

BEFORE THE 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
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Texas Statewide Telephone Cooperative, Inc. (TSTCI) respectfully submits its Reply Comments in the Commission’s proceedings to address comprehensive reform of the high-cost universal service support mechanisms. Subsequent to the filing of initial comments regarding the Commission’s Notices of Proposed Rulemaking,¹ the Commission took an important first step to curb the explosive growth in the universal service fund by implementing a cap on high-cost universal service disbursements to competitive eligible telecommunication carriers (CETCs). TSTCI supported the Joint Board on Universal Service’s (Joint Board’s) recommendation for an emergency interim cap on CETCs’ high-cost support when the proposal was made last year² and TSTCI applauds the Commission for taking this action now. TSTCI encourages the Commission to continue with meaningful reform by next eliminating the identical support rule and basing future high-cost support for CETCs upon their own costs.

¹ *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, Notices of Proposed Rulemakings (NPRMs), WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), FCC 08-5 (Reverse Auctions NPRM), and FCC 08-22 (Federal-State Joint Board NPRM)(rel. January 29, 2008).

² See Comments of Texas Statewide Telephone Cooperative, Inc. *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, June 6, 2007.

I. THE NEXT STEP TOWARD MEANINGFUL REFORM OF THE HIGH-COST USF IS THE ELIMINATION OF THE IDENTICAL SUPPORT RULE

Both wireless and landline carriers, as well as other interested parties filed comments supporting the Joint Board's recommendation and the Commission's tentative conclusion to eliminate the identical support rule.³ Although there are differing opinions on how support for CETCs should be determined in the absence of this rule, TSTCI believes the time has come (in fact, is overdue) for the identical support rule to be eliminated, and for CETCs to be required to file cost data demonstrating their costs of providing service in high-cost areas.

Several parties disagreed with the Commission's tentative conclusion to eliminate this rule and require CETCs to submit their own costs for the calculation of high-cost support specific to each carrier.⁴ For instance, the Rural Cellular Association & Alliance of Rural CMRS Carriers (RCA-ARC) states, "Repeal of the identical support rule would turn the Commission's core principle of competitive neutrality into a hollow promise by further entrenching incumbent LECs in rural and other high-cost markets and would hinder the delivery of competitive services in these markets."⁵ TSTCI fails to understand how providing high-cost support to a wireless CETC based upon its own costs to provide service hinders competition – or is not competitively neutral. On the contrary, it is more likely that there is a competitive advantage to a national or regional wireless carrier receiving high-cost support based upon a rural telephone company's costs when the wireless carrier's actual costs of providing service provide service are less than a rural telephone company's costs. Wireless ETCs receive equal support without demonstrating

³ See Consolidated Comments of NTCH, Inc., p. 2; Comments of Rural Telecommunications Group, Inc., p. 7; Comments of Verizon and Verizon Wireless, p.4; Comments of AT&T, Inc., p. 36; Comments of CenturyTel, Inc., p. 21; Comments of CoBank, ACB, p.2; Comments of Embarq, p. 10; Comments of the Independent Telephone and Telecommunications Alliance, p. 25; The Missouri Small Telephone Company Group Initial Comments, p. 5; Comments of the National Exchange Carrier Association, Inc., p.22; Comments of the New Jersey Division of Rate Counsel, p. 60; Comments of the Oklahoma Corporation Commission, p.9; Comments of Qwest Communications International Inc., p. 6; Comments of the Rural Independent Competitive Alliance, p. 13; Comments of Windstream Communications, Inc., p. 21

⁴ See Comments of Alltel Communications; Comments of Cellular South, Inc., p. 7; Rural Cellular Association & Alliance of Rural CMRS Carriers, p. 3; Comments of United States Cellular Corporation, p. 5.

⁵ See Comments of the Rural Cellular Association & Alliance of Rural CMRS Carriers, p. iv.

need, without being subject to the same service requirements (such as the POLR requirement) and without the same regulatory obligations. To the contrary, *retaining* the identical support rule turns competitive neutrality into a hollow promise, not its repeal, as suggested by the RCA-ARC.

Likewise, Cellular South, Inc. states, “The identical support rule treats all ETCs equally in a given high-cost area because all receive the same per-line support. This ensures that no provider or technology is favored over another.”⁶ The fallacy in this statement is that although the identical support rule may not differentiate among providers or technologies, it favors those providers utilizing technologies whose costs are lower than the rural telephone company’s costs but receiving support based on the rural company’s costs. The support these CETCs receive amount to a windfall. Cellular South continues with their recommendation that instead of eliminating the identical support rule, the per-line amount of support should be portable to ILECs when customers add or drop service, as it is for CLECs. The ILEC high-cost universal service support mechanism is based on the ILEC’s imbedded network investment and expenses and does not change based on the number of customers served. Further, an increase in the number of lines served would not increase the ILEC’s total support, since the support is capped. In the event of access line losses, the total support would not decrease; however, the amount of per-line support would increase. Thus, the CETC’s support that is based upon the rural ILEC’s per-line support would increase, with no relationship to its own network investment and expenses - and the result is an ever-expanding high-cost fund.

As explained by OPASTCO, “...identical per-line support provides competitive ETCs with an incentive to focus on maximizing their ‘line’ counts in portions of a service territory that they were already successfully serving in order to improve their profit margins and enhance their appeal to the investment community. As a result of this arbitrage opportunity, more carriers –

⁶ See Comments of Cellular South, Inc., p. 7.

wireless providers in particular – have been incented to seek ETC status than otherwise would in order to receive support, but which is not tied to an incentive to build-out to unserved territory.”⁷ TSTCI agrees with OPASTCO that the CETC should receive support based upon its own costs and the identical support rule should be eliminated.

Another argument made by Cellular South to retain the identical support rule is that there is no viable proposal to provide support to CETCs based on their own costs. To the contrary, reasonable proposals have been presented for determining wireless ETCs’ costs, such as the Wireless Carrier Actual Cost (WiCAC)⁸ proposal and the proposal from Panhandle Telecommunications Systems, Inc.,⁹ (which also includes a methodology to determine wireline CETC support). Also, CenturyTel provides an option whereby wireless CETCs that cannot identify embedded costs could use a FCC-sanctioned wireless specific theoretical cost model.¹⁰

In addition, the Rural Telecommunications Group, Inc., an association representing rural wireless carriers that each serve less than 100,000 customers, supports elimination of the identical support rule. This group of small rural wireless carriers has no problem with basing any support they may receive on their own costs and state that they support the principles of the Panhandle Proposal.¹¹ While TSTCI is not endorsing any of these proposals, these proposals provide options for the Commission to consider when determining the methodology for calculating high-cost support for CETCs.

TSTCI also supports a high-cost reform plan that eliminates Interstate Common Line (ICLS), Local Switching Support (LSS) and Interstate Access Support (IAS) support for wireless

⁷ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) WC Docket No. 05-337 and CC Docket No. 96-45, p. 11 (fil. April 17, 2008)

⁸ Letter from Jeffrey H. Smith, Advocates for Regulatory Action, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 and CC Docket No. 96-45 (fil. July 12, 2007)

⁹ Letter from Kenneth c. Johnson, on behalf of Panhandle Telecommunication Systems, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (fil. Jan. 11, 2008); Also Comments of Panhandle Telecommunication System, Inc., WC Docket No. 05-337 and CC Docket No. 96-45 (fil. April 18, 2008)

¹⁰ See Comment of CenturyTel, Inc. p. 22.

¹¹ Comments of the Rural Telecommunications Group, Inc. p. 7

CETCs. These universal service support mechanisms can best be described as access replacement support, and TSTCI agrees with the National Telecommunications Cooperative Association's (NTCA) contention that this type of support, "...designed to replace legitimate access cost recovery should not be available to wireless CETCs that do not impose access charges and have already benefitted from access charge reductions under the Commission's CALLS and MAG intercarrier compensation reform orders."¹² TSTCI also supports NTCA's position that access replacement support should continue to be available for landline CETCs because they "...provide access, bear the costs of providing access, and have relied on access charges as a means of supporting their networks."¹³

CTIA – The Wireless Association not surprisingly disagrees that wireless carriers should be restricted from receiving IAS and ICLS support. CTIA states, "For many of the same reasons, if the identical support rule is retained, it would be legally indefensible to deny Interstate Access Support ("IAS"), Interstate Common Line Support ("ICLS"), or other forms of support to wireless carriers on the grounds that these mechanisms are "access replacement," rather than universal service, and that wireless carriers never collected access charges (apparently disregarding the fact the wireless carriers – unlike local exchange carriers – have never been empowered by regulation to recover access charges and instead have been forced to recover the costs of access almost entirely from their end-user customers)."¹⁴ TSTCI contends that elimination of the access replacement support for wireless CETCs is but a first step toward implementing cost-based recovery for wireless CETCs. As confirmed by CTIA, wireless carriers "recover the costs of access almost entirely from their end user customers," so it is clear that this type of USF support is not necessary for wireless ETCs and should be stopped immediately.

¹² Initial Comments of National Telecommunications Cooperative Association, p. 23.

¹³ *Id.* at 23.

¹⁴ Comments of CTIA – The Wireless Association, p.17.

TSTCI urges the Commission to reject the arguments against eliminating the identical support rule and against discontinuing access replacement support to wireless ETCs and to proceed with this necessary reform that, in the Commission's own words, would potentially stabilize the high-cost fund and improve investment incentives.

II. REVERSE AUCTIONS MUST BE REJECTED

TSTCI joins a number of varied parties in urging the Commission to reject using reverse auctions to determine universal service support – at least in the high-cost areas that are already served by one or more carriers. Concerns regarding the use of reverse auctions come from a wide spectrum of interested parties, including wireless carriers, cable providers, landline carriers, and some state regulatory authorities, among others.

Several wireless companies urge the Commission to reject auctions because they believe reverse auctions are inconsistent with the Telecommunications Act of 1996. According to RCA-ARC, single-winner auctions in particular fail "...to uphold the Commission's own goal of advancing the dual goals of universal service and competition and denies Americans the very benefits that universal service was intended to deliver." RCA-ARC argues, "Use of auctions for USF support would not yield the right result if one carrier (e.g., the incumbent LEC) is fully built out in the area, and the other(s) (e.g., the competitive ETCs such as wireless carriers) have immature networks....A carrier with an immature network, that needs substantial capital to construct network facilities throughout an area, cannot reasonably be expected to bid competitively against a carrier that has already completed a network build-out and does not require such capital."¹⁵

¹⁵Comments of the RCA-ARC, p. 68.

Cellular South, Inc. also opposes reverse auctions as not being competitively neutral and claims (along with RCA-ARC) that in single-winner auctions, the advantage will always go to the carrier with the mature network – the incumbent LEC. Cellular South, Inc. also argues that a reverse auction that allows multiple winners in a given area also does not solve the problem. If support given to the “winners” is a percentage of the lowest bid or a percentage of the applicant’s own bid, “...the rational bidder will not enter the market because it is being offered a lesser amount of support than what is actually required to provide service. This yields the same result as a single-winner reverse auction... If a losing ETC is offered support that is a lesser percentage of its own submitted bid...this offers an incentive to submit a bid that is higher than actually necessary... so that the bidder after having lost the auction still receives an amount that is sufficient to facilitate entry in the market.”

The Rural Telecommunications Group also states that reverse auctions are contrary to Section 254 of the Act, contending that this mechanism undermines “...the requirement that service should be of comparable quality and at affordable rates in urban and rural areas because of the inherent focus on cost without regard to quality. Reverse auctions would violate the most important principle of universal service – promoting the availability of reasonably comparable service at comparable rates.”¹⁶

Some cable providers also weighed in with their reservations or outright opposition to reverse auctions for the determination of universal service support. For instance, Time Warner Telecom, Inc. (TWTI), contends that services should not be subsidized that have been deregulated as is the case with mobile services, broadband internet access service, and basic telephone service in many areas. Time Warner believes that a reverse auction can only be successful where multiple networks can bid for support; however, where multiple networks can

¹⁶ Comments of the Rural Telecommunications Group, Inc., p. 4.

bid, it is often the case that the market is deregulated. Therefore, because support in these instances is inappropriate, reverse auctions would only be useful under certain conditions.¹⁷ Competitors might only be able to serve a subset of a designated area, making bidding infeasible. TWTI advises the Commission not to devote any resources to reverse auctions at this time due to a reverse auction's administrative complexities, "and the fact that it is most likely to be viable only under the same set of conditions that make it unnecessary."¹⁸

Although Comcast Corporation (Comcast) commends the Commission for considering the use of reverse auctions in awarding high-cost universal service support, they reiterate (as many other parties have throughout the deliberations of the Joint Board and this Commission), that reverse auctions must be "properly designed" to ensure that such auctions are technologically and competitively neutral.¹⁹ As noted previously, several wireless parties have stated their concerns that reverse auctions are not competitively neutral.

Comcast also opines regarding the difficult and complicated issues that must be resolved in order to establish reverse auction rules that provide a competitively neutral approach. Comcast believes that the Commission's tentative conclusions set forth in the Reverse Auction NPRM indicate that the plan would be neither competitively nor technologically neutral. One issue that Comcast believes would tilt an auction in the incumbent LEC's favor (and not be competitively neutral) is the Commission's tentative conclusion to base reverse auctions on the incumbent LEC's study area. Comcast advocates use of smaller geographic areas, such as Census Block Groups (CBGs) to award universal service support.

Although this proposal may be seen by some as an advantage because small areas do not necessarily correspond with any wireline or wireless service area, as the Western Telecommunications Alliance (WTA) explains, the use of smaller areas for reverse auctions can

¹⁷ Comments of Time Warner Telecom, Inc., p. 4, 15.

¹⁸ *Id.* at 16.

¹⁹ Comments of Comcast Corporation, p. 7

also be a major disadvantage. Investment and service decisions are made to construct and operate integrated networks, not for small areas such as a CBG within those networks. It is questionable how a carrier can make infrastructure investments, maintain its network and set rates for customers if it wins reverse auction for some small geographic areas or CBGs within its network and loses other CBGs.

It will also be extremely difficult to determine how to invest, operate and charge for services if a carrier has to bid and then receives different amounts of high-cost support for different CBGs within its network that it wins through an auction.²⁰ Comcast urges the Commission to develop a more specific, detailed reverse auction proposal from the record compiled in response to the NPRM – and seek additional comments on that detailed proposal. However, TSTCI strongly encourages the Commission to reject the use of auctions to determine high-cost support and not waste the time to try and develop another proposal as suggested by Comcast. While the reverse auction concept may sound appealing, the “devil is in the details.” TSTCI agrees with the WTA when it states that “...reverse auctions...are replete with design complexities that will produce unwanted adverse consequences upon infrastructure investment, services and competition.”²¹

There are many other reasons expressed by different parties regarding their opposition to auctions and TSTCI respectfully requests that the Commission particularly consider the dangers to the principles of universal service if reverse auctions are used in the territories of small rural incumbent ETCs. As CoBank, ACB (CoBank) aptly describes, “Reverse auctions have the potential to severely disrupt the provisioning of universal service to rural America. The existing rural telecommunications infrastructure supports the connectivity of competing technologies, such as wireless, Voice over Internet Protocol (VoIP) and satellite networks. The current rural

²⁰ Initial Consolidated Comment of the Western Telecommunications Alliance at 35.

²¹ *Id.* At 39.

landline network would not exist without the assistance of USF and the competing technologies could not function without the rural landline network. Rural ILECs rely heavily on debt capital to maintain and improve this rural infrastructure.”²² The possibility of losing universal service support through a reverse auction system creates such uncertainty regarding future cash flow and the ability to repay debt, that lenders will restrict access to capital and can “impair the ability of service providers of all types to meet the growing telecommunications needs of rural Americans.”²³

In fact, there has been virtually unanimous opposition to reverse auctions by those rural telecommunications companies/cooperatives that have served rural consumers for decades and rely on universal service support to provide reasonably comparable rates and services to these consumers. TSTCI supports the comments of NTCA and OPASTCO who believe that auctions are a threat to sufficient, predictable and sustainable universal service support that in turn jeopardizes reasonably comparable services and rates to customers in rural service areas. There is no proven track record for reverse auctions, particularly in areas with existing infrastructure served by multiple carriers utilizing different technologies. TSTCI has taken the position in the past, and continues to take the position that it would be risky to adopt such drastic reform measures as reverse auctions under current market conditions. At this point, reverse auctions are only an untested theory, and mistakes in implementation or auction design have the potential to undermine the principles of universal service in rural high-cost areas.

There are different legitimate reasons given by various parties to try and persuade the Commission to reject reverse auctions as a mechanism to determine universal service support. If, however, the Commission resolves to use reverse auctions to determine universal service support, TSTCI contends that reverse auctions should only be used to determine support amounts

²² Comments of CoBank, ACB p. 3.

²³ *Id.* At 4.

in unserved areas, where there is no existing infrastructure. This sentiment or similar sentiments are shared by a number of parties. OPASTCO, although advocating the rejection of auctions as a mechanism to determine USF support, states that if the Commission is resolved to utilize auctions, they should only be for determining support amounts for mobile services and/or broadband Internet services in areas where these services do not presently exist.²⁴ The Independent Telephone and Telecommunications Association opposes auctions and argues that, at best, auctions should be conducted in only limited lower-risk contexts such as pilot programs in unlicensed or abandoned areas.²⁵ The Missouri Small Telephone Company Group (MoSTG) also opposes auctions for rural local exchange companies (RLECs) when the RLECs who have invested millions of dollars (in rural Missouri) are not the cause of the problem. The MoSTG proposes that if auctions are implemented, they should be conducted first on a pilot basis for wireless ETCs.²⁶ Embarq also urges the Commission to consider auction solely for wireless carriers who have primarily caused the growth in the USF.²⁷

While the Commission may continue to debate whether or not to implement reverse auctions and if so, the proper design of auctions, the bottom line is that the Commission has other options available for effective reform of the high-cost universal service fund than assuming the substantial risks of using reverse auctions to distribute high-cost support. Before seriously entertaining the idea of reverse auctions, TSTCI urges the Commission to first eliminate the identical support rule and base high-cost support to each CETC upon its own costs. Next, TSTCI urges the Commission to eliminate access replacement high-cost support mechanisms to wireless CETCs.

²⁴ OPASTCO Comments, p. 20.

²⁵ Comments of the Independent Telephone & Telecommunications Alliance, p. 38.

²⁶ The Missouri Small Telephone Company Group, p. 11

²⁷ Comments of Embarq, p. 15.

III. BROADBAND SHOULD BE INCLUDED IN THE FUTURE DEFINITION OF UNIVERSAL SERVICES AND THE BASE OF USF CONTRIBUTORS SHOULD BE EXPANDED TO INCLUDE BROADBAND PROVIDERS.

As stated in its initial comments, TSTCI supports the Joint Board's recommendation to include broadband Internet service in the future definition of supported services. NTCA also urges the Commission to promote the deployment of broadband through USF support in rural and high-cost areas and urges the Commission to "carefully consider the manner in which broadband is included in the universal service definition."²⁸ NTCA reminds the Commission of the historical precedent that was established by the rural ILECs in executing universal service policies first introduced over seventy years ago and believes the same level of success can be accomplished with regard to a future public policy that includes broadband service.

To include broadband services in the definition of supported services, it will be necessary to expand the base of contributors to the fund. The current revenue-based contribution mechanism for the USF has remained relatively unchanged since its beginning, although the Commission did extend the universal service contribution obligation to Voice over Internet Protocol (VoIP) services and increase the safe harbor percentage for wireless services to ensure the stability and sufficiency of the USF.

The National Exchange Carrier Association (NECA) describes how consumer demand is shifting to bundled service packages, including voice telephony that is provided as part of an advanced broadband service package (e.g., "triple play" packages). However, in rural areas the networks upon which these services depend continue to rely on universal service funding. TSTCI agrees with NECA and others who advocate the need to expand the contribution base to include contributions from broadband providers.

²⁸ NTCA Initial Comments, p.8

IV. CONCLUSION

The Commission has taken an important first step to stop the explosive growth in the high-cost universal service fund by implementing a cap on CETCs' high-cost universal service disbursements. Although additional reforms are urgently needed, the Commission must ensure that universal service support remains sufficient and predictable so that the rural consumer may continue to receive services and rates that are comparable to those in urban areas.

Although the Commission is considering the concept of reverse auctions, there are other more prudent options for effective reform of the high-cost universal service fund than assuming the significant risks of using reverse auctions to distribute high-cost support. TSTCI urges the Commission to first eliminate the identical support rule and base high-cost support to each CETC upon its own costs. Next, TSTCI urges the Commission to eliminate access replacement high-cost support mechanisms to wireless CETCs. And last, the Commission should include the definition of broadband as a supported service and expand the USF contributions base to include broadband service providers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cammie Hughes".

Texas Statewide Telephone Cooperative, Inc.

By: Cammie Hughes
Authorized Representative
June 2, 2008

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazos Telecommunications, Inc.
Brazos Telephone Coop., Inc.
Cameron Telephone Company
Cap Rock Telephone Coop., Inc.
Central Texas Telephone Coop., Inc.
Coleman County Telephone Coop., Inc.
Colorado Valley Telephone Coop., Inc.
Comanche County Telephone Company, Inc.
Community Telephone Company, Inc.
Cumby Telephone Coop., Inc.
Dell Telephone Coop., Inc.
E.N.M.R. Telephone Coop., Inc.
Eastex Telephone Coop., Inc.
Electra Telephone Company
Etex Telephone Coop., Inc.
Five Area Telephone Coop., Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Coop., Inc.
Nortex Communications, Inc.
North Texas Telephone Company
Panhandle Telephone Coop., Inc.
Peoples Telephone Coop., Inc.
Poka Lambro Telephone Coop., Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Coop., Inc.
South Plains Telephone Coop., Inc.
Tatum Telephone Company
Taylor Telephone Coop., Inc.
Wes-Tex Telephone Coop., Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Coop., Inc.
XIT Rural Telephone Coop., Inc.