

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing \$110 billion since 1996 to build a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art voice service to millions of American homes and are rapidly making these services available nationwide.

Cable operators increasingly are bringing the benefits of their competitive voice services to rural areas. With appropriate changes in how funding is distributed, the presence of cable operators and other facilities-based competitors in high-cost areas ultimately should reduce the need for federal universal service support. Consistent with this goal, and the fact that cable

¹ Public Notice, *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, FCC 07J-2 (rel. May 1, 2007) (Notice).

operators already make broadband service available to over 94 percent of homes, current USF mechanisms should not be extended to include broadband services. In addition, the Commission should move to a properly structured auction system for distributing funds and take other steps to reduce the amount of support made available to all recipients.

I. COMPETITIVE AND TECHNOLOGICAL DEVELOPMENTS REDUCE THE NEED FOR GOVERNMENT SUPPORT

The preservation and promotion of universal service is one of the Commission's most important jobs. The federal universal service support program provides funding to companies that serve areas where market forces historically might not have resulted in all customers being served. These market forces, however, are not static. Improvements in technology, particularly the transition to IP-based equipment and services, have made it possible for cable operators and other facilities-based competitors to serve areas that previously might not have supported competitive entry. Similarly, incumbent LECs increasingly are able to provide multiple services (including DSL and video) over infrastructure previously used solely to provide telephone service. This transition to markets in which there is facilities-based competition for voice and non-voice services calls into question the need for continued government funding at historical levels, and may eventually permit the total elimination of high cost support in at least some markets.

While the changing economics of building and operating networks in rural areas should have the effect of reducing the overall amount of federal support that is needed, that has not happened. Instead, the overall size of the federal Universal Service Fund, and the burden on American consumers, has grown significantly in recent years.² Absent changes to the program,

² See *Factors That May Increase Future Spending from the Universal Service Fund: A CBO Paper* at 1 (Congressional Budget Office, June 2006) (“Outlays from the Universal Service Fund have grown more than 50 percent in the past six years and now total about \$7 billion annually.”).

this trend shows no signs of abating, as a report from the Congressional Budget Office concluded last year.³

The continued growth in the size of the fund is a matter of significant concern to the cable industry. Cable operators providing voice services are required to contribute to the Universal Service Fund,⁴ and as with other providers that pay into the fund, these costs ultimately are borne by consumers. Based on the anticipated growth of cable telephony services, and the corresponding growth in the share of the program that will be funded by cable consumers, NCTA supports efforts by the Commission and the Joint Board to reduce the burden of federal support programs by more efficiently distributing support. As we explain below, there are a number of steps the Commission can take to curtail the growth of the fund, and eventually to reduce the total amount of government funding that is needed.

II. THE COMMISSION SHOULD NOT EXPAND THE LIST OF SUPPORTED SERVICES

In the Notice, the Joint Board asks whether the list of services supported by the high-cost fund should be expanded to include broadband.⁵ Given the staggering growth of the fund in recent years and the negative effect of that growth on consumers, the list of supported services should not be expanded at this time. Rather, programs other than the USF should be used to promote broadband deployment in unserved areas.

Maintaining the current list of supported services does not mean the Commission is not supporting the deployment of broadband service to high-cost rural areas. Although broadband is not on the current list of supported services, federal USF support can be used to add fiber optics

³ *Id.* (“Spending for that program could double again in the next few years”).

⁴ See *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Propose Rulemaking, FCC 06-94 (rel. June 27, 2006).

⁵ Notice at ¶ 8.

to LEC networks, which facilitates the provision of DSL service. Aided by a decade of government USF subsidies, most ILECs have been able to upgrade their networks to provide broadband services. For example, the National Telecommunications Cooperative Association (NTCA) reported that, in a 2006 survey of its members, 100 percent of respondents were providing broadband service to some portion of their service area.⁶ Similarly, the Iowa Telecommunications Association recently reported that over 95 percent of rural communities in Iowa have high-speed Internet access service.⁷ In addition, without any government support, cable operators have made broadband service available to over 94 percent of homes. The rapid growth of broadband in rural areas under the current system makes clear that, in most areas, there is absolutely no need for additional government funding above and beyond the substantial amounts that ILECs already receive under the USF program.

Although NCTA opposes expansion of the high-cost fund to include broadband services, we recognize that there are still remote rural areas across the United States that lack access to affordable broadband service. We would thus urge that existing and future federal initiatives to promote ubiquitous broadband availability more carefully target these unserved areas of the country. For example, NCTA has expressed support for legislation that would set aside additional funding for the deployment of broadband services in unserved areas.⁸ Such steps

⁶ NTCA 2006 Broadband/Internet Availability Survey Report (August 2006). The majority of these companies also are offering video services. *Id.* at 12 (59 percent of respondents are offering video services).

⁷ See Ex Parte Letter from David C. Duncan, President, Iowa Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337, Attachment at 5 (filed May 17, 2007).

⁸ “*Universal Service for Americans Act*,” S. 101, introduced by Senator Ted Stevens, January 4, 2007. In any such program, of course, it is critical that the areas that receive support are truly unserved and that safeguards are established to ensure that the funding is used for the intended purpose. Without such safeguards, a program of this nature will fall victim to the type of problems that have plagued the Rural Utilities Service loan program. See, e.g., Summary of Congresswoman Stephanie Herseth Sandlin’s Rural Broadband Improvement Act (H.B. 2035) (“RUS is too often being used to subsidize Internet access to suburban and affluent communities that already have multiple high speed Internet providers.”)

would be far more effective than increasing the size of a bloated USF system in bringing broadband where it is most needed.

III. THE COMMISSION SHOULD TAKE COMPETITIVELY NEUTRAL STEPS TO REDUCE SUPPORT IN AREAS SERVED BY MULTIPLE NETWORKS

Maintaining the current list of supported services is a first step in controlling the size of the fund, but obviously the Commission must do more. In particular, the Commission must establish mechanisms to reduce the amount of support that is provided in areas that are served by multiple networks. We address below some of the specific proposals discussed by the Joint Board in the Notice.

A. Reverse Auctions Would Reduce Support to More Efficient Levels

In the Notice, the Joint Board again seeks comment on the use of reverse auctions.⁹ NCTA supported reverse auctions when the Joint Board asked about this issue in 2006¹⁰ and we continue to believe that auctions, if properly structured, provide a mechanism through which the amount of support provided to competitive areas can be reduced to more efficient levels. In particular, a properly structured auction mechanism eliminates the need for the Commission to determine the cost of serving a particular area and the amount of support that is needed, and instead relies on the market to make such determinations.

As NCTA explained in its earlier comments, the structure of any auction system is critical if it is to achieve its intended goals. For example, it is important that the Commission use relatively small geographic areas, such as census block groups (CBGs), as the basis for distributing support. The use of a small service area is competitively and technologically neutral

⁹ Notice at ¶ 4.

¹⁰ See Comments of the National Cable & Telecommunications Association, WC Docket No. 05-337 (filed Oct. 10, 2006) (NCTA Comments).

because it does not conform to the boundaries of any particular type of service provider, nor is it defined by the use of any particular technology.

The Commission should not use ILEC study areas as the basis for auctions. As the Commission recognized in its recent *Video Franchising Order*, cable operators and telephone companies have different service area boundaries, and it is unreasonable to expect that a new entrant will build beyond its existing footprint to match the entire service area of the incumbent.¹¹ Specifically, the Commission acknowledged that if companies were expected to build where they have no existing plant, “the business case for market entry is significantly weakened because their deployment costs are substantially increased.”¹² The Commission must consider these marketplace realities in establishing an auction system.¹³

B. Other Steps Also Could Be Used To Reduce Support To Efficient Levels.

The Commission also should evaluate other mechanisms to ensure that support is provided more efficiently than under the current system. In particular, in markets served by multiple networks, the Commission should move away from using ILEC embedded costs as the basis for calculating per-line support. As ILECs themselves acknowledge, rural ILEC networks are not the most efficient way to provide voice service in rural territories.¹⁴ There is no reason

¹¹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180 at ¶ 38 (rel. Mar. 5, 2007).

¹² *Id.*

¹³ NCTA identified a number of other elements that should be part of an auction regime, including minimum service requirements, continued application of interconnection obligations, and elimination of any guaranteed support to incumbents. *See* NCTA Comments at 5-6.

¹⁴ *See, e.g.*, Comments of the Western Telecommunications Alliance at 24, WC Docket No. 05-337 (filed Oct. 12, 2006) (Rural ILECs “install and operate switches to serve study areas with relatively small numbers of access lines and are unable to generate significant economies of scale and scope with respect to their switching facilities. In contrast, many wireless CETCs employ a single switch (MTSO) to serve multiple urban and rural license areas in one or more states. They are not subject to the same inability to realize significant switching economies as are rural ILECs.”).

that the government should continue to provide funding at levels that exceed the amount that is absolutely necessary to ensure continued provision of service to any particular area.

One option raised in the Notice is to change the rules so that each recipient would receive support based on its own costs.¹⁵ To the extent this proposal uses the embedded costs of any company, it should not be adopted. As the Commission explained when it first established the USF program, “use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of efficient carriers.”¹⁶ Moreover, in a market with multiple companies each providing supported and non-supported services, an embedded cost approach depends on totally arbitrary cost allocations among services.

Rather than expanding the use of embedded cost studies, the efforts of the Commission and the affected companies would be better spent considering some of the alternatives identified in the Notice. For example, disaggregating ILEC study areas is a potential improvement to the current system, provided it is done in a manner that does not increase the total amount of support provided by the fund overall or to any particular service area. Similarly, the use of cost models or targeted support reductions (*e.g.*, through changes in the benchmark) to bring the level of support to more efficient levels is worth more detailed consideration by the Commission.

Finally, as part of any long-term reform effort, the Commission should not depart from the principle that the same level of per-line support should be available to all carriers. As explained above, the Commission should move away from using ILEC embedded costs as the basis for subsidies to any recipient, either by adopting a properly structured auction mechanism

¹⁵ Notice at ¶ 7.

¹⁶ See, *e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8901, ¶ 228 (1997). Similarly, the Commission has clearly found that “contrary to assertions by some incumbent LECs, regulation does not and should not guarantee full recovery of their embedded costs.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15858, ¶ 706 (1996).

or by establishing subsidy levels that reflect the most efficient cost structure for providing service. Either approach would promote universal service in a manner that is competitively neutral and in the best interests of consumers. In contrast, a system that perpetuates inefficiencies, or imposes onerous new requirements on competitors as a condition of obtaining support, will discourage facilities-based competition and deprive rural consumers of all its benefits.

CONCLUSION

For all the reasons explained above, NCTA encourages the Commission to take steps to reduce the size of the Universal Service Fund. In particular, the Commission should move forward with a transition to an auction-based distribution mechanism and it should not add broadband to the list of supported services.

Respectfully submitted,

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