

**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

NOTICE OF PROPOSED RULEMAKING

Adopted: January 16, 2008

Released: January 29, 2008

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (*Notice*), we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) regarding comprehensive reform of high-cost universal service support.¹ 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 determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas.² 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.

¹ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*) (attached as Appendix A).

² *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*).

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II. BACKGROUND

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.³ Section 254(b) of the Act, which was added by the 1996 Act, directs the 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.⁴ 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.⁵ Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section.⁶

3. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms.⁷ Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC provides service.⁸ In response, the Joint Board made a number of recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs.⁹ Instead, the Joint Board recommended that it and the Commission continue to consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.¹⁰

4. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.¹¹ In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

⁴ See 47 U.S.C. § 254(b).

⁵ 47 U.S.C. § 254(b)(1), (3), (5).

⁶ 47 U.S.C. §§ 214(e), 254(e).

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

⁸ *Id.*

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (Fed.-State Jt. Bd. 2004).

¹⁰ *Id.* at 4294, para. 88.

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11268-70 (2001) (*Rural Task Force Order*); see also *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending the *Rural Task Force Order* plan).

support mechanisms for rural carriers.¹² The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.¹³ Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs.¹⁴

5. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support provided to competitive ETCs to stem the dramatic growth in high-cost support.¹⁵ Specifically, the Joint Board recommended that the Commission cap the amount of support that competitive ETCs may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.¹⁶ The Joint Board further recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost universal service reform.¹⁷ The Joint Board also recommended that the Commission consider abandoning or modifying the so-called "identical support" rule in any reform it ultimately adopts.¹⁸ On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board's recommendation regarding the interim cap on competitive ETC support.¹⁹

6. In a companion Public Notice, released May 1, 2007, the Joint Board sought comment on various proposals to reform the high-cost universal service support mechanisms.²⁰ Specifically the Joint Board sought comment on the following issues and proposals: 1) the use of reverse auctions to determine high-cost universal service support; 2) the use of GIS technology and network cost modeling to better

¹² See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (Fed.-State Jt. Bd. 2004).

¹³ See *id.* at 16094, paras. 36-37.

¹⁴ See *Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006) (*Aug. 2006 Public Notice*). In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions and geographic information systems (GIS) to determine support for ETCs. See *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (Wireline Comp. Bur. 2007). Statements, slides and audio transcripts are available at http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html.

¹⁵ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, 8999-9001, paras. 4-7 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*).

¹⁶ *Recommended Decision*, 22 FCC Rcd at 9000-03, paras. 5-13.

¹⁷ *Id.* at 9002, para. 8.

¹⁸ See *id.* at 9002, paras. 8, 12.

¹⁹ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (*2007 Notice*).

²⁰ *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023 (Fed.-State Jt. Bd. 2007) (*May 2007 Public Notice*). Comments were due May 31, 2007, and reply comments were due July 2, 2007.

calculate and target support at more granular levels; 3) disaggregation of support; 4) the methodology for calculating support for competitive ETCs;²¹ and 5) whether universal service funding should be used to promote broadband deployment.²²

7. Finally, the Commission recently adopted two Notices of Proposed Rulemaking, which seek comment on specific high-cost universal service comprehensive reform proposals. First, on January 9, 2008, the Commission adopted the *Identical Support NPRM*, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to ETCs and tentatively concludes that the Commission should eliminate the "identical support" rule.²³ Second, on January 9, 2008, the Commission adopted the *Reverse Auctions NPRM*, which tentatively concludes that reverse auctions should be used as the disbursement mechanism to determine the amount of high-cost universal service for ETCs serving rural, insular, and high-cost areas and seeks comment on how to implement reverse auctions for this purpose.²⁴

III. DISCUSSION

8. On November 20, 2007, the Federal-State Joint Board on Universal Service issued its *Recommended Decision* regarding comprehensive reform of high-cost universal service.²⁵ In this *Notice*, we seek comment on the Joint Board's recommendations contained in the *Recommended Decision*.

9. We also incorporate by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM* into this *Notice*. In addition, we will incorporate the records developed in response to those two items into this proceeding. We thus request that parties who file comments in response to either or both of those items include those comments as part of their filings in response to this *Notice*. 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.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended,²⁶ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *Notice*, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice*. The IRFA is in Appendix B. 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*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for

²¹ Specifically, the Commission sought comment on "whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support." *Id.* at 9026, para. 7.

²² *Id.* at 9024-27, paras. 3-8.

²³ *Identical Support Rule NPRM*, para. 1. The "identical support" rule provides that a competitive ETC receive the same per-line high-cost universal service support amount that the incumbent local exchange carrier (LECs) receives for the relevant area. *Id.*

²⁴ *Reverse Auctions NPRM*, para. 1.

²⁵ *Recommended Decision*, FCC 07-4.

²⁶ 5 U.S.C. § 603.

Advocacy of the Small Business Administration.²⁷ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.²⁸

B. Paperwork Reduction Act Analysis

11. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.²⁹ Public and agency comments are due 60 days after this notice of proposed rulemaking is published in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."³⁰

C. Ex Parte Presentations

12. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.³² Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.³³

D. Comment Filing Procedures

13. Pursuant to sections 1.415 and 1.419 of the Commission's rules,³⁴ interested parties may file comments 30 days after publication of this Notice in the Federal Register, and reply comments 60 days after publication of this Notice in the Federal Register. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecg/ecfs/> or the Federal eRulemaking Portal:

²⁷ See 5 U.S.C. § 603(a).

²⁸ *Id.*

²⁹ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

³⁰ Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

³¹ 47 C.F.R. §§ 1.1200-1.1216.

³² 47 C.F.R. § 1.1206(b)(2).

³³ 47 C.F.R. § 1.1206(b).

³⁴ 47 CFR §§ 1.415, 1.419.

<http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number referenced. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

14. In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; website: www.bepiweb.com; phone: 1-800-378-3160;
- (2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: Antoinette.Stevens@fcc.gov.

15. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or theodore.burmeister@fcc.gov, or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, or katie.king@fcc.gov.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403 and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216, this Notice of Proposed Rulemaking IS ADOPTED.

17. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Federal-State Joint Board on Universal Service Recommended Decision

**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
)	
)	
)	

RECOMMENDED DECISION

Adopted: November 19, 2007

Released: November 20, 2007

By the Federal-State Joint Board on Universal Service: Commissioner Landis and Assistant Attorney General Mitch issuing separate statements; Chairman Edgar and Commissioners Baum and Burke approving in part, concurring in part, and issuing separate statements; Chairman Martin and Commissioners Tate and Copps approving in part, concurring in part, and issuing separate statements.

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I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) recommends that the Federal Communications Commission (the Commission) address the long-term reform issues facing the high-cost universal service support system and make fundamental revisions in the structure of existing Universal Service mechanisms. We also recommend that the Commission seek additional input from parties to further explore transitional issues associated with distribution reform. The Joint Board recommends establishing three separate "funds" with distinct budgets and purposes. This new classification achieves two principal purposes. First, it accommodates the arrival of, and the public demand for, broadband Internet services. Second, it allows the Commission to substantially increase the effectiveness of funding now awarded to wireless carriers.

2. We are also mindful that it is consumers who must pay universal service contributions. Despite our strong interest in providing adequate funding for broadband deployment, we also want to avoid significantly increasing the burden on those consumers. Therefore, we also recommend methods of transitioning from existing support mechanisms to the new funding structure, at approximately the current fund size. In addition, we recommend caps on the total amount of money distributed by the high-cost support mechanism and recommend measures that should lead to more efficient uses of existing funding.

3. We also recommend methods of administering the new broadband and mobility funding in ways that strengthen the universal service partnership between the Commission and the states and that avoid using universal service to subsidize competition or build duplicate networks. We further recommend making a formal change to the definition of services supported by Section 254 funding.

4. The definition of those services that qualify for Universal Service support under the Telecommunications Act of 1996 (the Act) has remained unchanged, despite numerous proposals for change made during the past decade. The Joint Board recognizes that while mobility and broadband capabilities have both received some funding from universal service dollars, the funding has been entirely within the formal context of providing basic voice telecommunications services by eligible telecommunications carriers (ETCs). The Joint Board now recommends that the nation's communications goals include achieving universal availability of mobility services (defined as wireless voice), universal availability of broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas.

5. Consistent with the Joint Board Public Notice released in September 2007,¹ we recommend that the Commission eliminate the identical support rule. The rule bears little or no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country.

6. We conclude that reverse auctions may offer advantages over current high-cost distribution mechanisms, and that the Commission should explore the most appropriate auction mechanisms to determine high-cost universal service support.

¹ See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, September 6, 2007.

II. BACKGROUND

7. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms.² Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service.³ In response, the Joint Board made many recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (*i.e.*, the methodology used to calculate support) in study areas with multiple ETCs.⁴ Instead, the Joint Board recommended that it and the Commission consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.⁵

8. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.⁶ In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers.⁷ The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.⁸ Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board and the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs.⁹

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Red 22642 (2002).

³ *Id.*

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Red 4257 (2004).

⁵ *Id.* at 4294, para. 88.

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Red 11538, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Red 11244, 11268-70 (2001) (*Rural Task Force Order*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 21 FCC Red 5514 (2006) (extending Rural Task Force plan).

⁷ See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Red 16083 (2004).

⁸ See *id.* at 16094, paras. 36-37.

⁹ See *Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Red 14267 (2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, Public Notice, 21 FCC Red 9292, released Aug. 11, 2006. In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions and geographic information systems (GIS) to determine support for eligible telecommunications carriers. See *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Red 2545 (2007).

9. In May 2007, the Joint Board recommended that the Commission place an emergency, interim cap on support for competitive ETCs.¹⁰ The Joint Board observed that high-cost support has been increasing in recent years¹¹ and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund was in dire jeopardy of becoming unsustainable.¹² The Joint Board went on to describe the operation of the cap, length of time that the cap should be in place, and the base period for the cap.¹³

10. In its May 2007 Recommended Decision, the Joint Board noted that the imposition of an interim cap on competitive ETC high-cost support represented only a temporary solution to the problems facing the high-cost support distribution mechanisms. As such, the Joint Board committed to providing further recommendations regarding comprehensive high-cost universal service reform within six months of that Recommended Decision. In furtherance of that target, the Joint Board sought comment, in a companion Public Notice, on several proposals that had been placed in the record since the close of the last comment cycle, as well as other possible reforms.¹⁴ Specifically, the Joint Board sought comment on proposals related to the use of reverse auctions, the use of geographic information systems (GIS) technology, the disaggregation of high-cost support, and support for broadband services.¹⁵ As the Joint Board stated in the May 2007 Public Notice, the expectation was for parties to submit comprehensive reform proposals pursuant to the pleading cycle set forth in the Public Notice.¹⁶ Further, in September 2007, the Joint Board released a Public Notice¹⁷ containing specific principles upon which comprehensive reform would be based. Those principles are: cost control, accountability, state participation, and infrastructure build-out in unserved areas.

III. FUNDAMENTAL HIGH-COST DISTRIBUTION REFORM

A. Scope of Reform

11. The Joint Board recommends that high-cost universal service support in the future be delivered through three distinct “funds,” each with separate distribution mechanisms and separate funding allocations. The Broadband Fund would be tasked primarily with facilitating construction of facilities for new broadband services to unserved areas.¹⁸ The Mobility Fund would be tasked primarily with

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd. 9023, (June, 2007) (“*Recommended Decision on CETC Caps*”).

¹¹ In the *Recommended Decision on CETC Caps*, we observed that while support to incumbent LECs had been flat or even declined since 2003, in the six years from 2001 through 2006, competitive ETC support grew from \$15 million to almost \$1 billion – an annual growth rate of over 100 percent. Moreover, we forecast that, without a cap, competitive ETC support would reach at least \$1.28 billion in 2007, \$2 billion in 2008 and \$2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.

¹² *Recommended Decision on CETC Caps*, para. 4.

¹³ *Recommended Decision on CETC Caps*, paras. 5-14.

¹⁴ *Federal-State Joint Board On Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, Public Notice, released May 1, 2007.

¹⁵ *Id.*

¹⁶ See *id.* at para. 1.

¹⁷ See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice dated September 6, 2007.

¹⁸ We recommend the Commission seek comment on defining this term. See section IV.B. below.

disseminating wireless voice services to unserved areas. Finally, a Provider of Last Resort (POLR) Fund would support wireline carriers who provide this function. These three funds would operate within an overall funding cap that is consistent with the current amount of high-cost funding. Support under existing programs would be transitioned over a period of years to the new three-part funding structure.

1. **The Broadband Fund**

12. The Broadband Fund would be tasked primarily with disseminating broadband Internet services to unserved areas, with the support being expended as grants for the construction of new facilities in those unserved areas. A secondary purpose would be to provide grants for new construction to enhance broadband service in areas with substandard service. Another secondary purpose would be to provide continuing operating subsidies to broadband Internet providers serving areas where low customer density would suggest that a plausible economic case cannot be made to operate broadband facilities, even after receiving a substantial construction subsidy.

13. Effective use of federal funds for broadband will require a detailed knowledge of the areas in which effective terrestrial broadband service is unavailable. Collecting information on areas without broadband or where broadband is substandard is a complex task. Broadband availability can vary on a street-by-street basis, sometimes on a house-by-house basis. Moreover, the facts can change quickly, for example when a wireless Internet service provider opens or closes its doors. To effectively apply federal funds to expand broadband deployment, primarily through new construction grants, it is essential that the agency responsible for dispensing the funds have access to detailed, current geographic information. The Joint Board believes that the Commission has engaged in some broadband mapping activities, but not at the scale necessary to administer broadband construction grants. States are generally more capable of performing this task, in large part because they have smaller areas and have more sources of information about local needs. Moreover, several states have already assembled data approaching or exceeding the required level of accuracy.

14. Working with adequate standards and safeguards, we conclude that states are better suited than the Commission to effectively administer the new Broadband Fund grant program. Accordingly, we recommend that the available pool of Broadband Fund monies first be allocated to the states,¹⁹ and thereafter awarded by designated state agencies to finance particular construction projects or the operations of broadband providers.²⁰ All state awards should be made pursuant to federal rules describing standards and containing accountability safeguards.

15. Today, the Joint Board does not propose a specific algorithm for the state allocations. However, we do believe that a major input factor should be the number of residents of each state who are unable to purchase terrestrial broadband Internet service at their residences. States would award Broadband Fund dollars primarily to assist in the construction of new facilities in unserved areas. Funding would normally be awarded on a project-by-project basis. To the extent that states are required to provide matching funds, they would all have an incentive to award funds effectively. In addition, states would be required to follow some prescribed procedures to ensure that the funds are spent effectively and that no more funding is awarded than is needed. Before awarding grants for construction, states should be required to develop and publish detailed maps of their unserved areas. Thereafter, they might wish to divide their unserved areas into distinct administrative districts for purposes of administering grants.

¹⁹ We consider below whether states should be required to provide matching funding.

²⁰ Some states may be unwilling or unable to assume this responsibility. In that event, the Commission would directly administer the grants.

States would be permitted to award Broadband Fund grants to only one provider in any geographic area. States should be allowed to use any suitable procedure for awarding grants that will ensure efficient and effective use of the funds. This may involve the use of reverse auctions or requests for proposal to serve specified geographic areas. Alternatively, states could use cost and support algorithms that produce an output equal to the minimum construction subsidy needed to ensure full broadband coverage.

2. The Mobility Fund

16. The Mobility Fund would be tasked primarily with disseminating wireless voice services to unserved areas. Most Mobility Fund support would be expended as subsidies for construction of new facilities in unserved areas. In this context, "unserved area" would mean areas with a significant population density but without wireless voice service. Public safety would also legitimately be considered in defining areas needing wireless service, and construction funds should be available to serve other areas frequently used by the traveling public, such as state and federal highways, without regard to the population residing in the immediate area. A secondary purpose of the Mobility Fund would be to provide continuing operating subsidies to carriers serving areas where service is essential but where usage is so slight that a plausible economic case cannot be made to support construction and ongoing operations, even with a substantial construction subsidy. While unserved areas should be readily identifiable, there are clearly existing areas that are underserved, with mobility services that are available but not reliable. While it should not be the goal of universal service funding to upgrade the multitude of existing wireless networks in rural areas throughout the country, it is a legitimate goal that all consumers should have access to at least one carrier that provides a reliable signal. Below we recommend the Commission seek additional comment on the issues surrounding the use of universal service funds to improve wireless service in under-served as opposed to unserved areas.

17. For the reasons explained above, the Joint Board believes states should be responsible partners with the Commission in administering Mobility Fund awards. As with broadband, the availability and quality of wireless service can vary over small distances and short time spans. State governments are much more likely than the Commission to be able to assemble and evaluate the data needed to make these grants efficient and effective. Today, we do not propose a specific algorithm for the state allocations. One input factor may be the number of residents of each state who cannot receive a strong and reliable wireless signal at their residence. Because the purpose of this fund is to enhance mobility services, allocation factors might also include each state's unserved mileage along state and federal highways.

18. States would award Mobility Fund dollars in a manner similar to Broadband Fund awards. Funding would normally be awarded on a project-by-project basis. States would be permitted to award Mobility Fund grants to only one provider in any geographic area. As with Broadband Fund grants, states would be required to provide a detailed map of areas not served by wireless voice service, and they might be required to provide matching funds. States would also be required to meet federal standards for awarding funds and accountability.

3. The Provider of Last Resort Fund

19. The Joint Board does not today offer the outline of any new and unified system for Providers of Last Resort. We have not reached agreement on specific changes to the legacy support mechanisms that today provide support for incumbent local exchange carriers (LECs). Therefore, our recommendation is more general. For now, we recommend that the POLR Fund be comprised of the sum of all existing Incumbent LEC support mechanisms. Except for possible funding reductions discussed below, these programs would be left intact for the present.

20. For several reasons, the Commission should focus its attention on developing a unified POLR mechanism. The present support mechanisms are substantially different for rural and non-rural carriers, and support for customers served by one kind of carrier can be significantly more generous than for comparably situated customers served by the other kind of carrier. Moreover, existing rules freeze support upon sale of an exchange.²¹ This can exacerbate the differences in treatment between comparably situated customers.²²

21. Second, the current support mechanisms do not recognize all costs. For rural carriers, support is substantial for loop costs, generally less so for most switching costs, and nonexistent for transport costs. Overlooking transport costs can harm remote carriers, and the problem worsens when those carriers must purchase special access facilities to connect their customers.

22. Third, the current high-cost universal service mechanisms are dated and need to be modernized in several ways. New entrants often compete only in densely populated areas that have relatively low costs. This makes it much more difficult for incumbent LECs to charge the same rates in both their low-cost densely populated areas and their higher cost, more remote areas. None of the existing support mechanisms adequately recognizes this phenomenon, which generally occurs on a smaller scale than the typical telephone exchange. The dependency, in many cases, of competitive providers on incumbent LECs for backhaul and interconnections, and the issues which that dependency raises, is a further outgrowth of the changing landscape. In addition, most of the existing mechanisms were introduced before local exchange competition became a reality, and may not appropriately adjust support to reflect line losses due to competition.²³ Nor do any of the mechanisms in place reflect the increased importance of non-regulated revenues generated by telecommunications plant. Finally, the High Cost Loop program has experienced significant increases in this decade in loop costs qualifying for support. Under the current cap, the effect has been to significantly reduce support over time for carriers whose costs have remained relatively constant.

23. In summary, the Joint Board recommends that the Commission establish a process and a timetable so that it will review and modernize the existing high-cost mechanisms for rural and non-rural carriers, with the objective of developing a coherent system that can be applied to all incumbent carriers.

B. Funding Levels, Caps and Transition

24. The Joint Board intends that both the Broadband Fund and the Mobility Fund will receive significant funding, as described in more detail below. At the same time, we recognize that further growth in universal service funding presents substantial risks. Any possible benefit anticipated from increased universal service fund (USF) distributions must be weighed against the added burden on consumers of telecommunications services. Larger USF contributions increase the risk that telecommunications services will become unaffordable for some, or even a substantial number, of consumers. As the courts have noted, excessive subsidization arguably may affect the affordability of telecommunications services, thus violating one of the principles in Section 254.²⁴ We note widespread

²¹ See 47 C.F.R. § 54.305.

²² Indeed, the Commission has repeatedly failed to demonstrate to the courts that funding for the customers of non-rural carriers is sufficient. See *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) ("*Qwest I*"); *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*").

²³ We note, for example, that line losses seem to increase net per-line support under the High Cost Loop program for rural carriers, but decrease per-line net support under the Model-based program for non-rural carriers.

²⁴ *Qwest I*, above, at 1200; *Qwest II*, above, at 1234.

concern that further increases in the size of the fund under existing collection methodologies would be detrimental to both customers and carriers alike.

25. Moreover, the Joint Board recognizes that unrestrained growth in the universal service fund, regardless of the source, could be, and would likely be, catastrophic for universal service. The universal service surcharge rate currently is near its historic high. Further uncontrolled growth in the fund size would likely harm universal service, possibly even causing erosion of public support for the goals of affordable and comparable rates and services articulated in Section 254.

26. The Joint Board recommends an overall cap on high-cost funding. These programs today use more than half of the funds currently raised under Section 254. If only because of size, they should be managed with particular care. Historically, high-cost funding has increased dramatically in this decade, in part because of new support programs associated with interstate access reform, but also due to the significant expansion of support to competitive carriers under the identical support rule.²⁵ While the Joint Board recognizes that legitimate public purposes require funding, we are unwilling to recommend any significant changes in the share of the entire USF devoted to high-cost support. For these reasons, we believe that the Commission should impose a cap on the total amount of high-cost funding at \$4.5 billion,²⁶ which is approximately equal to the 2007 level of high-cost funding.²⁷ Many areas of government enterprise operate within a budget, and we think that high-cost funding can do likewise, provided that we are willing to make realistic estimates of the funding needed to meet the statutory requirement that we preserve and advance universal service. Over the longer term, we anticipate that total funding can and should be decreased as broadband and wireless infrastructure deployment becomes widespread throughout the country.

27. The Joint Board also recommends a transition during which existing funding mechanisms would be reduced, and all, or at least a significant share, of the savings transferred to the new Funds and mechanisms described above. During the transition period, gradual elimination of support from the identical support rule will provide a source of funding for the Mobility and Broadband Funds. A previous Joint Board member suggested a five-year transition,²⁸ but the Joint Board has not reached consensus. We recommend the FCC seek further comment on that issue.

28. Wireless carriers currently receive the largest share of support provided to competitive ETCs under the identical support rule. They will also be solely eligible for funding under the Mobility Fund. During the transition, wireless competitive ETCs will receive reduced levels of support under the identical support rule, but will be eligible to seek funding from the Mobility Fund. We anticipate that this transition will be approximately revenue neutral, with about \$1.0 billion of funding per year eventually being distributed through the new Mobility Fund. Since the overall fund size will be capped at \$4.5 billion, any reductions in support for wireless carriers in year 1 will be available for disbursements from

²⁵ See, 47 C.F.R. § 54.307.

²⁶ This cap should not apply to any incremental support required as a result of the Commission's response to the Tenth Circuit's remand in *Qwest II*.

²⁷ Current estimates are for high-cost funding of \$4.47 billion in 2007.

²⁸ Former Joint Board member Gregg suggested a five-year phased transition from Identical Support to the Mobility Fund.

the Mobility Fund in year 2, and so forth.²⁹

29. The new Broadband Fund should have a meaningful chance to address the public's desire for more ubiquitous broadband availability. We estimate a reasonable federal funding level for this new program to be \$300 million per year. Not all of the financing need be accomplished with newly raised dollars or solely from federal sources, however. Revenues for the Broadband Fund could come from two other sources. For example, funding could be increased by imposing state matching requirements, discussed in greater detail below. The stretching of federal dollars would be more significant if, within a given overall budget, significant state matching requirements were to be imposed for both the Broadband Fund and the Mobility Fund. Additionally, funds could be reassigned to the Broadband Fund from legacy POLR programs. Possible changes to these legacy programs should be evaluated by considering whether moving dollars from legacy programs to the Broadband Fund would more effectively advance the nation's universal service goals.

30. A significant portion of the High Cost Loop fund supports the capital costs of providing broadband-capable loop facilities for rural carriers. Under this system, rural LECs (RLECs) have done a commendable job of providing broadband to nearly all their customers. While this program may need adjustments, we recognize its effectiveness in maintaining an essential network for POLRs and in deploying broadband.

31. We discussed above some reasons to modernize legacy POLR programs. Some of those reforms might also reduce the legacy funding requirements, thereby making monies available for the Broadband Fund. We note here several possible changes to existing legacy programs, including: applying a rates test as a condition or an adjustment to cost-based support (in some areas, the combination of universal service support and funds from other mechanisms such as pools, high intrastate access charges, and average schedule reimbursement may produce very low consumer rates); considering LEC costs on a comprehensive basis, as opposed to separate programs for loop and switching costs; considering unregulated revenues in calculating carriers' need for support; making the Local Switching Support mechanism more sensitive to high costs;³⁰ providing more limits on support for operating expenses; targeting support to only one service provider in an area; and reducing or eliminating, over time, the support to areas with multiple providers.

32. The Joint Board also recommends that, during the transition period, each of the five major current support mechanisms be separately capped at their 2007 levels.³¹ This will minimize unintended redistributions among support mechanisms and avoid duplication of support. Once the transition period is complete, the overall cap of \$4.5 billion would apply to the three remaining restructured funds.

33. Finally, we note that the Commission has not yet acted on the remand it received in 2005.

²⁹ We also note that the Commission recently imposed an interim cap on high-cost, competitive ETC support provided to ALLTEL as a part of approving a transfer of control. As a result of this condition, ALLTEL's high cost support will be capped at the level of support that it received as a competitive ETC for 2007, measured as of the end of June 2007 on an annualized basis.

³⁰ The Local Switching Support program essentially provides increased support based upon study area size. See 47 C.F.R. §§ 54.301(a)(2), 36.125(f).

³¹ The five major existing support mechanisms are: 1) High Cost Loop; 2) Local Switching; 3) Interstate Common Line; 4) Interstate Access; and 5) High Cost Model.

as a result of the *Qwest II* decision by the Tenth Circuit Court of Appeals.³² We anticipate that complying with this remand order may require revisiting the amount of support provided to non-rural carriers.

34. If all of these potential savings from legacy programs are examined seriously and promptly, potential savings could be significant. Together with the possibility of stretching federal dollars with state matching funds, we are confident that adequate funding can be provided for the Broadband Fund and the Mobility Fund without unduly burdening the customers who must pay USF contributions. We also note that legacy sources for wireless support are anticipated to be reduced over the transition period.

C. CETC Reform and the Broadband and Mobility Funds

35. The Joint Board recognizes that the identical support rule has resulted in the subsidization of multiple voice networks in numerous areas and greatly increased the size of the high-cost fund. High-cost support has been rapidly increasing in recent years due to increased support provided to competitive ETCs. These carriers receive high-cost support based on the per-line support that the incumbent LECs receive rather than the competitive ETCs' own costs. Support for competitive ETCs has risen to almost \$1 billion.³³ We believe it is no longer in the public interest to use federal universal service support to subsidize competition and build duplicate networks in high-cost areas. Consistent with the Joint Board Public Notice released in September 2007,³⁴ we recommend that the Commission eliminate the identical support rule. The rule bears little or no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country.

36. The primary objective of the Mobility and Broadband Funds should be the expansion of geographic coverage, and support from these funds should be targeted for capital spending for new construction in unserved areas. As noted above, during the transition period, gradual elimination of support from the identical support rule will provide a source of funding for the Mobility and Broadband Funds.

37. The three-fund approach will eliminate much of the current duplication of support by ultimately providing support to only one wireline, one wireless, and one broadband provider in any given area, once the transition is complete. The areas to support with Broadband Fund and Mobility Fund awards will be determined by state commissions, and are likely to differ geographically from the areas used for granting POLR support.

38. As discussed above, in some cases, it may make economic sense to provide ongoing support for operation and maintenance of an existing network. However, over the longer term, the Joint Board anticipates that Mobility and Broadband support for operation and maintenance will only be available for a limited period of time. We recommend the Commission request comment as to the appropriate transition plan to wean a provider from Mobility or Broadband support once the objectives of geographic coverage in an area have been met.

³² *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

³³ In the Recommended Decision on CETC Caps we forecast that, without a cap, competitive ETC support would reach at least \$1.28 billion in 2007, \$2 billion in 2008, and \$2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.

³⁴ See *Federal-State Joint Board On Universal Service Statement On Long Term, Comprehensive High-Cost Universal Service Reform*, CC Docket No. 05-337, Public Notice released September 6, 2007.

D. LEC Reform and the POLR Fund

39. Support to most if not all RLECs has been flat or has even declined since 2003.³⁵ Under existing support mechanisms, RLECs have done a commendable job of providing voice and broadband services to their subscribers. Therefore, the Joint Board believes it is in the public interest to maintain, for the present, the existing RLEC support mechanisms, distributed through the proposed POLR Fund. Funding for RLECs will continue to be based, for the present, on the provider's embedded costs as supported by modeling, but may be subject to a competitive bid approach at a later date.

40. With regard to non-rural LECs, the Joint Board believes further analysis of current nonrural support funds is required before adoption of specific changes in structure. However, some non-rural support mechanism issues are of particular interest to us. The Joint Board conceptually agrees that providers of service to rural areas should be treated similarly. Current support mechanisms tend to provide stronger incentives for rural LECs than for non-rural LECs to provide comparable and affordable rates and services in rural and high-cost areas. While the Joint Board seeks to minimize this disparity for rural consumers, regardless of provider, we also acknowledge the complexities and potential costs of such a transition.

41. Members have discussed the possibility of determining non-rural support on a wire center or even a sub-wire center basis, as opposed to the current statewide average cost basis. Such a change would target support to higher cost areas on a more granular basis. However, there are concerns that such a move from statewide averaging would neglect the economies of scale and scope inherent in non-rural LEC networks. In addition, we note that the Tenth Circuit upheld the existing statewide averaging mechanism as a reasonable method of support allocation consistent with the Act,³⁶ and it later rejected an argument advanced by Qwest and SBC that it was arbitrary and capricious for the Commission to fail to induce states to move from implicit to explicit state support mechanisms.³⁷

42. Some members believe federal support could be increased as a result of the *Qwest II* decision. Those in favor of augmenting support contend that rural customers of large "non-rural" carriers can have significantly higher rates than comparable customers of smaller "rural" carriers, and that the courts have twice found that the Commission has failed to demonstrate that support to non-rural carriers and their customers is sufficient. Those opposed to additional support believe that on a procedural basis, the court remand has not been "officially" referred to the Joint Board, thus causing us to have what some consider a deficit of record support regarding non-rural LEC reform. On balance, we acknowledge there may be impacts on high-cost funding when the Commission ultimately acts in response to the *Qwest II* remand, but we believe it would be speculative for the Joint Board to forecast how this matter may eventually be resolved. We do, however, acknowledge that the incremental dollars which could arise from this remand are not included in our recommended general cap or POLR cap.

43. The Joint Board recommends that the POLR Fund provide support for only one carrier in any geographic area. Initially this will be an incumbent LEC providing voice service over traditional landline facilities in each of the existing incumbent LEC study areas. We recognize that this single carrier recommendation eventually would exclude existing CETCs, some of whom are wireline CETCs. We recommend that the Commission examine the possibility of continuing support to these entities (both wireline and wireless CETCs) during the transition period.

³⁵ See *Recommended Decision on CETC Caps*, at para. 4.

³⁶ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1202 (10th Cir. 2001).

³⁷ *Qwest Corp. v. FCC*, 398 F.3d 1222, 1238 (10th Cir. 2005).

E. Partnership with States

1. States' Roles and Responsibilities

44. The Joint Board recommends strengthening the state-federal partnership regarding universal service. We believe that underscoring the importance of individual state actions will best promote wireless and broadband build-out for unserved areas.

45. Congress and the courts have in several ways recognized the importance of states in maintaining universal service. Federal law charges states with the designation of carriers as ETCs,³⁸ and it authorizes states to maintain their own universal service funds.³⁹ The courts have also previously said that the act "plainly contemplates a partnership between the federal and state governments to support universal service"⁴⁰ and that "it is appropriate—even necessary—for the FCC to rely on state action."⁴¹ The Commission has also previously recognized the importance of states in accomplishing universal service goals.⁴²

46. We explained above why we have concluded that states are best suited to identify unserved areas. This detailed knowledge will allow states to target Broadband and Mobility support to those areas, consistent with the universal service principles listed in 47 U.S.C. § 254(b). For these reasons, the Joint Board recommends that states should remain the primary designators of new ETC applicants as well as the annual certifying agent under Section 254(e) that federal high-cost support is being used appropriately.

47. States should have flexibility in the method of awarding funds to carriers because they are in the best position to assess the status of their markets and identify which geographic areas are unserved. We recommend that states be permitted to employ either: a competitive bidding process such as auctions with specific, transparent guidelines; or a suitable cost-based mechanism to fund capital infrastructure projects for mobility and broadband projects. State actions should be subject to formal Commission rules and guidelines, including guidelines and processes regarding an acceptable competitive bidding process. These guidelines may be analogous to those established by the Commission in its 2005 ETC Order⁴³ and should include, but not be limited to: parameters for defining the quality of broadband and mobility services, including acceptable broadband transmission speeds;⁴⁴ parameters for setting

³⁸ See 47 U.S.C. §214(e).

³⁹ See 47 U.S.C. §254(f).

⁴⁰ *Quest I*, above, at 1203; *Quest II*, above, at 1232.

⁴¹ *Quest I*, above, at 1203.

⁴² FCC, *Ninth Report and Order*, CC Docket No. 96-45, 14 FCC Red at 20451, para. 38 ("primary federal role is to enable reasonable comparability among states (i.e., to provide states with sufficient support so that states can make local rates reasonably comparable among states), and the primary role of each state is to ensure reasonable comparability within its borders (i.e., to apply state and federal support to make local rates reasonably comparable within the state).").

⁴³ FCC, *Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Red. 6371, rel. March 17, 2005.

⁴⁴ That speed may differ from the current working definition that the Commission currently utilizes. Currently, the FCC considers "high speed" services to be those capable of transmission rates of 200 Kbps in at least one direction and "advanced services" to be those capable of transmission rates of 200 Kbps in both directions. FCC, *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*, CC Docket No. 98-146, Second Report, 15 FCC Red. 20,913, para. 11 (2000).

reserve prices; the recognition that qualified bidders should be ETCs; and permissible options for states that have geographic areas that cannot attract a qualified pool of bidders. We recognize that the record regarding competitive bidding/auctions is robust⁴⁵ and we encourage the Commission to utilize the data presented by various parties in developing its guidelines.

48. We are aware that administering federal grants is an unusual role for state utility commissions, but it is a common role for many other state agencies, ranging from education to highways. In those policy areas, the federal and state governments have worked out strongly cooperative systems in which state officials administer federal grant funds.⁴⁶ We believe this kind of arrangement strengthens the relationship between state and federal officials and appropriately uses state expertise.

49. The Joint Board also believes it remains in the public interest for the Universal Service Administrative Company (USAC) to continue to distribute universal service funds and conduct periodic audits. Therefore, although states would award Broadband and Mobility Funds, the funds would be processed and audited by USAC.⁴⁷

2. State Matching Funds

50. The Joint Board recommends that the Commission adopt policies that encourage states to provide matching funds for Broadband Fund and Mobility Fund support. We recommend an approach in which all states are entitled to a base funding level. States could receive supplemental funding when they generate matching funds. For example, a state that does not provide a minimum match, perhaps 20 percent, for USF broadband support would still receive its base level of universal service support for broadband but no additional, supplemental funding from the federal fund.

51. This system will provide an incentive for states to be actively involved in monitoring the use of Broadband Fund and Mobility Fund dollars. It also recognizes the states' interest in pursuing economic development opportunities through broadband and wireless technology enhancements, and it encourages these states to provide additional funding for these projects. Because of the base support element, a state that is not in a position to provide matching funds would not be penalized by disqualification from receiving any support.

52. The Joint Board recommends that detailed federal guidelines be developed to address which expenses and/or projects should qualify for federal supplemental support. Examples of acceptable state matching funds could include: state and local government and/or private sector matching dollars;

⁴⁵ See *Federal-State Joint Board On Universal Service Seeks Comment On The Merits Of Using Auctions To Determine High-Cost Universal Service Support*, WC Docket No. 05-337, Public Notice, 21 FCC Red 9292, released August 11, 2006, and associated materials; see also FCC, Docket 96-45, Materials presented for En Banc meeting of Joint Board in February, 2007.

⁴⁶ Typically the federal agency first prescribes standards, procedures, and accountability mechanisms. Then, the states file a state plan agreeing to meet the grant requirements. Next, the states administer the grants, often by awarding the funding to contractors or non-governmental agencies. Finally, the states make post-award accountability reports and may be subject to audits. Some states may prefer to have these grants administered by an agency other than their state utility commissions. State Governors and Legislatures should be able to assign these tasks to other agencies if they wish.

⁴⁷ Alternatively, federal funds could be provided to the states and then later audited for compliance.

carrier contributions; customer contributions (surcharges); and state and local tax contributions. Comparison is possible to other areas of government that employ similar matching structures.⁴⁸ Also, the Joint Board recognizes that the Lifeline/Link-Up program also works in this manner. In order to be eligible for additional Tier 3 Lifeline support, a state must develop and fund its own state Lifeline/Link-Up program.⁴⁹

F. Avoiding Duplicate Support

53. It is important to avoid duplicate support for networks. Although the Joint Board here recommends creation of a Broadband Fund and a Mobility Fund, we intend to avoid support duplication through the differences among the missions of the three Funds. For example, Broadband funding would be available for construction of new broadband facilities. Mobility funding would be available for construction of new wireless facilities. Nevertheless, the Commission and the states will need to exercise care to avoid inadvertent duplication of funding. For example, a wireless provider who receives support under the new Mobility Fund would likely need only marginal Broadband Fund dollars to add broadband to its mobile network. Similar precautions should be applied when a wireline carrier receiving POLR support applies for Broadband Fund monies to provide broadband in areas currently served by the carrier's voice network.⁵⁰

54. In order to use federal funds efficiently, states will also need to consider other federal sources of support and assistance. For example, broadband construction grants should not duplicate or preempt funding available from the Rural Utility Service.⁵¹ Where a variety of funding sources exists, the Joint Board recommends that states encourage measures that improve the recipient's business prospects by increasing demand. States should award grants to carriers only when demand-side stimulation, state incentives, and borrowing are demonstrably inadequate. Finally, the Broadband and Mobility Funds should provide operational support only when essential.

G. Supported Services and Carrier Eligibility

1. Services Supported By Universal Service - Broadband

55. The Act explicitly tasks the Joint Board, from time to time, with recommending to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.⁵² The Act also recognizes that universal service is an evolving level of

⁴⁸ For example, the 1995 National Highway System Designation Act established the State Infrastructure Bank (SIB) pilot program. Designed to complement traditional transportation funding programs, SIBs can give states increased flexibility in project selection and financial management. A SIB uses seed capitalization funds to get started and offers customers or states, a range of loans and credit enhancement products. Similar to the DOT SIB Program, the Broadband Match Program can operate by using federal grants to states with "eligible projects" in lieu of traditional loans or credit enhancements.

⁴⁹ The federal universal service fund provides Tier 3 support equaling up to an additional \$1.75 of recurring monthly discounts to eligible consumers.

⁵⁰ We recognize that a significant portion of Broadband Fund monies given to incumbent LECs may be given to non-rural carriers. These carriers currently serve the majority of rural high-cost customers who do not have broadband service.

⁵¹ Congress is considering several pieces of legislation that would, in various ways, further enhance broadband diffusion.

⁵² See 47 U.S.C. § 254(c)(2).

telecommunications services that should be revised periodically, taking into account advances in telecommunications and information technologies and services.⁵³ Currently, all ETCs must provide all of the services supported by universal service. The services that are currently required are those that are common for voice communications services and are listed in a Commission rule first approved in 1997.⁵⁴

56. The Joint Board recommends the Commission revise the current definition of supported services to include broadband Internet service. While mobility and broadband capabilities both currently receive support, that has been within the context of the provision of basic local telecommunications services by ETCs.

57. Adding broadband to the list of services eligible for support under Section 254 will have several beneficial results. First, it will effectively declare an explicit national goal of making broadband Internet service available to all Americans at affordable and reasonably comparable rates. Second, it will legitimize existing support mechanisms that already provide support for broadband-capable facilities. Finally, it should reduce any tendency of existing support mechanisms to provide incentives for broadband deployment only in selected areas.⁵⁵

58. We conclude that broadband Internet service satisfies the statutory criteria for inclusion.⁵⁶ First, broadband Internet services are essential to education, public health, and public safety. The Internet is increasingly used for education, in significant part by sharing materials and audio and video streams in educational environments, as well as through informal educational content such as online news services that can be customized to reflect the user's interests. The Internet is also increasingly used by health care professionals, such as for sharing medical records and diagnostic information. Moreover, many residential users get health care advice from the many medical compendiums that are available online. In all of these applications, classical dial-up Internet access is marginally useful, and is often inadequate.

59. Second, broadband Internet service is subscribed to by a substantial majority of residential customers. More than half of the households in the United States currently subscribe, and at least one high speed provider is providing service in 99.6 % of the zip codes in the country.⁵⁷ In our view, Americans have made a clear judgment, consistent with the rest of the developed world, that broadband Internet access is an important component of modern life.

60. Third, broadband Internet access is being deployed in public telecommunications networks by telecommunications carriers. Millions of customers today purchase DSL service, the version of broadband Internet service that is customarily provided through copper telephone networks. Others purchase broadband Internet access through their wireless carriers.

⁵³ See 47 U.S.C. § 254(c)(1).

⁵⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Fourth Report and Order*, 13 FCC Red. 5318 (1997).

⁵⁵ Some federal support already is already being applied to provide broadband services. The High Cost Loop program supports investment and expenses associated with local loops, even when those loops are broadband-capable. Indeed, carriers with higher quality facilities generally tend to have more costly loops and thus tend to be eligible for more HCL support.

⁵⁶ See 47 U.S.C. § 254(c)(1).

⁵⁷ FCC, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2006*, Table 15, released Oct., 2007.

61. Finally, including broadband Internet access in the list of supported services is consistent with the public interest, convenience, and necessity. Congressional committees have repeatedly stressed to members of this Joint Board their opinion that uniform broadband deployment is an important national telecommunications goal. This is consistent with the public's view. The state commissioners on the Joint Board all have personal experience with consoling irate telephone customers who find themselves unable to buy broadband Internet service at home or at their place of employment. We conclude that ubiquitous broadband access will improve the lives of millions of Americans, particularly in the coming years when Internet communications are expected to become an even more essential communications tool in daily life.

62. In sum, Americans have made a collective judgment that broadband is an important service. Therefore, the Joint Board believes that it should be eligible for support under Section 254, with the goal of making it available to all. Below, we also recommend that the Commission seek further comment on the adequacy of the current definition of broadband.

2. Services Supported By Universal Service – Mobility

63. Consistent with the preceding recommendations regarding broadband service, the Joint Board also recommends that mobility be added to the list of supported services. Telecommunications services have evolved since the enactment of the Act, and mobility services have grown dramatically. Consumers throughout the nation today depend on those services for basic, essential communications that are no longer limited by the location of their wireline telephones. Due to this explosive growth and consumer dependence on mobility communications, we conclude that mobility satisfies the statutory requirements for inclusion as a separately supported service and should no longer be eligible for support because it happens to satisfy requirements designed for wireline voice communications.

64. First, the demands for mobility services, including demands for wireless broadband, have grown so much that mobility is today essential to the education, public health, and public safety of this nation. The Joint Board agrees with the thousands of comments received in this docket suggesting that wireless telecommunications services are no longer a luxury in our society, but are a fundamental necessity for an overwhelming majority of consumers for public health, safety, and economic development.⁵⁸ From a public service standpoint, the initial emphasis on mobility expansion will be to identify and serve those communities that are presently unserved by mobility services. Simultaneously, from a public safety standpoint, states will be encouraged to target mobility funding to unserved areas within the state and federal highway system.

65. Second, mobility service is subscribed to by a substantial majority of residential customers. The Act requires only that a supported service be subscribed to by a substantial majority (over 50%) of residential customers. The Commission reports that as of 2006, there are substantially more wireless telephones in service (217 million) than wireline access lines in service (172 million).⁵⁹ Although these counts include both business and residential customers,⁶⁰ the wireless numbers are so large as to compel a conclusion that wireless service is subscribed to by a majority of residential customers and has become an essential element in our nation's telecommunications services.

⁵⁸ Coalition Working for Equality in Wireless Telecommunication, *Connecting Rural America*, Ex Parte filing, WC Docket No. 05-337, Oct. 15, 2007.

⁵⁹ FCC, *Trends in Telephone Service*, 2007 report, FCC, tables 8.1 and 11.2.

⁶⁰ Residential line counts are not separately reported.

66. Third, mobility service, like broadband, is being deployed in public telecommunications networks by telecommunications carriers. The list of mobility services available throughout the country is rich and diverse. Mobility services have unique characteristics that are significantly different than those of the wireline network. The record shows many examples where customers have used wireless services in emergencies where wireline communications were either unavailable or not operational. Mobility provides freedom of communication not tied to specific location, communication occurring during travel on highways, and communication in areas where wireline phones or payphones are not available.

67. For all of the reasons previously stated, we conclude that including mobility service in the list of supported services is consistent with the public interest, convenience, and necessity. We recommend that the Commission seek additional comment prior to adopting new rules that will help refine both the definition of mobility service as well as identify the unique ETC responsibilities that will be required of mobility carriers.

3. Carrier ETC Designations and Support Eligibility

68. Currently, all ETCs must provide all of the services supported by universal service. Although the Joint Board recommends expanding the list of supported services, we do not intend that a carrier must offer all supported services (voice, mobility, and broadband) in order to receive any high-cost support. On the contrary, the three-fund approach envisions separate funds for each type of service, with no overlaps in support across the funds. As the transition to the three new replacement funds occurs, incumbent LECs moving to the POLR fund would remain subject to current ETC requirements. A different set of requirements reflecting the purpose and nature of the Broadband Fund would be established for eligibility to receive support from the Broadband Fund. Similarly, a different set of eligibility requirements reflecting the purpose and nature of the Mobility Fund would be established for the Mobility Fund.

IV. ISSUES FOR FURTHER COMMENT

69. Several of the preceding recommendations require more development and public comment. The Joint Board is willing to continue to add to the debate, but we also want to send a complete and actionable recommendation to the Commission, thereby allowing it to respond comprehensively to this Recommended Decision. We are willing to resume deliberations should the Commission refer questions back to the Joint Board.

A. Allocating Funds among States

70. As noted above, the Joint Board believes that states can most effectively choose the appropriate provider under the new Broadband and Mobility Funds. However, we recommend that the Commission seek further comment on the most effective mechanism to determine the appropriate allocation of funds among the states. We note a general need to determine the relative proportion of unserved areas, but seek further information on the specific method of allocation, whether it be a national forward-looking cost model, or other methods of determining state broadband and wireless deployment levels.

B. Identifying Unserved Areas

71. The Joint Board recommends that the Commission seek further comment on the most effective method to determine unserved areas for both broadband and wireless coverage. Various states, such as Wyoming and Kentucky, have enacted statewide efforts to map unserved broadband areas. The Commission should seek comment both from states and providers as to the means of obtaining detailed