial number of consumers. As the courts have noted, excessive subsidization arguably may affect the affordability of telecommunications services, thus violating one of the principles in Section 254.²

As the Commission considers whether to eliminate the Identical Support Rule, implement a system of reverse auctions for distribution of high cost support, and as it considers the comprehensive reform proposals of the Joint Board, TracFone respectfully urges the

² In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service (Recommended Decision), FCC 07J-4, released November 20, 2007, at ¶ 24.

Commission to remain mindful of that all-important underlying premise stated in the Joint Board Recommended Decision. It would be a sad irony and would undermine the statutory objectives of the 1996 Telecommunications Act if the size of the USF and the manner of fund distribution were to have the perverse consequence of actually making telecommunications services unaffordable for portions of the American population.

I. The Commission Should Promulgate Rules for Use of Reverse Auctions to Award High Cost Support in Rural Areas without Delay

TracFone has long been a proponent of competitive bidding procedures (also referred to as reverse auctions), in lieu of the current cost plus method for awarding high cost support to providers of telecommunications services in rural, high cost areas. In October 2006, TracFone commented in favor of reverse auctions in response to a Joint Board public notice.³ Rather than reiterate all of the legal, policy and public interest reasons in favor of reverse auctions, TracFone hereby incorporates by reference its October 2005 comments. For the convenience of the Commission, its staff, and interested parties participating in this proceeding, a copy of those October 2006 comments are attached hereto.

In those October 2006 comments, TracFone stated that use of competitive bidding to award high cost support would be consistent with the purposes of the universal service provisions of the Act as set forth at Section 254. TracFone also noted that there is nothing unusual about competitive bidding to select providers of goods and services. Such procedures are used frequently by governmental entities and for-profit corporations to procure products and services at the lowest cost to taxpayers and shareholders. Those same principles of rewarding economic efficiency and reducing financial burdens borne by consumers are what underlie the

³ Comments of TracFone Wireless, Inc. on Federal-State Joint Board Inquiry on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337, filed October 10, 2006.

Commission's tentative conclusion that reverse auctions offer potential advantages over current high-cost support distribution mechanisms.⁴

Given TracFone's well-documented prior and continuing support for use of competitive bidding methods to distribute high cost support, TracFone will focus on several specific questions raised in the Reverse Auctions NPRM.

1. High Cost Support Should be Limited to Single Auction Winners

If the goal of a reverse auctions system is to limit the size of the high cost portion of the USF by awarding support only to the most efficient providers, then auctions should be held on a winner-takes-all basis. Several proposals already presented to the Commission contemplate multiple auctions and/or multiple winners. For example, CTIA - The Wireless Association® proposes a "winner takes more" auction process with providers other than the low bidders also receiving funding.⁵ Verizon proposes a system of separate auctions for wireline and for wireless providers.⁶ Adoption of these proposals would deny the public the most important benefit of reverse auctions: limiting the size of the high cost fund by distributing high cost support to those who need the least amount of subsidization to provide service to high cost areas.

This is not youth soccer. There should not be awards -- financial awards paid for by telecommunications consumers -- simply for participating. In order for a competitive bidding process to realize its anticipated benefits, it is imperative that only the most efficient providers be rewarded. Neither should there be separate awards for separate technologies. As TracFone noted in its October 2006 comments:

Use of reverse auctions would ensure that the support goes to the most efficient provider -- irrespective of its technology, irrespective of its legacy investments (or lack thereof); irrespective

⁴ Reverse Auctions NPRM at ¶ 1.

⁵ *Id.* at ¶ 5.

⁶ *Id.* at 6.

of its market share. All providers would enjoy the same opportunity to compete for the support, with no advantage or disadvantage caused by technology deployed by any provider or by that provider's position in the marketplace. Where wireline is the most efficient technology, wireline providers will be the low bidders; where wireless technology is more efficient, wireless providers will be the low bidders; where satellite or other technology is most efficient, those providers will be the low bidders. A well-designed reverse auction approach would neither favor nor disfavor any provider based on its preferred technology or its position in the marketplace. In short, a reverse auction would be the essence of competitive neutrality.⁷

If one provider, irrespective of technology deployed, is able to commit to providing service within a specified geographic area with less USF subsidization than any other provider, that entity should be the only provider to receive high cost support within that area. Accordingly, the Commission should affirm its tentative conclusion that universal service support auctions should award high-cost support to a single winner.⁸

2. Geographic Areas for Reverse Auctions should not be based upon Any Provider's Service Areas

In requesting comment on the appropriate geographic areas within which to conduct reverse auctions, the Commission acknowledges that basing the geographic area on any carrier's service area would bestow upon that carrier an advantage.⁹ Notwithstanding that concern, the Commission then tentatively concludes that wireline incumbent LEC study areas are the appropriate geographic areas upon which to base reverse auctions.¹⁰ TracFone does not agree with that tentative conclusion. In considering the appropriate geographic areas for reverse auctions, the Commission should remain mindful of the important notion of competitive neutrality. Neither the incumbent wireline LEC nor any other potential reverse auction

⁷ October 2006 Comments of TracFone at 4-5.

⁸ Reverse Auctions NPRM at ¶ 14.

⁹ *Id.*, at ¶ 19,

¹⁰ *Id.*, at ¶ 21.

participant should be afforded the substantial competitive advantage of using that provider's existing service area as the geographic area upon which the competitive bidding process is based. Such favoritism will discourage competing bidders, will limit the bids, will protect the incumbent's advantage and, most importantly, will reduce pressure on the incumbent LEC to offer the lowest bid.

Whatever geographic area is selected should neither favor nor disfavor any provider or category of providers or any technology. TracFone recommends that reverse auctions be conducted within counties or census blocks. Use of counties or census blocks will be competitively neutral and will encourage multiple bidders since one need not serve a wide geographic area in order to participate in the reverse auction.

3. Auction Winners Should Comply with all Relevant Universal Service Obligations and be Subject to Appropriate Service Standards

Critics of reverse auctions have expressed the concern that carriers might bid low amounts in order to win the reverse auctions, but then offer service at unacceptably low levels in order to provide service within the amounts of their winning bids. That is a legitimate, but not an insurmountable, concern. TracFone recommends that any reverse auction design include within it technical and operational standards based on accepted industry standards. Such standards should be set at levels which obligate winning bidders to provide service at satisfactory levels. TracFone also recommends that the auction rules contain provisions for substantial monetary penalties for repeated service quality performance below those standards, and that they even provide for revocation of ETC designation and the conduct of new auctions in the event of prolonged or repeated performance shortcomings. Such provisions will ensure that winning bidders provide service at acceptable levels and will allow for replacement of those ETCs who fail to deliver service commensurate with the standards applicable to ETCs.

The question of service quality and reliability standards -- and sanctions for not meeting those standards -- discussed in the preceding paragraph is a separate question from the scope of services which reverse auction winners should be required to provide. The Commission's rules contain a list of services and functionalities deemed to be essential to universal service.¹¹ TracFone agrees that companies selected to receive high cost support through a competitive bidding process should be required, as a condition of receiving that support, to provide all the services and functions deemed to be part of universal service. However, TracFone urges the Commission not to impose or enforce that requirement in a mechanistic manner, but rather to do so in a manner which is appropriate for the service being provided.

For example, one of the services which is to be supported by federal universal service support mechanisms is toll limitation for qualifying low-income consumers.¹² Many wireless providers, including most of those designated as ETCs, do not impose additional charges for toll service, as the wireless industry offers usage-based pricing plans in which toll usage is not priced separately. If an ETC does not impose separate or additional charges for toll service, there is no logical reason to impose a toll limitation requirement on such providers. Of course, if those providers do impose additional charges for toll calling, the toll limitation requirement is relevant and should be applicable to such ETCs.

4. Before Implementing a Competitive Bidding System Nationwide, the Commission May Consider Market Tests or Simulations

Some have suggested that the Commission conduct various tests or pilot programs before imposing a mandatory competitive bidding process for distribution of high cost support on a national basis. If the Commission has concerns as to how reverse auctions would operate in the

¹¹ 47 C.F.R. § 54.101(a).

¹² 47 C.F.R. § 54.101(a)(9).

“real world,” it may wish to consider a series of market tests or model simulations before committing to the nationwide implementation of a competitive bidding system. Key factors in any test or simulation will be the competence, experience and objectivity of the entities conducting the tests. TracFone recommends that, in the event, that the Commission elects to utilize such testing or modeling, that it engage the services of a fully qualified firm with no ties or economic relationships with any potential auction participants. Based upon the results of the testing experience, however, the Commission may deem it necessary to make such adjustments as necessary and appropriate based on that experience.

While some adjustments to the competitive bidding process are likely to be appropriate based on testing and on actual experience, there is a compelling need to begin to reform the high cost distribution process now. Thus any such testing or simulation modeling should commence at the earliest practicable time. With the USF now well above seven billion dollars per year, and with more than one-half that amount going to support high cost programs, prolonged additional delay in reforming the high cost programs is something which American consumers can not afford. Accordingly, TracFone encourages the Commission to commence a reverse auctions high cost support distribution process -- a process which may be adjusted based on actual experience.

II. The Commission Should Abolish the Identical Support Rule

Based upon the tentative conclusions stated in the Identical Support NPRM and the separate statements issued by the Commissioners, there seems to be broad consensus that the Identical Support Rule was established in a different era, based on a series of expectations about development of competition which did not occur, and that the rule now produces inefficiencies and should be abolished. TracFone concurs fully with those views and supports immediate abolition of the rule.

There is no reason to provide high cost support to any provider based on another provider's historic costs, especially where the former provider is able to provide adequate service at lower costs than the latter. Of course, much of the need to support multiple ETCs serving the same geographic areas, either based upon the Identical Support Rule or otherwise, would be obviated by the prompt implementation of a winner-takes-all reverse auction high cost distribution method. Although TracFone does not anticipate that there will be much, if any, opposition to elimination of this anachronistic rule, it strongly supports abolition of the rule at the earliest practicable time.

III. The Commission Should Proceed Carefully in Considering the Comprehensive Reform Proposals of the Joint Board

The Federal-State Joint Board on Universal Service has presented the Commission which a broad-based plan for USF reform. Among other things, the Joint Board proposes to replace the USF with three separate funds -- a mobility fund, a broadband fund, and a provider of last resort fund. While the Joint Board is to be commended for its efforts, certain aspects of its reform proposal must be viewed very carefully. Underlying the Telecommunications Act of 1996 is the notion of competition, including intermodal competition. If the national policy is that various modes of telecommunications networks should be competitive alternatives to each other, why should there be separate sources of high cost subsidization for these supposedly competitive modes? If wireless services are to be competitive alternatives to traditional wireline services, why should high cost subsidization for each come from different publicly-supported funds?

Underlying the reverse auction concept which is the subject of a separate rulemaking notice is the concept that whichever provider can deliver suitable service with the least amount of subsidization should be awarded the subsidy funds. In a given geographic area, if a wireline provider can provide service with the least support, it will win the reverse auction. If a wireless

provider can provide service with the least USF support, it will win the auction. Under such a system, there would seem to be no need for separate and parallel funds. Moreover, it should be recognized that there are costs to these proposals -- costs which ultimately will be borne by consumers of telecommunications services. As Commissioner Tate stated in her separate statement attached to the Joint Board recommendation, “[m]ost citizens know that when the government starts creating new funds, more often than not it ends up impacting their pocketbooks.”¹³ Commissioner Tate also asked the question alluded to above -- does it make economic sense to provide ongoing support for three services that ultimately compete for the same customers?¹⁴

Another disturbing aspect of the Joint Board recommendation is its proposed retention of existing high cost support mechanisms for rural ILECs through a “new” fund which it calls the Provider of Last Resort Fund.¹⁵ In other words, the Joint Board proposes to defer implementation of a competitive bidding distribution mechanism in favor of the status quo in those very situations where such reform is most urgently needed -- the continuing subsidization of rural incumbents based on historic costs, without regard to whether other providers can deliver comparable service at less cost to the USF and to the consumers nationwide who fund the USF. TracFone respectfully urges the Commission to reject this aspect of the Joint Board recommendation and to proceed forthwith with implementation of a competitive bidding mechanism for high cost fund distribution, including in areas served by rural LECs.

¹³ In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service (Recommended Decision), released November 20, 2007, Separate Statement of Commissioner Deborah Taylor Tate.

¹⁴ *Id.*

¹⁵ *Id.*, at ¶39.

Conclusion

For the reasons set forth in these comments, TracFone recommends that the Commission implement a winner-takes-all reverse auction mechanism for awarding high cost support to all geographic areas, include those served by rural LECs, that it abolish the Identical Support Rule -- an anachronistic rule whose time has long since passed, and that it consider carefully all of the ramifications of the Joint Board recommendation before embracing any proposal which creates new funds to be supported by telecommunications consumers.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037

Its Attorneys

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Attachment

**Before the
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Washington, DC 20554**

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High-Cost Universal)				
Service Support)				
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WC Docket No. 05-337

**COMMENTS OF TRACFONE WIRELESS, INC. ON FEDERAL-STATE JOINT
BOARD INQUIRY ON THE MERITS OF USING AUCTIONS TO
DETERMINE HIGH-COST UNIVERSAL SERVICE SUPPORT**

Mitchell F. Brecher
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Suite 500
Washington, DC 20006
(202) 331-3100

Counsel for TracFone Wireless, Inc.

October 10, 2006

TABLE OF CONTENTS

Summary	i
Introduction.....	1
I. The Primary Purpose of the USF is to Ensure Affordable Telecommunications Service to All Americans	2
II. Use of Reverse Auctions to Distribute High Cost Support Would be Consistent with Statutory Universal Service Principles as well as Commission-Established Principles.....	4
III. USF Support Should be Awarded to Whichever Provider Can Most Efficiently Deliver Affordable Service.....	5
IV. High Cost Support Should Not be Based on the Costs of any Provider other than the Low Cost Provider	7
V. Other Procurement Models Used Throughout Government and Private Enterprise Demonstrate The Propriety of a Reverse Auction Approach.....	10
VI. Observations on Specific Questions Raised in the Joint Board Notice	11
1. Strict Time Limitations Should be placed on all Commission and State Designation of ETCs.....	12
2. ETCs would still be required to Demonstrate their Qualifications.....	13
3. Only one Low Bidder should be Selected in each Reverse Auction	14
Conclusion	14

Summary

TracFone supports the establishment of a reverse auctions approach for the distribution of high cost support from the Universal Service Fund. The largest challenge facing the USF today is the continued growth of the fund and the burden that the growth places on telecommunications service providers who contribute to the USF and ultimately, on America's telecommunications consumers who are subjected to USF fees and surcharges. These additional fees are especially burdensome on low income and elderly consumers.

Under a reverse auctions approach, no provider would automatically be entitled receive high cost support based on its own embedded costs (in the case of an incumbent local exchange carrier) or on another provider's embedded costs (in the case of a competitive Eligible Telecommunications Carrier). Rather, high cost support would go to the providers who need the least USF support to serve consumers in high cost areas. Such an approach would achieve the goals of the USF, including just, reasonable and affordable rates to all consumers and support mechanisms which are specific, predictable and sufficient. Moreover, reverse auctions would be competitively and technologically neutral as no provider would be favored or disfavored based on its historic marketplace position or on the technology deployed to provide service. Since the universal service support system is based on many consumers paying more so that consumers in high cost areas pay less, at the very least, the USF distribution system should reduce the burden borne by those paying customers to support the subsidized customers. A well-designed reverse auction plan would achieve that objective. Under a reverse auction approach, situations like that involving Sandwich Isles Communications, Inc. in Hawaii could be prevented. There, two Eligible Telecommunications Carriers receive many thousands of dollars per line per year in

high cost support based on the incumbent LEC's when service can be provided to consumers there for a fraction of the support received by those providers.

For the same reasons that governments and private businesses make procurement decisions using competitive bidding, so too should universal service support be awarded based on competitive bidding.

In addition, TracFone offers several specific suggestions for a reverse auction approach. First, there should be strict time limitations on the processes for designation of ETCs by state commissions and by the Commission. Since designation of multiple ETCs will not further burden the Fund, there is no reason for prolonged delay in the ETC designation process. Second, in order to receive high cost support, winning bidders should be required to demonstrate their qualifications through the ETC designation process. Third, there should be only one winning bidder and therefore one recipient of high cost support for each geographic area where reverse auctions are held and support awarded.

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WC Docket No. 05-337)

High-Cost Universal)
Service Support)

**COMMENTS OF TRACFONE WIRELESS, INC. ON FEDERAL-STATE JOINT
BOARD INQUIRY ON THE MERITS OF USING AUCTIONS TO
DETERMINE HIGH-COST UNIVERSAL SERVICE SUPPORT**

TracFone Wireless, Inc. (TracFone), hereby submits its comments on the Federal-State Joint Board proposal to utilize competitive bidding procedures, commonly referred to as “reverse auctions,” as a means for distributing high cost support from the Federal Universal Service Fund (USF).¹ TracFone supports the use of reverse auctions and strongly encourages the Joint Board and the Commission to adopt such an approach.²

Introduction

TracFone is a provider of commercial mobile radio services. It is the nation’s largest provider of prepaid wireless services. It provides prepaid services only. As TracFone has described in previous filings with the Commission, its prepaid service offerings, with no

¹ Public Notice - Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support, (WC Docket No. 05-337 and CC Docket No. 96-45), FCC 06-J-1, released August 11, 2006.

² The Joint Board reverse auctions proposal and TracFone’s comments on that proposal are limited to the use of reverse auctions for distribution of high cost support. Other universal service program funding is beyond the scope of that proposal. For example, TracFone has applied to the Commission for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e) of the Communications Act so that it can receive USF support to offer Lifeline service to qualified low income households. Since only one line per household may receive Lifeline support, there are not concerns about wastefulness or inefficient distribution of support.

contracts, no term or volume commitments, no credit requirements, and no termination charges, are favored by many low volume, often low income, consumers. TracFone's "pay-as-you-go" service provides many consumers with wireless service who could not otherwise afford wireless service plans from traditional providers.

For several years, TracFone has been concerned that proposed changes to the manner in which the USF is funded could have a very adverse impact on TracFone and other prepaid wireless providers and, more importantly, on those consumers who use their services. For that reason, TracFone has pointed out to the Commission its concerns with telephone numbers-based and connections-based contribution methodologies.

However, it has become increasingly apparent that the largest challenge facing the universal service program and the aspect of universal service most in need of reform is the escalating size of the USF and the manner in which USF funds, especially high cost support funds, are distributed. What began as a \$1.7 billion fund less than a decade ago in 1998 -- the year of its inception, has mushroomed into a fund approximating \$7 billion. Unless responsible steps are implemented to control the size of the fund, it is likely to continue to grow. In TracFone's view, identifying and taking the steps needed to limit and control the size of the fund while ensuring that sufficient USF resources remain available to provide affordable telecommunications service to those that need assistance while not bestowing costly and unneeded support on providers whose customers do not need such assistance is the most critical universal service issue before the Commission.

I. The Primary Purpose of the USF is to Ensure Affordable Telecommunications Service to All Americans

Universal service is about availability of affordable telecommunications service. In enacting Section 254 of the Communications Act in 1996, Congress articulated a requirement

that quality service should be available at just, reasonable, and affordable rates.³ Congress also mandated that telecommunications services should be available to all throughout the United States, including rural, insular and high cost areas, at rates “reasonably comparable” with those in urban areas.⁴ This primary purpose of the USF was well-articulated in a recent position paper of the Progress and Freedom Foundation: “. . . the purpose of the Universal Service Fund is to make telephone service available to individuals who would not otherwise be able to afford it, either because they are low income or because they live in areas of the country where the cost of providing service is disproportionately high.”⁵

While Congress mandated just, reasonable, and affordable rates, and rate comparability, nothing in the Communications Act reflects a legislative purpose which would limit the Commission’s obligation to ensure such affordability and rate comparability or the methods by which such affordability and comparability are attained. Neither are there any provisions in the Act which reflect a legislative intent to ensure a steady, guaranteed, and continuing stream of federal subsidization to any category of service providers, including incumbent wireline telephone companies, when such subsidization is not necessary to achieve rate affordability and comparability to American consumers.

If just, reasonable and affordable rates for telecommunications service can be achieved by means other than direct subsidies to incumbent providers based on those providers’ embedded costs of service, and if such alternative measures can result in just, reasonable and affordable service at less cost to the overall telecommunications industry and to the overall consuming

³ 47 U.S.C. § 254(b)(1).

⁴ 47 U.S.C. § 254(b)(3).

⁵ Progress Snapshot - The FCC Asks the Right Questions of USF - Reverse Auctions a Promising Way to Distribute Funds, by Raymond Gifford and Thomas Lenard, the Progress and Freedom Foundation, August 2006, at 1.

public (which ultimately bears the cost of universal service support), then such alternatives should be considered, and the Commission and the Joint Board should be commended for seeking public input on that all-important question.

II. Use of Reverse Auctions to Distribute High Cost Support Would be Consistent with Statutory Universal Service Principles as well as Commission-Established Principles

Section 254(b) of the Act lists several principles to be followed in establishing universal service policies. Use of reverse auctions to award high cost support to the lowest bidder would be consistent with those principles. As noted in the preceding paragraphs, reverse auctions would produce just, reasonable and affordable rates to all consumers -- those that receive subsidized service as well as those consumers who are charged rates which include USF contributions to support subsidized service in high cost areas. Section 254(b)(5) requires that USF support mechanisms be "specific, predictable and sufficient."⁶ By definition, the winner in any reverse auction process would be the entity who committed to provide the requisite level of service within a geographic area at the lowest price. By committing to provide service at the bid amount, the provider would be guaranteeing that the amount bid would be sufficient to meet the service demands. Since the bid amount would be known before funds were distributed and service provided, the amount of support from the USF would be entirely predictable.

In addition to the principles codified at Section 254, the Commission has added the principle that federal support mechanisms should be competitively neutral.⁷ It is difficult to imagine any distribution mechanism which would be more competitively neutral than a reverse auction mechanism. Use of reverse auctions would ensure that the support goes to the most efficient provider -- irrespective of its technology; irrespective of its legacy investments (or lack

⁶ 47 U.S.C. § 254(b)(5).

⁷ Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd 8776, 8801 (1997).

thereof); irrespective of its market share. All providers would enjoy the same opportunity to compete for the support, with no advantage or disadvantage caused by technology deployed by any provider or by that provider's position in the marketplace. Where wireline is the most efficient technology, wireline providers will be the low bidders; where wireless technology is more efficient, wireless providers will be the low bidders; where satellite or other technology is most efficient, those providers will be the low bidders. A well-designed reverse auction approach would neither favor nor disfavor any provider based on its preferred technology or its position in the marketplace. In short, a reverse auction would be the essence of competitive neutrality.

III. USF Support Should be Awarded to Whichever Provider Can Most Efficiently Deliver Affordable Service

Under a reverse auction approach, no specific provider would be automatically entitled to receipt of USF funds to subsidize its provision of service in high cost areas. Whichever provider can deliver in the most efficient manner a package of services and features which comprise the Commission's evolving definition of universal service would be entitled to receipt of USF funds. The beauty of a reverse auction approach is that there would be no preconceived preferred recipient. In circumstances where the incumbent local exchange carrier can demonstrate the ability to deliver service to high cost areas with the least USF support (*i.e.*, by being the low bidder at auction), it would -- and should -- be entitled to receive that support. In circumstances where another provider, whether a wireless provider, a competing wireline provider, or even a satellite telecommunications provider, is able to commit to delivering the same or better level of service with less USF support, that provider should receive the funding.

The purpose of the Universal Service Fund is to ensure just, reasonable and affordable service throughout the United States, including rural, insular and high cost areas. The purpose is

not to ensure the continuing economic viability of any specific providers or categories of providers. As a result of technological developments as well as other factors, the inherent economies historically enjoyed by incumbent providers may no longer exist. Where other providers need less support to deliver comparable service, those other providers should be afforded an opportunity to compete for that support by demonstrating that they can deliver the service for less.

The cost of USF support is borne by consumers of all providers' services, including those providers who contribute to the USF and receive no funding. Since those providers ultimately recover their contributions to the USF through surcharges imposed on their consumers, it follows that lower USF high cost support payments will lessen the price of USF funding borne by all consumers.

The impact of a growing USF on consumers is critical. Notwithstanding the availability of Lifeline service, many low volume, low income consumers are required to contribute to support of the USF without deriving any benefit from the fund. For example, TracFone customers currently contribute on average about \$0.10 per month into the USF under the revenues-based contribution methodology, based on TracFone's actual interstate revenues. Under a per number contribution methodology, those same customers would be required to contribute \$1.00 -- or more -- per month, despite the fact that TracFone's overall average revenue per user is only about \$13.00 per month and that TracFone customers typically make few -- if any -- interstate calls. This is not the proceeding to debate whether the revenues-based contribution methodology should be changed. That question is before the Commission in CC Docket No. 96-45 and TracFone has made numerous filings where it has expressed its concerns about how a numbers-based contribution methodology would adversely impact the prepaid

wireless industry segment and the low volume, often low income, consumers who utilize those services.

The important point is that, under any contribution methodology, low volume, low income consumers are being asked to pay substantial additional charges per month to subsidize incumbent carriers serving high cost areas, without regard to a) whether the customers served by those carriers receiving USF support need subsidization to ensure affordable service; and b) whether other providers could deliver affordable service to those high cost customers with less subsidization. Since the entire universal service support system is based on many consumers paying more so that other consumers in high cost areas pay less, at the very least, the Commission should embrace a distribution system which reduces the burden borne by those paying consumers to support the subsidized consumers, and which ensures that the ultimate beneficiaries of the USF high cost support are the consumers who need that support and not the providers who serve those consumers. A well-designed reverse auction plan would achieve that all-important objective.

IV. High Cost Support Should Not be Based on the Costs of any Provider other than the Low Cost Provider

Critics of the current high cost funding rules have complained about the so-called “identical support rule.” Under that rule, competitive ETCs receive high cost support from the USF based upon the incumbent LEC’s costs, rather than their own costs of providing service. For example, in a recent ex parte submission, the Organization for the Promotion and Advancement of Small Telephone Companies (OPASTCO) stated that “elimination of the ‘identical support rule’ in rural service areas would address the wasteful payout of windfall

support amounts to competitive ETCs that threatens the Fund's sustainability.”⁸ OPASTCO is correct; only it failed to take its point to its logical conclusion. Just as it is wasteful to subsidize one ETC based on another ETC's costs, it is even more wasteful to provide any USF subsidization to one ETC when another provider can -- and will -- deliver the same service to the same consumers, but at less cost to the Fund. This wasteful duplication of support payments and windfall payouts to the less efficient providers would be eliminated under a reverse auctions methodology for distribution of high cost support.

The manner in which the current method for distributing high cost support, including the “identical support rule,” burdens the USF and the consuming public which bears the cost of funding the USF is dramatically illustrated by the situation involving Sandwich Isles Communications, Inc. in Hawaii. Sandwich Isles is a telecom provider which has received waivers of several Commission rules in order to receive funding from the Universal Service Fund as if it were an incumbent local LEC (which it is not).⁹ As a result, Sandwich Isles now receives about \$13,345 per line per year in USF high cost support for each of the approximately 1,200 lines which it serves at a total cost to the nation's telecommunications consumers of more than \$16.5 million per year in federal subsidization.¹⁰ As if that were not enough, the same geographic area served by Sandwich Isles is served by another Eligible Telecommunications Carrier which receives comparable high cost support from the USF. NCPR, Inc. d/b/a Nextel Partners (now part of Sprint Nextel) receives in excess of \$13,000 per line per year for each of

⁸ OPASTCO Ex Parte Notice, CC Docket No. 96-45, WC Docket No. 06-122, CC Docket No. 01-92, filed September 15, 2006, at 6.

⁹ See Sandwich Isles Communications, Inc. (Order), 20 FCC Rcd 8999 (2005).

¹⁰ See Universal Service Monitoring Report, CC Docket No. 98-202, 2005, prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service (www.fcc.gov/wcb/iatd/monitor.html).

the approximately 900 lines which it serves.¹¹ If a household in the geographic area served by Sandwich Isles and by Sprint Nextel obtains landline service from Sandwich Isles and has two wireless service accounts from Sprint Nextel, the combined annual USF high cost subsidy received by the companies who serve that household would be approximately \$40,000 per year!

Since Sprint Nextel provides service using wireless technology and did not have to bear the cost of a wireline network in rural Hawaii, there is no doubt that Sprint Nextel's cost of providing wireless service to those customers is far below \$13,000 per line per year. In fact, it is probably below \$1,000 per year. Yet both companies receive more than \$13,000 per line for each of the three lines -- all paid for by America's telecommunications consumers.

The Sandwich Isles situation is an extreme case. It is addressed in a report recently prepared by Professor Thomas W. Hazlett and submitted to the Commission.¹² It has also been the subject of significant media criticism within the State of Hawaii, and other places.¹³ While the level of USF high cost support received by Sandwich Isles is unusually high, telephone consumers throughout the U.S. are providing millions of dollars in high cost support to incumbent LECs when other providers can -- and do -- provide telecommunications service to consumers in the same geographic areas for far less than the amount received by the incumbent LECs from the USF. As demonstrated by the Sandwich Isles example, the waste of public resources is compounded when that other provider receives the same level of per line high cost support as the incumbent, irrespective of its own costs. A reverse auction system would

¹¹ *Id.*

¹² "Universal Service" Telephone Subsidies: What Does \$7 Billion Buy, prepared for the Seniors Coalition by Thomas W. Hazlett, Professor of Law & Economics and Director, Information Economy Project, George Mason University.

¹³ See, e.g., "Firms Reap Telcom Bonanza," Honolulu Advertiser, June 19, 2005; "Sandwich Isles Communications: Political Connections Pay Off," Hawaii Free Press, June 4, 2005; "FCC Issues Ruling on Phone Company," Honolulu Advertiser, January 30, 2005.

eliminate this situation by subsidizing only the low cost provider and only by the amount actually needed by the low cost provider to deliver service within its service area.

V. Other Procurement Models Used Throughout Government and Private Enterprise Demonstrate The Propriety of a Reverse Auction Approach

While some may view the use of reverse auctions to distribute high cost support to be a radical departure from the "cost plus" distribution methodology for high cost support which has been used in the past, in truth, the reverse auction model is used throughout business and government to identify and reward the most efficient providers and, more importantly, to deliver the greatest value to the consuming public. For example, the entire scheme for awarding government contracts is, in effect, built on a reverse auction model. When the federal government or, for that matter, a state or local government, seeks to procure goods or services, it does not automatically purchase those goods or services from a single incumbent vendor at prices based on that incumbent provider's historic costs. Rather, it establishes the criteria for the goods or services to be procured and then invites interested providers to submit competing bids. Typically, the contracts are awarded to the entity or entities who can furnish the goods or services and meet the stated criteria at the lowest price.

There is a reason why governments utilize competitive bidding procedures in their procurement processes: they are spending the public's money and governments have an obligation to their citizens to utilize the public's resources wisely and efficiently. Similarly, the Universal Service Fund is the public's money. The USF is funded by contributions imposed on providers of interstate telecommunications services pursuant to a federal statute and a program administered by the Commission -- a federal agency. Virtually every telecommunications provider recovers its USF contributions from its consumers, either directly as surcharges which are added to consumers' invoices or, in the case of non-billed services such as prepaid wireless,

as additional components of their rates. Either way, the USF is funded by consumers of telecommunications services and consumers have a right to demand that their money is spent wisely and in an efficient manner. Awarding USF support through a competitive bidding process would ensure that the public's money is not wasted, and that the goals of universal service are achieved at the least possible cost to the consuming public. In this sense, the analogy to the government contract procurement process is appropriate.

Use of competitive bidding to make purchasing decisions is not limited to governments. Most private businesses utilize similar procurement procedures and policies. For example, when a commercial business needs office supplies, it does not automatically purchase those supplies from the vendor who has been around the longest at prices charged by that long-time provider based on the provider's historic costs. Rather, it views the marketplace and seeks out the vendor who can provide the needed supplies for the lowest price. Whether or not the selection process is formalized as in the case of government contracts, the general approach is the same: to promote the profitability of the business by purchasing the business's needed inputs from the provider who is willing to provide the products or services at the lowest price.

A reverse auctions approach like that suggested by the Federal-State Joint Board and by members of the Commission would achieve the same result: It would deliver affordable telecommunications service to those that need USF support to afford service at the lowest possible cost to those who provide that support -- telecommunications providers and, ultimately, their customers.

VI. Observations on Specific Questions Raised in the Joint Board Notice

As described in the preceding pages, TracFone heartily recommends the establishment of a reverse auctions methodology for distribution of high cost support. Such an approach is a necessary step in the Commission's effort to address the continued unrestrained growth in the

size of the USF. Moreover, a reverse auctions method would be fully consistent with all of the public interest objectives inherent in the universal service provisions of the Communications Act. In the remaining portions of these comments, TracFone will address several specific issues raised in the Commission's public notice.

1. **Strict Time Limitations Should be placed on all Commission and State Designation of ETCs**

Section 214(e) of the Act codifies a bifurcated system for ETC designation. Pursuant to Section 214(e)(2), state commissions bear primary responsibility for designating carriers as ETCs. However, Section 214(e)(6) provides that the Commission shall make ETC designations in cases where providers seeking ETC designation are not subject to state jurisdiction. For that reason, most wireless ETCs have been designated by the Commission rather than the states. Under a reverse auction approach, winning bidders would still require ETC designation by the appropriate agency in order to receive USF support. Since use of a reverse auction process could eliminate the wasteful duplication of supporting multiple providers serving the same territories based on the incumbent providers' embedded costs, the public policy concerns which have complicated previous competitive ETC designations would be largely eliminated, or at least significantly reduced. Therefore, there would seem to be no reason for the long delay in making competitive ETC designations which have occurred in the past.

Providers seeking to bid in a reverse auction process should be required either to have been designated as ETCs for each state where they propose to bid in advance of the auction, or they should be required to represent at the commencement of bidding either that they have applied to the appropriate authority for ETC designation or that they will submit an ETC application within thirty (30) days of the reverse auction. No funds would be disbursed to the winning bidder until such time as it received ETC designation and commenced service.

Moreover, since the ETC approval process would be limited to determination whether the applicant met each of the required criteria for ETC designation, there is no reason why either the Commission or state commissions should be permitted to delay action on ETC applications by more than thirty days from receipt of the ETC application, absent compelling reasons (for example, where the applicant has failed to respond in a timely manner to requests for required but missing information).

2. ETCs would still be required to Demonstrate their Qualifications

Being the low bidder in a reverse auction would not, by itself, ensure that the provider is qualified to be an ETC. The applicant would still need to demonstrate to the appropriate designation authority that it meets all of the relevant criteria for ETC Designation, *e.g.*, that it provides service using its own network or a combination of its own network and resale; that it will provide all supported services encompassed within the evolving definition of universal service; that it will serve the entire geographic area covered by the reverse auction process; that its level of service will comply with applicable service standards. Therefore, there will continue to be a need for submission of ETC applications.

The situation would be analogous to the Commission's rules governing spectrum auctions. The winning bidders must still submit applications for licenses and those applications must still be reviewed by the Commission. If a winning bidder failed to demonstrate in its application that it would meet all applicable ETC criteria, then the second lowest bidder would be notified and afforded an opportunity to submit an ETC application.¹⁴

¹⁴ TracFone recommends that each winning bidder be afforded one opportunity to correct any deficiencies in its ETC application by submitting a curative amendment before the runner-up bidder was notified and invited to submit an ETC application.

3. Only one Low Bidder should be Selected in each Reverse Auction

TracFone does not agree with those who advocate multiple recipients of high cost support within a geographic area, irrespective of whether the area is rural or non-rural. The overarching purpose for a reverse auction process is to limit the growth of the high cost portion of the USF by distributing high cost support to the entities which can deliver service with the least amount of support. Attainment of that important objective would be compromised if high cost support remained available to multiple providers within a geographic area.¹⁵ Bearing in mind that one of the goals of the reverse auction methodology is competitive neutrality, the low -- and winning -- bidder in a market could be a wireline or a wireless provider. Whichever entity can provide affordable service to high cost areas using the lowest amount of USF resources should receive that support. Increasingly, wireline and wireless service are becoming fungible with each other. There should not be an assured high cost-supported wireline provider serving any area any more than there should be a USF high cost fund-supported wireless provider serving any area.

Conclusion

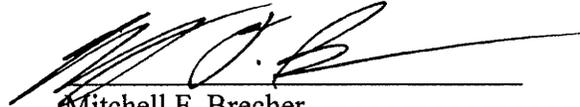
As described in these comments, TracFone applauds the Joint Board and the Commission for opening a public discussion on the use of reverse auctions to award high cost support from the Universal Service Fund. The reverse auctions approach affords the Joint Board and the Commission an opportunity to address the most important challenge confronting the federal universal service program today -- the continued unrestrained growth of the USF and the resulting burden being borne by providers of telecommunications services and, more importantly, by consumers of telecommunications services nationwide. Accordingly, TracFone

¹⁵ As noted in footnote 1 of these comments, TracFone's advocacy of reverse auctions is limited to high cost support. There is no reason why there can not be multiple providers of other USF-supported programs including, for example, Lifeline, in any area, since only one provider per household could receive support.

respectfully urges the Joint Board and the Commission to promulgate regulations to implement a reverse auctions method consistent with the views expressed in these comments.

Respectfully submitted,

TRACFONE WIRELESS, INC.

A handwritten signature in black ink, appearing to read 'M.F. Brecher', is written over a horizontal line.

Mitchell F. Brecher
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Suite 500
Washington, DC 20006
(202) 331-3100

Its Attorneys

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