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
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	CC Docket No. 99-68
Intercarrier Compensation for ISP-Bound Traffic	)	WC Docket No. 04-36
IP-Enabled Services		

To: The Commission

<u>Comments of the Rural Telecommunications Group, Inc.</u>

The Rural Telecommunications Group, Inc. ("RTG"),[1] by its attorneys, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or

[1] RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG's members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised

"Commission") Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned universal service and intercarrier compensation proceedings.[2]

I. A Rushed Reform Decision Will Lead to Financial Uncertainty

RTG is concerned that the rushed nature of the instant proceeding is not conducive to reasoned decision-making. RTG suggests that the Commission take the time necessary to digest industry comments concerning the outgoing FCC Chairman's three proposed Orders. In fact, the last-minute nature of the proposed new rules, and questionable legal foundation for many of them, makes any hasty December decision on such major universal service and intercarrier compensation issues a risk that the FCC should not take and a paradigm shift that the rural telecommunications industry, given the current state of the United States' economy, may be unable to survive.

Specifically, the FCC's decision to vastly expand the scope of Section 251(b)(5) of the Telecommunications Act of 1934, as amended ("Act"), to include any "telecommunications" traffic the FCC sees fit, rather than "local" traffic,[3] is highly likely to lead to litigation and lawsuits as the FCC treads on previously well-defined state jurisdiction. Tacking additional regulations to an already shaky legal base can only lead to financial uncertainty for rural telecommunications providers, and the industry as a whole. Ideas and theories such as reverse

---

of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

[2] *In re High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link* Up, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 ("Order on Remand" and "FNPRM") (November 5, 2008).

[3] Order on Remand at ¶ 7.

auctions have yet to be vetted in the current economic downturn. Universal service and intercarrier compensation reform will have economic consequences that will determine the Nation's telecommunications landscape for decades. RTG urges the Commission to take a step back and consider the hurried reform proposals of the past few months in a cautious and deliberate manner.

RTG, like the Commission, is concerned about the rapid growth in high cost universal service disbursements. However, such concern is not a justification for rash decisions in the name of reform for reform's sake. RTG's members, all of whom provide wireless service in rural areas, understand the importance of a targeted and limited universal service fund. The Commission's imposition of an interim cap on the receipt of high cost support by competitive eligible telecommunications carriers ("CETCs")[4] negates any need for any sudden reform decision in light of the current, unprecedented state of the economy. In addition, the FCC's decision to phase out high cost support to Verizon Wireless will eventually save the universal service fund ("USF") approximately $400 million per year,[5] easing pressure on USF. Further, the FCC's determination in the Sprint/Clearwire merger to require Sprint to phase out high cost support, or demonstrate its own costs if it desires high cost support,[6] also reduces the size of USF

---

[4] *See Interim Cap Order*, 23 FCC Rcd at 8834.

[5] *See in re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLCWT for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, File Nos. 0003463892, *et al.*, ITC-T/C-20080613-00270, *et al.*, File No. ISP-PDR-20080613-00012, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258 at ¶ 192 (November 10, 2008).

[6] *See in re SPRINT NEXTEL CORPORATION AND CLEARWIRE CORPORATION Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, File Nos. 0003462540 *et al.*, Memorandum Opinion and Order, FCC 08-259 at ¶ 106 (November 7, 2008).

and eliminates any rationale for an immediate USF "fix." For the time being, USF is in good shape, allowing time for lucid, long term decisions.

RTG supports reasoned, long term universal service solutions that focus high cost support to regions of the country where it is needed and to the carriers most able to serve high cost rural areas. Such support, however, should not be relegated to one class of carriers or limited to certain technologies. Neither should such support be divvied up through the use of competitive bidding or "reverse auctions" that will relegate rural consumers to lowest common denominator telecommunications services. As voice traffic migrates to wireless services and new, broadband services become available on wireless networks, RTG urges the Commission to retain its technologically neutral universal service principle – a principle noticeably lacking in the three hastily-developed Orders.

II. Reverse Auctions Will Harm Rural Consumers

The Chairman's reverse auction proposals are ill-advised, untested, and unnecessary. Reverse auctions create an economic incentive to provide the least costly service in order to maximize the high cost subsidy. Reverse auctions will also reward carriers who are the least interested in investing in rural, high cost areas. This will result in rural consumers being saddled with second-rate technology and the possibility of providers more interested in maximizing their subsidy than in rural development. Even rural providers with ties to the local community like RTG's members may be unable to invest in new technologies, including broadband applications, if forced by a reverse auction to lower their bids in order to "win" the right to provide universal service to their customers in high cost areas at a discounted cost.

The Act mandates comparable services in urban and rural areas.[7] Reverse auctions will create an insurmountable economic incentive for "winners" of rural reverse auctions to take drastic cost cutting measures to the detriment of their customers. This incentive *against* rural investment will have a devastating economic impact on rural communities who will be cut off from providing goods and services that rely on robust telecommunications links and broadband applications.

Just as wireless providers have an incentive to drive up the cost of spectrum being sought by their competitors in the Commission's spectrum auctions, participants in reverse universal service auctions will have the incentive to drive down the level of high cost support available to their competitors. This will result in support levels that may be lower than the actual support needed to provide high cost universal service support in rural regions. It would not be farfetched for large, nationwide carriers to enter into reverse auctions with the sole goal of lowering support to their rural competitors. These large carriers, many of whom have been fighting to eliminate and/or lower their universal service contributions for decades, would be likely to participate in reverse auctions with the self-interested goal of minimizing their universal service contributions rather than any public interest pursuit of providing telecommunications service in high cost rural areas. Many rural carriers rely on high cost support for their financial survival. Nationwide carriers know this and will be able to exploit this need in any reverse auction.

The FCC has no experience with reverse auctions for universal service and should not risk the continued viability of its successful universal service program on an untested experiment that could devastate rural America. The theory that a reverse auction will accurately determine the support needed to provide high cost universal service in accordance with the Act's

[7] *See* 47 U.S.C. § 254(b)(3).

comparability requirements has yet to be proven. While spectrum auctions give spectrum to the entities that value it the most, a universal service auction may give high cost support to the entity that values rural customers the least.

The FCC need not risk radically revising universal service with an administratively burdensome reverse auction mechanism when it can much more easily use carriers' own costs for determining the allocation of high cost support. Rural telephone companies and non-rate-of-return carriers have cost mechanisms in place. RTG suggests that the Commission abandon portable high cost support and use carriers' costs instead.

RTG supports the wireless cost models, such as the "WiPan" model, for the determination of high cost universal service fund ("USF") support, rather than the use of reverse auctions. Consistent with the WiPan model, RTG believes that the receipt of high cost universal service comes with an obligation, both ethical and fiscal, to use high cost support for the express provision of high cost universal service. Therefore, wireless carriers who directly or indirectly benefit from high cost support used to build out wireless networks in rural regions where multiple networks are cost prohibitive should be required to provide automatic roaming on a non-discriminatory basis to other wireless carriers in their area and their customers. RTG notes that this concept has the support of Rep. Henry Waxman in his "Universal Roaming Act of 2008."[8]

[8] H.R. 7000, 110th Cong. (2008).

III. Support Should Remain Competitively and Technologically Neutral

RTG believes that universal service support should remain available to all qualifying competitors on a technologically neutral basis. ETCs and competitive ETCs should be required to use USF monies for the maintenance, upgrade, and expansion of the supported network in the market area where they receive funds. A stringent rule requiring carriers to demonstrate where and how USF monies are being spent will keep carriers from going after high cost support simply to improve their bottom line. RTG and its members who receive high cost support are required to use their high cost support for specific rural buildout projects. Thus, high cost support that is targeted to small, rural wireless carriers gives rural consumers better mobile telecommunications coverage. In some cases, RTG members have committed to doubling the size of their rural networks and to serving previously unserved areas in exchange for their receipt of high cost funds.

RTG notes that wireless is winning the voice traffic battle over wireline providers. Wireline access lines are slowly declining nationwide while wireless subscribers are speedily growing. Any Commission favoritism over the type of technology used to provide universal service telecommunications reeks of Soviet-style industrial policy. The Act's "comparable"[9] service mandate requires fixed and mobile services, regardless of technology. Consumers in high cost areas should not be relegated to having to choose between either a wireline service or a wireless service (*i.e.*, a "primary line" limitation) for their telecommunications needs. Both services ought to be funded in accordance with the Act.[10]

---

[9] 47 U.S.C. § 254(b)(3).

[10] Lifeline and Link-Up should be provided to and required of all ETCs.

IV. Broadband, High Speed Data Services Ought to Be Supported

RTG is wary of supporting numerous additional broadband technologies when the Commission's major concern with USF at the moment is the size of the fund. This is not to say that the government does not have a role in ensuring that broadband access is available in all regions of the nation, including rural areas. However, RTG believes that it is the proper role of Congress to explicitly fund such broadband programs rather than to put more pressure on a high cost fund that is buckling under the pressure of basic voice communications, be they fixed or mobile. As the Commission moves forward on any broadband funding measures, it should focus on high speed data services, rather than video and entertainment services. While RTG is intrigued by the Commission's linking of the receipt of high cost support to the provision of broadband,[11] none of the three proposed Orders provides a genuine funding path to the provision of broadband in high cost, rural areas.

Any support for broadband services should be done on a technologically neutral basis. In many instances, wireless broadband is the most efficient method of providing high speed internet access to remote, rural customers. If the Commission is to fund broadband, it will need a broader pool of more universal service contributors. RTG believes the Commission's proposed numbers-based contribution mechanism, with its inclusion of broadband providers in the scheme, is a promising start.[12]

V. Conclusion

Unlike many government agencies struggling with the unprecedented economic crisis, the FCC has the luxury of time. RTG urges the Commission to examine the consequences of its many proposed universal service and intercarrier compensation reform proposals in light of new

---

[11] *See, e.g.*, FNPRM, Appendix, A at ¶ 3.
[12] *See, e.g.*, FNPRM, Appendix, A at ¶ 105.

economic realities. The Chairman's three proposals offer almost nothing for rural wireless carriers, struggling to provide vital mobile services in high cost and remote areas of the country. RTG encourages the Commission to tackle long term reform under less rushed circumstances.

As the Commission moves forward on its reform measures, it must bear in mind that rural consumers use both wireless and wireline services. The Commission should not limit high cost universal service to just one technology. The three proposed Orders under discussion in the FNPRM basically abandon the principle of competitive neutrality, instead doling out provisions based on political considerations due to the time constraints involved in their drafting. RTG requests that the FCC slow down and refocus its reform efforts to include providers such as rural wireless carrier who can demonstrably show where their high cost funds are being used.

For the foregoing reasons, RTG respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: _____/s/_____

Caressa D. Bennet
Kenneth C. Johnson
Bennet & Bennet, PLLC
4350 East West Highway
Suite 201
Bethesda, MD 20814
(202) 371-1500

Its Attorneys

Date: November 26, 2008