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

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

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

Caressa D. Bennet
Kenneth C. Johnson
Bennet & Bennet, PLLC
4350 East West Highway
Suite 201
Bethesda, MD 20814
(202) 371-1500

Its Attorneys

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SUMMARY

The Rural Telecommunications Group, Inc. ("RTG") opposes the use of reverse auctions to determine high-cost universal service support for ETCs; supports the elimination of the identical support rule; and finds little to like in the Joint Board's suggestions for reform of the universal service fund. RTG supports the FCC's current determination that all telecommunications carriers, regardless of technology, should be eligible for high cost support and cautions the FCC to avoid proposals such as the Joint Board's "Mobility Fund" that discriminate against one class of carrier. Further, RTG believes that reverse auctions are ill-advised and will result in consumers in high cost areas receiving second-hand telecommunications services. If there is any industry consensus regarding the contentious matter of universal service, it is that the identical support rule ought to be eliminated.

By focusing cost-based support on rural providers, both wireline and mobile, that can demonstrably show where their high cost funds are being used, the Commission can limit the size of the high-cost fund without risking catastrophic damage to rural communities. This is one of the concepts behind the "Panhandle Proposal," which RTG supports. Over time, the "Panhandle Proposal" seeks to deliver high-cost support to a single high-cost wireless network owned by multiple providers. RTG opposes any freeze on competitive ETC funding. As the FCC moves forward on universal service reform, it needs to distinguish comments from industry members whose main goal is to eliminate universal service from the views of those in the industry committed to the provision of universal service.

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The Rural Telecommunications Group ("RTG"),[1] by its attorneys, hereby submits comments in response to the Federal Communications Commission's ("FCC" or "Commission") three Notices of Proposed Rulemaking (collectively, "Notices") regarding the high-cost universal service support program.[2] Specifically, RTG opposes the use of reverse auctions to determine high-cost universal service support for eligible

[1] RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies. RTG's members are Tier III mobile carriers that have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. Many RTG members rely on high cost universal service support in order to extend vital mobile services into underserved or previously unserved rural regions. RTG's members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

[2] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) ("*Identical Support Rule NPRM*"); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*"); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) ("*Joint Board Comprehensive Reform NPRM*").

telecommunications carriers ("ETCs") pursuant to Section 254(e) of the Communications Act of 1934, *as amended* (the "Act"); supports the elimination of the identical support rule; and finds little to like in the Federal-State Joint Board on Universal Service's ("Joint Board") suggestions for reform of the Universal Service Fund ("USF" or "Fund").

I. Introduction

Prior to the Telecommunications Act of 1996 ("1996 Act"), the Federal Communications Commission ("FCC" or "Commission") established the USF to promote the availability of reasonably comparable telecommunications service at reasonably comparable rates in rural areas because AT&T, and later, large incumbent local exchange carriers ("ILECs"), would not serve high-cost, low-density areas. In the 1996 Act, Congress affirmed the FCC's historical universal service structure and codified the FCC's universal service principles to ensure that rural consumers had access to the same telecommunications services as were available in urban areas.

In implementing a new universal service structure pursuant to the 1996 Act, the FCC developed the concept of technological neutrality and determined that all telecommunications carriers, regardless of technology, would be eligible for high cost support. High cost support was portable and wireless carriers who became ETCs were eligible to receive high cost support based upon the support received by their ILEC competitors. This has become known as the identical support rule.

Many RTG members witnessed their larger Tier I and Tier II wireless competitors seek and receive ETC status and soon had no choice but to seek ETC status themselves in order to remain competitive in their high cost service areas. This trend manifested itself nationwide and in the last few years the federal high cost fund has had to support more and more wireless ETCs, all receiving support based on the costs of their ILEC competitor. If there is any industry consensus, it is that this dissemination of identical high cost support has led to a ballooning of the Fund, leading to higher consumer telecommunications bills, and an illogical situation where high cost support originally meant to support a single network where costs were so high that the market could not support such a network is now used to artificially prop up competition. Multiple ETCs that may or may not need the support depending upon their costs receive high cost support where one network cannot stand alone without support. This situation makes no economic sense and taxes consumers of interstate telecommunications services who must support multiple providers of the same services. Any long term reform should efficiently target universal service support toward complementary wireline and mobile universal service networks.

Rural consumers use both wireless and wireline services. Mobility is demanded by rural consumers just as it is demanded by urban and suburban consumers. Universal service should support these complementary telecommunications services. The Commission should continue its policy of not limiting high cost universal service to just one technology. By focusing on rural providers, both ILEC and mobile, that can demonstrably show where their high cost funds are being used and justify their costs, the Commission can target and limit the high cost fund. By using carriers' costs rather than reverse auctions, as suggested by the "Panhandle Proposal"[3] discussed below, the

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[3] Letter from Kenneth C. Johnson, on behalf of Panhandle Telecommunication Systems, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (January 11, 2008) ("Panhandle Proposal").

Commission can target the fund and trim costs without risking catastrophic damage to rural communities.

II. Reverse Auctions Are Contrary to Section 254 of the Act

RTG opposes the use of reverse auctions to determine eligibility for high-cost universal service support and to determine carriers' funding levels. RTG urges the Commission to reject any reverse auction mechanism since it is contrary to the statutory principles that define universal service and will harm rural consumers and businesses that rely on broadband and wireless telecommunications solutions in rural regions of the country. Any mechanism that rewards the lowest-cost provider will limit rural consumers to second-hand telecommunications services, an outcome prohibited by the Act.

Section 254(e) of the Act provides that only an ETC designated under Section 214(e) shall be eligible to receive specific Federal universal service support.[4] Section 254(e) further states that such support should be explicit and sufficient. Section 254(b) of the Act establishes the principles and policies upon which universal service should be based including, among other principles: quality of service should be available at affordable rates; telecommunication and information services in rural areas should be comparable to services in urban areas and available at comparable rates; and there should be specific, predictable, and sufficient support mechanisms to preserve and advance universal service. A reverse auction mechanism will undermine the requirement that service should be of comparable quality and at affordable rates in urban and rural areas because of the inherent focus on cost without regard to quality. Reverse auctions would

[4] *See* 47 U.S.C. § 254(e).

violate the most important principle of universal service – promoting the availability of reasonably comparable services at comparable rates.[5]

Supporters of reverse auctions tend to be large, nationwide (mostly urban and suburban) wireless carriers that eschew serving remote, rural regions. Large, nationwide wireless carriers primarily serve densely-populated areas and interstates, and their limited coverage off of the interstate highways could be a harbinger of the future of universal service if reverse auctions take hold. The Commission should not let its desire to control the size of the Fund lead it down a reverse auction path where the provision of high cost service becomes subservient to simple Fund control.

Unlike competition, reverse auctions create no incentive to deploy better quality service. In fact, reverse auctions would stifle competition, and therefore, the development of new technology and services in rural areas. The Act mandates that rural consumers enjoy comparable telecommunications services to those enjoyed by urban consumers.[6] A single recipient of wireless high cost support would have no economic or competitive incentive to upgrade its services beyond basic voice services, leaving rural consumers trapped with a provider unwilling to offer the sort of data and Internet-based services that are increasingly being provided in urban areas. Even if the FCC could implement a reverse auction mechanism that incorporates quality of service as a successful bidding element, quality of service would still suffer due to lack of funding. In a reverse auction, support will be primarily based on the lowest bid. The lower the bid, the less amount of support a carrier will receive. In a reverse auction, wireless

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[5] *See* 47 U.S.C. § 254(b)(3).
[6] *Id*.

carriers will be facing the choice between seeking drastically reduced support or risking no support at all if they do not low-ball their support bids. Large carriers with deep pockets will be able to exploit this economic reality, and force potential smaller wireless ETC competitors to settle for limited support.[7] Simply put, low-ball bids will make it extremely difficult for small carriers to upgrade their networks and provide the quality of service guaranteed by the Act if they are able to "win" a reverse auction against their deep-pocketed competitors with direct economic interests in reducing or eliminating the Fund.

A wireless carrier who wins a reverse auction would have the economic incentive to provide cut-rate, secondhand services to high cost rural areas. Faced with a reduction in support as a result of reverse auctions driving down support, rural wireless ETCs will have to drastically cut costs in order to continue to provide service in high cost areas. Upgrades and network expansions will be stifled. Discounted services would lead to the degradation of rural networks, and rural businesses and consumers would be stuck with aftermarket and sub-par networks as rural wireless ETCs struggle to get by on limited support. By statute, rural consumers should have services comparable to those provided in urban areas and at comparable rates.[8] Reverse auctions will decimate this provision of the Act.

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[7] One can imagine a scenario where a Tier I wireless provider bids to provide universal service at a nominal and below-cost rate knowing that this will save it on the USF contribution side and knowing that this will drive its small wireless competitors out of business.

[8] *See* 47 U.S.C. § 254(b)(3).

III. RTG Supports Elimination of the Identical Support Rule and the Use of Actual Carrier Costs to Calculate High Cost Support

As previously stated, the federal universal service fund was created to promote the availability of comparable service at comparable rates in rural areas because AT&T and its ILEC offspring would not serve high cost, low-density areas. For years, the high-cost fund has successfully provided support to rural wireline carriers who used such support for its intended purpose, developing rural networks that equaled urban and suburban networks. Rural carriers, both wireline and lately wireless, have built-out their networks to provide high quality service at reasonable rates to rural consumers who would not otherwise have such service. Any long term universal service reform must recognize the role of rural wireless carriers in the provision of high cost support and target support to carriers genuinely committed to serving high cost areas.

Like many in the industry today, RTG's members support elimination of the identical support rule. Support should not be based on the incumbent carrier's costs. RTG's members are willing to base the support they receive on their own costs to provide quality wireless service to its rural consumers and support the principles of the Panhandle Proposal. The "Panhandle Proposal" was filed as an *ex parte* letter in CC Docket No. 96-45 on January 11, 2008.[9] The Panhandle Proposal is based on the concept that the receipt of high cost universal service comes with an obligation, both ethical and fiscal, to use high cost support for the express provision of high cost universal service. Therefore, wireless carriers who directly or indirectly benefit from high cost support used to build out wireless networks in rural regions where multiple networks are cost prohibitive

[9] *See* footnote 3, *supra*.

should be required to provide roaming on a non-discriminatory basis to other wireless carriers in their area and their customers. With the receipt of high cost support for wireless build out comes the obligation to share the high cost network with *all* customers who need access to the network.

Under the Panhandle Proposal, wireless competitive ETCs receiving high cost support would be required to make their network available to the other wireless carriers licensed to serve in the same markets at a reduced rate. This would permit wireless carriers licensed to serve the same area to indirectly benefit from federal high cost support and better serve their customers residing in that market. This reduced rate would generally be lower than the standard roaming rates charged to wireless carriers who do not hold licenses in the ETC area and whose customers reside outside the ETC area and roam in the licensed area. The approach taken in the Panhandle Proposal would discourage uneconomic investment in high cost areas, and instead encourage a single high cost network in rural areas that could be owned by multiple carriers. The Panhandle Proposal, with its roaming element and built-in attractive roaming rate, encourages wireless carriers to share high cost wireless networks where it is uneconomical to build multiple networks. The Panhandle Proposal also discourages wireless carriers from building economically unsustainable networks with its cap on individual support.[10]

To determine wireless carrier costs for the receipt of high cost support, the Panhandle Proposal suggests a formula be developed to allow wireless carriers to calculate their own costs based on a national average cost without resorting to the highly-

[10] The Panhandle Proposal, in recognition that some regions have extremely high costs, allows for waivers of this cap based on a public interest determination.

regulated and burdensome cost accounting methods currently required of ILECs. RTG supports this concept. In much the same way that ILECs receiving high cost support compare their costs to a national average, wireless ETCs should compare their costs to a national average. Wireless ETCs that have simply average costs should not be eligible for high cost support. In addition, ETCs and competitive ETCs should be required to use USF monies for the maintenance, upgrade, and expansion of the supported network in the market area where they receive funds. A stringent rule requiring carriers to demonstrate where and how USF monies are being spent will keep carriers from going after high cost support simply to improve their bottom line or that of their owners.

RTG agrees with the Commission's tentative conclusion that competitive ETCs should use Generally Accepted Accounting Principles ('GAAP") in calculating costs. This concept is part of the Panhandle Proposal. Converting non-rural ILEC ETCs to the arcane rural ILEC accounting system makes no sense. Competitive ETCs should also use the same depreciation schedules they use in other financial reports. The Panhandle Proposal comes to this same conclusion.

IV. The Joint Board's "Mobility Fund" Is Discriminatory

RTG fervently objects to the Joint Board's discriminatory "Mobility Fund." The Joint Board would task the Mobility Fund primarily with funding the delivery of wireless voice services to "unserved" areas. Most Mobility Fund support would be expended as subsidies for construction of new facilities in unserved areas. In this context, the Joint Board defines "unserved area" as areas with a significant population density but without wireless voice service. Based on this definition of "unserved areas," the proposed

Mobility Fund may not need to be funded at all, since arguably, there exist no areas with significant populations that do not have wireless service of some sort.[11] The Joint Board's concentration on and limited definition of "unserved areas" is troubling, ignores the ongoing costs of the provision of wireless services in high cost areas, and suggests a bias toward nominal support for wireless ETCs. Using the same logic, the Joint Board could also call for the elimination of the wireline fund because the network is already built. To date, the Commission has not dignified this disingenuous argument by opponents of *any* universal service, and the Commission should not allow it to be used to eliminate high cost support for wireless ETCs.

The Joint Board also states that public safety should be considered in defining areas needing wireless service, and construction funds should be available to serve areas frequently used by the traveling public, such as state and federal highways, without regard to the population residing in the immediate area. While RTG appreciates the Joint Board's concern for public safety and first responders, the Joint Board cannot choose to ignore rural consumers and their visitors who live more than a thousand feet from these roads. In many cases, high cost support may be unnecessary to support mobile telecommunications services frequented by the traveling public. Most large wireless carriers will build out highways and will more often than not ignore regions beyond the highway. The Commission needs to focus on providing support where costs are high and where small populations make recovering such costs difficult, not strictly on highways,

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[11] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Twelfth Report, WT Docket No. 07-71 (rel. February 4, 2008).

per se. Rural roads where costs are high deserve funding. On other roads where cost recovery is easy, funding may be unnecessary.

The Joint Board's recommendation to fund only "unserved" areas effectively eliminates any useful high cost support to rural wireless carriers serving high cost areas overlooked by larger wireless carriers. The Joint Board's concern about public safety apparently stops at the highways, and ignores the high cost of providing mobile Phase II E911 services in rural regions where service already exists. Rural wireless carriers have encountered tremendous costs in the implementation of life-saving E911 services and, in many cases, would not be able to afford the upgrades necessary to provide emergency automatic location information absent high cost support. Any universal service reform needs to include the high costs of network upgrades inherent in the provision of location-based emergency services provided pursuant to FCC mandate by wireless carrier.

According to the Joint Board, a secondary purpose of the Mobility Fund would be to provide continuing operating subsidies to carriers serving areas where service is essential but where usage is so slight that a plausible economic case cannot be made to support construction and ongoing operations, even with a substantial construction subsidy. This "secondary purpose (*i.e.*, if we have the money) comes with the caveat that funds will not be used to upgrade the multitude of existing wireless networks in rural areas throughout the country. In other words, little, if any, support would be available to existing high cost wireless networks. This is plainly discriminatory. RTG submits that a *primary* purpose of the fund, as envisioned by Congress,[12] is to provide universal service support for the ongoing costs of providing mobile wireless services in high cost regions.

V. Other Joint Board Recommendations Should Not Be Adopted

The Joint Board's Recommended Decision and its resurrection of carriers of last resort ("COLR") under the provider of last resort ("POLR") moniker is anything but reform with its reheated concepts from the universal service debates of the early 1990s. Its use of three separate funds is simply a way to "ghettoize" mobile services and broadband services.

RTG is concerned about the Joint Board's state-centric approach to federal universal service funds. Pursuant to the Joint Board recommendation, states would be in charge of disbursing the funds. Creating fifty separate high cost support funds throughout the country is also administratively unnecessary and complicated.

RTG is optimistic that geocoding technology ("GIS") may be able to target support to areas where it is most needed. The ability to target support where costs are indeed high makes economic sense. RTG's optimism about GIS, however, is tempered by the fact that its members have yet to review any GIS network cost models. If the Commission chooses to implement GIS technology, rural carriers must be given the chance to test the technology in the rural "real world." If the Commission moves toward GIS in the distant future, a shift to actual costs in the near future would allow the FCC to compare the two systems.

[12] *See* 47 U.S.C. § 254.

RTG opposes any freeze on competitive ETC funding. In an age where consumers are migrating toward mobile technologies, a freeze on competitive high cost support ignores consumer choice and would discriminate against wireless ETCs. Any freeze will deter construction of new facilities in rural areas, harming rural consumers. Any freeze, be it short-term or long-term, on competitive ETCs should not unduly harm small, rural wireless carriers who have committed to aggressive buildout schedules in their often underserved areas. The Commission must take great care to ensure that small, rural wireless carriers are able to meet their buildout commitments that go along with their receipt of high cost support. Most small wireless carriers were late in obtaining ETC status, having sought ETC status only when their large competitors were successful in receiving high cost support, and a clumsy freeze mechanism could freeze out small wireless carriers from receiving support. In other words, the Commission must ensure that capping support at past levels does not entrench support for larger wireless carriers while denying support for smaller wireless carriers new to the ETC arena.

Finally, as the Commission moves forward on any broadband funding measures, it should focus on high speed data services, rather than video and entertainment services. The Commission should also expand the base of contributors, especially if it decides that broadband funding is a necessity. Basing contributions solely on interstate and international telecommunications revenue as Internet-protocol ("IP") technologies expand places an unfair burden on consumers of interstate telecommunications and providers of interstate telecommunications. Expanding contributions to encompass broadband Internet applications will ensure a stable and equitable contribution base.

Broadband, especially mobile broadband, is a service that more and more urban customers are demanding. Universal service principles dictate that providers of broadband IP applications should contribute to universal service in order for such services to be available in rural areas.

VI. Conclusion

For the foregoing reasons, RTG requests that the Commission reconsider its support of ill-advised and ill-tested reverse auctions and instead reform the Fund by mandating that carriers use their own costs to determine high cost support. In doing so, the Commission needs to reiterate its commitment to long-standing universal service principles and to distinguish comments from industry members whose main goal is to eliminate universal service from those in the industry committed to the provision of universal service.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: ___________/s/_______________

Caressa D. Bennet
Kenneth C. Johnson
Bennet & Bennet, PLLC
4350 East West Highway
Suite 201
Bethesda, MD 20814
(202) 371-1500

Its Attorneys

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