

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF MINNESOTA INDEPENDENT COALITION

Date: June 2, 2008

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SUMMARY

Achieving successful reform of the federal universal service fund (“USF”) rests on: (i) recognition that some features of the USF now threaten its financial stability, while others have accomplished universal service goals without posing such a threat; and (ii) prioritizing reform efforts to the features that have caused problems while refraining from changing features that are performing well. Approaching USF reform without express recognition of that distinction would pose the risk of applying remedies that are not needed in some areas, while imposing remedies for non-existent problems in other areas.

As the Joint Board has noted, USF support for Rural Incumbent Local Service Providers (“Rural ILECs”) has not been the source of the growth in the cost of USF, and Rural ILECs have provided excellent services to their customers, consistent with universal service goals. As a result, reform of USF should not involve radical changes in USF support for Rural ILECs because that support has not been the source of the problems that now threaten USF. Rather, the unique and central role of Providers of Last Resort (“POLRs”) should be expressly recognized and a separate fund should be established that is limited to support of POLRs. Similarly, there is no reasonable basis to apply untested and radical proposals, such as reverse auctions to support for Rural ILECs that perform POLR obligations.

In contrast, dramatic cost increases have resulted from providing identical support to Competitive Eligible Telecommunications Carriers (“Competitive ETCs”) who do not perform the same, or even similar, obligations to POLRs. Since providing such identical support is not critical to core universal service goals and such identical support has been the source of substantial and growing difficulties, the Commission should give elimination of such support a top priority in its reform of the USF.

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REPLY COMMENTS OF MINNESOTA INDEPENDENT COALITION

The following Reply Comments are submitted on behalf of the Minnesota Independent Coalition (“MIC”), which includes over eighty rural incumbent local exchange carriers (“Rural ILECs”) providing service in rural areas in Minnesota. The very broad range of proposed actions and conflicting opinions reflected in the Initial Comments in this proceeding underscore the need for application of sound principles and priorities in addressing universal service issues.

The following principles would assist in achieving a workable approach to the extremely broad and complex subject of reform of the federal universal service fund (“USF”):

1. *Recognition of Distinctions.* The Rural ILECs’ unique role in performing provider of last resort (“POLR”) obligations, and the substantial costs that they have incurred to perform those obligations, should be expressly recognized, in contrast to the roles performed and costs imposed by other providers;
2. *Proportionality.* Reform efforts should be applied to specific features of the USF in proportion to the degree to which problems have arisen from those features;
3. *Prioritization.* The order of implementation of reform efforts should be prioritized toward features of the USF that have caused problems; and
4. *Response to Changing Needs and Conditions.* Reform of the USF should recognize and accommodate both changing communications needs and changing market conditions.

I. MAJOR CHANGES TO USF SUPPORT OF RURAL ILECS ARE NOT NEEDED.

Identifying and focusing on the aspects of the USF that have led to the rapid escalation of costs and resulting instability of the USF is essential to a properly focused reform. When those aspects are identified, it is clear that USF support for Rural ILECs has not been the cause of rising costs and funding pressures for USF, and that no significant changes to high cost USF support for Rural ILECs should be implemented.

A. USF Support Of Rural ILECs Performing POLR Services Has Worked Well.

The Joint Board is correct that all USF support must provide incentives and have appropriate safeguards that clearly promote the goals of the universal service.¹ Meaningful reform is also appropriate because the universal service program is at risk of losing its ability to fulfill these statutory goals.² However, that reform should not be implemented in a manner that sacrifices the core goals of affordability and comparability of rates and services between urban and rural areas.

Universal service funding of Rural ILECs performing POLR obligations: (i) has achieved universal service objectives; (ii) has not been the source of the recent explosive growth in the cost of the USF that now threatens the entire program; and (iii) is subject to appropriate financial controls, including independent audit.

Universal service funding of Rural ILECs performing POLR services has not been the cause of the explosive growth in the costs of the universal service programs and the Rural ILECs have been diligent in performance of their POLR obligations. As the Joint Board has noted:

¹ TDS Initial Comments at 5.

² CenturyTel Initial Comments at 6.

Support to most if not all RLECs has been flat or has even declined since 2003. RLECs have done a commendable job of providing voice and broadband services to their customers.³

As such, a reduction to high cost USF support for Rural ILECs is not needed or justified, and untried and untested approaches should not be applied to USF support for Rural ILECs.

Reform of the USF should not be allowed to undercut the essential universal service principles reflected in the 1996 Act,⁴ which provides in part:

- (1) Quality service should be available at just, reasonable, and affordable rates.
- (2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Consumers in all regions, ... including ... those in rural, insular and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

- (5) There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

The USF was intended to promote affordable telecommunications and advanced services in rural, high cost and insular areas,⁵ and the current USF system has provided significant benefits by ensuring broad availability of voice communications.⁶ As the Joint Board noted, the USF has been successful for customers of Rural ILECs.⁷

³ Montana Tel. Assn. Initial Comments at 19 (quoting the November 20, 2007 Joint Board Recommended Decision, FCC 07J-4 (“*Recommended Decision*”), Appendix A, ¶ 39.

⁴ 47 U.S.C. § 254.

⁵ CenturyTel Initial Comments at 3.

⁶ *Id.* at 12.

⁷ Recommended Decision, Appendix A, ¶ 39.

B. USF Support Of Rural ILECs Should Be Based On Embedded Costs.

USF reform should not threaten the use of actual cost for determining Rural ILEC support. Use of actual cost is a key element of universal service that has succeeded and is not the cause of current USF funding and cost issues.

The current approach has been extremely successful in achieving the objectives of the High Cost Program.⁸ High Cost Loop support should fund *networks*, not the service of individual customers. The current system also works well to provide an infrastructure that supports both voice and broadband services.⁹

High-cost USF support for Rural ILECs has not been the source of the recent severe cost escalation related to the USF program. As a result, reform should not be aimed at this aspect of the USF program. Rather, USF reform should be aimed at the source of the problem and should also ensure that universal service support is stabilized for Rural ILECs to preserve affordable and comparably priced telecommunications for rural and high cost areas.¹⁰

C. A Separate POLR Fund Is Appropriate.

The establishment of a separate POLR fund, as recommended by the Joint Board, would be appropriate and would reflect that facts that: (i) funding of Rural ILECs has not been the cause of current USF cost increases and resulting instability; and (ii) the maintenance of USF support for POLR services in high cost and rural areas is at the core of universal service goals. Appropriate standards for a POLR should be determined by Commission rule.¹¹ Existing cost-

⁸ OPASTCO Initial Comments at 6.

⁹ CenturyTel Initial Comments at 14.

¹⁰ *Id.* at 12.

¹¹ NECA Initial Comments at 12.

base support mechanisms for Rural ILECs should be maintained pending broad comprehensive review of POLR universal service policies.¹²

The Commission should recognize the success and importance of the existing high-cost USF support funding and confirm ongoing support for POLR services through a separate POLR fund.¹³ The separate POLR Fund would appropriately reflect the special obligations borne by Rural ILECs and would help to resolve current controversies and minimize future controversies regarding high cost USF support mechanisms.¹⁴ Because infrastructure is critical to the provision of POLR services in rural areas, cost based recovery of infrastructure costs remains the best approach for Rural ILECs providing POLR services.¹⁵

Existing high cost USF support mechanisms: (i) are functioning appropriately;¹⁶ and (ii) should be retained and stabilized to provide certainty and to ensure that essential infrastructure is maintained and extended.¹⁷ Establishing a POLR fund would facilitate those results.

D. The POLR Should Not Be Subject To State-By-State Implementation.

The Commission should both adopt the standards for the POLR and implement those standards on a uniform nation-wide basis. Such a result is required by the Act and is supported by sound public policy.

¹² *Id.* at 14.

¹³ TDS Initial Comments at 4.

¹⁴ NECA Initial Comments at 4.

¹⁵ GVNW Initial Comments at 26.

¹⁶ CenturyTel Initial Comments at 18.

¹⁷ *Id.* at 17.

1. The Act does not contemplate delegation of these responsibilities to States.

Section 254 of the Act does not grant States or State commissions the authority to determine USF support levels and does not authorize the Commission to grant this type of authority to the States.¹⁸ Rather, as the Joint Board has previously recognized, the absence of such authority strongly weighs against such delegation to the States:

[W]e cannot recommend that the Commission adopt [a state block grant] mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism.¹⁹

Sections 254(a) and (b) of the Act authorize the Commission to implement policies relating to USF, including distribution of the USF support.²⁰ In contrast, Section 254(f) authorizes the States to adopt regulations “not inconsistent with Commission rules to preserve and advance universal service” but “only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms” that “do not rely on or burden Federal universal service support mechanisms.”²¹ The division of responsibilities between the Commission and the States is clear and these separate statutory responsibilities should be observed in implementation of USF reform.

2. Sound public policy factors support implementation by the Commission.

Delegation of responsibility to the States for determination of USF support levels and distribution of USF support: (i) would be likely to result in inconsistent implementation of USF

¹⁸ NTCA Initial Comments at 46.

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service*, Second Recommended Decision, CC Docket 96-45, ¶ 61 (rel. Nov. 25, 1998).

²⁰ 47 U.S.C. § 254 (a) and (b).

²¹ 47 U.S.C. § 254 (f).

policy; and (ii) would also create substantial administrative burdens for those States which may lack the necessary resources to incur those burdens.

Having fifty State Commissions independently determine the basis on which ETCs would receive USF support would be very likely to defeat the consistency needed for implementation of national policy.²² If some Rural ILECs with POLR obligations would become under-funded based on a State commission's USF distribution decision, their ability to provide affordable service would be compromised along with universal service goals under Section 254. The fact that such results would have occurred because of a State commission's decision would not change the violation of federal, statutory policy.

Some States also may not have the resources available to incur such responsibilities. State Commissions often have limited budgets and staffs. Adding to the burden of administering a broadband grant program could prove prohibitive. Some of the States may also not have the State statutory authority to perform the necessary functions.

E. Added Caps On High Cost USF Support Are Not Necessary Or Appropriate.

As previously noted, it is clear that the high cost USF support provided to Rural ILECs is not the source of the recent growth in USF costs. As a result, the Commission should not impose additional caps on high cost USF support mechanisms.²³ The Commission should also not

²² *In the Matter of Comprehensive Review of Universal Fund Management, Administration, and Oversight*, WC Docket No. 05-195; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6; *Rural Healthcare Support Mechanism*, WC Docket No. 02-60; *Lifeline and Link-Up*, CC Docket No. 03-109; *Changes to the Board of Directors for the National Carrier Association*, CC Docket No. 97-21, FCC 05-124 (rel. June 14, 2005).

²³ NECA Initial Comments at 17.

subject high cost USF support levels to a permanent cap, or impose separate caps on the individual elements of the ILEC high cost fund.²⁴

F. Reverse Auctions Should Not Be Used To Determine USF Support For Rural ILECs Providing POLR Services.

The use of reverse auctions to determine USF support for Rural ILECs that provide POLR services would be inappropriate for three reasons: (i) reverse auctions would not meet the criteria of Section 254 to provide predictable support needed to maintain reasonably comparable rates and services in rural and urban areas; (ii) reverse auctions would be inherently biased when potential bidders have very dissimilar obligations; and (iii) unproven approaches, such as reverse auctions, should not be applied to situations in which critical public policy goals are at stake, unless and until they have been proven in less critical contexts.

1. Reverse auctions would not meet the goals of predictability and comparability of rural and urban rates and services in Section 254.

Universal service goals involve far more than mere access to the most basic services. Rather, universal service goals include comparability of services and rates between urban and rural areas. The support for the POLR role is not consistent with a reverse auction experiment.²⁵

Reverse auctions would imperil core universal service goals of reasonable comparability of rates and services between urban and rural areas and predictability and sufficiency of support.²⁶ Use of reverse auction with respect to Rural ILECs who provide POLR services

²⁴ TDS Initial Comments at 8.

²⁵ GVNW Initial Comments at 20.

²⁶ The Act provides in part:

(3) Consumers in all regions, ... including ... those in rural, insular and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

would be inappropriate because reverse auctions would unnecessarily jeopardize the availability of reasonably comparable services and rates to consumers in rural service areas.²⁷ Reverse auctions would also not provide “specific, predictable, and sufficient” support because funding would remain subject to either withdrawal or reduction (based on subsequent auctions).²⁸

2. Reverse auctions would be heavily biased against Rural ILECs with POLR obligations.

Rural ILECs perform POLR obligations, which are the foundation of universal service, and the costs of performing these obligations are particularly high in their areas. In contrast, competitive eligible telecommunications carriers (“Competitive ETCs”) do not perform POLR obligations and do not incur the particularly high costs of doing so in rural areas. Rather, the obligations of Competitive ETCs are subject to significant limitations, including provisions that require Competitive ETCs to provide service only if reasonably feasible or if service is economically justified.

As a result, bidding for USF support between Rural ILECs and Competitive ETCs would be seriously and inherently biased against the Rural ETCs. Such a bias would be completely inappropriate in a mechanism that would be used to determine USF support eligibility or levels. Whatever the merits of an auction process for two carriers that have the same obligations, having carriers with fundamentally different obligations engaged in a competitive bidding process would be inherently unbalanced and slanted. Accordingly, the Commission should reject the use of any reverse auction involving Rural ILECs.

(5) There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

²⁷ OPASTCO Initial Comments at 16.

²⁸ NTCA Initial Comments at 44.

The use of reverse auctions would also tend to degrade the quality of service provided in high cost areas.

The critical factor affecting Rural ILEC costs is the obligation of virtually all Rural ILECs provide service as a POLR. These obligations arise under state law, but that fact does nothing to diminish the added costs that result. Accordingly, it is highly predictable that the costs of Competitive ETCs without POLR obligations would be lower than the costs of a Rural ILEC in the same area. It is equally predictable, however, that providing support at the level of the lower cost Competitive ETC would not be sufficient to allow Rural ILECs to continue to provide high quality services at affordable rates or to perform the obligations of a POLR.

Once an auction was won, the clear incentive for the winning bidder would be to maximize the return by minimizing the costs, including investments. Attempting to prevent the adverse effects of such an incentive would inevitably center on enforcement of rules that would set forth the *minimum standards* that are acceptable. As a result, the incentives that would necessarily result from an auction would systematically reduce the quality of service to the minimum acceptable levels, which violates the goals of universal service. This unfortunate result would be compounded by the difficulty of articulating, much less enforcing, rules designed to provide high quality with a service as complex as telecommunications. Accordingly, auctions should be rejected as a possible mechanism to control universal service costs.

3. Reverse auctions are unproven and should not be implemented with respect to support for Rural ILECs performing POLR obligations.

Maintaining support for Rural ILECs who are providers of POLR obligations is essential to the maintenance and advancement of universal service objectives in high cost rural areas. Such support has been appropriately based on the cost to fulfill those obligations, and the use of reverse auctions as a mechanism to determine such support would represent a radical change to

an untested and unproven approach. Radical changes, such as the use of reverse auctions, should not be tested in situations where critical public policy objectives, such as universal service, are at stake.²⁹ Rather, the Commission should exercise great caution in considering the use of reverse auctions.³⁰ Accordingly, the Commission should not employ reverse auctions to determine support for Rural ILECs.³¹

The Application of Reverse auctions as a mechanism for determining Future High Cost USF support would be a serious mistake that would harm consumers significantly.³²

The CTIA, Verizon, and Alltel reverse auction proposals are not viable solutions to the problem of the escalating costs of the federal USF.³³ Rather, those escalating costs should be addressed by revoking and phasing out identical support for Competitive ETCs, which was the source of the rapid growth in the cost of USF.

II. IDENTICAL SUPPORT FOR COMPETITIVE ETCs HAS CAUSED SEVERE PROBLEMS AND NEEDS TO BE ELIMINATED.

While existing high cost support of Rural ILECs has achieved the goals of universal service and has not caused the current spiraling costs and resulting pressure on USF funding, the opposite is true of the identical support rule. Identical support for Competitive ETCs is clearly at the core of USF cost increases and the resulting pressure on funding. Accordingly, prompt replacement of that rule is supported by both the proportion of the problems that it has caused and by the priority that should accompany such a clear and substantial source of difficulty.

The MIC supports the position that the identical support rule should be eliminated and that future High-Cost universal service support for all carriers should be based each carrier's own

²⁹ GVNW Initial Comments at 21.

³⁰ TDS Initial Comments at 9.

³¹ NECA Initial Comments at 27.

³² NTCA Initial Comments at 27.

³³ *Id.* at 42.

costs. Rural ILECs incur substantial costs in connection with performing POLR obligations that are not incurred by Competitive ETCs. Since the obligations performed by Rural ILECs and competitive ETCs are not the same, there is no reason to expect the same costs to be incurred and no compelling policy basis to provide the same level of support. Rather, high cost support provided should be based upon the costs of the carrier providing the services. However, a ceiling on support for wireless Competitive ETCs may be appropriate to limit the escalation of total USF costs.³⁴

Providing identical support to entities that are not in a comparable position will either under-compensate one of the entities or over-compensate the other. In this case, providing support to Competitive ETCs based on the costs of Rural ILECs, which are based on providing POLR services, over-compensates Competitive ETCs.

Competitive ETCs, including CMRS providers, have the right to limit investments to only those investments that fit their business-case criteria. As a result, it is hardly surprising that the average per line costs of Incumbent ETCs that perform POLR functions is higher than carriers that do not, and the higher per line costs do not reflect a lack of efficiency.

Arguments have been made that competitive neutrality does not require identical state regulations be imposed upon Competitive ETCs. However, those arguments are all the more applicable to universal service payment levels. Competitive neutrality does not require that Competitive ETCs be paid the costs of performing POLR obligations that they do not perform. To the extent that CMRS providers are not required to perform POLR obligations, payments based on the costs of performing those obligations amount to a windfall for the Competitive ETCs. For Rural ILECs, those costs undoubtedly have a significant effect on the Rural ILECs'

³⁴ Mont Tel Assn. Initial Comments at 16.

costs. Accordingly, the Joint Board and Commission should change the practice of paying Competitive ETCs in rural ETC areas based on the costs of the Rural ILECs. Instead, Competitive ETCs should receive universal service support at a level that is reduced to reflect the fact that they do not perform POLR obligations.

The MIC also agrees that replacing the identical support rule should be a priority.³⁵ Fund growth would have remained reasonable if not for the identical support rule.³⁶ A one year transition period would, in effect, provide wireless Competitive ETCs a minimum of three years of continued non-cost based support.³⁷ Thus, a one year transition period is adequate.

III. SOME CHANGES TO USF ARE APPROPRIATE TO REFLECT CHANGING NEEDS AND CHANGING MARKET CONDITIONS.

A. A Broadband Fund For Un-Served And Under-Served Areas Would Be Appropriate.

The Communications Act of 1934's goal was to get telephone service deployed in all areas. This goal has largely been achieved based on the Commission's subscriber levels (but requires continued funding to be maintained), and now the focus for expansion of service needs to turn to deployment of broadband services in all areas. The Joint Board's Recommended Decision recognizes the extent to which existing high cost loop funding supports the capital costs of providing broadband-capable loop facilities in rural areas.³⁸ The creation of a separate broadband program for un-served and under-served areas would be appropriate.³⁹

³⁵ GVNW Initial Comments at 8.

³⁶ *Id.* at 20.

³⁷ Mont Tel Assn. Initial Comments at 3.

³⁸ NECA Initial Comments at 3.

³⁹ TDS Initial Comments at 2.

B. A Mobility Fund For Un-Served And Under-Served Areas Would Be Appropriate.

The Commission should also consider establishing separate support mechanisms for mobility that encourage mobile service deployment in un-served and under-served areas.⁴⁰ The creation of a separate mobility program may be appropriate (with appropriate incentives and safeguards to ensure that the goals of universal service are being met).⁴¹

C. Funding Reform Is Essential.

Reform of funding sources for the federal USF is essential. The funding base should be expanded to encompass broadband services.⁴² The Commission should broaden the contribution base to encompass all entities that benefit from it.⁴³ FCC should proceed cautiously to move some or all of the funding away from a revenue basis to another basis.

IV. CONCLUSION.

For the reasons set forth above, the Commission should establish a separate POLR fund, while refraining from radical changes to high cost USF support for Rural ILECs that perform POLR obligations. The Commission should reject the use of a reverse auction in connection

⁴⁰ OPASTCO Initial Comments at 21.

⁴¹ TDS Initial Comments at 3; OPASTCO Initial Comments at 21.

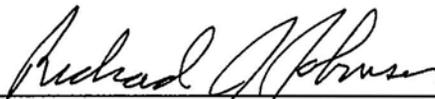
⁴² NECA Initial Comments at 33; NTCA Initial Comments at 9.

⁴³ TDS Initial Comments at 10.

with USF support for Rural ILECs. The Commission should also make the elimination of identical support for Competitive ETCs that do not provide POLR services a priority of its USF reform efforts.

Respectfully submitted,

MINNESOTA INDEPENDENT COALITION



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