

**Before the
Federal Communications Commission
Washington, D.C. 20554**

<p>In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service</p>	<p>WC Docket No. 05-337 CC Docket No. 96-45</p>
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COMMENTS OF THE UTAH RURAL TELECOM ASSOCIATION

April 17, 2008

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I. INTRODUCTION

The Utah Rural Telecom Association (“URTA”), by and through its undersigned counsel, files these comments in response to the Commission’s three Notices of Proposed Rulemaking (“NPRMs”) released January 29, 2008.¹

URTA is an association of fourteen rural local exchange carriers who serve customers throughout rural Utah and receive high-cost universal service support.² In addition to traditional

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. Jan. 29, 2008); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*) (attached as Appendix A to FCC 08-22); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*).

local exchange service, all URTA members provide broadband service to their customers and several members operate separate wireless affiliates. Collectively and individually, URTA members have in-depth experience with the current high-cost support system and have a significant interest in each of the three NPRMs.

The role of federal universal service support is as important today as it was when the program began. There continues to be significant value to Utah and the country to add and retain as many customers as possible on the public switched telephone network (“PSTN”). No action should be taken that could diminish or impede the progress the current universal service support program has made to provide affordable telecommunications services throughout the country. In this light, URTA generally supports efforts designed to ensure sustainable, predictable, cost-based universal service support that fulfills the congressionally-mandated purpose to provide access to affordable, high-quality telecommunications services rural America.³

URTA also supports the Federal-State Joint Board on Universal Service’s (“Joint Board”) recommendation not to use universal service to subsidize competition or to build duplicate networks.⁴ The subsidization of competition should not be a purpose of universal service as

² The URTA members are All West Communications, Bear Lake Communications, Beehive Telephone, Carbon Emery Telcom, Central Utah Telephone, Direct Communications, Emery Telcom, Gunnison Telephone, Hanksville Telcom, Manti Telephone Company, Skyline Telecom, South Central Communications, UBTA-UBET Communications, and Union Telephone Company.

³ While URTA supports some of the proposed reforms to universal service support recommended in the NPRMs, URTA urges the Commission to first reform its contribution policy to broaden the base of contributors and to ensure equal and fair treatment of all service providers and customers using the services.

⁴ *Recommended Decision* FCC 07J-4 at ¶ 3. The identical support rule is an example of universal service support being used to subsidize competition and that is one of the reasons URTA agrees with the FCC’s tentative recommendation to eliminate this rule.

efforts to create competition with subsidies will ultimately fail. If the Commission determines that a change in policy with respect to incumbent local exchange support is in the public interest, URTA urges the Commission to implement any new policy gradually in order to maintain the availability and affordability of capital for investment in rural areas.

URTA's comments will address: first, the Joint Board's proposed reform of high-cost universal service support; second, the Commission's rules governing the amount of high-cost universal service support to be provided to eligible telecommunications carriers ("ETCs"); and third, whether and how to implement reverse auctions in disbursing high-cost support to ETCs.

II. JOINT BOARD'S PROPOSED REFORM OF HIGH-COST SUPPORT

A. URTA Conditionally Supports Dividing Fund

URTA conditionally supports the Joint Board's recommendations to include broadband as a supported service⁵ and to separate the high-cost universal service support fund into the Broadband Fund, the Mobility Fund, and the Provider of Last Resort ("POLR") Fund. The conditions on which URTA supports these recommendations are that first, the POLR Fund be held harmless and second, that operation of the POLR Fund be predictable, sufficient, and sustainable using embedded costs to determine the level of support.⁶

⁵ *Id.* at ¶ 56.

⁶ *See Id.* at ¶ 39 where the Joint Board recommends using embedded costs to determine support.

B. NPRM Proposal Does Not Satisfy URTA Conditions or Law

The Joint Board's recommended \$4.5 billion cap on the total fund and its proposed allocation of \$300 million to the Mobility Fund and \$1 billion to the Broadband Fund do not satisfy URTA's conditions for approving the inclusion of broadband as a supported service and dividing the fund.⁷ Nor do the recommendations meet the statutory requirements of 47 U.S.C. § 254(b)(5) that the fund be specific, predictable and sufficient to preserve and advance universal service. There are no findings or analyses in the Joint Board's *Recommended Decision* showing that \$4.5 billion is sufficient to fulfill the purposes of the fund. The Joint Board left \$3.2 in the POLR Fund without explaining how that is the appropriate sum to address the needs of universal service. It appears the Joint Board arbitrarily chose \$4.5 billion to avoid increasing the burden on consumers who pay universal service contributions.⁸ If the Commission is going to cap the fund, there must be some analysis and rationale for the Commission's decision that satisfies the congressionally-mandated sufficiency principle.⁹ In addition, the cap only applies to the total fund, so there is nothing to prevent one of the other two funds from raiding the POLR Fund to the detriment of the customers requiring universal service support from the POLR Fund.

⁷ *Id.* at ¶¶ 26, 28, 29.

⁸ *Id.* at ¶ 2. There is no finding or analysis determining at what level the universal service contribution becomes a burden or of the savings other reforms have saved these consumers. If the Commission first reformed universal service contribution policy and expanded the contributor base, both the concern over customer burden and the perceived need to cap the fund would likely disappear. The impact of contributions on individual customers would decrease, the fund would increase, and the statutory requirements of universal service could be addressed sufficiently.

⁹ Capping the overall fund would have the unintended consequence of states rushing to certify CETCs to increase the states' universal service support distributions. If the Commission is going to cap the fund, it must correct this incentive.

If the Commission were to correctly address these issues, dividing the fund in three separate funds with separate budgets and purposes could protect the POLR Fund, enhance accountability, and guard against waste. Having the three separate funds should make it clear where and how the funds are being used and ensure that the support for the separate services does not adversely affect one another. This, combined with eliminating the identical support rule as URTA recommends below, should also allow the Commission to more easily control the size and growth of the funds.

The Joint Board acknowledged the commendable work the rural local exchange carriers have done in providing voice and broadband services to their customers using the existing support mechanisms which have been flat or declining since 2003.¹⁰ Other than dividing the fund in three and imposing the required safeguards, there is no purpose in altering the current POLR mechanisms when they are working. URTA therefore disagrees with the Joint Board that the Commission should consider changing the POLR mechanism in the future.¹¹ If the Commission were to contemplate any change to the current mechanisms which constitute the POLR program, URTA recommends that the POLR Fund be increased to enable rural local exchange carriers to expand the work they are doing for the further benefit of rural customers by removing the cap on the high-cost loop support mechanism.

¹⁰ *Id.* at ¶ 39. This is further evidence that universal service support used for traditional universal service purposes has not been the cause of the fund spiraling out of control.

¹¹ *Id.* The Joint Board took the position that funding for RLECs may be subject to a competitive bid approach in the future. URTA disagrees with this position.

C. States Should Administer Funds and Analysis Should be Required

Should the Commission accept the Joint Board's recommendation to divide the current high-cost fund into three separate funds, URTA concurs with the Joint Board that states should administer the Broadband Fund. The Utah legislature started a modest rural broadband grant program this year to extend broadband service to unserved areas that could be blended with a similar federal program. States typically are in a better position to know the areas that are not yet served and understand how those areas can best be served. That is true for the Mobility Fund as well. As stated above, however, funding for the POLR Fund should not be diminished by funding the Broadband Fund or the Mobility Fund. The Commission should take particular care not to adversely affect the POLR Fund in moving money from the so-called POLR legacy programs to the Broadband Fund as the Joint Board has suggested.¹²

URTA recommends that any Broadband Fund or Mobility Fund program require an analysis of unserved areas by each participating state before funds are distributed. The information on the availability of these services in Utah has been inaccurate historically and should be corrected to ensure that funds are used only where they are needed. In the areas served by URTA members for example, broadband is nearly ubiquitously available, but that fact is often not recognized or not known by policymakers. URTA, therefore, supports the Joint Board's recommendation that states develop and publish detailed maps of unserved areas before construction grants are awarded.¹³

¹² *Id.* at ¶ 29.

¹³ *Id.* at ¶ 12

III. THE COMMISSION'S RULES GOVERNING HIGH-COST UNIVERSAL SUPPORT TO ETCs (*THE IDENTICAL SUPPORT NPRM*)

A. Identical Support Rule Should be Eliminated

The URTA concurs with the Commission's tentative conclusion that the "identical support" rule should be eliminated.¹⁴ Over time, this rule has proven to be the single biggest contributing factor to the rapid escalation of the universal support fund and allowing it to continue would be a mistake.

Customers have not treated wireless service as a substitute for wireline service and as a result, the number of lines supported by the universal service fund has multiplied beyond expectations as states have granted wireless providers ETC status.¹⁵ In addition, distributions pursuant to the rule have had nothing to do with the actual cost of providing service in rural areas. The identical support rule was initiated in an attempt to treat all providers fairly and to promote competition, but it has had serious, unintended consequences on the universal service fund.

If the identical support rule is left in place and demands on the universal service fund continue to increase exponentially as they have, public and political support for universal service will wane or worse, disappear. In that event, customers in rural America who need universal service to maintain their telecommunications service will be irreparably harmed.

¹⁴ *Identical Support Rule NPRM* FCC 08-4 at ¶ 1.

¹⁵ *Id.* at ¶¶ 9, 10.

B. CETC Support Should be Based on CETC Costs

URTA also supports the Commission's other tentative conclusions to provide support to competitive ETCs based on the CETCs' own costs instead of the incumbents', and to require CETCs to file cost data demonstrating their per-line costs to provide service in order to receive universal service support.¹⁶ Taking such action should reduce demands on the universal service fund and begin to ensure that support is only distributed where it is needed. URTA suggests that CETCs report their costs based on and in alignment with the study areas of the incumbents where they offer service. The Commission should also require that CETCs file total costs for all study areas where they serve in order to compare those costs to the costs from the study areas where the CETCs are seeking universal service support. That is one potential option to crosscheck the CETCs' costs in order to prevent costs from being shifted to the higher cost areas.

IV. WHETHER AND HOW TO IMPLEMENT REVERSE AUCTIONS TO DISTRIBUTE HIGH-COST SUPPORT

A. URTA Strongly Opposes Reverse Auctions

URTA strongly disagrees with the Commission's tentative conclusion that reverse auctions offer advantages in distributing high-cost support and that it should develop an auction mechanism to determine high-cost universal service support.¹⁷ URTA opposes the development and implementation of any reverse auction mechanism because of the negative effect it will have on investment in infrastructure in rural areas and urges the Commission to reconsider and reverse its tentative position. It is URTA's position that under a reverse auction regime, service in rural

¹⁶ *Id.* at ¶¶ 12, 13. Including a possible cap on CETC per line support at the ILEC level.

¹⁷ *Reverse Auctions NPRM* FCC 08-5 at ¶ 1.

areas will deteriorate and it will not be possible to ensure the universal availability of services. URTA believes that reverse auctions will be to quality and availability of service in rural America what the identical support rule has been to the universal service fund support mechanism in terms of the unintended adverse exponential, unsustainable growth the rule created. If implemented, the use of reverse auctions to distribute support funds is a policy the Commission will likely have to change within a few years following implementation to address the harm it will have caused to service in rural areas.

B. Reverse Auctions Will Stifle Capital, Reverse Incentives, Harm Service

Economic lives of most facilities and cost recovery periods for investment in infrastructure will be longer than the length of an auction term.¹⁸ If universal service fund revenues are only available during the term of an auction, those revenues will be at risk each time there is an auction. Should a rural local exchange service provider lose an auction and the accompanying universal service revenues before it has had an opportunity to recover its investment costs, the provider may have to default on its loans and possibly seek bankruptcy protection. Lenders will not lend money under this cloud of risk and the provider will have no incentive to invest. As the lowest bidder with the least support from the support fund, the winning bidder will avoid upgrading its equipment where possible and will be slow to extend service to unserved areas. URTA avers reverse auctions simply reverse investment incentives and will worsen the quality and availability of service in rural America.

¹⁸ In *Reverse Auctions NPRM* FCC 08-5 ¶ 47 the Commission seeks comment on the frequency of auctions and queries whether five years is the appropriate length of time between auctions. Five years is far less than the economic life of most telecommunications equipment and would not allow providers to recover the costs of their investment before universal service funds are at risk.

C. Asset Transfer Is Not the Answer

Partly in response to some of these concerns, the Commission suggested considering the possibility of transferring assets from a previously supported provider to the new winning bidder.¹⁹ URTA opposes even the consideration of such a proposal, particularly in the context of wireline service. It is fraught with legal questions and customer service issues. First and foremost, the Commission's authority to require such a transfer is questionable. In addition, the previously supported provider may have numerous contracts including loans that are not assignable. The confusion for customers alone of having perpetually revolving providers makes this proposal not worth considering. A reverse auction regime that requires the transfer of assets would be heavy-handed regulation contrary to all the trends in the telecommunications industry.

D. If Used, Reverse Auctions Should Start As Experiment in Wireless Industry

If the Commission decides to experiment with reverse auctions despite their adverse impacts on POLR Fund recipients, URTA recommends that they be tried first among multiple wireless ETC providers, within the framework of the Wireless Fund.²⁰ This approach has the advantage of allowing the Commission to determine if reverse auctions are practical and whether they should be used any further.

URTA recommends the Commission not mix wireless and wireline providers together in the same auction. URTA would characterize this as the lesser-of-the-evils option. The

¹⁹ *Id.* at ¶ 49.

²⁰ *Id.* at ¶ 6. Although this is the first part of the Verizon Proposal, URTA does not recommend that the Commission adopt the rest of the proposal.

Commission's *Identical Support Rule NPRM* recognized that wireless and wireline services are not substitutes for one another.²¹ They fill different needs in the market and are primarily complementary services. With few exceptions, wireless service has not become the sole provider in households. It makes no sense to have providers that provide different, non-substitutable services competing in the same auction for the same funds to provide service in the same area when the service they provide is different.

E. Single Winner and Multiple Winner Auctions Are Both Harmful to Service

URTA's position opposing reverse auctions necessarily means that it opposes single winner and multiple winner reverse auctions. Even though the Commission has tentatively concluded that universal support auctions should award support to a single winner,²² and a single winner auction may be preferable, single and multiple winner auctions will both harm quality and availability of service in rural areas. With either option, bidders have incentive to underbid to win or retain universal support funds. Both options therefore create reverse incentives to invest because the funds from the winning lowest bid will likely not be sufficient support. The auction winners will have to postpone or eliminate projects to make up for having insufficient funds. In addition, both options create unacceptable risk for lenders which will cause a scarcity of available capital in the market. Rural service will suffer under either scenario.

²¹ *Identical Support Rule NPRM* FCC 08-4 at ¶ 9.

²² *Reverse Auctions NPRM* FCC 08-05 at ¶ 14.

V. CONCLUSION AND SUMMARY

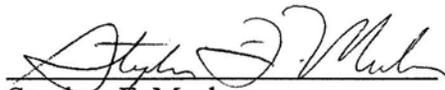
URTA supports universal service support reform that is sufficient, predictable, sustainable, and acceptable to lenders to maintain access to capital for investment in rural areas. Dividing the fund into the Broadband Fund, the Mobility Fund, and the POLR Fund with separate budgets and purposes could achieve these objectives if the POLR Fund is held harmless and any cap the Commission proposes is sufficient support to address traditional universal service needs.

Reverse auctions will not accomplish these reform objectives. Instead, they will harm quality and availability of service in rural areas and the Commission should reverse its tentative conclusion to not implement them.

URTA agrees with the Commission's conclusion to eliminate the identical support rule. This rule has been a mistake and should be abandoned as soon as possible.

Respectfully submitted this 17th day of April, 2008.

Callister Nebeker & McCullough



Stephen F. Mecham
10 E. South Temple, Suite 900
Salt Lake City, Utah 84133
Tel. 801 530-7300
Email: sfmecham@cnmlaw.com

Attorneys for URTA