May 30, 2008

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

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

Reply Comments of the

Montana Public Service Commission

I. Introduction and Summary

The Federal Communication Commission's (FCC's) January 16, 2008 Notice of Proposed Rulemaking (NOPR) invites comments on ways to reform the high-cost universal service program. The FCC incorporates by reference in this NOPR both of the FCC's NOPRs adopted on the same date and the Federal-State Joint Board on Universal Service (FSJB) Recommended Decision to comprehensively reform high-cost universal service support. The other two NOPRs regard the identical support mechanism and reverse auctions. [1] The FCC will include in this NOPR the records developed in response to these other NOPRs.

The FSJB's Recommended Decision includes the following key recommendations. First, the nation's communications goals should include universal availability of (1) wireless voice mobility, (2) broadband Internet and (3) affordable voice services at comparable rates for all rural and non-rural areas. The FSJB recommends eliminating the identical support mechanism (ISM). The FCC should also "explore" auction mechanisms as a means to determine high-cost universal service fund (HCUSF)

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[1] The FCC's other two NOPRs were also adopted on January 9, 2008, WC 05-337, CC 96-45. Also, See Recommended Decision; FCC 07J-4; WC 05-337; CC 96-45; November 19, 2007.

support. The FSJB's Recommended Decision cites to its May 2007 recommendation involving an interim cap. The FSJB further cites its request for comments on three topics: disaggregation of HCUSF, use of geographic information systems (GIS) and support for broadband services.

The Montana Public Service Commission (PSC) has reviewed the initial April 17, 2008 comments filed by each of the Montana Independent Telecommunications Association (MITS), the Montana Telecommunications Association (MTA), Century Tel, Inc. (CTI), Qwest, the Western Telecommunications Alliance (WTA) and Alltel. The PSC has the following reply comments.[2] The PSC will first summarize the FCC's NOPR on comprehensive reform.

II. Background

The FSJB's recommended "high-cost distribution reform" includes the following topics: (a) scope of reform, (b) funding levels, caps and transition, (c) CETC reform and the broadband and mobility funds, (d) LEC (local exchange carrier) reform and the provider of last resort (POLR) fund, (e) partnership with the states, (f) avoidance of duplicate support, and (g) supported services and carrier eligibility. The PSC summarizes each FSJB topic.

First, as for the scope of reform, the FSJB recommends HCUSFs for three mechanisms each of which has a separate fund but with an overall funding cap. The three funds include: (1) the broadband, (2) the mobility and (3) the POLR fund. The broadband fund is for Internet service in unserved areas and new broadband construction in areas with substandard service. The FSJB assumes that states are most capable to perform mapping to identify these unserved and substandard areas. In admitting to have no specific method to allocate funds, the FSJB assumes a major input should be the number of a state's residences that are unable to purchase terrestrial broadband Internet service. States should provide detailed maps of unserved areas. Only one provider in any geographic area would be awarded grants and reverse auctions (RAs) may be used.

[2] The PSC is filing separately its reply comments in the matter of the FCC's other two NOPRs involving the elimination of the identical support rule or mechanism (ISM) and the application of reverse auctions (RAs). The PSC's comments on this comprehensive reform NOPR incorporate by reference these other PSC reply comments.

The FSJB suggests that the purpose of the mobility fund should be to construct new facilities in unserved areas having significant population density and secondly to provide continuing operating subsidies to carriers that serve 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." The FSJB expects the states will partner in administering the mobility fund awards which would be awarded similarly to how broadband funds are awarded.

The FSJB recommends that the POLR fund be comprised of existing incumbent LEC (ILEC) support mechanisms but with the following changes. The FSJB appears to support adding transport costs to the support that rural carriers receive. The HCUSF mechanism needs to be modernized to take into account for presently averaged rates over low-cost and high-cost areas, the dependence of competitors for backhaul and the fact that plant also serves to generate non-regulated revenues.

Second, as for funding levels, caps and the transition, the FSJB believes larger federal universal service fund (FUSF) contributions run the risk of making telecommunications services unaffordable, in violation of Section 254 and to the detriment of customers and carriers alike. The FSJB asserts that unrestrained growth in the FUSF would likely be catastrophic for universal service. Therefore, the FSJB recommends a HCUSF cap of $4.5 billion with a transition whereby existing funding mechanisms are reduced and the savings transferred to the new funds and mechanisms. Elimination of the ISM would support the mobility and broadband funds. The FSJB anticipates about $1.0 billion to be distributed through the mobility fund. Any reduction in support to wireless CETCs resulting from eliminating the ISM in the first year and thereafter would be available for disbursements from the mobility fund in later years. The FSJB finds $300 million reasonable for the broadband fund with funding coming from a state matching requirement that would also be imposed on the mobility fund. Additional funds could be reassigned to the broadband fund from the legacy POLR programs. The FSJB adds that a significant share of the High Cost Loop fund supports broadband capable loop facilities. Reform of legacy POLR programs could free up money for the broadband fund. The FSJB would cap each of the five "major current" support mechanisms at 2007 levels. The FSJB adds that since the FCC has repeatedly failed to demonstrate to the courts that non-rural carriers receive sufficient funds that the FCC's compliance with the Qwest II remand decision by the 10th Circuit Court of Appeals (Qwest II Remand) may impact the support non-rural carriers receive.

Third, as for CETC reform and the broadband and mobility funds, the FSJB recommends eliminating the ISM in part because it subsidizes multiple voice networks in numerous areas. The FSJB recommends support for one wireline, one wireless and one broadband provider in any given area. The mobility and broadband funds should be used for capital expenses for new construction in unserved areas and not operation and maintenance.

Fourth, as for LEC reform and the POLR fund, the FSJB lauds the rural LECs for providing voice and broadband service at flat or declining support levels. The FSJB recommends maintaining their existing support for distribution through the POLR fund. The support mechanism for non-rural LECs needs further analysis including whether to provide support on a sub-wire center basis. The FSJB again raises the status of the Qwest II Remand, noting that no referral has occurred but acknowledging there could be impacts on the general or the POLR cap. POLR fund support would be limited to one carrier in any geographic area.

Fifth, the FSJB recommends a strengthened partnership with the states given that Congress and the courts have recognized the importance of states in maintaining universal service. As states are best suited to identify unserved areas and in assessing the status of their markets, they should have flexibility in awarding funds. States should be permitted to use auctions or a suitable cost-based method to fund capital infrastructure for mobility and broadband projects, subject to compliance with FCC rules and guidelines. The FSJB asserts the record on competitive bidding and auctions is robust. While the administration of federal grants is an unusual role for state PUCs, it is not uncommon for other state agencies e.g., highways, education, where strong cooperative systems exist. The USAC should distribute funds and conduct periodic audits.

The FSJB recommends that the FCC adopt policies to encourage states to provide matching funds for the mobility and broadband support. Such a system would incent states to actively monitor the use of broadband and mobility funds.

Sixth, the FSJB seeks to avoid duplicative support for networks given the different missions of the three funds. A wireless carrier who receives mobility support would, for example, only need marginal broadband fund support. The states will also need to consider other federal sources of support and assistance such as that from the Rural Utility Service (RUS).

Seventh, as for supported services and carrier eligibility, the FSJB makes several recommendations. Broadband Internet service should be a supported service. Mobility should also be a supported service. While ILECs supported by the POLR fund would continue to be subject to the current ETC requirements, a different set of requirements must be established to receive support from the mobility and broadband funds.

III. Discussion of Issues

We organize our discussion of issues similar to the structure of topics in the FSJB's Recommended Decision. We then review comments filed by the above noted parties followed by our reply comments.

A. Global Reform and Stabilizing Universal Service Support

CTI argues to stabilize support for rural telephone companies. It adds that recognition must be given to ILECs who successfully overcame the challenges of serving lower density areas, with lower per-capita income, to provide wireline, wireless and satellite services. CTI said the view that IP (Internet Protocol) and wireless services are replacing wireline services distorts the fact that such services critically rely on the modern wireline network.

Alltel asserts the legacy voice-grade system should be phased out, with the funds redirected to the mobility and broadband funds. Alltel finds that ILECs, CLECs and wireless are all in direct competition and voice-grade services are substitutes for one another. Alltel cites various sources and statistics in defense of its view that these are substitute services and then concludes that the carrier of last resort has a new meaning.

The WTA opposes an integrated cap on all existing and proposed high-cost support programs. Such a cap would become a zero-sum game that subjects rural ILECs to reduced support as new support is provided to non-rural ILECs, wireless and broadband providers.

Montana PSC Reply:

The PSC appreciates and agrees with CTI's recognition that rural ILECs have overcome substantial challenges to provide not only wireline but also wireless services. The rural ILEC members of MITS are a case in point. Three members of MITS, Cable and Communications Corporation (D2003.8.105), Sagebrush Cellular Inc (D2004.1.7) and Triangle Communications Systems Inc. (D2004.1.6) were all designated as wireless CETCs by the PSC; the latter Triangle petition remains, however, pending at the FCC. Each of these three Montana rural ILEC wireless affiliates serve areas of the type that CTI recognizes as presenting substantial challenges.

The PSC adds that it is not just wireless and IP carriers that critically depend on other ILECs for service. As the PSC explained in its October 19, 2004 reply comments to the FCC (See WC 04-313, CC 01-338) there are numerous small and isolated rural areas of Montana with no real alternative to Qwest as a provider of transport services to exchange traffic. In its 2004 reply comments, the PSC illustrated how one wireless carrier (Verizon) and a rural ILEC (Southern Montana Telephone) had no direct ability to interconnect locally except by means of one provider, Qwest.

The PSC finds Alltel's comments somewhat at odds with the facts. First, as for phasing out of the legacy voice-grade system, not even Alltel who is licensed to serve most, if not all, of Montana is willing to provide ubiquitous service. Alltel does not even serve all of Qwest's customers in each Qwest wire center that it serves. Indeed, the carrier of last resort obligation is important and wireline ILECs certainly have met this challenge. The time may come when wireless is not just alleged to be a substitute but is in fact a substitute. The facts do not now support the conclusion that wireless is generally a substitute.[3]

[3] The PSC provides the following empirical data on the loss of lines by ILECs and the growth of mobile wireless lines for Montana. This data derives from the FCC's Local Telephone Competition reports for June 2003 and June 2006. From June 2003 to June 2006, all ILECs in Montana lost 40,807 access lines (excluding gains in unbundled network element, UNE, subscriptions and resold lines). However, over the same time period Montana's ILECs added

Alltel's assertion of plummeting ILEC access lines also begs an analytical response. Alltel's assertion is a gross exaggeration as it fails to account for product substitution. Two types of substitution are missing. First, the ILEC's customers are substituting the same ILEC's deregulated DSL services for prior subscriptions to the ILECs basic retail landline service. Second, a competitive landline carrier will often lease at wholesale, or simply resell, the ILEC's retail service. In either case, when the ILEC loses the basic retail service, it still has the customer's business through a third party, the competitive carrier. The result is a wholesale service is substituted for a retail service.

The PSC is in agreement with the WTA's opposition to caps. Section 254 of the Telecommunications Act of 1996 (the Act) sets forth the universal service goals that Congress envisioned. Those goals are principled and their achievement has a cost. In order to progress towards the goal of universal service the focus should not be on costs alone. The present FUSF mechanisms have made otherwise unaffordable services affordable to rural Montanans, in compliance with Section 254. The opportunity for rural Montanans to benefit from the use of advanced services including broadband and wireless is evolving but unlikely matches the opportunities in urban areas of the United States.

Just as the WTA perceives an integrated cap to create a zero-sum game, the FCC's recent interim cap on CETC support also creates a zero-sum game. To satisfy the goals in Section 254, a new wireless CETC in Montana will most likely reduce the support other CETCs in Montana receive, thereby putting in jeopardy the achievement of the goals in Section 254. Two of Montana's wireless carriers that had committed to serve unserved areas of rural Montana are now most likely foreclosed from receiving support,

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18,653 resold and UNE leased lines. After netting out resold and UNE leased lines, Montana's ILECs lost about 22,154 land lines between 2003 and 2006 (mid-year), some portion of which would then have subscribed to landline cable service. In contrast to this still <u>exaggerated</u> estimate of the statewide loss of landline service the number of mobile wireless lines increased from June 2003 to June 2006 by 233,989 subscriptions. There is a <u>magnitude</u> of difference between the net wireline ILEC access line loss and mobile carrier access line growth. Thus, wireless service is obviously for most Montanans a complementary, and not a substitute, service to wireline service. <u>See</u> PSC Order 6723a, D2004.1.6, August 14, 2007.

support that in urban areas was made readily available by the FCC and other state PSCs.[4] To now receive support, Chinook Wireless and Tri-Com Inc., will most likely deprive other wireless CETCs of the support that they receive to build out and maintain their rural Montana wireless networks. Such an outcome is prejudiced, a violation of Section 254 and favors the urban areas of the United States.

B. Broadband Fund and Internet Service Support

MITS recommends expanding the definition of universal service to include broadband but disfavors creating an entirely new program to facilitate the deployment of broadband services. MITS adds that it is appropriate for universal service to support the entire network capacity needed to meet consumer expectations. MITS is concerned that the states do not have sufficient resources to manage, as the FSJB suggests, the process of expanding universal service to include broadband service. MITS adds that reliance on state matching funds will not ensure sufficient or predictable universal service funding.

The MTA supports a rural broadband grant program targeted at new construction in unserved areas, where there is insufficient broadband service. The MTA finds inadequate the current 200 kbps speed. While the MTA supports requiring states to provide matching funds for the broadband fund, it opposes an across-the-board flat percentage requirement for all states as it would be punitive in sparsely populated states, causing the rural state to make a higher per capita match than a less rural state. Instead, a per capita assessment should be considered.

CTI recommends creating a limited broadband fund to encourage one provider in a market to create the infrastructure needed to serve "currently unserved subscribers." [sic] CTI suggests first defining what the terms broadband and support mean, and then regularly review the definition. CTI recognizes that in some remaining rural areas the cost to provide service and increase capacity will be expensive. If 100% broadband penetration is the goal, sufficient and predictable funding will have to be made available. CTI said funding is needed for the recurring cost of transport paid to other providers as part of the advanced telecommunications services to remote areas, adding that inter-office

[4] See Footnote Number 5, infra.

transport may involve hundreds of miles and backhaul for urban Internet access. None of these transport costs are expressly covered by the FUSF.

Qwest agrees that universal service principles and support should to a degree extend to broadband. Qwest urges redefining broadband to have at a minimum speed of one megabit/second downstream and 256 kilobits/second upstream. In support of its preference to only fund unserved areas, Qwest said the fund should not support on-going operational subsidies, adding that duplicate networks should not be supported and only one provider of broadband should receive HCUSFs. Qwest would task state PSCs with the mapping of unserved areas. Qwest would also have states receive block grants based on the number of unserved households in each state.

Alltel comments that, absent an upgrade to higher speeds, DSL services should not quality for broadband funding.

Montana PSC Reply: The PSC shares, in part, the MTA's concerns over an equal-percentage state matching grant requirement. First, the PSC does not believe a matching grant requirement can satisfy Section 254 of the Act. The PSC's reason is the cost of comparable service in Montana will impose a higher cost on Montana's residents than it would upon residents in relatively higher populated urban areas.

Second, not all companies have similar access to capital. The WTA comments that the barriers to investment in rural infrastructure by "non-rural ILEC POLRs" have no similarity to the limited financial resources and limited access to capital markets of rural ILECs. See p. 16. Two of the MTA's members have multi-state telecommunications operations. Other Montana wireline carriers e.g., Mid-Rivers Telephone Co-op serve some of the least densely populated areas in the United States. As a result, not only is an equal percentage matching grant punitive among states, but an equal percentage grant is punitive to carriers within a state.

Third, while the MTA raised competitive neutrality concerns elsewhere in its comments, it did not do so here. Whereas the MTA supports state matching for the broadband fund, it has not suggested the same funding mechanism for rural ILECs. For the same reason that state matching funds should not be required to fund universal service for rural ILECs, such funding should not be required to achieve universal broadband or universal wireless service. This is because Montana ranks low on the per capita income scale but has high costs to serve rural areas. A principle reason for universal service funding in high cost areas is to achieve service and rate comparability with (low-cost) urban areas. A state like Montana cannot, so to speak, pick itself up by its bootstraps when it comes to achieving universal service comparable to what is available in urban areas. FUSFs should serve to achieve rate and service comparability.

In turn, the PSC also disagrees with the FSJB suggestion to use "the number of state residences that are not able to purchase terrestrial broadband Internet service" as the means to allocate broadband funds to states. The PSC's disagreement is because a "numbers" mechanism is a primitive foundation for costing. Also, the FSJB's numbers approach is not how HCUSFs for rural and non-rural carriers are allocated.

As for Qwest's comments, the PSC has the following reply. First, Qwest's proposal to fund only unserved areas and to not support on-going operations poses real problems. In contrast to Qwest's proposal, the support that rural and non-rural ILECs receive includes loop support. Loops that are designed for voice service also facilitate the provision of advanced broadband services. Thus, there already is some ongoing support for rural and non-rural carriers, due to joint products, that enables their provision of broadband services, even though broadband is not currently a funded service. In Montana, DSL is not available in every non-rural exchange and in some exchanges where it is available, DSL is not ubiquitously available. Thus, if only one broadband provider is supported, as Qwest proposed, either the FCC or the states will be in the position of picking winners and losers -- technology wise. The PSC finds this outcome problematic.

Second, as for Qwest's proposal to task the states with the function of mapping to discover unserved broadband areas, the PSC disagrees. The PSC has neither the budget nor the expertise to perform such work. Legislation may be required to fund such an effort, unless of course the FCC carves out some of the broadband funding to support a state's mapping effort. A better option is as the MTA suggests, to have the carrier perform the mapping (<u>See</u> D. Mobility Fund, infra).

Third, the PSC finds ill-advised Qwest's proposal to have the states receive "block grants" based on the number of unserved households in each state. One objection is similar to why we oppose the FCC's "numbers" based mechanism discussed above. If

Qwest's proposal had any merit, then the entire FUSF process could be simplified by ignoring costs entirely with FUSFs provided to carriers based on the number of unserved households. Qwest's challenges of, and the resulting Tenth Circuit remands of the FCC's high-cost model universal service orders belies the merit of providing FUSFs for broadband based just on the number of unserved households. The cost to provide broadband is not the same in unserved rural areas of Montana as it is in more urban areas. Ironically, Qwest's advocacy appears also more aligned with those that would not eliminate the ISM. Qwest, however, advocates eliminating the ISM. The provision of broadband in unserved areas is, as with the provision of wireless and wireline service, something for which the cost will vary. With Qwest's proposal, more densely populated urban areas without broadband would receive better support than would less densely populated and higher cost rural areas. Qwest's proposal is not consistent with Section 254 of the Act.

The PSC is surprised by Alltel's comment to deny broadband funding for DSL. Although DSL is not ubiquitously available, where it is available in Montana it is often available at speeds that exceed that for Internet access over wireless networks. The PSC has through time asked wireless ETC applicants to provide the Internet speeds available on their networks and while their future speeds appear relatively fast their actual speeds are not. The PSC cannot support Alltel's comment.

C. The Universal Service Contribution Base

MITS recommends expanding the contribution base for universal service to include all "service providers" that use the national telecommunications infrastructure. The MTA also supports broadening the base of contributions to include "all providers of voice communications" as all traffic that uses the public network should support universal service. In its comments, CTI said that because of the decrease in long-distance traffic, due to IP and wireless services, the funding base has irrevocably changed. Therefore, CTI supports requiring all carriers that use the PSTN (public switched telephone network) to contribute to the FUSF. CTI also supports changing to a hybrid numbers- or connections-based method whereby contributors "would simply count the number of customers connected to a working telephone number, IP address, or the equivalent…"

Montana PSC Reply:

The PSC supports the advocacy of MITS, the MTA and CTI to broaden the contribution base for the FUSF. All such providers today use the PSTN to some extent. For purposes of contributions such use should be treated similarly regardless of the technologic platform and the sort of communications (voice, data). The PSC does not clearly understand what CTI means by its proposal to "count the number of customers connected…" CTI's proposal should not be considered, absent a clarification of this ambiguity and an opportunity to then provide reply comments.

D. Mobility Fund

The MTA commented in support of a separate mobility fund. It did so in apparent support of the FSJB's recommended interim cap decision which noted differences in regulatory treatment between CETCs and ILECs, such as equal access and carrier of last resort. The MTA added other differences such as wireless carriers that are subject to license areas while rural ILECs are subject to study areas and CETCs receive support for each handset deployed. The MTA agreed with the FSJB and would target support to wireless voice services that are "…beyond reasonable economic means to serve…" to construct new facilities in unserved areas. The highest priority for support should be to areas that may never justify the economic deployment of wireless services, absent FUSFs. The MTA also agrees with the FSJB's recommendation that state PSC's should require CETCs to fund detailed mapping of areas they intend to serve to determine unserved areas.

CTI finds damning the current situation and concludes that a mobility fund that is limited to serving unserved areas and that funds only one carrier should be established. CTI's underlying arguments include that (1) CETCs receive support that is not based on their proven investments; (2) CETCs may receive support for an unlimited number of handsets; and (3) there is no assurance that service quality is monitored.

Qwest states to support a mobility fund that limits to a single handset per household the level of universal service support.

Alltel comments that by allowing multiple carriers to qualify as ETCs would facilitate competition while selecting a single ETC could lock in existing providers, technologies and market structures.

Montana PSC Reply:

First, the PSC finds the comments that would favor limiting service to unserved areas to be inconsistent with and to violate the principle of competitive and technologic neutrality. This is not how the POLR fund would operate or how ILECs currently receive HCUSFs.

Second, the PSC is surprised by CTI's comment damning the current situation. The PSC is surprised as elsewhere CTI recognized and lauds rural ILECs for having overcome substantial challenges to provide not only wireline but wireless services. See CTI comments, p. 13. Thus, as we noted above, several rural ILECs in Montana must be the exception to CTI's comment "damning" all wireless carriers. In any case, the PSC requires wireless ETC designees to achieve 98% coverage.

Third, as for CTI's, the MTA's and Qwest's concern for funding unlimited handsets, their criticism is a two-edged sword. Qwest, for example receives FUSFs for each retail landline to which a customer subscribes. In addition, part of the distribution facilities that wireline ILECs typically use does not just contain a single copper wire pair. Instead, there are multiple copper wire pairs to allow for primary, secondary etc., phone subscriptions. And, it is, in part, these actual costs for which rural ILECs receive HCUSFs. The PSC imposes stringent service quality reporting requirements on ETCs. Therefore, the PSC disagrees with CTI's comments that damns all wireless ETCs and, in turn, concludes that the FCC should freeze funding for CETCs pending reform. To treat wireline and wireless technology differently, as Qwest suggests, fails to satisfy the principle of competitively neutrality.

The PSC is somewhat surprised by but agrees with one aspect of the MTA's comments. The MTA advocates targeting support to wireless voice services that are beyond reasonable economic means to serve to construct new facilities in unserved areas.

The PSC's surprise stems from the MTA's challenge of the PSC's decision to designate Tri-Com Systems Inc. (TCS) as an ETC in redefined study areas (See PSC's August 14, 2007, Order 6723b, D2004.1.6). The PSC does not agree that wireless is somehow different from wireline service such that only new construction in unserved areas should be supported.

Fourth, the PSC finds CTI's and Qwest's advocacy supporting one wireless ETC a likely violation of the FCC's competitive neutrality principle. It is a likely violation as all wireless platforms are not technologically similar. In Montana, the PSC for the first time designated a carrier that uses Global Systems for Mobile Communications (GSM) technology. The other provider uses code division multiple access (CDMA). Since two technology platforms may now exist in rural areas there are enhanced benefits. See D2007.2.18, Order 6812d, April 18, 2008. Thus, the PSC agrees with Alltel's comment that multiple carriers should be designated as ETCs. For just wireless service, to designate a single ETC would, as Alltel comments, advantage not just one carrier but a technology. Also, by designating multiple carriers there will occur intra-modal competition even if there is limited if no inter-modal competition.

E. Provider of Last Resort Fund

Among other concerns, the MTA raised a competitive neutrality concern involving the provider of last resort (POLR) fund. See pp. 19-21. The MTA believes that the absence of a cap on CETC funding, given one exists for rural ILECs, is not competitively neutral. In addition, the MTA would include support for transport. Last, the MTA disagrees with the FSJB that high-cost support does not reflect the increased importance of non-regulated revenues.

CTI said confusion has resulted from an unclear understanding of the relationship between networks and services, with the result that a wireless network may be able to add lines with a relatively lower investment-to-customer ratio if the wireless carrier has no POLR obligation. See pp. 15, 17-18. In turn, the voice network requires redesign to eliminate long loops etc., to better provide the next generation of voice platform. CTI adds that in order for a "network" to expand and modernize to accommodate new services there are costs and investments to do so. Elsewhere, CTI also said that there still is a significant mismatch between ILEC and wireless carrier duties as states impose carrier of last resort obligations on the former and wireless ETCs do not build to serve virtually all customers in a territory, particularly where there is low density. CTI further adds that whereas the FCC in its "*ETC order*" adopted guidelines for ETCs "it has done nothing to retard ETC grants…" CTI concludes that regulatory oversight should focus on achieving parity among ILECs and ETCs, such as an auditing program and states should not be able to impose added regulations on ILECs to be certified as ETCs.

Alltel comments that the FCC should decline to adopt the FSJB's proposal to limit mobility and broadband support to just construction and to not support the operation and maintenance.

The WTA proposes that the transport costs of rural ILEC POLR be supported if they exceed a calculated national average or standard transport cost.

Montana PSC Reply:

The PSC would note that the POLR issue is one that is somewhat complicated if not confused and confusing. First, it is conceivable that wireless technology could eventually replace wireline technology and services, although at present wireless and wireline services are for the most part complements. And, although no wireline ETC in Montana has sought to relinquish its ETC designation as a common carrier who is obligated to provide universal service, if and when one does, there are provisions in the Act that require the ILEC to forewarn the PSC so that a substitution can occur. Thus, any ETC could be called upon to be the POLR when any other common carrier ETC seeks to abandon its obligation to provide universal service.

The PSC does not agree with the MTA that the rural ILEC cap and the cap the FCC imposed on wireless CETCs are similar. At the time that rural ILECs in Montana were designated as ETCs their wireline coverage was arguably already ubiquitous. In contrast, not all rural areas of Montana are served by wireless service. To now achieve advanced (mobile) service comparability, the FCC's interim cap will likely take FUSFs intended for already designated CETCs to then fund new wireless CETCs that seek to serve unserved areas of Montana. Therefore, to impose an interim cap as the FCC has on wireless CETCs is not at all consistent with the cap imposed on rural ILECs. The FCC's interim cap discriminates against rural Montana consumers compared to consumers in urban areas that benefit from prior FCC designations of wireless CETCs.[5]

The FCC's interim cap has other flaws. First, in terms of implementation it is not clear with whom a CETC would file cost data when it petitions to not be subject to the interim cap. Second, there is no helpful direction on what type of cost study must be filed. Third, there is a statement in defense of the interim cap that in the case of high-cost model support the HCM has a built-in restraint on growth. The PSC finds this third point puzzling given that in Montana Qwest's FUSF receipts increased from about $1.5 million in year 2000 to about $16 million in 2004.

The PSC will not at this time comment on the MTA's disagreement with the FSJB's recommendation to modernize all the HCUSF mechanisms to, in part, account for non-regulated revenues. The FSJB's recommendation simply states the no HCUSF mechanism reflects the increased importance of non-regulated revenues. The FSJB's statement did not provide sufficient detail to allow for thoughtful initial or reply comments. It did provide an opportunity for idle speculation. Such an approach is not how existing policies should be investigated let alone considered for change. The FCC should not further consider the FSJB's vague statement before the FSJB has an opportunity to explain itself.

The PSC agrees with the MTA that transport should be a supported service. To be competitively neutral, such support should also be available to other CETCs such as wireless CETCs.

The PSC agrees with CTI and Alltel that investment is not a one-time event, but a recurring obligation if a carrier is to keep up with the next generation of technology. This is one reason why wireline ILEC ETCs and wireless CETCs alike should not only receive

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[5] The historical growth in the amount of FUSFs that CETCs receive appears, in large part, due to designations by other states and the FCC. In 2006, Montana CETCs will receive $7.2 million of the $820 million that all CETCs receive. The FCC has, in the past, been busy designating wireless carriers. The FCC designated Virginia Cellular as an ETC in the face of an allegedly burdened FUSF. The FCC designated Nextel as an ETC in New York, Pennsylvania, Florida, Georgia, Alabama, etc., again apparently concluding Nextel's designation would not dramatically burden the FUSF. In contrast, Montana has unserved wireless areas that, relatively speaking, would have miniscule impacts on the overall size of the FUSF that CETCs receive. Yet, with an interim cap diluted support for all designated CETCs will likely result from any new CETC designation. <u>See</u> PSC Initial Comments, FCC 96-45, MW 05-337; June 6, 2007.

one-time FUSF support for construction. As CTI has explained, the network provider is always focused on future demands and the associated platforms must evolve. The PSC would add that the evolution of platforms for wireline and wireless services in rural Montana depends upon FUSFs so that comparable advanced services at comparable rates are available. Nothing less satisfies Section 254 of the Act. In addition, to limit FUSFs to just construction, and to exclude FUSFs for maintenance and upgrades, is a clear violation of Section 254(e) of the Act.

F. State Administrative Role

The MTA opposes the FSJB's proposal to increase the role of states in administering universal service fund broadband programs. As for the mobility fund, the MTA recommends cost data be submitted to USAC as adding states to the process could overwhelm state agencies, risk compromising confidential information and complicate filing requirements for multi-state enterprises and create redundancy. The MTA perceives legal problems involving a state's authority with any state administration.

CTI expresses trepidation about the FSJB's recommendation to have state PSCs administer the distribution of support, for mobile services. CTI finds the proposal inherently flawed given the spender (PSC) has no political skin in the game. CTI adds that the Tenth Circuit Court of Appeals remands in Qwest I and II emphasized that since universal service is a federal mandate any system of state administration would have to be subject to FCC management. CTI said states may administer the broadband program but only pursuant to definite federal guidelines.

Montana PSC Reply:

The FSJB's three NOPRs would shift more responsibility to the states, presumably state PSCs. The PSC takes quite seriously the process it uses to designate and to then maintain ETC designations. The PSC has over the past ten years devoted considerable resources to this effort. The hurdles that applicants must clear in Montana are not trivial and have not gone unchallenged. An ETC that satisfies the requirements the PSC imposes, furthers the universal service goals of Section 254 of the Act. The suggestions the FSJB makes to have states run auctions, map unserved areas (broadband, wireless) and to divvy up FUSF grants is a significant change from the status quo. If imposed, the PSC will do its best to satisfy these requirements. The FCC must realize that compliance could take time to implement due to the expected fiscal impacts and the likely need for state legislation.

G. Qwest II Remand

Qwest asserts the most pressing high-cost reform is of the non-rural HCUSF mechanism. Qwest criticizes the FCC for inappropriate and unnecessary delays in addressing the Qwest II Remand. The delay has ensured that the rates for non-rural carriers are not reasonably comparable to urban rates as required by the Act.

Montana PSC Reply:

The PSC agrees with Qwest's comments. This FCC's inability to deal with fairly tractable Qwest II Remand issues, relative to those now raised by the FSJB's recommended decision, does not bode well for the implementation of any new FCC policies. The FCC's recent interim cap on CETC funding will likely be long-lived and the adjective "interim" a misnomer. As with the FCC's response to the Qwest II Remand its response to proposals to eliminate the ISM was languid. As a result, the high cost rural areas of the United States have suffered from less than comparable services and rates relative to urban areas. Instead of safely concluding the Qwest II Remand the FCC's consideration of the FSJB's recommended decision appears to now juggle nearly every conceivable FUSF issue. The FCC will be challenged to bring the process to a speedy and coherent resolution without continued disputes.

IV. CONCLUSION

The PSC thanks the FCC for the opportunity to reply to the above noted initial comments of some parties. The PSC appreciates the complexity of the issues in these three NOPRs. We hereby incorporate by reference our separately filed comments on the FCC's reverse auction and identical support mechanism NOPRs (CC 96-45, FCC 08-05 and 08-04). If its final decisions are to avoid being tied up in lengthy disputes, the FCC must be assured that its decisions are in the public interest as set forth by the requirements in Section 254 of the Act. While some of the FSJB's recommendations are supportable, the PSC is concerned that certain of the FSJB's recommendations, including the cap on CETC funding, are not in the public interest and are not consistent with either the intent or the spirit of Section 254 of the Act.

Dated this the 30th day of May, 2008.

Respectfully submitted,

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May 30, 2008

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

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

Reply Comments of the

Montana Public Service Commission

I. Introduction and Summary

The Federal Communication Commission's (FCC's) January 9, 2008 Notice of Proposed Rulemaking (NOPR) invites comments on its rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers (CETCs). The FCC adds that the identical support mechanism (the ISM) rule should be eliminated. The FCC seeks comment on this conclusion and on how then to determine a CETC's federal universal service fund (FUSF) support.

The Montana Public Service Commission (PSC) has reviewed the initial April 17, 2008 comments of each of the Montana Independent Telecommunications Association (MITS), the Montana Telecommunications Association (MTA), Century Tel, Inc. (CTI), Qwest, the Western Telecommunications Alliance (WTA) and Alltel and has the following reply comments. The PSC also includes by way of reference its reply comments filed on this date in the FCC's comprehensive reform NOPR (FCC 08-22, CC 96-45) and in its reverse auction NOPR (FCC 08-5, CC 96-45). The PSC will first provide a brief background of its prior comments filed with the FCC on the subject of the ISM.

II. Background

The Montana Public Service Commission (PSC) has recently filed comments with the FCC on the issue of eliminating the ISM.[1] In those comments, the PSC also cited its prior recommendation to eliminate the ISM. As the PSC has previously commented, if the FCC wanted to address the growth in the FUSF it could have done so by eliminating the ISM. The pancaking of a FUSF cap on top of elimination of the ISM is, however, unnecessary and does not comport with the goals of Section 254 of the Telecommunications Act of 1996 (the Act). In this regard, our policy positions have not changed.

III. DISCUSSION OF ISSUES

The Identical Support Mechanism

The landline member companies of Montana Independent Telecommunications Association (MITS) and their wireless affiliates support a transition to the elimination of the ISM for non-rural CETCs (WC -337, FCC 08-22, 08-5, 08-4). MITS urges the FCC to use a separate proceeding to develop a rural CETC recovery mechanism to replace the ISM. Because of other recent FCC actions, such as conditioning certain merger/acquisition transactions on the placement of an interim cap, MITS does not believe that the FCC needs to immediately eliminate the ISM for all wireless CETCs. A phased-in transition to a cost-based method is appropriate for rural wireless CETCs who are aggressively expanding facilities in Montana. In this regard, MITS recommends refreshing the record developed by the Rural Task Force: a one-size-fits-all policy is not likely to satisfy the Act's universal service principles. The need to refresh stems from the need to determine the extent of rural and non-rural carrier differences.

MITS also said that the explosive growth of high-cost funding was not unavoidable. MITS adds that ETC designations should be revoked for carriers that fail to advance universal service or comply with explicit post-designation oversight.

[1] See PSC Initial Comments to the FCC, June 6, 2007, WC 05-337, CC 96-45; also, See PSC Reply Comments to the FSJB, December 14, 2004, CC 96-45.

The MTA also opposes the ISM rule. The MTA said there is little demonstrable economic benefit from the fund's growth. In addition to eliminating the ISM, the MTA supports eliminating Interstate Common Line Support (ICLS) and Interstate Access Support (IAS) from the support that wireless CETCs receive. The MTA adds that whereas a household may be served by a single supported wireline, the same household may be served by multiple supported handsets. The MTA asserts to like the so-called Panhandle proposal that would disallow wireless carriers from recovering "administrative, marketing and handset subsidy" [sic], holding that this mirrors the support wireline ILECs get. The MTA supports using a minimum multiplier of 115% "of national average cost" [sic] such that if the CETC's costs exceed the benchmark, it would be eligible for high cost support for construction of new facilities in unserved areas. MTA adds that because significant differences exist between wireline and wireless carriers, independent costs are needed so that competitive neutrality is achieved.

CTI said that CETCs should have to prove eligibility based on their own costs. CTI also said in citing Section 254 of the Act that because Congress intended to remove implicit subsidies CETCs should not receive IAS and ICLS. They should not as IAS and ICLS served to replace access revenue and lower interstate access charges. CTI adds that although many ETCs never levied access charges, the FCC, in applying its competitive neutrality goal, permitted CETCs to receive access subsidies.

Qwest also supports eliminating the ISM. Qwest notes that it is even more inefficient for the funding that ports from rural carriers to CETCs. In addition, Qwest said CETCs should not receive IAS and ICLS.

Alltel's comments strenuously oppose any suggestion that the ISM should be eliminated. Alltel also commented that the FCC could have anticipated the growth in the certification of wireless ETCs given the FCC expressly provided that CETCs would receive support for new lines and lines captured from ILECs. Alltel opposes the elimination of IAS and ICLS.

<u>Montana PSC Reply</u>:

As for Alltel's comments, the PSC disagrees with the need to continue the ISM. The issue then is one of timing and transition. Both wireless and wireline CETCs must begin to receive funding based on their own costs. The PSC believes such a transition is competitively neutral. If Alltel believes such a transition is not competitively neutral because the FCC's embedded cost mechanism is flawed, then that concern must be raised with the FCC. If Alltel believes the rural ILECs costs are fair compensation for wireless CETCs, then we disagree. Our disagreement in part stems from the following Alltel (f/k/a Western Wireless) statement:

> *Western Wireless' CEO, John Stanton, in his presentation to this fall's Qwest Regional Oversight Committee (ROC) meeting of September 12 and 13, Missoula, Montana, presented estimates of relative wireline and wireless investment costs. Those costs are as follows: (1) national wireline carriers' cost is $2,492; (2) national wireless carriers' cost is $920; (3) rural wireline carriers' cost is $7,195; and (4) rural wireless carriers' cost is $1,734.*[2] (italics added)

This statement by the CEO of Western Wireless ironically provides good reason to question the continuation of the ISM. It is not competitively neutral to allow a wireless CETC to receive funding based on the cost to provide service by means of another technology. In addition, if in fact wireless is a substitute for wireline service as Alltel argues, why then have wireless carriers not eliminated wireline carriers by capturing all of their customers?

The PSC agrees with Alltel's observation that the FCC should have anticipated the emergence of wireless ETCs with their associated impact on the FUSF. The FCC asserts that its and the Federal State Joint Board's (FSJB's) predictions that CETCs would compete against ILECs have proved inaccurate. They were inaccurate as they failed to foresee that CETCs might use services that were not substitutes, such as wireless ETCs that do not capture lines from ILECs. The PSC finds somewhat disingenuous this explanation. The FCC's own rules have clearly and deliberately allowed for the designation of ETCs irrespective of the technology that the ETC uses. See CFR 54.201(h). The FCC has also modified the universal service principles in Section 254 to include competitive neutrality in order to foster the development of and to benefit

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[2] See PSC Reply Comments, CC 96-45, December 14, 2004. It is unclear if these are embedded or economic costs. Western Wireless has recommended that CETCs receive support based on their own embedded costs.

wireless providers.[3] The Rural Task Force in advising the FSJB clearly recognized in 2000 the problems associated with porting support to wireless services. Thus, the FSJB and presumably the FCC could not have been in the dark about the potential for wireless carriers to receive FUSFs and to cause the FUSF to expand.

Although wireless is at present a complementary service to wireline service, that relationship is not static. Wireline ILECs would like, for policy reasons, to believe wireless is "eating their cake." Although certain ILECs blame their declining market shares on wireless, such posturing is often made to support requests for reduced regulation. That said, wireless has made, and will continue to make, inroads and may in the future become the technology of choice for a majority of consumers. That is not however the situation today.

Whereas the PSC generally supports elimination of the ISM, the FCC should critically evaluate the recommendations to eliminate IAS and ICLS before a CETC's support is based on its own costs. Because of the evolution of technology, competition and policy, not all CETCs have similar access costs, charges, rate structures and obligations. It should not be surprising that in an effort to mitigate the impact on the goal of universal service that when implicit subsidies were made explicit universal service subsidies to ILECs increased. While abolishing the porting of IAS and ICLS may appear correct based on an argument that ILECs and CETCs have different costs, close scrutiny of the cost structures for the various kinds of CETCs is in order. The PSC has not performed such an analysis but recommends that the FCC do so.

IV. CONCLUSION

The PSC urges the FCC to eliminate the ISM, and when doing so, to remove the interim cap it has placed on FUSF support for CETCs.

Dated this 30th day of May, 2008.

[3] See Rural Task Force, White Paper 5, September 2000, ¶¶ 8, 21.

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May 30, 2008

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

Reply Comments of the

Montana Public Service Commission

I. Introduction and Summary

The Federal Communication Commission's (FCC's) January 9, 2008 Notice of Proposed Rulemaking (NOPR) invites comments on the merits of using reverse auctions (RAs) to determine the amount of high-cost universal service support that is provided to eligible telecommunications carriers (ETCs). The FCC has tentatively concluded that RAs offer potential advantages over the current high-cost support mechanisms and seeks comments on specific issues to be resolved before implementation.

The Montana Public Service Commission (PSC) has reviewed the initial April 17, 2008 comments of the Montana Independent Telecommunications Association (MITS), the Montana Telecommunications Association (MTA), Century Tel, Inc. (CTI), Qwest, the Western Telecommunications Alliance (WTA) and Alltel and has the following reply comments. The PSC also includes by way of reference its reply comments filed on this date in the FCC's comprehensive reform NOPR (FCC 08-22, CC 96-45) and in its identical support mechanism NOPR (FCC 08-4, CC 96-45). The PSC will first provide a brief background of its prior policy decisions filed with the FCC.

II. BACKGROUND

The PSC has over the past few years filed comments with the Federal-State Joint Board on Universal Service (FSJB) that generally address the use of RAs to provide Federal Universal Service Funds (FUSFs). In prior comments the PSC has urged the FSJB to not support the use of RAs to ration FUSFs. The reason not to use RAs is they will jeopardize universal service generally and could be particularly harmful for customers in rural areas. The PSC has previously cited the overwhelming opposition to RAs filed by CTI, CoBank, GVNW, MTA, MRTC, OPASTCO and RTG.[1] The PSC also commented that prior to implementing any RA the quality of service (QOS) attributes of the services to be auctioned must first be established. As we have previously explained, Dr. Alfred E. Kahn has written that absent clear QOS attributes prices are meaningless. Therefore, to avoid discriminatory outcomes, the FCC should first make clear the expected QOS standards before it imposes RA mechanisms to ration FUSFs. The FCC should not just consider the above noted opposition but weigh heavily the risks posed by RAs that these and other commenters have raised.

III. DISCUSSION OF ISSUES

Reverse Auctions

MITS recommends against using RAs to determine the amount of high-cost support ETCs receive. It opposes RAs as there is no evidence that the preservation and maintenance of universal service will result.

The MTA states its opposition to the FSJB's recommended use of RAs. In this regard, the MTA opposes funding of duplicate networks in high-cost areas. The inherent risks of a RA mechanism include a threat to the investment in infrastructure.

CTI said the FCC should "shelve" the idea of using a RA to distribute FUSFs but, apparently only in the case of the provider of last resort (POLR) fund.

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[1] See PSC Comments, July 2, 2007, WC 05-337, CC 96-45; pp. 1-5.

Qwest said RAs are not appropriate for distributing FUSFs to existing service areas. RAs could be useful in the case of unserved areas where there should only be a single winner of support. Qwest said RAs should not be used to distribute high cost FUSF support where there is an existing provider given the potential for harm to investments and service quality.

The WTA also opposed the use of RAs. Its opposition stems from the expectation that RAs are replete with investment disincentives, gaming opportunities and design complexities that may produce unintended and adverse consequences.

Montana PSC Reply and Conclusion:

We have previously commented to the FSJB on this topic and our views reviewed below are unchanged. The markets in which a RA auction might be used to ration support for wireline, wireless and broadband are highly imperfect and any application of RAs should first occur in states that have the conditions conducive to testing such theories.

In its NOPR on comprehensive reform, the FCC cites to the FSJB's recommendation stating that the purpose of the mobility fund should be to construct new facilities in areas having "significant population density" (CC 96-45, FCC 08-22; January 16, 2008). Although we do not have access to maps with wireless service coverage for Montana the implementation of RAs for this FSJB suggestion is at best ambiguous. Montana has relatively low density even if all the cities are included in a density estimate. Throw out the cities and density drops precipitously. In the rural areas of our rural incumbent local exchange carriers (ILECs) and some of the rural exchanges of our non-rural ILEC, the densities are likely lower yet. Whatever the FSJB meant by "significant population density," Montana's rural areas unlikely qualify as having "significant population density." If there is not sufficient density, then per the FSJB's recommendation, there will be no funding of mobility. If there is no funding of mobility, of what use is an RA? The foundation of the FSJB's suggestion to only fund mobility in areas with "significant population density" is puzzling given the principles set forth in Section 254 of the Telecommunications Act of 1996. In our rural areas, the wireline ILECs face few if any wireline competitors. It is unlikely that where there is no competition that a competitor could or would bid lower than an ILEC. An ILEC that faced competition could bid below cost to avoid losing all FUSF support. In turn, the loss would have to be made up by increasing local rates. In conclusion, the application of RAs to the achievement of the universal service goals in the Act is untested and risky. It is premature to experiment on Montana's rural carriers and their customers with this RA device. If the FCC is inclined to try RAs, it should first do so in states where the conditions are conducive to testing such theories.

Dated this 30th day of May, 2008.

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