Federal Communications Commission
Washington, D.C. 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
	:	

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO REGARDING HIGH-COST UNIVERSAL SERVICE REFORM, IDENTICAL SUPPORT AND REVERSE AUCTIONS

BACKGROUND AND INTRODUCTION

On January 29, 2008, the Federal Communications Commission (Commission) released a series of three Notices of Proposed Rulemaking in the above mentioned dockets. These Notices addressed proposed rules and questions regarding reforming the high-cost universal service program[1], the role and funding awarded to Competitive Eligible Communications Carriers (CETCs)[2], and the merits of the use of reverse auctions in the determination of the amounts of funding to be provided to ETCs[3]. These Notices

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[1] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96- 45, FCC 08-22, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM).

[2] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support Rule NPRM).

[3] *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions NPRM).

appeared in the Federal Register on March 4, 2007. Initial Comments were due April 17, 2008, with Reply Comments due May 19, 2008. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its reply comments in regard to these Notices of Proposed Rulemaking.

DISCUSSION

A. General Observations

At the outset, it should be noted that a number of different groups of commenters filed Initial Comments. The commenters, and their comments, tended to fall in to predictable groups. CETCs (particularly wireless CETCs) wanted to keep Identical Support. Rural wireline incumbents like the POLR fund, but don't like Reverse Auctions. Few in the industry, whether wireline or wireless, favor any cap on High Cost funds that affects them (though they are often quite certain that other groups' support can safely be capped). For most commenting parties, the issue of importance with regard to the Joint Board's Recommended Decision[4] appears to be less "How do we best preserve and promote Universal Service?" than "How do we best preserve and promote our bottom line?"[5] This is normal, and to be expected. Parties' comments generally will follow their own perceived best interests.

It is worth noting that the groups of commenters with the least economic advan-

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[4] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, VFF 07J-4 (Fed.-State Jt. Bd. 2007) (2007 Recommended Decision).

[5] As noted later in these comments, there are instances where the business model of a company and the goals of Universal Service are well aligned. If there are changes made to the Recommended Decision in order to accommodate a business model, the Ohio Commission believes that it is these exceptions which should be accommodated.

tage in any particular arrangement of the High Cost Fund, and the greatest interest in the goals of universal service being met and sustained (*i.e*. the States[6] and the various consumer-oriented groups[7]) generally support the 2007 Recommended Decision with minimal modification or clarification.[8]

As was discussed in the Ohio Commission's Initial Comments in this comment cycle[9] the Ohio Commission had submitted reply comments in response to the Public Notice released by the Joint Board May 1, 2007. A brief review of the major points of the Ohio Commission 2008 Initial Comments along with those earlier comments[10] may be useful in setting a background for the Ohio Commission's reply comments. The Ohio Commission has advocated:

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6 California, Connecticut, Iowa, Montana, New Jersey, New York, North Dakota, Ohio, and Oregon.

7 American Association of Retired Persons, American Library Association, Consumers' Union, Consumer Federation of America, Free Press, National Association of State Utility Consumer Advocates, National Consumer Law Center, New Jersey Division of Rate Counsel, and the Wyoming Office of Consumer Counsel.

8 The exception to this generalization is the Oklahoma Commission, which advocates a proposal put forward by Panhandle Telecommunication Systems. This proposal is different from the 2007 Joint Board Recommendation primarily in that it advocates economic modeling of costs as preferable to Reverse Auctions.

9 *Federal-State Joint Board on Universal Service*, Comments Of The Public Utilities Commission Of Ohio Regarding High-Cost Support For Competitive Eligible Telecommunications Carriers, WC Docket No. 05-337, CC Docket No. 96-45, filed May 18, 2008 (Ohio 2008 Identical Support Comments), *Federal-State Joint Board on Universal Service*, Comments Of The Public Utilities Commission Of Ohio Regarding Reverse Auctions, WC Docket No. 05-337, CC Docket No. 96-45, filed May 18, 2008 (Ohio 2008 Reverse Auction Comments), *Federal-State Joint Board on Universal Service*, Comments Of The Public Utilities Commission Of Ohio Regarding High-Cost Universal Service Reform, WC Docket No. 05-337, CC Docket No. 96- 45, filed May 18, 2008 (Ohio 2008 Comprehensive Reform Comments), (Collectively, Ohio Commission 2008 Initial Comments).

10 *Federal-State Joint Board on Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No 96-45, filed July 2, 2007 (Ohio July, 2007 Reply Comments).

- A separation between the different goals that the high-cost fund had been asked to meet.[11]
- Ending the "identical support" rule.[12]
- A need for equity in terms of the obligation to serve, and a balance between cost support, responsibility and accountability.[13]
- Ongoing State authority over the ETC designation, including the Reverse Auction process.[14]
- Capping the High Cost fund during any transition period.[15]
- Continued use of costing methods for the POLR fund, with Reverse Auctions used for the Mobility and Broadband funds.[16]

B. Identical Support

Almost without exception, wireline and wireless CETCs voiced objection to the end of Identical Support. In fact, one exception makes such an outstanding point about Identical Support that it is worthy of discussion here.

In its Comments, PetroCom License Corporation describes itself as "a full-service

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[11] *Federal-State Joint Board on Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No 96-45, filed July 2, 2007 (Ohio July, 2007 Reply Comments at 3, 11-13); Ohio 2008 Comprehensive Reform Comments at 6-7.

[12] Ohio July, 2007 Reply Comments at 3-6; Ohio 2008 Comprehensive Reform Comments at 3-5; Ohio 2008 Identical Support Comments.

[13] Ohio July, 2007 Reply Comments at 6-8, 10; Ohio 2008 Comprehensive Reform Comments at 9; Ohio 2008 Reverse Auction Comments at 6-7.

[14] Ohio 2008 Comprehensive Reform Comments at 11; Ohio 2008 Reverse Auction Comments at 5-6.

[15] Ohio 2008 Comprehensive Reform Comments at 12

[16] *Id*. at 6-12; Ohio 2008 Reverse Auction Comments at 10, fn. 8.

telecommunications and network solutions company" and notes that it provides a 95,000 square mile cellular network in the Gulf of Mexico, primarily serving the petroleum industry in that area. PetroCom supports the end of Identical Support, and indicates that ETCs should receive support based on their actual costs. PetroCom is not currently an ETC, but is considering applying for ETC status. In PetroCom's case, as well as for a few other CETCs who have commented in these dockets, there *is no incumbent provider* for their support to be identical to. Under the current High Cost Fund structure, PetroCom will be required to file their costs in order to obtain support, since there is no other basis, and indicates that they would request a waiver from Identical Support.

In short, PetroCom's business model is a perfect example of what CETC[17] designation was intended to achieve: Where there is no incumbent provider or service that is significantly less desirable than that available elsewhere, make it economically feasible for *someone* to provide comparable service. This is consistent with the original mission of the Universal Service Fund, to provide service (or adequate service) where it otherwise would not exist. While bringing competitive providers into high cost areas may, arguably, be consistent with the goal of making high cost and lower cost areas comparable, the simple and observable fact is that the current application of Identical Support to CETCs has not generally worked out that way.[18]

Quite possibly the most interesting aspect of PetroCom's comments is that it has

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[17] Possibly more properly termed "Non-Incumbent ETC", since where there is no incumbent, there is no completion and no "competitor".

[18] See, generally, the Ohio 2008 Identical Support Comments and Ohio 2007 Reply Comments at 6-7.

managed to provide a wireless communications network covering 95,000 square miles, under unarguably high-cost conditions, without CETC status. It does much to call into question the "need" of many wireless providers for CETC status, and the necessity of Identical Support.

C. CETC Accountability

One of the reasons why Identical Support to CETCs hasn't generally worked out as planned is that there is often little or no accountability. Many States that have certified CETCs have no structure in place to ensure that the requirement under the Act to provide service "throughout the service area for which the designation is received"[19] is met.

To a great extent, the efforts of the various States to provide a framework for accountability have been hampered by a lack of jurisdiction over the construction plans of CETCs. Often, State law does not provide jurisdiction over the construction plans of competitive carriers, or does so in a way that is disconnected from the Universal Service authority, by placing that authority within other agencies of the State. This is not a criticism of any State's laws; these laws have good reason for establishing jurisdiction as they do. The side-effect on CETC accountability, however, is unfortunate.

The difficulty is exacerbated in the case of wireless CETCs, due to the limitation of State authority over wireless carriers.[20] Again, this is not a criticism of the law or the FCC's decision, but again, there is an unfortunate side-effect. The 2007 Recommended

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[19] 47 USC § 214(e)(1) (2008).

[20] Second Report and Order, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, (March 7, 1994) (93-252 2nd Report and Order).

Decision includes a structure that is consistent with those laws and decisions, yet does provide a measure of accountability at the State level for the use of Universal Service funds.

D. Reverse Auctions

As is noted in Ohio's July, 2007 Reply Comments in this docket, "Reverse Auctions are not a panacea."[21] Specifically, they are not appropriate for the POLR fund. However, the structure of the Reverse Auction, as applied to the Broadband and Mobility funds in the 2007 Recommended Decision, has the potential to cure a number of ills, and may do so with limited and tolerable side-effects.

As discussed above, there is limited opportunity for CETC accountability at the State level. As the Ohio Commission noted in its Ohio 2008 Reverse Auction Comments: "If the auction is properly structured, *including requirements for service provision and expansion* under the bid, it is possible to achieve a high degree of confidence in the result. . . ."[22] The 2007 Recommended Decision and the tentative conclusions in the Reverse Auctions NPRM[23] provide a suitable structure and appropriate requirements. As the Ohio Commission noted in its Ohio 2008 Reverse Auction Comments, the Reverse Auction process, as applied to the Broadband and Mobility funds, should include a requirement to provide service throughout a given service area under the same rates,

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[21] Ohio July 2007 Reply Comments at 8-9.

[22] Ohio 2008 Reverse Auction Comments at 4.

[23] Reverse Auctions NPRM at ¶ 26.

terms and conditions, and notes that a commitment to do so can and should be tied to ETC designation.[24]

Structured in this manner, the Reverse Auction becomes, in effect, a type of Request For Proposal (RFP) process. In fact, the 2007 Recommended Decision explicitly mentions that "requests for proposal to serve specific geographic areas" are a reasonable alternative to a Reverse Auction for the Broadband Fund[25], and notes that the Mobility Fund should be awarded in a similar manner[26]. States have a great deal of experience in conducting this type of process, in which a contract is awarded based on a specific set of criteria that must be met.[27] In fact, this is precisely the process used for other telecommunication services that are provided throughout an area by a single provider, such as Telecommunication Relay Service.

Conversely, a great deal of concern is expressed by a number of wireline ILECs with regard to the use of Reverse Auctions for the allocation and distribution of the POLR fund. The Ohio Commission believes that this is a valid concern. The portion of the High Cost fund that is fulfilling its traditional role (which the 2007 Recommended Decision separates into the POLR Fund) is a working, established, cost-based system that provides for the provision of basic telecommunication services. As such, the application

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[24] Ohio 2008 Reverse Auction Comments at 7-9.

[25] 2007 Recommended Decision at ¶ 15.

[26] *Id* at ¶ 18.

[27] The States also have a good deal of experience at terminating or enforcing the provisions of RFPs when the conditions of the RFP are not met. While the gathering of this experience is a painful process, it can be put to good use here.

of Reverse Auctions to the POLR fund would be prescribing a "medication" where there is no disease. As discussed in the 2007 Recommended Decision, the POLR Fund should not be subject to a Reverse Auction process.

E. The POLR Fund

In the discussion of the High Cost fund, there is an unfortunate problem with terminology, which is highlighted by the PetroCom comments, along with other comments appearing in earlier comment cycles in these dockets. The 2007 Recommended Decision uses terminology that unfortunately lumps some carriers in a category that they do not really belong to. In the discussion of the Provider of Last Resort Fund[28], the Joint Board indicates that this fund would be made up of "the sum of all existing Incumbent LEC support mechanisms"[29] and would be "applied to all incumbent carriers"[30].

The terms "Incumbent LEC", "ILEC" and "incumbent carrier" are derived from the Telecommunications Act of 1996, to separate those carriers which were in operation prior to the Act, from those presumably competing carriers who came into being after the Act. While this distinction is generally useful, when Universal Service is being discussed, it fails in certain respects. There are many areas throughout the country in which there were no telecommunications service providers in 1996. For those areas, there is no "incumbent" provider, as the term is commonly used. As a result, any carrier entering

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[28] 2007 Recommended Decision at ¶ 19-23.

[29] *Id* at ¶ 19.

[30] *Id* at ¶ 23.

those areas to provide service is presumed to be a CETC, even if there is no "incumbent" for them to be "competing" against.

It may seem a minor point, but the 2007 Recommended Decision, if strictly interpreted, would leave these carriers, who are, in these territories, the Provider of Last (or Only) Resort, excluded from access to the POLR fund. The development of the POLR Fund should be structured so as to include these carriers, who are the "non-incumbent POLR".

G. The Mobility Fund

Several commenters reject the idea of a separate Mobility Fund as well as the use of a Reverse Auction or similar process to determine the recipient of Mobility Fund support. United States Cellular Corporation and many other wireless companies maintain that the Identical Support rule must be continued, stating that wireless companies must be granted the same amount of support as the incumbent wireline companies, based on the need for "competitive neutrality".

As was stated in the Ohio 2007 Reply Comments:

> "Competitive and technological neutrality isn't as simple as "treating every carrier identically", it is avoiding giving one competitor or technology undue advantage in the market. Given the differences in the services being offered, and the technological dependence of "wireless" services on wireline providers (and often wireline competitors on incumbent providers), "competitive and technological neutrality" *requires* different treatment in terms of cost support mechanisms.[31]

[31] Ohio 2007 Reply Comments at 5 (emphasis in original).

The identical support rule may have been a simple mechanism of support for CETCs, but was not, on the whole, either an efficient or effective use of the Universal Service Fund. This has already been demonstrated on the record in this proceeding, and need not be elaborated upon here. In contrast, United States Cellular Corporation was so bold as to say that ". . . the Commission presents virtually no evidence or documentation supporting its assumptions about the growth of the high-cost fund, the causes of this growth, the likelihood that the rate of growth will continue, or the actions necessary to stem the purported growth trends."[32] While the Commission may not have detailed the evidence in the Notice of Proposed Rulemaking, the record in this proceeding is sufficiently laden with evidence presented as to make United States Cellular Corporation's statement laughable. Rather than repeat the discussion that has already been presented on the record, the Ohio Commission refers the reader to the comments filed with regard to Joint Board's Request for Comments[33] and the proposal to cap CETC High Cost funding.[34]

In its effort to preserve Identical Support, United States Cellular outlines the "tortuous journey the Commission must undertake if it abandons the identical support rule, namely, the mapping out of the embedded costs of competitive ETCs using several

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[32] *Federal-State Joint Board on Universal Service*, Comments Of United States Cellular Corporation, WC Docket No. 05-337, CC Docket No. 96-45, filed May 17, 2008 (US Cellular Comments) at page iv and un-numbered page v.

[33] Ohio July, 2007 Reply Comments.

[34] *In the Matter of Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, Comments of the Public Utilities Commission Of Ohio, WC Docket No. 05-337, CC Docket No. 96-45, filed June 6, 2007.

different technologies."[35] As a foundational point, if Reverse Auctions are used to identify the recipient of Mobility Fund support and determine the amount of that support, as is proposed under the 2007 Recommended Decision, then the concerns of United States Cellular regarding the complexity and difficulty of costing are moot.

As was noted in the Ohio Commission's Initial Comments on the subject,[36] Reverse Auctions may not always be possible or successful. In that event, the determination of costs would be an important tool. While it may seem "tortuous" to the wireless industry, identifying costs is a process that utilities and their regulators, both Federal and State, have been doing for, quite literally, a hundred years, with many variations on the theme encountered and dealt with, including everything from strictly historical embedded costing to forward looking cost projections including LRSIC and TELRIC models. In short, this is familiar territory, and is not a cause for concern.

It seems to the Ohio Commission that the real issue with regard to costing is accountability. Costing and costing methodologies impose a certain degree of accountability. The existing record in this proceeding demonstrates that some carriers have reason to be concerned in that regard.

In its earlier comments, the Ohio Commission supported the separation of funds and funding processes, and it continues to do so. The Mobility Fund provides support that is specifically for the wireless companies and geared to their operational and infrastructure support needs. This separation allows for more flexibility to develop and to

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[35] US Cellular Comments at 4.

[36] Ohio 2008 Reverse Auction Comments at 4.

change with the needs of the technology. The separation of the funds is a first step in devising truly "competitively neutral" cost support that meets the goals of Universal Service.

H. Funding Levels and Caps

A number of commenters have expressed concern that either the funding levels for the various funds are insufficient, or that the funds should not be capped. A few things about those concerns need to be clarified. First, the proposed funding levels are neither the only source of funds, nor are they the end state.

Windstream in particular expresses concern about the Broadband fund, noting that the estimated $300 million would not even pay for upgrading their own network.[37] Windstream is far from the only commenter to express concern about inadequacy of the Broadband fund (or any of the funds), but their statement serves well to focus attention on a few major points.

First: The $300 million figure is an estimate of a "reasonable federal funding level" to provide a "meaningful chance to address the public's desire for more ubiquitous broadband availability."[38] These funds are not intended to pay for these projects in their entirety; they are designed merely to assist in making such projects economically feasible. The Ohio Commission sincerely doubts that Windstream intends, in exchange for a Broadband grant, to give broadband service away for free, or will forego the numerous

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[37] Windstream Comments at 13.

[38] 2007 Recommended Decision at ¶ 29.

sources of revenue that providing broadband internet access makes possible.[39] Any carrier taking advantage of the funds will likewise presumably design their business model to recover some of the costs of building and operating their networks from customers.

Second: As the Ohio Commission noted in its 2008 High Cost Reform Comments, a provider taking advantage of economies of scope could draw from multiple funds to support a single project, if it provided multiple services.[40] The 2007 Recommended Decision notes this as well in the discussion regarding avoiding duplicate support; "…a wireless provider who receives support under the new Mobility Fund would likely need only marginal Broadband Fund dollars to add broadband to its mobile network." The same factor is noted with regard to wireline providers.[41]

Finally: There are other sources of funding and grants, both Federal and State. As is discussed in the Recommended Decision, care must be taken to ensure that funding administered under the Universal Service fund is not duplicative of funding from other sources.[42]

As a final matter, it should be stressed that the funding caps are in place during a transition period, during which much will be learned about the actual needs. To the Ohio Commission's knowledge, no commenter has proposed, and the 2007 Recommended

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[39] Numerous broadband service providers already provide targeted marketing services, injecting advertising into browsed web pages and as signature bocks in e-mail, in effect utilizing the business model pioneered by the broadcasting industry.

[40] Ohio 2008 Comprehensive Reform Comments at 6.

[41] 2007 Recommended Decision at ¶ 53.

[42] *Id* at ¶ 54.

Decision does not contain any permanent cap. The High Cost Fund has been bleeding profusely for the past few years, and one of the first steps in First Aid is to stop the bleeding.[43] To continue the analogy, when the patient is being transported, care must be taken to ensure that movement does not cause the hemorrhaging to start all over again. For this reason, the 2007 Recommended Decision, appropriately, contains a cap during the transition to the revised High Cost Fund.

CONCLUSION

The Ohio Commission's comments in these dockets have consistently emphasized the need for balance, accountability and sustainability in the USF. The Ohio Commission believes that the 2007 Recommended Decision, with the implementation of the refinements we have noted in these and earlier comments, will achieve those three goals. In addition, the 2007 Recommended Decision successfully recasts the High-Cost Fund to both respect its true purpose, and provide a basis for the future. While there is a great deal yet to be determined regarding its implementation, and a number of areas on which the 2007 Recommended decision does not speak, a close adherence to the structures and processes outlined in the 2007 Recommended Decision will serve the Telecommunications industry, its customers, and the nation as a whole, well.

[43] The Ohio Commission notes that a major source of the economic exsanguination of the fund was staunched by the Commission on May 1, 2008 with its decision to cap the CETC component of the fund pending the institution of comprehensive reform.

The Ohio Commission would like to thank the FCC for the opportunity to submit these reply comments.

Respectfully submitted,

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