

information on which areas are without service, as well as potential issues which could impair such efforts. The Commission should also seek comment regarding under-served areas that may be receiving marginal or unacceptable levels of mobility or broadband service. Commenters should address the appropriate means to ensure that customers in those areas have an equal opportunity to obtain adequate and reliable mobility and broadband service.

### C. Defining Broadband

72. The Joint Board recommends that the Commission seek comment on the appropriate level of broadband service for which universal service support would be eligible. The Commission has already sought comment on the current definition of broadband.<sup>61</sup> We note that the current Commission definition of "high speed" data transmission, 200 kilobits per second, has been in place for years. While that standard was once useful, we now believe that a more rigorous requirement may be justified, closer to the capacities more typical of the most common national broadband plans. If so, an objective method would be needed to determine such upload and download capacities, and a regular review would be necessary.

### D. Impacts on Lifeline/Link-Up

73. The impact of the proposed high-cost fund transition on Lifeline and Linkup initiatives is also an important consideration. The Joint Board recommends that the Commission seek comment on whether Lifeline/Link-Up customers may be negatively affected by any aspects of the transition to the new three fund approach. Parties should feel free to include specific proposals to remedy any infirmities created by a three fund approach.

### E. Implementation, Transition, and Review

74. The addition of a new Broadband Fund and the transition from current wireless competitive ETC allocations to the new Mobility Fund will necessitate a careful and deliberate implementation process. The Joint Board recommends that the Commission seek further comment on how best to create as clear a transition path as possible for all providers. Specifically, comment should be sought on how to implement the transition of support from current areas that no longer need support, to areas unserved by either broadband or mobility providers, including timelines. Specifically, we recommend seeking comment on whether a five-year transition is desirable.

75. The Joint Board also believes there should be a future review of the transition process, and the results of support allocations under the new funds. At such a date it may be appropriate to make refinements to funding mechanisms and distributions. The Commission should seek comment on whether a review should occur after three or five years, and what issues should be addressed during this review. For example, should specific parameters be used to determine the effectiveness of fund support to unserved areas? On what aspects should the review be focused?

### F. Compliance with Federal Law

76. The Joint Board recommends that the Commission seek comment on any aspects of our three funds approach which would require reconciliation with federal law. The transition from existing

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<sup>61</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Notice of Inquiry, FCC 07-21 released Apr. 16, 2007.

support mechanisms to more appropriate mechanisms serving high-cost and unserved areas will create some difficulties for carriers and possibly customers. The Commission should seek comment on specific policy areas requiring adjustment to comply with applicable federal regulations.

**V. RECOMMENDING CLAUSE**

77. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to Sections 254(A)(1) and 410(e) of the Communications Act of 1934 as amended, recommends that the Commission adopt recommendations set forth herein concerning comprehensive reform for the high-cost portion of the universal service fund.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dorch  
Secretary

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*In the Matter of High-Cost Universal Service Support, WC Docket No. 03-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45*

Today, the Federal-State Joint Board on Universal Service recommends to the Commission a number of important proposals to address the structure of the high-cost universal service program. I want to thank my colleagues on the Federal-State Joint Board for their contributions and efforts to improve the universal service fund. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have similar opportunities for communications as other areas. I believe our universal service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

I support today's Joint Board recommendation to revise the current definition of supported services to include broadband Internet access service. Congress did not envision that services supported by universal service would remain static. Instead, it views universal service as an evolving level of communications services. With each passing day, more Americans interact and participate in the technological advances of our digital information economy. Deployment of these telecommunications and information technologies support and disseminate an ever increasing amount of services essential to education, public health and safety. A modern and high quality communications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the economic, educational, and healthcare opportunities available on the network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services.

The broadband program recommended by the Joint Board is tasked primarily with disseminating broadband Internet access services to unserved areas. This is a laudable goal as we work to make broadband services available to all Americans across the nation. As proposed, the program would have limited resources. Additional support for this broadband program could be made available by requiring competitive ETCs to demonstrate their own costs and meet the support threshold in the same manner as rural providers.

I am also pleased that the Joint Board supports reverse auctions as a mechanism by which the new broadband and mobility funds would be administered. I continue to support the use of reverse auctions to determine high-cost universal service funding for eligible telecommunications carriers. I believe that reverse auctions provide a technologically and competitively neutral means of restraining fund growth and prioritizing investment in rural and high-cost areas of the country.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*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*

I am honored to serve as Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board). During my tenure my goal has been to encourage thoughtful discussion among my colleagues and facilitate consensus whenever possible. I have striven to keep our work on a timetable paced to fulfill our statutory role in a thoughtful and deliberative manner. Along with the other Joint Board members, over the past six months I spent countless hours holding regular meetings and conference calls, issuing notices and referrals, and reviewing comments. I would be remiss not to mention that one of the most knowledgeable and articulate Joint Board members, Mr. Billy Jack Gregg, former Consumer Advocate of West Virginia, retired in September, and that his expertise was invaluable. He will be sorely missed, but many of his original concepts are still apparent in this decision. Certainly, all of the Joint Board members deserve praise for their commitment to the in-depth study of these complex issues, their desire to positively affect public policy and to make decisions in the public interest. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

I fully support the principles of universal service that this country has recognized for decades and Congress codified in Section 254(b) of the Telecommunications Act of 1996 (1996 Act): *to promote the availability of quality services at just, reasonable and affordable rates, to increase access to advanced telecommunications services throughout the Nation, and to advance the availability of such services to all consumers.*

In accordance with the process envisioned by Congress in the 1996 Act, in 2002 the Commission asked the Federal-State Joint Board on Universal Service (Joint Board) to review certain rules related to the high cost universal service support mechanisms and recommend any reforms to the Commission to ensure that these principles are advanced. The high cost fund is the largest universal service program, and the one most often thought of when someone refers to universal service. This is an important program and its purpose to connect all Americans to the telephone system has over the years permitted telephone connections to reach even those in rural and remote parts of our nation at a reasonable rates.

The Joint Board's Recommended Decision is an initial step on the road to more comprehensive long term reform of the Universal Service Fund. I support the recommendation to eliminate the identical support rule. I also agree with the Recommended Decision that reverse auctions could offer advantages over current high-cost distribution mechanisms. The Joint Board sought and received numerous in-depth comments and several creative proposals for reverse auctions, and I look forward to exploring this issue further. I also look forward to examining whether some type of cost-based mechanism is an appropriate replacement methodology for calculating support for eligible telecommunications carriers (ETCs) in high cost study areas.

While I support some of the recommendations, others raise questions that need to be addressed in more depth. For instance, is it prudent to create three new government administered funds instead of reforming the existing high cost fund? It is clear that we must more clearly target and direct the funds than is done at present, as Congress in Section 254 of the 1996 Act specifically intended to assist Americans who live in "rural, insular and high cost areas." Most citizens know that when the government starts creating new funds, more often than not it ends up impacting their pocketbooks. Moreover, does it make economic sense to provide ongoing support for three services that ultimately compete for the same customers? A problem we recognized but did not cure in this Recommended Decision. Indeed, this Commission has worked to help ensure technological and competitive neutrality in communications

markets, that is, to the extent possible, all providers of the same service must be treated in the same manner regardless of the technology that they employ. For instance, the Commission has adopted the same regulatory approach for broadband Internet access service provided over cable systems, telephone wires, power lines, and wireless platforms, to help ensure a level playing field among competing platforms.

I also believe that many questions remain with respect to two of the new funds: the Broadband Fund and the Mobility Fund. Should these new funds be more targeted, limited to unserved areas or used to enhance substandard service and/or to provide continued operating subsidies? What is the source of funding for the proposed \$300 million and when will it accrue? What will the transition plan and period be? How should the proposed Broadband Fund relate to other current existing government programs such as those administered by the federal Department of Agriculture, the (14) fourteen broadband bills that are currently pending in Congress, and the hundreds of state and local projects that have been undertaken with state and local taxpayer dollars? While we all support the expansion and deployment of broadband to every corner of this Nation, we must do so in a way that is efficient, targeted and fiscally responsible.

Growth for rural incumbent local exchange carriers (ILECs) for high cost loops has been flat or has even declined since 2003. I question whether it is prudent to penalize these carriers since they are not responsible for the growth in the high cost fund and ILEC high-cost support is already capped or subject to a targeted limit. In many cases, these carriers are already providing broadband to rural Americans.

As stewards of public funds, we must remain mindful that it is consumers who ultimately pay universal service contributions, and any increase in the fund size will increase the burden on consumers. Therefore I respectfully approve in part and concur in part from the Recommended Decision.

STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, CONCURRING IN PART

*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*

Five years ago I dissented to a recommendation by a different Federal-State Joint Board on Universal Service that concluded advanced services should not be eligible for Universal Service support and that broadband, specifically, should not be included in the definition of Universal Service. Today, the Joint Board happily reverses course and finds that broadband does indeed meet the statutory criteria of section 254 for inclusion as a supported service and that it is in the public interest to do so. I am enormously pleased to approve of this historic finding by the Joint Board because it establishes for the first time the right mission for Universal Service in the 21<sup>st</sup> century. This may well be the most important single action a Joint Board has ever taken.

Universal Service is a critical pillar of the Telecommunications Act of 1996. Congress concluded many years ago that a core principle of federal telecommunications policy is that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress wisely anticipated that the definition of Universal Service would evolve and advance over time. The Joint Board's recommendation to include broadband in the definition of Universal Service finally puts the program in sync with the intent of the Act.

I must express disappointment, however, that once the initial decision to include broadband was made, councils of caution found their way to the fore. Instead of bold recommendations to implement our historic decision, the Joint Board only suggests that \$300 million of federal dollars be dedicated to this challenge. And none of this would be new money, but rather a mere reshuffling of dollars among different pots.

That's like fighting a bear with a fly swatter. Bringing broadband to the far corners of the nation is the central infrastructure challenge our country confronts right now. It is no different than the challenges previous generations of Americans faced to build the essential infrastructures of *their* times--the roads, turnpikes, bridges, canals, railroads and highways of centuries past. Broadband is *our* generation's infrastructure challenge, but we have fallen behind other nations in getting high-speed services out to our people. We have put ourselves in an untenable competitive position by denying the tools of high-speed opportunity to most Americans. Our challenge, then, is to think, plan and act boldly. I am disappointed that the Joint Board did not go farther in its recommendation.

To put it in context, in the mid-1950s Congress looked to complete the interstate highway system in 10 years at a cost of \$27 billion, which in 2005 dollars amounts to \$196 billion. While no one is suggesting that such a level of government support be invested here, I believe the Joint Board has basically closed its eyes to the level of challenge we face. It should have struck a better balance between our collective interest in having a sustainable fund for the future and the desire to ensure that high-speed broadband reaches all Americans. By recommending a cap of the fund at current levels, the Board cripples the ability of USF to support broadband in a credible manner. Nonetheless, today's recommendation to include broadband is important in and of itself. It's more than a small step forward, but it's not the giant leap for mankind that we need.

With regard to comprehensive reform, I believe there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I continue to believe that much would be accomplished if the Commission were to include broadband on both the distribution *and*

contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on *intrastate* as well as interstate revenue would be a valuable tool for supporting broadband. Today the Joint Board makes an assortment of recommendations of its own. Some I agree with, some I do not, and some merit further discussion. For example, the Joint Board recommends three funds that are tailored to supporting the missions of voice, mobility and broadband. This seems a creative and reasonable approach. The Joint Board also recommends the elimination of the Identical Support rule, places renewed emphasis on the federal-state partnership in administering the Fund, and suggests that the FCC's current definition of broadband is antiquated. I agree with all of these decisions.

At the other end of the spectrum, the Joint Board focuses almost exclusively on supporting unserved areas, without sufficiently taking into account the fact that there are many underserved areas of the country where residents receive little service and, very often, service at levels that are the laughing stock of the rest of the world. The Joint Board also concludes that reverse auctions may be the appropriate method for distributing funds, despite the many unanswered questions regarding such a bidding approach on quality of service and provider of last resort obligations, not to mention many other concerns that have been raised about this type of bidding.

I concur in part because of the concerns I have enumerated here, plus others that I will discuss more fully during the pendency of these recommendations before the FCC. But it is time to get on with fixing Universal Service. While I have made clear that I do not agree with all of the recommendations that have been made, it is crucial to get a Joint Board recommendation to the Commission. This alone is a signal accomplishment, one many years in the making, and one that I have pushed for since becoming a Joint Board member. At least and at last we have tackled many of the issues, charted a direction for the future, and moved a recommendation to the Commission for follow-through action. While we may have been deflected from our important work for a time by disputes over a CETC cap and reverse auctions, in the end we decided to act in a more appropriately comprehensive fashion.

A new chapter begins now. I hope the FCC will deal with this recommendation expeditiously and comprehensively. This is no place for piecemeal actions. We need to think expansively and creatively about implementing the path-breaking broadband decision that has now been presented to us. This country desperately needs a comprehensive broadband strategy. The Joint Board recommendation provides the opportunity for the FCC to move toward such a strategy, working with our own rules and making suggestions to Congress in those areas where legislative action may be required to ensure such a strategy.

I wish to thank my Joint Board colleagues for their hard work on this proceeding. Chairwoman Tate and Chairman Baum should take merited pride in actually sending a recommendation forward. All of my state colleagues worked with tireless energy and determination to get this job done, and their expertise, experience and vision make today's action possible. The Commission and the country are fortunate to have such people to call upon. The Joint Board's staff worked long and hard to bring this recommendation to fruition, and their creativity and perseverance often made the critical difference. A final bow to our recently-retired colleague, Billy Jack Gregg, who stayed long enough to get us on-course. His ability to see both the forest and the trees of Universal Service is perhaps unmatched, and his imprint is writ large in our recommendation to bring Universal Service into the twenty-first century.

**STATEMENT OF  
COMMISSIONER RAY BAUM  
APPROVED/CONCUR IN PART**

*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*

I support the Recommended Decision (RD) of the Federal-State Joint Board on Universal Service. Its provisions contain fundamental forward-looking reforms that deserve the FCC's serious consideration. The RD proposes significant changes to the High Cost Fund component of the Universal Service Fund (USF). It does so by clearly directing funds to truly high cost and unserved areas, by expanding and redefining the scope of supported services to explicitly recognize mobility and broadband, and by increasing accountability to better benefit the consumers who pay to support the fund.

The RD recommends the FCC change the basic paradigm of High Cost support by creating three distinct categories of High Cost funding. This approach appropriately recognizes key distinctions between traditional wireline telephone services (the Provider of Last Resort or POLR Fund), wireless mobility services (the Mobility Fund), and high speed Internet access (the Broadband Fund). I am convinced that the best course is to make these distinctions explicit rather than continue to muddle support for each within traditional High Cost funding. This is particularly important for reforming wireless CETC support. Moving wireless CETC funding into a new Mobility Fund responds effectively to the concern that current High Cost support to wireless CETCs primarily subsidizes competition where competition already exists. The new Mobility Fund targets support toward the task of building infrastructure to bring wireless service to the unserved areas of rural America. As wireless build-out is completed across the country, the Mobility Fund should decrease in size over time.

The RD jump starts deployment of broadband to unserved areas by recommending the FCC establish a new Broadband Fund. All states would be eligible for a base allocation of funds. Supplemental allocations would match state efforts similar to Connect/Kentucky. This, along with the other recommendations in the RD, help ensure that monies are used effectively and efficiently. The Joint Board debated whether to use "unserved" or "under-served" to describe the areas to be targeted for infrastructure build-outs under the Broadband Fund, and under the Mobility Fund as well. In my mind, this discussion is largely over semantics. What constitutes a qualified area should be left to the individual states to decide on a case by case basis, within FCC guidelines. The key point here is that states will make these decisions within their fixed dollar allocations. Leave it to each state to decide whether it is a priority to spend some broadband dollars on areas where service is available, but not reliable. The state may have very important public safety reasons for doing so. That decision will neither burden the Broadband Fund nationally nor reduce funding to any other state.

The new Broadband Fund will greatly accelerate broadband access in rural areas served by the non-rural incumbent local exchange carriers (non-rural ILECs). The new fund will also assist rural ILECs (RLECs) who are caught in the "parent trap" when purchasing service areas from non-rural ILECs. The idea is to direct funds to those portions of the country where broadband deployment is lagging, and where Rural Utility Service (RUS) loans and other types of support are not available. The RD points out that current High Cost support mechanisms have allowed RLECs to more effectively deploy broadband to their consumers. RLEC access to low-interest RUS loans helps to fill any gaps.

As for overall funding, I support the recommendation to cap High Cost funding at \$4.5 billion for the near term. The RD appropriately exempts from the cap any additional funding that may be required when the FCC implements changes to comport with the 10<sup>th</sup> Circuit decision regarding the non-rural mechanism. The RD supports capping the CETC side of the fund at \$1.0 billion based on year-end 2006.

However, we need to acknowledge that a \$1.0 billion cap on CETCs is unlikely to happen, since the FCC appears to be moving toward a somewhat higher cap amount based on fund numbers at the end of June 2007. This June date is consistent with the FCC's approval of the Alltel transaction terms. As a result, the CETC cap is more likely to be in the neighborhood of \$1.15 billion.

While I support an overall cap on High Cost funding, I have practical concerns about capping the ILEC portion of the fund. First, capping the separate funds within the ILEC portion as recommended in the RD seems unnecessary. The ILEC side of the High Cost Fund is not growing and is not expected to do so in the near future. Second, I anticipate the ILEC portion of the fund will be subject to some adjustment during the next five years as a consequence of intercarrier compensation reform. The RD should have taken this into account.

In addition to these practical concerns, the RD did not meet my expectations when it failed to address some basic inequities in how High Cost support is distributed among non-rural ILECs and among the states. Inequitable distribution of support to states has been compounded by the equal support rule for CETCs. The exponential growth in the CETC portion of the fund over the last 6 years has gone to states where per line reimbursements to ILECs are the highest and where the politics are the most favorable. As a result, by the end of 2006, the top 10 states, exclusive of the insular jurisdictions of Alaska and Puerto Rico, received almost 45%, or over \$450 million, of the \$1 billion CETC support. Other similarly situated rural states received less than 10% of that amount. Mississippi (\$140m), Kansas (\$55m), Wisconsin (\$51m), and Washington (\$44m) lead the way with \$290 million. Idaho (\$0), Missouri (\$.1m), Utah (\$.3m) and Tennessee (\$1.5m) received the least with \$1.9 million. It is clear that the current distribution system is broken.

The current FCC rules have resulted in a vast misallocation of public dollars to the benefit of only a small portion of rural consumers, and to the detriment of the rest. The RD missed an opportunity to partially correct this misallocation when it failed to recommend replacing current support calculations based on statewide averages with calculations at the wire center level. Statewide averaging relies on implicit subsidization of rural rates by urban consumers. This kind of subsidy is not sustainable in an increasingly competitive environment. A change to a wire center basis for calculation of support would have targeted support where it is needed on a more granular basis. This could have been accomplished without increasing the size of the fund simply by reallocating existing support.

Again, I support an overall cap on the High Cost Fund of \$4.5 billion, including the new Broadband Fund. The Joint Board discussed funding the Broadband Fund at \$300 million dollars within the \$4.5 billion cap. This \$300 million dollar figure was originally projected to be available from the savings gained by capping the CETC portion of the fund at the 2006 year-end level (i.e., \$1 billion) as set forth in the Joint Board's original CETC cap recommendation in May of this year.

However, it now appears likely that the FCC will adopt a cap on CETC funding based on levels at the end of June 2007. This would eliminate about \$150 million, or half the savings, that would otherwise have been available for the Broadband Fund under our proposal. If the current collection rate is maintained through the end of 2008, probably the earliest date the fund could be implemented, the remaining \$150 million needed to fully support the Broadband Fund at \$300 million would be available under the \$4.5 billion cap by the end of 2008. In subsequent years, broadband funding could be supplemented by as much as \$150 million per year, subject to the cap and within the current surcharge. By the end of 2009, approximately \$450 million could be accumulated and available for broadband deployment. At that point the FCC should review the collection mechanism to determine whether additional funding is needed. As broadband build-out is completed across the country, the Broadband Fund should decrease in size over time.

Finally, the RD leaves several details of the implementation of its fundamental reform concepts to the FCC for further clarification. This is entirely appropriate. At a policy level the RD recommends major changes by designating two new qualifying services, creating two new funds, imposing caps on the respective fund(s) and fundamentally reforming how at least 29% of the current fund is distributed. I urge the FCC to put the RD out for comment as soon as possible with the goal of instituting the recommended reforms by June of 2008.

**STATEMENT OF  
CHAIRMAN LISA POLAK EDGAR**

*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*

Today this board sets in motion a plan to bring much needed real reform to the universal service high-cost fund. I support the Recommended Decision for a permanent cap to the current and future high-cost fund mechanisms at the projected fourth quarter 2007 level of approximately \$4.5 billion. If implemented by the FCC, the Recommended Decision will put an immediate halt to unfettered growth in the fund and provide the opportunity for fundamental and much needed reform. This is a victory for consumers everywhere who rightfully expect their federal government to be fiscally responsible with money collected from their monthly telephone bills.

I strongly support the FCC developing a unified Provider of Last Resort (POLR) mechanism. This is an opportunity to make real strides to ensure that funding for wireline POLRs is targeted to areas of need and distributed in a way that is more efficient, accountable, and fiscally responsible as envisioned by the Telecommunications Act of 1996. The current support mechanisms must be reformed to reduce duplicative funding to multiple providers and to better target financial support.

I am pleased that meaningful discussion has resulted in a Recommended Decision that will result in substantive change. However, I have lingering concerns that we have not accomplished all that can and should be done. As a Joint Board member from a net contributor state, I have concerns that expanding the scope of the fund to include broadband and mobility could inadvertently increase the overall fund size. While I recognize the importance of broadband Internet access and the importance of deploying it to unserved areas, I am wary of what lies beyond that initial objective and what financial impacts such deployment may have on consumers. I view these funding mechanisms as intended to facilitate service to unserved areas and not as long-term entitlements.

Broadband technology as a consumer product has been growing steadily. Actions should not be taken that would interfere with market forces already at work or discourage current state efforts which are helping to bring broadband to unserved areas. Equally important, we must be mindful to not unduly burden consumers in states that have already made concerted efforts to foster deployment of these new technologies. As deployment becomes more widespread and as advances in technology lower service costs, a reduction in the universal fund size should occur.

The Joint Board process requires that some concessions be made by each member to reach a consensus and majority support. While I support the Recommended Decision, I would have preferred that more emphasis be placed on substantive reform of current mechanisms prior to the adoption of the cap. It is likely that the complexity of current funding mechanisms and the funding of multiple ETCs has led to both a fund size greater than is necessary to achieve the stated objectives of the Telecommunications Act of 1996 and duplicative funding to multiple providers. By capping the fund at current levels we may be continuing an excessive burden for telecommunications consumers going forward. I urge all participants to remain focused on the universal service objectives of availability and affordability while remaining mindful of fiscal responsibility.

**STATEMENT OF  
COMMISSIONER LARRY S. LANDIS**

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

The proposals contained in today's Recommended Decision provide the framework for significant and much-needed reform of the high cost universal service program. Whether the promise inherent in those reforms is realized depends almost exclusively on what happens next, and on how the details of the framework outlined here may be implemented. Those processes and mechanisms must be weighed with great care, because in any public policy decision the odds are reasonably high that when we get to granular implementation the end result will be to produce outcomes which are unintended, undesired, or both.

The level of participation among stakeholders in this proceeding, together with the robustness of the comments and replies, as well as the *ex parte* communications, has contributed materially to the thinking leading up to today's Recommended Decision. While it is to be expected that the input of stakeholders will reflect their respective interests, for the most part they were thoughtful, productive, constructive and even imaginative, as opposed to reflecting an entitlement mentality which has at times clouded this ongoing debate.

There are four sections of this Recommended Decision which I believe warrant brief comment, because of the critical importance of getting it right when it comes to actual execution of the recommendations set forth here.

The first is the discussion of issues related to current mechanisms as they impact incumbent LECs (participants in the POLR fund, as proposed).<sup>1</sup> Competition is a reality today not only in our urban centers, but also increasingly in the small towns, villages and rural communities which are the population cores of rural areas across the country. It is essential that POLR support be matched as closely as possible to the high cost exurban ("truly rural") areas. This requires adoption of improved analytical and modeling techniques to examine those costs at a far more granular level than has been heretofore been possible. Failure to align support with costs as closely as possible could put rural service at risk as surely as the unmanaged ballooning of the high cost program.

An outgrowth of that concern is a recognition that rural is rural, and the time for distinguishing among RLECs, midsize companies and the largest LECs is past. Just as telecommunications policy should be technologically neutral, it should be neutral when it comes to providing appropriate support to those residing in high cost areas, regardless of the corporate logo or size of the provider delivering the service.

Second, great care and attention must be given to the method by which a transition from the existing, increasingly dysfunctional mechanisms to the proposed new Funds is effected. In the Recommended Decision, appropriate attention is given to the importance of effecting the transition over time, to give providers the time required to adjust their business models to account for shifts in emphasis and process. Too frequently, particularly when it has come to communications policy, remediation has taken the form of a "flash cut" to a new and presumably better framework.

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<sup>1</sup> See paragraphs 19-23 *passim*, esp. paragraph 22.

That said, virtually nothing is said in this recommendation about the transition mechanism itself. That process should be guided by the first principle in the Hippocratic oath: "Do no harm." Or if that is not possible, close attention should be given to minimizing the harm which occurs. A great deal has been said and written, including in this Recommended Decision, about the undesirability of continuing "subsidized competition." We need to recognize that the providers who have benefited from the pathology of the existing system have done so in a manner which is entirely legal, if less than visionary. It is essential that one provider not be advantaged over others as the proposed modifications to support for competitive, especially wireless, ETCs occur and wireless providers are transitioned to the proposed Mobility Fund.<sup>2</sup>

Third, it is time for the states to have a stake not only in policy decisions and in the administration of the high cost universal service program, but also to step up to at least a modest role in its funding. As our former colleague Billy Jack Gregg has pointed out, several states which are among the largest net recipients (disbursements less collections) of funds under the federal universal service program do not have a state universal service program or any other program targeted to address issues such as those addressed in this Recommended Decision.

I strongly support the recommendation that state matching funds<sup>3</sup> should be a requirement for receipt of maximum funding under the proposed Broadband fund, and further believe comment should be sought on whether it is appropriate to structure all three funds in that manner, perhaps consistent with ability (but independent of political will) to pay for those states seeking to maximize the funds allocated to service areas within their boundaries.

Fourth, I concur in the view of my colleagues who support redefinition of supported services to include broadband, employing a mechanism such as that outlined in this recommendation. It is beyond debate that there are those areas in which buildout is sufficiently costly that no business case can be made for buildout, regardless of the technology under consideration, and it is to those areas I would expect the broadband dollars would be primarily directed.

An approach which draws upon the expertise of the states and which follows a logical progression such as is outlined in this Recommendation,<sup>4</sup> relying primarily on the private sector for addressing unserved areas<sup>5</sup> and utilizing funds from the Broadband Fund as a "funding source of last resort" will best and most efficiently reach the goal of ubiquitous broadband availability. Given that many states still do not have an accurate assessment as to precisely how widely available broadband is, and where it is and is not available, enthusiasm should be tempered by a degree of caution. I support the initially incremental approach which is contemplated by a \$300 million initial funding level. I hope that thereby we can avoid the temptation to unnecessarily throw resources at a need before its scope has been clearly and precisely defined.

<sup>2</sup> See esp. paragraph 27.

<sup>3</sup> See paragraphs 50-52.

<sup>4</sup> See esp. Paragraph 54

<sup>5</sup> Such as the community-based demand development program which is the core element of the Connected Kentucky and Connected Nation model

It may be appropriate to seek input into the latent barriers to achieving more pervasive broadband use. Those who are without computers, whether by choice or circumstance, are still largely precluded from robust broadband usage. We also need to take into consideration those who have made what, for them, is a rational decision that broadband is not a service they need or want, no matter how widely available and no matter what the cost.

**STATEMENT OF  
COMMISSIONER JOHN D. BURKE**

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

The key universal service objectives of the 1996 Act are to provide rural areas with telecommunications services that are reasonably comparable to those available in urban areas, and to provide them at prices that are reasonably comparable to prices in urban areas. In recommending three separate high-cost funds, this Recommended Decision establishes a very different path to those goals. I support this change, believing that the proposed system would be more effective at achieving the objectives of the Act and more efficient at conserving resources.

I congratulate my fellow Joint Board members for their engagement in a collective process and their willingness to compromise. Each of us had to make substantial compromises, but the result is a stronger and more balanced recommendation. I also want to particularly thank the Joint Board state staff members who, near the end of our deliberations, were suddenly called upon to be responsible for drafting this document.

The most dramatic change we recommend is to support broadband deployment. Finding adequate funding for that program was our most difficult challenge. Since wireline and wireless voice services already receive support, one might anticipate that adding broadband would increase high-cost support by as much as one-half. I am pleased that we could find a way to offer substantial new funding for broadband deployment while still limiting the increase in fund size to about seven percent. I agree with Commissioner Baum's observation that, whenever the FCC ultimately chooses to impose a CETC cap, by setting that cap at a support level being distributed at an earlier date, it can make some of the existing support immediately available for the Broadband Fund.

I regret that the majority has not set forth more clearly the country's need for ubiquitous high quality mobility services. I applaud our statement that all consumers should have access to at least one carrier that provides a reliable signal. However, we also say that the primary goal of the Mobility Fund is to support new construction. There are many rural areas with weak and intermittent wireless service. I would have preferred to have included areas that have unreliable wireless voice service within the primary purpose of the Mobility Fund. If wireless service is indeed a substitute for wireline service, that wireless service should be, in all instances, reliable. Moreover, a broader definition may be more efficient. Providing support to improve weak signals may well provide more benefits to consumers and promote competition better than building new cell towers in remote unserved areas.

The states' role in this Recommended Decision becomes critical. The obligation to identify areas lacking wireless or broadband service is key to making our decision work. For states to authorize their own funding mechanisms, and thereby facilitate the matching grants proposal, will require effort. Solid models for such funding mechanisms exist in the Connect/Kentucky example and in Vermont's Act 79 of 2006. If adapted to each state's needs, this effort will create a partnership among the federal government, state governments and private industry that will, I believe, be the fastest and most cost efficient method of serving all of our citizens, even those in the areas that are hardest to serve.

**STATEMENT OF  
ASSISTANT ATTORNEY GENERAL  
PUBLIC COUNSEL SIMON FITCH**

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

I support the Recommended Decision issued by the Joint Board today because it adopts an important framework for needed reform of high-cost universal service support. The decision establishes appropriate priorities by recommending that the FCC concentrate on reform of existing funding in order to eliminate excessive and unneeded USF support, to better target areas in need, to adjust to evolving technology, and to recognize changing consumer preferences.

The decision adopts a "cap and target" approach which should provide significant benefits for consumers. By recommending a cap on high-cost funding, the decision addresses the problem of uncontrolled growth in the fund size. The USF contribution currently adds approximately 11 percent to the interstate portion of the telecommunications bills of most Americans. This level of burden and the dramatic growth in fund size have become counterproductive to the ultimate goals of universal service. I therefore strongly support the recommendation to cap the fund.

In addition to capping the fund, the decision proposes ways to use existing funds more efficiently and effectively. This is accomplished through the three-fund approach, by recommending the end of the identical support rule, and by other proposed changes. A key aspect of this Recommended Decision is that it proposes a reasonable and practical way to reform existing support mechanisms and to redirect support to broadband and mobility needs, while at the same time keeping control on the overall size of the fund. In this way, the plan proposed in this Recommended Decision keeps the focus where it should be in this process -- on the interests of America's telecommunications consumers.

Finally, it is important to note the significant role played by former Joint Board member and West Virginia Consumer Advocate Billy Jack Gregg in developing some of the core concepts that are part of the framework adopted in this Recommended Decision. Though his tenure ended September 30 of this year, his thoughtful work has been a valuable contribution to this effort.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 13 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice of Proposed Rulemaking (Notice) and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition.<sup>4</sup> Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.<sup>5</sup> Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.<sup>6</sup>

3. In this Notice, we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support.<sup>7</sup> We also incorporate into this Notice the following two Notices of Proposed Rulemaking (NPRMs): (1) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the "identical support rule," and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

<sup>5</sup> See 47 U.S.C. § 254(b). Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. § 254(b)(1), (3), (5).

<sup>6</sup> 47 U.S.C. §§ 214(e), 254(e).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State It. Bd., rel. Nov. 20, 2007) (*Recommended Decision*) (attached as Appendix A).

determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas.<sup>8</sup> We also will incorporate the records developed in response to those Notices of Proposed Rulemaking into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules.<sup>9</sup>

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted.<sup>10</sup> The RFA generally defines the term "small entity"<sup>11</sup> as having the same meaning as the terms "small business,"<sup>12</sup> "small organization,"<sup>13</sup> and "small governmental jurisdiction."<sup>14</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>15</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>16</sup> Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>17</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>18</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>19</sup>

<sup>8</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*).

<sup>9</sup> 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403; 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216.

<sup>10</sup> 5 U.S.C. § 604(a)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3).

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register." 5 U.S.C. § 601(3).

<sup>16</sup> 15 U.S.C. § 632.

<sup>17</sup> See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, at 40 (July 2002).

<sup>18</sup> 5 U.S.C. § 601(4).

<sup>19</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>20</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,<sup>21</sup> Paging,<sup>22</sup> and Cellular and Other Wireless Telecommunications.<sup>23</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

#### 1. Wireline Carriers and Service Providers

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>24</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>25</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> According to Commission data,<sup>27</sup> 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

9. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under

<sup>20</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

<sup>21</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>22</sup> *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>23</sup> *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>24</sup> 15 U.S.C. § 632.

<sup>25</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>27</sup> *Trends in Telephone Service* at Table 5.3.

SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>28</sup> According to Commission data,<sup>29</sup> 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees.<sup>30</sup> In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

## 2. Wireless Carriers and Service Providers

10. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>31</sup> and "Cellular and Other Wireless Telecommunications."<sup>32</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>33</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>34</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>35</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>36</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

11. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>37</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer

<sup>28</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>29</sup> *Trends in Telephone Service* at Table 5.3.

<sup>30</sup> *Id.*

<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>32</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>33</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

<sup>34</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>35</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

<sup>36</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517212.

employees.<sup>38</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>39</sup> We have estimated that 221 of these are small under the SBA small business size standard.

### 3. Satellite Service Providers

12. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.<sup>40</sup>

13. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."<sup>41</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>42</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>43</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

14. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."<sup>44</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>45</sup> Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>46</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

<sup>38</sup> *Id.*

<sup>39</sup> *Trends in Telephone Service* at Table 5.3.

<sup>40</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>41</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>42</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>43</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>44</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>45</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>46</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

15. This Notice seeks comment on ways to reform the high-cost universal service program. Specifically, the Notice seeks comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support.<sup>47</sup> The Joint Board recommended the creation of three distinct high-cost funds: a broadband fund, a mobility fund, and a provider of last resort fund.<sup>48</sup> If the Commission ultimately adopts the Joint Board's recommendations, new or additional reporting requirements may be required for carriers to receive support under a three-fund approach. Additionally, the Notice incorporates by reference two NPRMs addressing the adoption of a reverse auctions approach for distributing high-cost support, and the elimination of the identical support rule for competitive eligible telecommunications carriers.<sup>49</sup> Projected reporting, recordkeeping, and other compliance requirements are discussed in the IRFAs of those NPRMs.<sup>50</sup>

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>51</sup>

17. This Notice seeks comment on ways to reform the high-cost universal service program, including recommendations issued by the Joint Board. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching

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<sup>47</sup> See *generally Recommended Decision*.

<sup>48</sup> *Recommended Decision* at paras. 11-43.

<sup>49</sup> See Notice at para. 1.

<sup>50</sup> *Identical Support Rule NPRM, App.*; *Reverse Auctions NPRM, App.*

<sup>51</sup> See 5 U.S.C. § 603(c).

its final conclusions and taking action in this proceeding. To the degree that the other NPRMs that the Notice includes by reference offer alternatives that may minimize the significant economic impact on small entities, those alternatives will be considered as well.

**F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules**

18. None.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice).*

Today, the Commission adopts several proposals to reform the high-cost universal service program. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive universal service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Joint Board has recognized the problems of maintaining this identical support rule.

I am supportive of several means of comprehensive reform for the universal service program. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive ETCs. And today we adopt a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's own costs in the same way that rural phone companies' support is based. I'm supportive of both measures as a means to contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected.

I continue to believe the long-term answer for reform of high-cost universal service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the fund and ensuring a move to most efficient technologies over time. Accordingly, I am pleased that we adopt today's Notice of Proposed Rulemaking to use reverse auctions to distribute universal service support.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS,  
APPROVING IN FCC 08-22  
APPROVING IN FCC 08-4  
APPROVING IN PART, DISSENTING IN PART IN FCC 08-5**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice) (Approving in Part, Dissenting in Part).*

The Commission adopts and seeks comment on three Notices of Proposed Rulemaking concerning: the Federal-State Joint Board on Universal Service's (Joint Board) recommendation on comprehensive reform of the high-cost Universal Service support mechanism; the elimination of the "Identical Support" rule; and the merits of using reverse auctions in distributing high-cost support to eligible telecommunications carriers (ETCs). I am pleased that the Commission today initiates all three NPRMs simultaneously as I have long believed that Universal Service reform must be done in a comprehensive, systematic manner. I write here to express my views on all three proceedings.

I continue to believe that there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I believe much would be accomplished if the Commission were to include broadband on both the distribution and contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on intrastate as well as interstate revenue would be a valuable tool for supporting broadband.

That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. In my view, the most important part of the recommendation is its inclusion of broadband as part of USF for the 21<sup>st</sup> Century. My views on the recommendation are explained in further detail in my statement that accompanied the Joint Board's recommendation and which is attached as an appendix to the NPRM adopted today. I believe the recommendation merits further action by the Commission, and therefore, I am pleased to support the NPRM initiated today.

Let me briefly take this opportunity to thank the members of the Joint Board who worked tirelessly on the difficult task of developing a comprehensive proposal for the FCC's consideration. I congratulate Chairwoman Tate for her leadership in bringing these recommendations to the Commission. We are all deeply indebted to her co-chair, Commissioner Ray Baum of Oregon, for his tireless and energetic work in shepherding the Joint Board toward consensus on many items. And I want to pay tribute to the always visionary yet practical efforts of the indefatigable Billy Jack Gregg whose endless good counsel is sewn throughout the Joint Board's recommendations.

With regard to the NPRM on the Identical Support rule, it is clear to me that the costs of investing and maintaining wireless and wireline infrastructure are inherently different. I believe that wireless can and should be a part of Universal Service, but the time has come to put an end to the irrational and costly

system of supporting wireless carriers based on the cost of wireline incumbents. I therefore am supportive of the tentative conclusion that we eliminate this rule. The NPRM is particularly important because it seeks comment on how best to replace this rule and in particular the methodologies by which CETCs should be able to recover costs for Universal Service support purposes.

The NPRM on reverse auctions is much more of a mixed bag. On the one hand, I support the Commission's decision to seek comment on the merits of reverse auctions as a method for distributing high-cost Universal Service support. The Joint Board spent a great deal of time examining the use of reverse auctions, but I must say that our review raised in my mind many more questions than it answered. For instance, how do we ensure that the winning bidder provides adequate quality of service? What happens if the winner later decides it is no longer profitable to continue its operation? And who will be responsible for establishing the rules and enforcing them? Ironically, this purportedly market-based approach strikes me as hyper-regulatory. For these reasons, I must dissent from the NPRM's tentative conclusion that the Commission should develop an auction mechanism to determine high-cost support. I believe that the options I outlined above—including broadband as part of Universal Service; elimination of the Identical Support rule; stepped-up accounting oversight; and Congressional action to enable Universal Service collections on an intrastate as well as an interstate basis provide a more effective and less disruptive approach to Universal Service reform.

The good news is that these three items, particularly the Joint Board recommendation, put the urgent need for comprehensive Universal Service reform squarely in front of the Commission. I hope the FCC will deal with these recommendations expeditiously and comprehensively. This is no place for piecemeal actions. We need to think expansively and creatively about implementing the path-breaking broadband decision that has now been presented to us. This country desperately needs a comprehensive broadband strategy. The Joint Board recommendation provides the opportunity for the FCC to move toward such a strategy, working with our own rules and making suggestions to Congress in those areas where legislative action may be required to ensure such a strategy. I am looking forward to working with my colleagues in order to turn these proposals into workable solutions.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN,  
APPROVING IN FCC 08-22  
APPROVING IN FCC 08-4  
CONCURRING IN PART, DISSENTING IN PART IN FCC 08-5**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice) (Concurring in Part, Dissenting in Part).*

Through these Notices, the Commission seeks comment on potentially profound changes to the Universal Service High Cost program. While I am not without reservations about some of the proposals in these items, I am pleased that the Commission is engaging in serious consideration of how to preserve and advance universal service, one of the bedrock principles of U.S. telecommunications policy. I am particularly encouraged that the Commission is seeking comment on the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), and I thank the members of the Joint Board for their considerable efforts to bring us this Recommended Decision.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. In Section 254 of the Communications Act, Congress affirmed the broad principle that "consumers in all regions of the nation . . . 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." Implementing universal service as intended by Congress in Section 254 of the Act is among the highest priorities for the Commission.

The task before us – ensuring the continued vitality of universal service – is particularly important as technology and the marketplace continue to evolve. Our choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow with the rest of the country. History has shown that many rural consumers would be left behind if it weren't for the support made available through our universal service policies.

The Joint Board's Recommended Decision for comprehensive reform of the high cost support mechanism – and, in particular, the decision to include broadband as a supported service – is a landmark development. I have long argued that the universal service fund is an integral component of our efforts to meet the broadband challenge. So, the decision to embrace broadband, through the list of supported services and through targeted funding for unserved areas, and the recognition of the effectiveness of the current High Cost Loop Fund in supporting the capital costs of providing broadband-capable loop facilities for rural carriers are encouraging developments.

I must express a degree of reservation over the amount of support allocated to the Broadband Fund, among other limitations on support. Maintaining our commitment to connectivity, particularly in the broadband age, is more important than ever, and the Commission must start to provide realistic

assessments of what will be required. To that end, I am also concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America. For these reasons, I dissent from the tentative conclusions in the separate Reverse Auctions Notice. While I appreciate the majority's willingness to flesh out details of their reverse auction proposal, I cannot support these premature tentative conclusions, and would have preferred a more balanced presentation of the potential disadvantages of such an approach.

There remain many questions about the Recommended Decision and details to be vetted. While I reserve judgment on many of the proposals, there is much here that warrants careful consideration. The Joint Board has wrestled with many difficult issues, including the unique role of providers of last resort, compensation for multiple providers, and the role of the States in fostering universal service, and I look forward to seeking comment on their recommendations. I agree with the Joint Board's recommendation on the identical support rule and support the separate Notice seeking comment on alternative approaches.

As we move forward with these proceedings at the Commission, I would like to express my sincere gratitude to all the members and staff of the Joint Board. The Joint Board, and the many parties who participated in those proceedings, engaged in a long and arduous effort to bring us these recommendations. I know that we will benefit considerably from their expertise and judgment, and I look forward to the coming dialogue on these proposals with our state commission colleagues, consumers, providers, and the many others with a stake in the future of universal service.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice) (Approving).*

As Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board) I am particularly pleased that we are taking this significant step forward in the journey toward comprehensive reform of the high-cost universal service program. This is an important program at the heart of rural America. Its purpose, to connect all Americans to telecommunications at affordable rates, has over the years permitted people to be connected even in rural and remote parts of our nation. Going forward, the Universal Service Fund will continue to play a critical and increasing role in one of our top priorities at the Commission – encouraging broadband deployment to all corners of America.

Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. It is also significant that we also incorporate by reference the *Identical Support NPRM* and *Reverse Auctions NPRM*, including the records to be developed in response to those NPRMs. I look forward to receiving public input and examining these issues.

I would like to thank my Co-Chair, Commissioner Ray Baum of the Oregon Public Utility Commission. I am especially pleased that all eight Joint Board members, large and small/rural and urban/donor and recipient, were able to come to this consensus and hope this will move us forward and provide the basic building blocks for fundamental reform to ensure Fund stability and viability in a fiscally responsible manner. All of the Joint Board members deserve praise for their commitment to the in-depth analysis of these complex issues, their desire to positively affect public policy and to make decisions in the public interest in a thoughtful and deliberative manner. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice) (Approving).*

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. A number of proposals have been put forth, particularly the Joint Board's recommendations for comprehensive reform sent to the Commission on November 19, 2007.

By adopting these three notices of proposed rulemaking, we are moving forward to advance specific reforms to the way the Universal Service High Cost Fund is administered. I favor a comprehensive approach where we can consider all ideas and options for reform of this important program. This year the Commission has an historic opportunity to implement meaningful and lasting fiscal reform that balances stakeholders' concerns and promotes the interests of consumers. We should seize this opportunity and take a bold step forward.