

Before the
Federal Communications Commission
Washington, D.C. 20554

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

Initial Comments
of the
Montana Telecommunications Association

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SUMMARY

MTA supports a separate Mobility Fund, as recommended in the “CETC NPRM,” which would target high-cost support for construction of new facilities in unserved areas. State commissions should require detailed mapping of targeted areas not served by wireless voice service prior to granting ETC designation. MTA agrees with several findings of the Notices of Proposed Rulemaking with regard to the perverse consequences of the identical support rule (ISR). As the CETC NPRM notes, “it is no longer in the public interest to...subsidize competition and build duplicate networks in high cost areas.”

We strongly encourage the Commission immediately to eliminate the “identical support rule” (ISR). CETCs must be required to submit their own costs, which would be used to determine a national average benchmark cost. High-cost CETC support would be based on the extent to which a CETC’s costs exceed a multiplier of the national average cost. Such a mechanism would mirror how high-cost support is determined for rural LECs and as a result would satisfy the Commission’s principle of competitive neutrality.

There are substantial disparities wireline and wireless carriers. Wireless CETC support should be based on independent, wireless-specific cost and allocation criteria. Only by comparing wireless to wireless and wireline to wireline factors can competitive neutrality be achieved.

MTA recommends a transition period for wireless CETCs of no longer than one year. A one-year transition period effectively provides wireless CETCs a minimum of three years of continued non-cost-based support. Wireless carriers would be required to file costs within the first year following a final Order. As is the case with rural LECs, there would be a two-year lag between the time costs are submitted and support is received, during which time CETCs would continue to receive identical support. Any newly designated CETC in the future would need to file costs immediately. Wireless CETCs that fail to submit costs within the first year following the final Order would lose their ETC designation.

MTA supports a broadband grant program similar to the one proposed by AT&T in 2007. Broadband grants would be made available for construction of

new facilities in unserved areas. Support would not be provided to areas in which sufficient broadband service already exists. Nor should support be provided to companies that have previously agreed to deploy broadband as the result of mergers or other legal agreements. The size of the broadband fund necessarily depends on the definition of broadband and the speed with which companies are required to deploy broadband services.

MTA agrees with the finding that RLECs have done a commendable job of providing voice and broadband services to their subscribers. We further agree that “overlooking transport costs can harm remote carriers, and the problem worsens when those carriers must purchase special access facilities to connect their customers.” We recommend that transport costs should be included in high-cost support mechanisms.

MTA suggests that establishing an overall funding cap, as well as “sub-fund” caps on the Mobility, Broadband and POLR Funds, is premature. An overall fund cap creates a zero sum game, in which one fund’s gain is another fund’s loss. Such a proposal would threaten the statutory requirements for sufficient and predictable universal service.

MTA opposes the establishment of a reverse auction mechanism. The inherent risks of a reverse auction mechanism outweigh any perceived benefits.

MTA advises against an increased role for states in administering universal service funding programs. While the specific suggestion in the NPRM for state matching funds would be punitive for rural states like Montana, MTA supports requiring states to match some portion of the support which they approve when they designate CETCs.

MTA urges the Commission immediately to adopt the Joint Board’s May 1, 1007 Recommended Decision an interim cap on the amount of support received by CETCs.

Finally, MTA urges the Commission to broaden the universal service contributions base to include any telecommunications traffic that uses the public network.

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I. Introduction

The Montana Telecommunications Association (MTA) represents rural local exchange carriers (RLECs) serving nearly 25 percent of the access lines in Montana. The RLECs of Montana serve on average fewer than three access lines per mile. They derive between 25 and 50 percent of their revenues from high-cost universal service support. Without such support, the price of telephone service would increase by 150 to 250 percent.

Montana's RLECs have deployed nearly 9,000 miles of fiber plant in Montana and reach between 80 and 100 percent of their customers with DSL broadband service. In the areas where DSL access is prohibitive, these RLECs deploy alternative means, such as satellite or other technologies to reach their customers with broadband service. These companies actively participate in rural health care initiatives, providing discounted telecom services to clinics and health care networks throughout the state. Similarly, Montana's RLECs are deeply engaged in a host of telemedicine, distance learning and a variety of economic development initiatives.

MTA applauds the Commission for issuing the three universal service Notices of Proposed Rulemaking (NPRMs) in this proceeding, hereinafter referred to as the Joint Board NPRM (FCC 08-22), the CETC NPRM (FCC 0-4) and the Reverse Auction NPRM (FCC 08-5), released on January 29, 2008. Reforming the federal universal service program is essential in meeting the statutory goal of preserving and promoting universal service as a way to ensure that all Americans, regardless of where they live, continue to have access to comparable, affordable, quality telecommunications services. The universal service program is as valid and valuable today as it has ever been. MTA offers the following comments in the spirit of proposing various reforms intended to preserve the long-term viability of the universal service program. MTA's comments herein address all three NPRMs.

II. Mobility Fund

A. Separate Mobility Fund

MTA supports the recommendation to establish a separate Mobility Fund as recommended Joint Board NPRM, which incorporates the Federal-State Joint Board's November 20, 2007 Recommended Decision (FCC-07J-4), as Appendix A.¹ The Joint Board NPRM recommends "separate distribution mechanisms and separate funding allocations" for the Mobility Fund.²

The technological, financial, market and regulatory differences between wireless and wireline carriers demands apples-to-apples comparisons when considering how to provide universal service support to carriers. In the Federal-State Joint Board's interim cap recommended decision, the Joint Board noted

¹ *In the Matter of High-Cost Universal Service Support*. WC Docket 05-337. CC Docket 96-45. Notice of Proposed Rulemaking (Joint Board NPRM), FCC 08-22. Rel. January 29, 2008. This NPRM seeks comment on the Federal-State Joint Board on Universal Service Recommended Decision for Fundamental High-Cost Distribution Reform, FCC 07J-4, Rel. November 20, 2007 and attached as Appendix A to FCC 08-22.

² *Id.* (FCC 08-22, Appendix A.) ¶11.

that differences between wireless and wireline carriers compromise the Commission's principle of competitive neutrality.

Fundamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs. For example, competitive ETCs, unlike incumbent LECs, have no equal access obligations. Competitive ETCs also are not subject to rate regulation. In addition, competitive ETCs may not have the same carrier of last resort obligations that incumbent LECs. Furthermore, under the identical support rule...incumbent rural LECs' support is cost-based, while competitive ETCs' support is not.³

MTA notes, further, that there are substantial additional differences between wireless and wireline carriers. For example, wireless carriers generally deploy service according to license areas, whereas wireline carriers' networks, particularly RLEC networks, conform to study areas. This difference also results in significant disparities in wireless vs. wireline intercarrier compensation. A local call for a wireless carrier can traverse multiple exchange areas, study areas or even state boundaries; while a wireline local call often is limited to a single exchange area, particularly in rural study areas. Wireless carriers benefit financially from this disparity as wireless carriers pay reciprocal compensation for traffic that would be subject to access compensation in a wireline environment. Another example is that wireless CETCs receive universal service support for each handset deployed, since support currently is based on a per-line allocation. Thus, a household with one supported wireline phone may have four or more supported wireless handsets.

A Mobility Fund may help mitigate some of these disparities by separately allocating universal service support to wireless and wireline carriers based on industry segment-specific criteria.

³ *In the Matter of High-Cost Universal Service Support*. WC Docket 05-337. CC Docket 96-45. Recommended Decision of the Federal State Joint Board on Universal Service, FCC 07J-1, recommending an interim cap on the amount of high-cost support that CETCs may receive. (CETC Interim Cap Recommended Decision). Rel. May 1, 2007.

B. Target Support to Unserved Areas

MTA concurs with the Joint Board's recommendation to target support to wireless voice services for construction of new facilities in unserved areas.⁴ MTA concurs that "it should not be the goal of universal service funding to upgrade the multitude of existing wireless networks in rural areas throughout the country..."⁵ We note that many wireless CETCs have deployed substantial network facilities throughout their service areas at affordable rates, with comparable services, and without universal service support. To the extent there are unserved areas that are beyond reasonable economic means to serve, support should be targeted to support construction of new facilities that serve these specific unserved areas.

Joint Board NPRM suggests how support might be allocated to "unserved areas."

In this context, "unserved area" would mean areas with 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 another 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' service 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.⁶

MTA suggests that the order in which the Joint Board NPRM prioritizes the criteria used to determine how support would be targeted to "unserved areas" should be reversed. That is, MTA suggests that more densely populated areas frequented by the traveling public on state and federal highways are likely to be built out sooner, and with non-supported operating funds, than other areas for which no plausible economic case can be made for service or network deployment. This has been the case in Montana. State and federal highways appear to be the first areas often to receive wireless service, beyond densely

⁴ *Op cit.* (FCC 08-22, Appendix A.) ¶16, *inter alia*.

⁵ *Id.*

⁶ *Id.*

populated communities, frequently before or without any CETC support is provided to these carriers.

However, if ubiquitous deployment of wireless service is a goal of the Commission, then there arguably may be areas that may never justify economic deployment of wireless service without the aid of universal service support. It is these areas that should receive the highest priority for targeted support to facilitate service to unserved, and likely “unservable” areas.

C. Data Collection

MTA concurs with the Joint Board’s recommendation that state commissions should require detailed mapping of targeted areas not served by wireless voice service prior to granting ETC designation.⁷ We are concerned that such mapping not turn into a permanent, unfunded mandate that carriers would be expected to fund *ad infinitum*. In this regard, it is possible, if not likely, that technology and service evolution rapidly will render obsolete any detailed maps of service availability. At a minimum, state commissions could require CETC applicants to fund detailed mapping of the targeted, unserved areas they intend to serve as ETCs as part of the ETC designation proceeding. After all, it is impractical, to say the least, to designate ETCs to serve unserved areas when the specific conditions of the area to be served are unknown. And it is incumbent on the ETC applicant to demonstrate that the areas proposed to be served indeed are unserved, and unservable without universal service support.

Additionally, we urge the Commission, if detailed mapping requirements are established, to establish strict confidentiality of individual company data inputs.

D. Current rules promote uneconomic competition and unnecessary universal service support funding

MTA agrees with several findings of the Notices of Proposed Rulemaking with regard to the perverse consequences of the identical support rule (ISR). For

⁷ *Id.* (FCC 08-22, Appendix A.) ¶18.

example, “it is no longer in the public interest to...subsidize competition and build duplicate networks in high cost areas.”⁸ As the CETC NPRM notes,

Rather than providing a complete substitute for traditional wireline service, these wireless CETCs largely provide mobile wireless telephony service in addition to a customer’s existing wireline service.⁹

Many households subscribe to both wireline and wireless services and receive support for multiple lines, leading to rapid growth in the size of the Fund,¹⁰ while providing little demonstrable economic benefit from the fund growth. As Kevin Caves and Jeffrey Eisenach found in an extensive study of surveying 1,374 ILEC study areas, capturing essentially all study areas in the 48 contiguous states,

...there is no economic basis for believing CETC subsidies affect rural wireless prices at all, and...there are good reasons to believe that the relationship between subsidies and coverage, if it exists at all, is likely to be weak.¹¹

MTA notes other negative effects of the ISR. For example, both carriers and state commissions in many states, including Montana, have felt compelled to seek universal service support, because others carriers have received it, and/or other states have designated CETCs. This creates a “keep up with the Joneses” syndrome. The money’s there, so we’d better grab it before it goes away. The ISR simply exacerbates the desire to take the money and run.

There are both competitive and financial “obligations” forcing carriers to seek universal service support. For example, if carrier “A” serves an area and is a CETC receiving universal service support, and carrier “B” serves the same area, but does not receive universal service support, carrier “B” is likely to conclude that carrier “A” has a financial, and competitive advantage over carrier

⁸ *Id.* (Appendix A.) ¶32.

⁹ *In the Matter of High-cost Universal Service Support*, WC 05-37, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. FCC 08-4. (CETC NPRM) Rel. January 29, 2008. ¶9.

¹⁰ *Id.* ¶10.

¹¹ Caves, Kevin W. and Eisenach, Jeffrey A. “The Effects of Providing Universal Service Subsidies to Wireless Carriers.” Criterion Economics. June 13, 2007. P.23. www.criterioneconomics.com.

“B”. Carrier B would conclude that its fiduciary responsibility compels it to seek universal service support, whether carrier “B” needs the support or not.

E. Elimination of the Identical Support Rule (ISR)

MTA strongly supports the elimination of the ISR.

The CETC NPRM asks whether eliminating the ISR meets the Commission’s principle of competitive neutrality.¹² MTA contends that the ISR itself violates the Commission’s standard of competitive neutrality. Eliminating the ISR, and basing carriers’ support on their own costs, recognizes that the same rules apply to all recipients of universal service alike. We note that CETCs voluntarily seek ETC designation. If these companies are reluctant to provide cost data or submit to other public contract obligations inherent in receiving federal high-cost support, they need not seek ETC status. To impose requirements on one set of carriers, while not imposing similar obligations on other carriers receiving support fails to meet any standard of neutrality or fairness.

In addition to eliminating the ISR, the Commission should immediately eliminate ICLS and IAS from the support that wireless CETCs receive.¹³ AT&T estimates that over \$500 million can be saved by this reform alone.¹⁴ As the CETC NPRM tentative concludes,

IAS and ICLS were created by the Commission in order to maintain the Commission’s cap on subscriber line charge rates that incumbent LECs may charge end users...[B]ecause competitive ETCs’ rates generally are not regulated and they are not subject to SLC caps, they are able to recover their revenues from end users and have no need to recover additional interstate revenues from access charges or from universal service, and therefore e should not eligible for support under IAS and ICLS.¹⁵

¹² FCC 08-4. ¶12.

¹³ *Id.* ¶¶ 23-24.

¹⁴ Ex parte letter by AT&T, *In the Matter of the Federal-State Joint Board, High-cost Universal service*, WC Docket No. 05-337, *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. March 22, 2007.

¹⁵ *Op cit.* ¶23.

F. Determination of Costs

The CETC NPRM tentatively concludes that CETCs “should file data showing their own per-line costs of providing service in a supported service area in order to receive high-cost universal service support.”¹⁶ MTA agrees.

However, we suggest that an alternative to “per-line” support for wireless CETCs should be explored. As noted above, supporting “lines” in a wireless environment is equivalent to supporting handsets. While a household may be served by a single supported wireline, the same household may be served by multiple supported handsets, if wireless CETC support were allocated on a “per-line” basis.

The Commission should consider alternatives to the per-line basis for support for wireless carriers. In this regard, the “minutes of use” recommendation by Panhandle Telecommunications, Inc. has merit.¹⁷ Panhandle’s recommendations would require wireless ETCs to file cost information, including an approved rate of return, that would be used to determine a national average cost per wireless minute. Excluded from the allowable costs would be administration, marketing and handset subsidy. Carriers also would report the number of minutes generated. Total costs for all wireless carriers would be divided by total minutes to determine a national average cost per minute. Panhandle recommends that multipliers would be applied to the national average cost per minute based on the size of the carrier to determine high-cost networks which in turn would be eligible for high-cost support. This mirrors the current manner in which high cost support is determined for incumbent wireline LECs, but appropriately is designed specifically for a wireless network, thereby mitigating disparities between current treatment of wireless and wireline carriers and conforming to the Commission’s principle of competitive neutrality.¹⁸

¹⁶ *Id.* ¶13.

¹⁷ CC Docket 96-45. Ex Parte notice of Panhandle Telecommunications, Inc. January 11, 2008.

¹⁸ MTA notes that some wireless carriers (e.g., Verizon Wireless) do not receive universal service support as CETCs. An argument can be made legitimately that

The Panhandle proposal also recommends a cap should be placed on the amount of support a wireless CETC may receive to ensure against uneconomic investment and to account the effect of new entrants on per minute costs. That is a carrier that may lack sufficient minutes of use when entering a market would have high costs but few minutes of use, causing the cost per minute to be anomalously high for a limited time. (This issue is discussed more below. See subsection II. H, of these comments.)

Panhandle further recommends that wireless carriers receiving high-cost support would be required to make their networks available at reduced rates to other wireless carriers licensed to serve the same areas. This would encourage use of universal service-supported facilities and increase minutes of use on supported networks, thereby reducing the cost per minute of use.

MTA supports these Panhandle recommendations and encourages the Commission to adopt these concepts.

The CETC NPRM (FCC 08-4) seeks comment on whether CETCs seeking high cost support should separate their costs into network components in a manner that is similar to the manner in which wireline incumbent LECs disaggregate their costs into network components. In particular, the NPRM asks “whether the Commission should develop a system of accounts for competitive ETCs, including wireless carriers, that would mirror Part 32 rules applicable to incumbent LECs.”¹⁹ In this regard, the Commission references the wireless carrier actual cost (WiCAC) proposal, which “would utilize 23 specific Part 32 accounts to calculate wireless competitive ETC costs.”²⁰

According to MTA member companies that have operated wireless companies, the 23 Part 32 accounts targeted by the WiCAC proposal would not be difficult for wireless carriers to capture. The WiCAC proposal, in other words,

such carriers are not part of the universal service “contract,” and therefore should not be required to submit cost data that is used to determine the national average cost per (wireless CETC) minute.

¹⁹ *Op cit.* (FCC 08-4.) ¶15.

²⁰ Letter from Jeffry Smith, Advocates for Regulatory Action, to FCC Secretary Marlene Dortch. WC Docket No. 05-337 and CC Docket No. 96-45. July 12, 2007.

recommends a viable method for identifying wireless CETC costs that in turn could be used to determine cost-based wireless CETC support.

Both Panhandle and WiCAC provide useful recommendations that should be adopted by the Commission in establishing an efficient and effective cost-based universal service support mechanism for wireless CETCs.

As noted above, CETCs voluntarily apply for CETC designation in order to receive universal service support. Universal service is a social contract. In exchange for providing supported affordable, comparable, quality service in a designated service area, the carrier receives federal high-cost support. It is incumbent on the carrier to ensure that consumers' contributions to the universal service fund are appropriately spent, i.e., not wasted or misused. Without requiring carriers to base the support they receive on their own cost data, the program lacks sufficient accountability that consumers deserve and expect.

G. Wireless-specific costs

The CETC NPRM “tentatively conclude[s] that wireless spectrum costs should be included in high-cost support cost submissions only to the extent that the competitive ETC actually paid for the spectrum...”²¹ Further, the NPRM tentatively concludes that

wireless handsets should not be treated as an allowed expense, both because they are more akin to traditional customer-owned telephones in a wireline network than to the network interface device, and because the handsets are purchased by subscribers rather than leased to customers by carriers.²²

MTA concurs with both of these tentative conclusions.

Spectrum costs are a legitimate cost of operation for wireless carriers, much as loop costs are included in high-cost support cost submissions filed by wireline carriers. MTA notes that such costs should be amortized over a reasonable time period in a manner that mirrors wireline depreciation schedules.

Similarly, handsets should not be treated as an allowed expense, as discussed above.

²¹ *Op Cit.* (FCC 08-4.) ¶17.

²² *Id.*

In conclusion, wireless CETC high-cost support should be based on the extent to which a wireless carrier's costs exceed a multiplier of national average cost. Panhandle recommends a minimum multiplier of 115 percent of the national average, similar to the multiplier applied to wireline LECs. If a wireless CETC's costs exceed the high-cost benchmark multiplier, then the CETC would be eligible for high cost support, for construction of new facilities in a targeted, unserved area.

H. Calculation of Support

The CETC NPRM notes that "because a CETC may have few or no lines when it first receives its ETC designation...per line support at the initial time of market entry likely would result in a considerable upward bias in resulting support amount."²³ The Commission therefore asks "whether a competitive ETC should be required to project its subscribership for some future point in time when performing its cost submissions."²⁴

The CETC NPRM further seeks comment on "whether the Commission should examine wireless competitive ETC costs independently from wireline LEC costs for purposes of determining high-cost support."²⁵

As MTA points out above, significant differences, and disparities in treatment, distinguish wireline and wireless carriers. It is essential, in MTA's opinion, that wireless CETC support is based on independent cost and allocation criteria from wireline criteria used for calculating high-cost support. Only by comparing wireless to wireless and wireline to wireline factors can competitive neutrality be achieved.

With regard to the effect of new ETCs on the amount of per-line support, MTA agrees that newly designated ETCs can cause considerable upward bias on initial support received. We note, however, that various recommendations in these NPRMs, if implemented, may mitigate the effect of this upward bias. For example, if a carrier's eligibility for support is based on the extent to which a

²³ *Id.* ¶21.

²⁴ *Id.*

²⁵ *Id.* ¶22

carrier's total costs exceed a national average benchmark multiplier, and if support is targeted carefully to new construction in unserved areas, the upward effect of newly designated ETCs on the resulting support amount may be diminished considerably. Moreover as minutes of use on the supported facilities increase, the carrier's revenue requirements would diminish. Further, as discussed in the next section (I), a ceiling on support received in such situations may be explored as an "escape valve."

I. Ceiling on CETC Support

The NPRM further seeks comment on whether CETC support for high-cost rural areas should be subject to a ceiling at the "amount that the incumbent LEC receives from high-cost loop support."²⁶ MTA concurs with the concept that a ceiling should be explored to "avoid rewarding competitive ETCs for being inefficient and [to] reduce incentives for competitive ETCs to inflate their costs."²⁷

J. Transition

Existing wireless CETCs, should comply with cost-based support requirements within one year of the final order establishing new cost-based allocation rules. Carriers already account for their costs. They know how many minutes of use they generate. Providing data necessary to determine the appropriate level of universal service support they receive should not be difficult. Such a transition period effectively will provide current CETCs with a three-year transition period in which to make any adjustments necessary. As is the case with wireline LECs, there is a two-year "lag" between the time when costs are submitted and universal service support, based on such cost submissions, is received by the carrier. Thus, the one-year transition period, plus the two-year lag, effectively results in a three-year transition before current CETCs would actually begin to receive cost-based support.²⁸ Applying the same lag between

²⁶ *Id.* ¶25.

²⁷ *Id.*

²⁸ Current CETCs actually will have longer than a year to make any adjustments to a cost-based support mechanism, since the Final Order implementing reforms proposed by these NPRMs is not likely to be released until later this year,

cost submission and support receipt further conforms to the Commission's principle of competitive neutrality.

During the three-year transition period, CETCs could receive the current level of support they receive today based on 2007 ILEC identical support as capped under the Joint Board's Interim Cap Recommended Decision of May 1, 2007, which should be implemented immediately.

For any future ETC applicant, support should be based on the carrier's own costs as of the time of the CETC's application. In other words, any new ETC application filed with the Commission or a state commission after the final order implementing new CETC cost-based support rules would be required to comply with the new rules immediately, without an "ISR-based transition" period.

After the one-year implementation transition, the ETC designation of any ETC not complying with the new cost-based rules should be revoked.

III. Broadband Fund

A. Broadband Grant Program

MTA supports the concept of initiating a rural broadband grant program modeled after the proposal recommended by AT&T in July, 2007.²⁹ As with the Mobility Fund program, eligibility for support under the Broadband program should be based on the cost of new construction for the specific purpose of deploying broadband service in unserved areas.

Unserved areas may be identified by state commissions, and support should be focused on unserved areas where a plausible economic case cannot be made to justify investment in broadband facilities without the aid of universal service support.

MTA further recommends that the Commission consider the caveats enumerated by the National Telecommunications Cooperative Association

thereby giving current CETCs several months before the one-year transition "clock" starts.

²⁹ Letter from Robert Quinn, AT&T, to FCC Chairman Kevin Martin. WC docket No. 05-337, CC Docket No. 96-45. July 16, 2007.

(NTCA) in its October 1, 2007 letter to FCC Commissioner Deborah Tate and Oregon Commissioner Ray Baum.³⁰ In supporting a rural broadband pilot program, NTCA recommended various limitations and conditions on broadband grants, such as

- Support should not be given to carriers in areas where they have agreed to achieve broadband deployment as part of past and future merger approvals.
- Support should not be given in areas where carriers have included broadband services in petitions for forbearance from Title II regulation.
- Support should not be given to carriers in areas where they have entered into state incentive regulation plans, which require these carriers to achieve specific broadband deployment in return for pricing and earnings flexibility.
- **Support should not be provided in areas where there are sufficient broadband services.**

NTCA also recommends that support should be given only after alternative financing sources are considered and exhausted including: state USF/broadband funding, Rural Utility Service loans and grants; state broadband tax incentives; federal broadband tax incentives; and other financial resources (e.g., traditional loans or other commercially-available financing options and other lawful broadband and mobile financing options).

B. Definition of Broadband and Size of the Broadband Fund

Obviously the size of the Broadband Fund depends on the definition of “broadband.” The current definition of 200 Kbps is widely, if not universally, perceived as inadequate. The definition should be adjusted upward, taking into account not only present, but future expectations for bandwidth demand. The definition should be revisited periodically and adjusted accordingly.

We note that the cost of deploying higher bandwidth broadband service will increase as the minimum bandwidth necessary to meet the definition of broadband increases and as the gap between what is economically possible today and what is required to meet the future definition of broadband widens.

³⁰ Letter from Dan Mitchell, NTCA, to Commissioner Deborah Tate and Ray Baum, *In the Matter of the Federal-State Joint Board on Universal Service Proceeding on Long-Term Comprehensive High-cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45. October 1, 2007.

For example, if the market today can accommodate economically a definition of 1 Mbps and the definition of broadband is adjusted to require a minimum bandwidth of 1 Mbps, then the cost of meeting the new definition would be less than if the definition were, say, 100 Mbps. In other words, meeting a universal service goal of ubiquitous, 100 Mbps broadband service today would necessarily cost substantially more than meeting a 1 Mbps universal service definition of broadband.

Thus, MTA recommends that the Commission adjust upward the definition of broadband taking into account market feasibility and the effect of periodic adjustments on the ability of the Broadband Fund to support carriers' deployment of supported broadband service to unserved areas.

Further, MTA emphasizes the concern expressed by NTCA that broadband support not be used to fund multiple broadband providers where sufficient broadband service already exists.

Finally, the Commission should consider separate broadband criteria for wireless and wireline carriers, as the CETC NPRM suggests.³¹

IV. Provider of Last Resort (POLR) Fund

A. Rural LECS have successfully and appropriately used universal service support as it is intended.

MTA concurs with the finding that

Support to most if not all RLECs has been flat or has even declined since 2003...RLECs have done a commendable job of providing voice and broadband services to their subscribers...³²

Significantly, the cap on rural high-cost support has contributed largely to the fact that support to most if not all RLECs has been flat or has even declined. As MTA and dozens of other parties have said in response to the Joint Board's Recommended Decision to place an immediate interim cap on CETC support,

³¹ *Op cit.* (FCC 08-4.) ¶122.

³² *Op cit.* (FCC 08-22, Appendix A.) ¶39.

the fact that CETC have had no similar cap violates the FCC's principle of competitive neutrality. If the Commission determines a cap is to be continued, it must be applied equally to all ETCs. As discussed below, MTA is not in favor of caps, particularly one that is applied only to one type of ETC and not to another.

Again, MTA agrees that RLECs have done a commendable job of providing voice and broadband services to their subscribers. As we noted in the introduction to these comments, MTA's member companies reach between 80 and 100 percent of their customers with broadband DSL service. Most companies have deployed broadband facilities to the upper ninety percent of their service areas. Where it is simply prohibitive to reach with DSL only a few customers dozens of miles from a central office (for example, where entire counties have fewer than 1,000 residents), MTA's members have deployed alternative means to provide broadband service to practically 100% of their customers.

Further, MTA recommends that the Commission continue to base universal service support on carrier's actual costs, as opposed to a model or a "competitive bid approach"

B. Transport

We concur with the Commission's finding that "current support mechanisms do not recognize all costs."³³ In particular, support is

...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.³⁴

Transport costs are significant for rural carriers, which often must transport data and voice traffic over vast distances, frequently involving multiple providers, to reach their rural customers. We recommend that transport costs should be included in high-cost support mechanisms.

³³ *Id.* ¶21.

³⁴ *Id.*

C. Non-regulated Revenues

The Joint Board NPRM suggests that current high-cost universal service mechanisms do not “reflect the increased importance of non-regulated revenues generated by telecommunications plant.”³⁵ MTA respectfully disagrees. Rural LECs separate non-regulated revenues from their regulated revenue requirements. The more telecommunications plant is dedicated to non-regulated enterprise, the less universal service support the carrier receives. Thus, high-cost universal service mechanisms do reflect a positive effect of non-regulated revenues.

V. Funding Caps

The Joint Board NPRM (FCC 08-22) recommends that

...high-cost universal service support in the future be delivered through three distinct “funds”...These three funds would operate within an overall funding cap that is consistent with the current amount of high-cost funding.³⁶

MTA suggests that establishing an overall funding cap, as well as “sub-fund” caps on the Mobility, Broadband and POLR Funds, is premature. There are substantial variables inherent in comprehensive universal service reform recommended in the current the universal service NPRMs that render an accurate determination of sufficient support impossible at this moment. There are additional current forces that will affect the amount of universal service necessary to meet the goals of the Telecom Act.

For example, it is difficult, if not impossible, today to predict with any reliability what effect transitioning wireless CETCs to a cost-based support mechanism will have on the size of the universal service high-cost fund. As noted above, removal of IAS and ICLS from wireless CETC support is estimated by AT&T to reduce high-cost funding by \$500 million. Other wireless CETC recommended reforms, such as eliminating the ISR, could further reduce support

³⁵ *Id.* ¶22.

³⁶ *Id.* ¶11.

levels, assuming the ISR is responsible for inflating high-cost support funding. In any event, the extent to which the ISR will affect the overall fund size currently is not determined.

Nor is the size of a broadband grant program. The NPRM suggests a \$300 million fund within a fund to be internally financed within an overall cap. Many parties suggest \$300 million is insufficient, particularly if the definition of broadband is adjusted upward. It is apparent that there is widespread support for funding broadband deployment under universal service. This goal, however, may be in conflict with the goal of containing the cost of universal service. Until we know what size a broadband fund will be, it is premature to determine the size of the overall fund.

An overall fund cap creates a zero sum game, in which one fund's gain is another fund's loss. Such a proposal indeed could threaten the statutory requirements for sufficient and predictable universal service.³⁷

Moreover, the Joint Board NPRM recognizes that the *Qwest // Remand* “may require revisiting the amount of support provided to non-rural carriers.”³⁸

We note, too, that intercarrier compensation reform remains unsettled. The “Missoula Plan” for example recommended a recovery mechanism, which, if implemented, would affect the size of the overall universal service fund.

In conclusion, MTA suggests that proposing a cap on the overall universal service fund, or recommended “sub-funds,” before these other variables are determined is like putting the cart before the horse.

VI. Reverse Auctions

MTA does not support the recommendation to establish a reverse auction mechanism. While we concur with the finding that “it is no longer in public interest to...subsidize competition and build duplicate networks in high cost

³⁷ 47 U.S.C. §254(b)(5).

³⁸ *Id.* ¶33.

areas,³⁹ the inherent risks of a reverse auction mechanism outweigh any perceived benefits. On May 31, 2007, MTA filed comments jointly with the Oregon Telecommunications Association Small Company Committee and the Washington Independent Telephone Association (Joint Association Comments) in response to the Commission's request for comments on the *Merits of Using Auctions to Determine High-cost Universal Service Support*. These Associations filed reply comments on July 2, 2007.⁴⁰

The associations pointed out, among other things, that reverse auctions could cause a lowest-common-denominator approach to universal service investment. Commenters expressed concern about the effects of a reverse auction mechanism on the cost of capital and stranded investment if the sufficiency and predictability of universal service support were threatened.

Moreover, reverse auctions could threaten investment in telecommunications infrastructure that is essential for the provision of a variety of telecommunications services and applications. For example, if a wireless carrier won a reverse auction, displacing an incumbent LEC, investment in the previously-supported underlying telecommunications plant that the wireless carrier relies on to provide its service could diminish.

We refer the Commission to the Joint Association comments and reply comments filed on May 31, 2007 and July 2, 2007.

VII. States' Role

A. State Administration

The Joint Board NPRM (FCC 08-22) recommends an increased role for states in administering universal service funding programs. With regard to the Broadband Fund, the NPRM recommends

³⁹ *Id.* ¶35.

⁴⁰ *In the Matter of Federal-State Joint Board on Universal Service Seeking Comment on the Merits of Using Auctions to Determine High-cost Universal Service Support*. WC Docket No. 05-337, CC Docket No. 96-45. Comments of the Montana Telecommunications Association, Oregon Telecommunications Association Small Company Committee and the Washington Independent Telephone Association (Joint Association Comments). May 31, 2007 and July 2, 2007.

that the available pool of Broadband Fund monies first be allocated to the states, and thereafter awarded by designated state agencies to finance particular construction projects or the operations of broadband providers.⁴¹

For the Mobility Fund, the NPRM recommends that

State governments are much more likely than the Commission to be able to assemble and evaluate the data needed to make [Mobility Fund] grants efficient and effective.⁴²

MTA does not believe that states have the resources and expertise necessary to administer a broadband grant program. State Commissions often have limited budgets and staffs. Adding the burden of administering a broadband grant program could prove prohibitive.

With regard to Mobility Fund administration, MTA recommends that any cost data be submitted to USAC or a similar federal agency. Adding states to the process could overwhelm state agencies, increase the risk of compromising confidential information, complicate filing requirements for multi-state enterprises, and create unnecessary redundancy. Since cost data would need to be assembled on a national level in order to determine such factors as a national average cost benchmark, it makes more sense to require cost information to be filed with a single, secure source.

We also note that *state* administration of a *federal* high-cost universal service program raises legal issues concerning the appropriate authority of states in the context of federal high-cost program administration.

B. State Matching Funds

The Joint Board NPRM “recommends that the Commission adopt policies that encourage states to provide matching funds for Broadband Fund and Mobility Fund support.”⁴³

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 state’s interest in pursuing economic development opportunities through broadband and wireless technology enhancements,

⁴¹ *Op cit.* (FCC 08-22, Appendix A.) ¶14.

⁴² *Id.* ¶17.

⁴³ *Id.* ¶50.

and it encourages these states to provide additional funding for these projects.⁴⁴

MTA supports the concept of requiring states to provide matching funds for mobility and broadband fund support; however, we have some concerns with the suggestion that states provide a minimum match of “perhaps 20 percent.” In addition to the reasons listed above in the NPRM, MTA believes that there is no cost to states from granting additional ETCs. The more ETCs designated, the more “federal” money flows to the state. Requiring states to match some portion of the support which they approve when they designate CETCs would provide an additional incentive for states to “localize” the effects of designating additional ETCs in their states.

MTA notes, however, that an across-the-board, flat percentage requirement that all states pay a single percentage match could result in a punitive, discriminatory effect on rural, sparsely populated states. That is, the more rural, less densely-populated a state is, the more likely it is that high-cost support would be greater than it is in a less rural, more densely-populated state. The more rural state would face a higher *per capita* match than the less rural state, if a flat 20 percent factor were established as the state match requirement.

Therefore, MTA suggests that the Commission consider alternatives to the flat-rate percentage match that is recommended in the NPRM. For example, the Commission might consider a *per capita* high cost subscriber assessment or some other alternative way to implement a local match to help defray the costs of detailed mapping, for instance, or other universal service initiatives that recognize the state’s interest in pursuing economic development opportunities.

VIII. Other Issues

A. Interim Cap

MTA reiterates its support for the Joint Board’s May 1, 2007 Recommended Decision to establish an immediate interim cap on the amount of

⁴⁴ *Id.* ¶51.

high-cost support received by CETCs. Such a cap should be established immediately as part of the transition to long-term universal service reform, which is addressed in the current NPRMS. MTA filed comments and reply comments in support of the Joint Board's Recommended Decision.⁴⁵ We refer the Commission to those comments.

B. Contributions Methodology

MTA also recommends that the Commission broaden the base of contributions into the universal service fund to include all providers of voice communications. In this regard, we believe that either a numbers-based, or contributions-based mechanism will broaden the base in an effective and efficient manner, further helping to sustain the long-term sufficiency of universal service support.

As the Commission is aware, there is a consistently growing amount of telecommunications traffic that is circumventing universal service contribution, even though such traffic benefits from the investment in infrastructure that such traffic depends on. Any telecommunications traffic that uses the public network should share in an equal obligation to support the universal service program.

IX. Conclusion

Universal service continues to provide essential support for investment in critical telecommunications infrastructure, particularly in high-cost areas of the nation. MTA commends the Commission for releasing these Notices of Proposed Rulemaking designed to reform universal service support mechanisms in a manner intended to contain the rapid growth of the fund while preserving and promoting the deployment of comparable, affordable telecommunications services for all Americans.

MTA supports recommendations to target high-cost support for mobility and broadband investments to new construction in unserved areas. MTA

⁴⁵ *Op cit.* MTA filed comments on the Joint Board's *Interim Cap* proposal on June 3, 2007, and reply comments on June 13, 2007.

encourages the Commission to eliminate the identical support rule and to impose immediately an interim cap on CETC support while long-term reform recommendations are established. MTA opposes reverse auctions and believes that the reforms proposed in the Joint Board and CETC NPRMs, as discussed herein, will promote the efficient use of universal service support, increase accountability of high-cost support mechanisms, and restore competitive neutrality to the federal universal service program.

Respectfully submitted,

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