

**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)	CC Docket No. 96-45
Universal Service)	

**CONSOLIDATED REPLY COMMENTS OF
THE ALASKA TELEPHONE ASSOCIATION**

In the three rulemakings addressed in this consolidated proceeding,¹ the Commission (and the Federal-State Joint Board on Universal Service) have properly focused on addressing the nature and level of high-cost support provided to competitive ETCs (“CETCs”) as the basis for much needed reform, since it is clearly established in the record that the recent uncontrolled growth in support directed to CETCs, is jeopardizing the continued viability of the universal service fund (the “Fund”). In an effort to distract the Commission’s attention from this obvious source of the Fund’s problems, CETCs in the first round of comments have sought to turn the Commission’s effort at reform on its head by intimating that the ills of the program are attributable instead to shortcomings in the existing forms of support for incumbent LECs. This theme is both ironic and fallacious, as the record demonstrates not only that the current high-cost program has succeeded in enabling incumbent LECs to deliver affordable universal voice service in areas where such service would be commercially infeasible, but that rural ILECs have, in particular, succeeded in introducing broadband services under this program using levels of support which are now actually declining.

¹ FCC 08-4 (“*Identical Support NPRM*”), FCC 08-5 (“*Reverse Auctions NPRM*”), and FCC 08-22 (“*Joint Board USF Reform NPRM*”).

For the members of the Alaska Telephone Association (“ATA”), the need for reform of the high-cost program remains particularly pressing. Although the Commission has, since issuing the NPRMs in this proceeding, established a cap on the level of high-cost support paid to CETCs until more fundamental USF reform measures are adopted,² it exempted from that order CETCs serving Alaska Native regions. Since the Alaska Native Claims Settlement Act directed the division of the state of Alaska into 12 geographic Native regions,³ CETCs throughout the state can continue to exploit the competitive inequities made available by the identical support rule.

The ATA hereby reaffirms its commitment to the following positions identified and supported in its initial consolidated comments in this proceeding:

1. It strongly favors the Commission’s proposal to eliminate the identical support rule by which high-cost support is currently provided to CETCs, and instead require that support for CETCs be based on their costs which they should be obligated to demonstrate and have approved.

2. It endorses the creation of a separate Provider of Last Resort (“POLR”) Fund, but opposes applying the same high-cost support mechanism to rural and non-rural POLRs.

3. It strongly opposes the Commission’s consideration of reverse auctions as a mechanism for selecting ETCs or distributing high-cost support funding, at least to the extent applied to the proposed POLR Fund.

² In the Matter of High-Cost Universal Service Support, *Order*, FCC 08-122, released May 1, 2008 (“*Interim Cap Order*”).

³ See Pub. L. 92-203 § 7(a), codified at 43 U.S.C. § 1606(a)(2005).

4. It also opposes adoption of an integrated high-cost cap covering the POLR and proposed Mobility and Broadband Funds alike.

Finally, the ATA suggests that the Commission could give consideration to redirecting funds saved as a result of repeal of the identical support rule to the new, proposed Broadband Fund.

I. The High-Cost Program Has Worked Well for Rural Customers and Should Not be Tampered With

The initial comments in this proceeding reveal wide-spread agreement with the Federal-State Joint Board's finding that the high-cost support program, as currently administered by the Commission, has succeeded in enabling rural LECs to deliver affordable services in portions of the nation where such services would not otherwise be commercially feasible. Indeed, it is further acknowledged that, to a significant degree, rural LECs have succeeded in deploying broadband services to their subscribers through use of existing high-cost support mechanisms. These achievements are recognized by representatives of the incumbent and competitive ETC communities alike.⁴ Given this recognition, and the evidence that the funding demands made on the high-cost program by this sector has plateaued and are even starting to decline, the ATA submits that, whatever measures the Commission ultimately settles on to curb the current growth of the Fund, it would make no sense to tamper with the fundamentals of the existing program as they relate to the rural incumbent LEC community.

⁴ Comments of OPASTCO, at 4, 6-9; Western Telecommunications Alliance, at 12-15, 27; NECA, at 15; Independent Telephone & Telecommunications Alliance ("ITTA"), at 3, 7-8; AT&T, at 5, 24; CTIA, at 8, n. 30.

Yet, some CETCs, anxious to deflect the scrutiny of the Commission from the inequitable burden on the high-cost fund they represent, advocate that the Commission's reforms should impact incumbent ETCs and CETCs equally, without distinction as to support provided in rural or non-rural areas. These commenting parties call for the Commission to evaluate whether the services provided by incumbent ETCs are "efficient" and whether the present level of support is justified.⁵ These comments either fail to recognize, or choose to ignore, that the fundamental reason the high-cost program works for incumbent LECs is that – in contrast to CETCs – it is based on their actual cost of providing service. Moreover, the costs of these carriers of last resort are routinely subjected to scrutiny and approval by a series of public authorities, including NECA, state regulatory commissions and even the Universal Service Administration Company.⁶ Thus, the high-cost program, as it is applied to such carriers of last resort, does not require the introduction of any proxy standard for measuring efficiencies, because it is based on actual costs of investment and operations.

By contrast, there currently exists no comparable means to determine the justification for or to measure the reasonableness of high-cost support payments made to CETCs. They operate free from any requirement to demonstrate their own costs of operations, as well as from any carrier of last resort responsibilities. As a result, they are able to establish competitive strategies based solely on where the largest profit margins can be gained. Proposals made by competitive ETCs in this docket to impose a cap on incumbent ETC funding⁷ and to freeze the level of per-

⁵ *e.g.*, Sprint Nextel Comments, at 3-4.

⁶ ITTA Comments, at 5-6, 10.

⁷ Comcast Comments, at 6.

line support for incumbent LECs must be recognized, therefore, as misdirected.⁸ This approach represents an unnecessary effort to impose an artificial restraint on a legitimately cost-based support mechanism. Putting to one side the question of why such a cap is necessary from a policy perspective since support for incumbent LECs is already declining on its own, the imposition of such an artificial restraint on support for incumbent ETCs would also conflict with the standard of “sufficiency” in Section 254 of the Communications Act.⁹

II. The Separate POLR Fund Represents a Reasonable and Appropriate Reform Mechanism

In its initial comments, CTIA attacks the high-cost support program as it is currently constituted, arguing that it is designed to support a narrowband communications system that no longer reflects the direction in which the communications industry is evolving. CTIA claims that mobile and broadband services today serve the public’s needs more than do voice services, which it claims will shortly become little more than an adjunct of VoIP, and that mobile telephony services are today more important than the wireline network for public safety and emergency purposes.¹⁰ This wireless-centric view urges the Commission to turn its back on the historical purpose of the universal service program and to ignore the reality that the wireline network built by incumbent LECs remains the backbone of today’s communications system on

⁸ See, e.g., Verizon and Verizon Wireless (“Verizon”) Comments at 23-24.

⁹ See Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket 00-256*, released November 8, 2001, ¶ 132: “A reduction in common line revenues might undermine our universal service goals by creating pressures for certain rate-of-return carriers to reduce service quality, increase local rates, or limit service offerings....[T]he absence of a cap will ensure that the rate structure modifications we adopt do not affect the overall recovery of interstate loop costs by rate-of-return carriers.”

¹⁰ CTIA Comments, at 2-7.

which all other mobile and broadband providers depend for seamless operations.¹¹ In light of the success that the program has enjoyed in enabling incumbent providers in high-cost areas to make voice, data and even broadband services available at affordable rates, the Commission's current reform efforts properly recognize that the POLR community deserves continuing and special protection. Contrary to the assertions of representatives of the CETC community,¹² the Joint Board's proposal to establish a separate POLR fund insulated from the service and ETC designation requirements of the newly conceived Mobility and Broadband Funds represents a constructive means of expanding the scope of the high-cost program while preserving that core element which has historically enjoyed the greatest success because it has been based on the actual costs of recipient carriers.

The record established through the initial comments in this proceeding reveals widespread recognition of the fact that wireless and wireline carriers operate on the basis of different cost structures and subject to differing regulatory regimes.¹³ Moreover, as the Commission has recognized, mobile wireless services have evolved as a complementary, and not a substitute, service to wireline services.¹⁴ Particularly in light of the fact that incumbent LECs bear the unique responsibility of carriers of last resort, therefore, the proposed creation of separate POLR and Mobility Funds would by no means contradict the principle of competitive neutrality, but rather would advance it.

¹¹ See ITTA Comments, at 8-9.

¹² See Comments of Rural Telecommunications Group, Inc. ("RTG"), at 12; Verizon, at 22; Comcast, at 13, 16-17.

¹³ See, e.g., Comments of NECA, at 5; GVNW Consulting, Inc. ("GVNW"), at 4; Sprint Nextel, at 9; WTA, at 23; National Telecommunications Cooperative Ass'n, at 24-26.

¹⁴ *Identical Support NPRM*, ¶ 9; *Interim Cap Order*, ¶¶ 19-20.

Nor is the proposed capping of the Mobility Fund below the current level of high-cost support paid to mobile wireless carriers arbitrary, as has been suggested,¹⁵ assuming that the creation of the Fund is accompanied by the long-overdue repeal of the identical support rule for CETCs. The reduction in demand on the USF that will be realized as a result of restricting support for wireless operators to their own, demonstrated costs, rather than linking such support to the embedded costs of incumbent LECs in their service areas, should leave the proposed \$1 billion fund more than adequate to accommodate all qualified wireless ETCs.¹⁶ The administrative justification for a cap on the proposed Mobility Fund has been driven home by CTIA's own calculation that the cost of supporting the deployment of competing CDMA and GSM mobile wireless systems nationally will total some \$22 billion.¹⁷

III. Eliminating the Identical Support Rule Will Promote, Not Retard, Competitive Neutrality

The initial round of comments in this proceeding reveals broad recognition of the equities of the Commission's proposal to repeal the identical support rule. The ATA agrees with GVNW's characterization of that rule as "the largest error made in implementing the

¹⁵ Sprint Nextel Comments, at 6.

¹⁶ High-cost payments to all CETCs collectively did not exceed \$1 billion until 2007. Based on its monitoring of payments distribution, the Universal Service Administration Company has linked the explosive growth in CETC support at over 100% a year to the application of the identical support rule. *Identical Support NPRM*, ¶ 4.

¹⁷ CTIA Comments, at 28-29. In this connection, GCI's suggestion that the restriction of high-cost support to one carrier per service area would be unlawful is highly suspect, particularly in rural areas since the Communications Act specifically recognizes that the public interest can justify the restriction of ETC designations to one carrier in such areas. 47 U.S.C. § 214(e)(2). See GCI Comment, at 30-33. Based on more than 10 years of empirical evidence in the administration of the high-cost program, the Federal-State Joint Board has concluded that it is no longer in the public interest to use federal universal service funds to subsidize competition and build duplicate networks in high-cost areas. *Joint Board USF Reform NPRM*, Appendix A, Joint Board Recommended Decision ("*Joint Board Recommendation*"), ¶ 35. In any case, if at least one operator is designated for ETC status under each of the three proposed funds in each service area, any statutory requirement for multiple ETCs by service area would be satisfied.

Telecommunications Act of 1996.”¹⁸ As explained by the ITTA, the rule disadvantages incumbent LECs by artificially dividing their costs of network investment and operation on a per-line basis and then counting the lines serviced by their competitors and subsidizing those competitors on that basis, even though their costs of operation are completely unrelated.¹⁹ Rather than act on the basis of competitive neutrality, as was originally intended, the rule effectively serves as a disincentive to competitive carriers making their own investments in their networks. Although the disparities of this interpretation of the Act are particularly stark when applied to mobile wireless operators, due to the differing cost structures and regulatory regimes of these operators as compared to incumbent LECs, ATA believes the rule is similarly inequitable when applied for the benefit of competitive wireline ETCs. In this regard, it applauds the candor of the Rural Independent Competitive Alliance, which represents the interests of wireline CETCs, in its support of the Commission’s proposal that all CETCs should be required to demonstrate their own costs as a basis for qualifying for high-cost support.²⁰

By contrast, CTIA’s efforts to retain on behalf of CMRS ETCs access charge-replacement support demonstrates how detached from reality that organization’s comments are.²¹ Mobile wireless operators never qualified for the assessment of such charges and, consequently, are not competitively impacted by the loss of such payments.

¹⁸ GVNW Comments, at 20.

¹⁹ ITTA Comments, at 25-28.

²⁰ *Compare* Rural Independent Competitive Alliance (“RICA”) Comments, at 13-15, *with* GCI Comments, at 56-58.

²¹ CTIA Comments, at 18-19.

Nor does ATA agree that the repeal of the identical support rule should be deferred until other reforms are adopted, as some commenters have urged.²² Since repeal of this rule represents the single most effective step to relieve and reverse the growth in demand for high-cost support that the Commission can take, there is no justification for delaying this measure while fashioning a more comprehensive set of reforms. While CETCs may currently account for only a quarter of USF support,²³ they represent the fastest growing proportion of Fund payments. In any case, any interpretation of the Act that is recognized as so fundamentally unfair and illogical must not be allowed to survive, as it constitutes an unnecessary waste of public resources. Indeed, elimination of this rule should be embraced as a priority by the Commission as the cost savings that it represents could in itself potentially prove sufficient to provide initial funding for the proposed Broadband Fund, thereby avoiding the need for the Commission to identify any sources of “new” money for this purpose.

Commenting CETCs strain the Commission’s credibility when they complain that being required to demonstrate their own costs would entail an “overwhelming regulatory burden” and even the need to adopt new accounting systems.²⁴ Since incumbent LECs have had to justify their costs in this manner since the beginning of the universal service program, to require anything less of CETCs would constitute a travesty of the principle of competitive neutrality. Interestingly, these parties have not proposed in their comments that the determination of high-cost support on the basis of demonstrated costs should be eliminated for incumbent carriers of last resort. Nor would the adoption of this requirement for CETCs necessarily lead to artificially

²² Comments of National Association of State Utility Consumer Advocates (“NASUCA”) on the Identical Support Rule; WTA., at 23; AT&T, at 36-37; Verizon, at 35.

²³ GCI Comments, at 2.

²⁴ See Comments of GCI, at 70; CTIA, at 25; Sprint Nextel, at 7.

inflated costs for them, any more than it has for incumbent ETCs.²⁵ The adoption of this requirement would be accompanied by a sufficient level of oversight, as exists today for incumbent LECs, to avoid the possibility of such abuse occurring.

IV. The Initial Comments Support ATA's View That Reverse Auctions Would be Financially Destructive for Rural Incumbent LECs

In their comments, both CoBank and the Rural Telephone Finance Cooperative, which specialize in the provision of debt financing to the rural ILEC community, provided confirming support for ATA's expressed concern that the use of reverse auctions to award high-cost support would be financially destructive for rural LECs.²⁶ Because rural LECs depend substantially on high-cost support to fund both their capital improvements and operations, the uncertainty to the continued flow of such funding that the use of reverse auctions would inject would make it impossible for the rural LEC community to have access to debt financing for these purposes. They would, as a result, be crippled as competitive entities and their customers' access to affordable services would be impaired.

As observed by GVNW, the use of reverse auctions would inevitably decouple rural LECs from the rate of return model.²⁷ They would elevate cost considerations over quality of service for carriers of last resort, and would act as a disincentive for rural LECs to continue to invest and upgrade their systems.²⁸ All of this would negatively impact rural end users' access to universal services. Moreover, the establishment of a reserve in a reverse auction would

²⁵ Comments of GCI, at 65-74; Verizon, at 35-36; Comcast, at 5.

²⁶ Comments of CoBank, at 4; Rural Telephone Finance Cooperative, at 2-4. *See also* Comments of GVNW, at 5, 21-22; NECA, at 27; ITTA, at 38.

²⁷ GVNW Comments, at 20.

²⁸ Comments of GVNW, at 5; RTG, at 4-6; WTA, at 29-31.

automatically and artificially create a cap on high-cost support for incumbent carriers of last resort.²⁹

Significantly, the initial comments in this proceeding reflect widespread opposition to or skepticism regarding the role of reverse auctions in the high-cost program even among CETCs.³⁰ Moreover, as has been observed, the Commission's "tentative conclusion" to adopt the use of reverse auctions for the distribution of support to existing service providers appears to contradict the majority of public comments previously filed on this subject.³¹

From ATA's perspective, at the most, reverse auctions might potentially bring value to the program as a means of awarding support to ETCs in unserved areas under the Mobility and Broadband Funds. But they should under no circumstances be considered as an acceptable methodology where incumbent networks already exist.³² This would require, as a precondition, that the POLR Fund be recognized as separate and insulated from the use of this methodology under any circumstances, and that the introduction of reverse auctions for the distribution of support to mobile wireless and broadband providers in unserved areas not be viewed as a "pilot" program which could potentially gain applicability in the realm of incumbent carriers of last resort.³³

**V. A Cap on Support for Incumbent ETCs Would
Eviscerate Rate of Return Regulation for Rural LECs**

²⁹ OPASTCO Comments, at 19. *See Reverse Auctions NPRM*, ¶¶ 36-40.

³⁰ *See* Comments of GCI, at 84-89; Sprint Nextel, at 12-13; Comcast, at 10.

³¹ Comments of ITTA, at 36-37; RICA, at 21.

³² *See* Comments of OPASTCO, 20; Qwest Communications International, Inc., at 7-8; Comments of NASUCA on Using Reverse Auctions to Determine High-Cost Universal Service Support.

³³ *See, e.g., Reverse Auctions NPRM*, ¶¶ 50-51.

The initial comments in this proceeding reflect little public support for a cap on high-cost support for incumbent ETCs. Those parties that do advocate the imposition of a cap, urge only that it be adopted for incumbent ETCs and CETCs alike on an interim basis.³⁴ Given the fact that the Joint Board has itself recognized that high-cost support for incumbent ETCs has either remained flat or has actually shown a decline since 2003,³⁵ there is little efficacy in the Commission resorting to this measure. Elimination of the identical support rule will, instead, produce a substantial reduction in the demand for high-cost support from the industry sector that has demonstrated the fastest escalation in such demand at the same time as support for incumbent ETCs has plateaued. Under these circumstances, the imposition of an overall cap on the high-cost-program would constitute a gratuitous and harmful “top-down” regulatory

³⁴ See, e.g., Comments of Verizon, at 23-24; Comcast, at 6.

³⁵ *Joint Board Recommendation*, ¶ 39.

approach that would effectively eviscerate the rate of return business model for rural LECs. ATA renews its opposition to the Commission's consideration of this mechanism as both unnecessary and harmful.

Respectfully submitted,

A handwritten signature in black ink that reads "Jim Rowe". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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