

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

In the Matter of)	
)	
Federal-State Joint Board on)	WC Docket No. 05-337
Universal Service Seeks Comment on)	
Long Term, Comprehensive High-Cost)	CC Docket No. 96-45
Universal Service Reform)	

**COMMENTS OF CONSUMERS UNION,
CONSUMER FEDERATION OF AMERICA AND FREE PRESS**

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**COMMENTS OF CONSUMERS UNION,
CONSUMER FEDERATION OF AMERICA AND FREE PRESS**

Consumers Union¹, Consumer Federation of America² and Free Press³ (collectively, “CU et al.”), respectfully submit these Joint Comments in response to the Notice of Proposed Rulemaking regarding the November 2007 Recommended Decision by the Federal-State Joint Board on Universal Service (“Joint Board”; FCC 08-22, released January 29, 2008); the Notice of Proposed Rulemaking regarding the elimination of the identical support rule for Competitive Eligible Telecommunications Carriers (FCC 08-4, released January 29, 2008); and the Notice of Proposed Rulemaking regarding the use of reverse auctions to determine Federal Universal Service Fund support (FCC 08-5, released January 29, 2008).

¹ Consumers Union, the publisher of Consumer Reports[®], is an independent, nonprofit testing and information organization serving only consumers. CU does advocacy work from four offices in New York, Washington, San Francisco, and Austin. CU’s public policy staff addresses a broad range of telecommunications, media and other policy issues affecting consumers at the regional, national and international level. CU staff members frequently testify before Federal and state legislative and regulatory bodies and participate in rulemaking activities at the Commission and elsewhere.

² The Consumer Federation of America is an advocacy, research, education and service organization established in 1968. CFA has as its members some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people. As an advocacy group, CFA works to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts.

³ Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and non-commercial sector.

I. THE JOINT-BOARD HAS DETERMINED THAT BROADBAND SATISFIES THE STATUTORY CRITERIA FOR INCLUSION AS A SUPPORTED SERVICE. THE TASK NOW BEFORE THE COMMISSION IS TO IMPLEMENT THIS IMPORTANT DECISION IN AN EFFICIENT AND EQUITABLE MANNER THAT PROMOTES THE GOALS OF SECTION 254

The debate over the purpose and administration of the Federal Universal Service Fund (“FUSF”, “USF” or “the Fund”) has sharpened in focus in the year since the Joint Board sought comment on how to reform, stabilize and modernize the program. Interested parties in the debate over modernization have largely reached consensus that broadband is the communications infrastructure of the 21st century and deserves promotion under the Fund. The Joint Board and the Commission have indicated in these NPRMs that they agree with this conclusion. But large gaps remain between parties when the discussion shifts to implementation. The root of the debate lie in the phenomenon of convergence itself, and the path dependent nature of this massive multi-billion dollar federal program.

II. “BROADBAND” IS INFRASTRUCTURE, TELEPHONY IS AN APPLICATION. THE COMMISSION SHOULD FOCUS USF SUPPORT ON THE SUPPORT OF BROADBAND INFRASTRUCTURE. CONTINUED SUPPORT FOR LEGACY TECHNOLOGIES DOES NOT CONFORM TO SECTION 254’S VISION OF UNIVERSAL SERVICE AS AN EVOLVING LEVEL OF SERVICE

When Congress crafted Sections 214 and 254 of the Telecommunications Act of 1996 (“The Act”) they were squarely focused on promoting competition in communications markets; but they did not envision how convergence would turn the old order on its head. At the time, Internet access was an *application* that used telephony as an *infrastructure*. Today, telephony is one of many applications that are supported by broadband infrastructure -- infrastructure that is deployed using cable television networks, mobile cellular networks (using licensed spectrum), fixed wireless networks using licensed and unlicensed spectrum), satellite television networks, electrical

powerline networks, fiber optic networks, and of course, the old Plain Old Telephone Service (“POTS”) twisted copper-pair network. Despite this converged marketplace, millions of American homes cannot purchase a broadband connection at any price, and millions more are only offered third-rate broadband service at exorbitant prices.

Thus, regulatory structure put in place a decade ago to meet the primary goals of Section 254 -- to create universal access and competition in the telephony market -- has become unworkable in today’s market. Convergence has created both the opportunity and the onus to undertake a complete overhaul of our basic conceptions and justifications for universal service, as well as completely reengineer how the Commission administers the directives of Section 254.

III. MEANINGFUL UNIVERSAL SERVICE REFORM REQUIRES A CLEAR AND COHESIVE POLICY FRAMEWORK. THE THREE NOTICES OF PROPOSED RULEMAKINGS ARE SCHIZOPHRENIC AND CONTRADICTORY

This is the backdrop of the problem that the Commission must deal with. The Commission’s response is to solicit comment on three separate Notices of Proposed Rulemaking -- the proposed elimination of the identical support rule; the use of reverse auctions; and the Joint Board’s recommended decision (to cap the High-Cost fund and split the fund into provider-of-last-resort, mobility, and broadband funds). These three NPRMs, while broad in nature, do not deal with the problem of universal service reform in a comprehensive manner. Worse, they seem to operate without regards to each other, with basic assumptions in one NPRM being ignored in another. Indeed, if all of the “tentative conclusions” contained within these three NPRMs were implemented, the result would be a Fund in more need of reform than the one we have now -- and one no closer to realizing the goal of a universal, affordable and competitive advanced

communications marketplace. We defer to our reply comments our specific response and critique of the framework outlined in the three NPRMs.

Ultimately, we believe that broadband is the communications infrastructure of the 21st century, and that the principle goal of the USF should be to support the deployment of, and consumer access to, next-generation, future-proof high-speed Internet services. But that goal cannot be reached under the current framework of the Universal Service Fund without making extremely difficult choices. The dark underside of the Fund as currently administered is one of inefficient support of redundant legacy technologies and private companies wholly dependent on the continuance of the old model. Changing the old path-dependent model with thus inevitably result in winners and losers, *in the short term*.

This upsetting of the status quo must be done in a realistic manner. It is not enough to simply say broadband should be supported. A method for reaching universal broadband service must be proposed that does not balloon the size of the fund, which is already under great strain. The meaning of the word “broadband” must be decided in a way that reflects realistic judgment of the future development of technology. The ability for companies to recoup costs through applications that rely on broadband infrastructure changes the ongoing support-cost equation and must be considered. And the politically difficult questions of funding supplemental and complementary as opposed to substitutable products, and the questions of ending the inefficient support of legacy providers must be dealt with.

In short, we need a plan.

However, in these comments, we do not offer such a plan. Constructing a realistic Universal Service reform proposal, as the Commission well knows, is not something to be done in haste. We look forward to reviewing the record in this proceeding, and will submit a detailed reform proposal in our reply comments.

Respectfully submitted,

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