

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

**FEDERAL-STATE JOINT BOARD
FOR UNIVERSAL SERVICE**

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**WC DOCKET NO. 05-337
CC DOCKET NO. 96-45**

**REPLY COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

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SUMMARY

As demonstrated in ITTA's initial comments, the level of support to wireline incumbent local exchange carriers has remained steady or declined in recent years. Therefore, commendable efforts to impose cost-controls on the Universal Service Fund (USF) should focus on the source of growth, which has been demonstrated to be competitive eligible telecommunications carriers, the vast majority of which are providers of mobile services.

ITTA supports the Joint Board's recommendations to create three programs within the USF, addressing, specifically, providers of last resort, providers of mobile service, and broadband. ITTA submits that support to any entity should be based upon the recipient's own costs. Proposals such as reverse auctions for wireline carriers that implicate troubling legal, administrative, and financial concerns should be rejected. Rather, the Commission should preserve successful mechanisms that have contributed greatly to the viability of the wireline network that also provides backbone functions for wireless and broadband, and focus immediate attention on rational own-cost based support for providers of mobile wireless voice services, including the elimination of the identical support rule and the removal of access replacement for providers of mobile services.

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To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby files these reply comments in the above-captioned proceeding. Nearly 100 initial comments were filed in response to the Commission's three separate Notices of Proposed Rulemaking (NPRMs),¹ each of which NPRM investigated a different aspect of possible Universal Service Fund (USF or Fund) reform. As illustrated herein, certain of the comments failed to offer realistic approaches toward ensuring the viability of the Nation's telecommunications network while controlling Fund size.

¹ *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (rel. Jan. 29, 2008) (Identical Support NPRM); *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (Reverse Auctions NPRM); *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22 (rel. Jan. 29, 2008) (Joint Board NPRM). The Joint Board NPRM contained as an appendix the November 2007 Recommended Decision of the Joint Board, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (2007) (Joint Board RD).

II. RATIONAL REFORM MUST CONTAIN COSTS WHILE SUPPORTING NETWORKS THAT SERVE RURAL AMERICA.

A. EASILY ACHIEVEABLE REMEDIES REMOVE THE NEED TO IMPOSE UNSOUND SOLUTIONS.

As stated in ITTA's initial comments, the Commission can take quick and effective action to stem Fund growth while ensuring the future of the Nation's networks. The elimination of the identical support rule, along with radical reductions in support for duplicative competitive carriers in markets unable to support a single provider, would rein in out-of-control growth while ensuring the viability of wireline networks that serve as the backbone for wireline, wireless, and broadband communications. Concurrent with those two reforms, the Commission must ensure that incumbent wireline networks are supported adequately as further Nationwide deployment of mobile wireless voice services and broadband occurs. The cost controls achieved by eradicating the identical support rule and halting the designation of needlessly redundant competitive eligible telecommunications carriers (CETCs) will eliminate any perceived need for wireline reverse auction proposals that are riddled with legal, economic, and administrative concerns.²

As described in initial comments, ITTA supports the establishment of separate universal service programs within a single unified Fund to support (a) providers of last resort and their wireline networks that provide essential voice service and backbone functions for mobile and advanced services, (b) mobile wireless voice services (MWVS), and (c) broadband. ITTA also supports elimination of the identical support rule, as well as higher public interest standards to govern the designation and support of CETCs. As

² See, Comments of ITTA at 36-42.

stated by USTelecom, “[f]unds are not being used to preserve and advance universal service when they are directed at the provision of wireless service in areas already served by mobile carriers not receiving support.”³

ITTA recommended that USF reformation affirm the purpose of USF; address the cause of recent Fund growth; ensure the viability of a wireline network necessary to support the delivery of voice and high-capacity advanced services; establish clear guidelines for mobile wireless voice service providers that receive USF support; promote broadband deployment; eliminate the “identical support” rule; and, impose higher equitable public interest standards for CETC certifications and funding. By contrast, certain of the parties commenting on the NPRMs recommended approaches that would result in unreasonable expansion of the USF to accommodate proposals that conflict directly with the recommendations of the Joint Board. Moreover, certain of the proposals seek constrictions on USF support that would dim the prospects for adequate service in rural America. Such proposals must be rejected. USF reform must be premised on the understanding that the intent of the Communications Act, as amended,⁴ can be met only by rational dedication of resources; neither unnecessary allocations nor needless reductions will serve goals that are consistent with the Act.

³ Comments of United States Telecom Association at 3 (USTelecom).

⁴ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1996, as amended by the 1996 Act, will be referred to as “the Act,” and citations to the Act will be to the Act as it is codified in the U.S. Code.

B. FUND CONTROL IS BEST ACHIEVED BY RATIONAL DISTRIBUTION OF SUPPORT.

1. The Joint Board was Clear that Support for Mobile Services Should be Limited to Voice Communications.

The Joint Board was clear that support for mobile carriers should be limited to mobile wireless voice services⁵ (referred to herein as MWVS). By contrast, some parties envision a vast and expensive expansion of the Joint Board's recommendation. For example, CTIA presents a comprehensive study dedicated to addressing the costs of deploying a Nationwide 3G network. The study submitted by CTIA states, "The looming question then is: 'what is the cost to provide ubiquitous 3G mobile broadband coverage?'"⁶ But, that is a question the Joint Board did not ask; it was clear that mobility support would be limited to MWVS. Nevertheless, "CTIA asked CostQuest to focus on the cost of completing the build-out of a broadband capable mobile network."⁷ CTIA's focus is perplexing in light of the fact that the amount of USF growth that instigated the current round of USF proceedings was a fraction of the \$22 billion price tag identified by the CTIA-commissioned study.⁸

A departure from the Joint Board's recommendation to support MWVS is not necessary. In the wireline context, carriers have leveraged supported voice telecommunications facilities to provide advanced services. Like CTIA, AT&T

⁵ Joint Board RD at para. 16.

⁶ "U.S. Ubiquitous Mobility Study: Identification of and Estimate of Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved Areas," CostQuest Associates, at 3 (submitted by CTIA – The Wireless Association® (CTIA) in Docket Nos. 05-337 and 96-45, April 17, 2008).

⁷ CTIA at 27.

recommends a model that would support in every market a wireless provider of each GSM and CDMA; this proposal would likely increase the cost of an already ambitious proposal. USF at the outset should not be configured to support each variation of a technology. That approach could lead to increases in Fund size similar to those that have prompted the current round of proceedings.

Particularly troublesome is that without addressing directly the proposal set forth for comment by the Commission, specifically, the cost of mobile voice networks, the record is bereft of relevant information pertaining to what is needed to deploy MWVS in unserved parts of the Nation. An opportunity for meaningful discussion that would result in public benefit is hobbled by this lack of information. Generally, wireline carriers make no presumptions to estimate the cost of deploying MWVS in unserved areas, leaving that task to those who provide the service.

The costs of the ILEC network are known. And, as explained by ITTA in its initial comments, those costs are accountable, verifiable, and auditable by USAC, NECA, and state commissions.⁹ By contrast, as described by CTIA, “wireless carriers do not keep financial records on a study area basis, or often even on a statewide basis.”¹⁰ In the era of identical support, this type of approach may have been acceptable, but in the waning days of a regulatory regime that failed to meet imperative goals, implications that costs cannot be accounted can only be acceptable if other forms of accountability are sufficiently strengthened to be able to answer the question of whether the money is being

⁸ CTIA at 29.

⁹ See ITTA at 6, 10.

¹⁰ CTIA at 25.

used for the purpose for which it is intended. Relating USF money to the cost of build-out, operation, and maintenance is a good approach. If there are other ways of increased accountability to meet the public trust demanded when support flows occur, then those should be made known; the public trust demands no less.

ITTA urges the Commission to move forward with a rational program supporting MWVS, and to set aside proposals that would attempt to expand unnecessarily the Joint Board recommendation.

2. Support for Carriers Should Be Based Upon Auditable and Accountable Costs.

(a) The identical support rule has created a vacuum of accountability.

As stated in ITTA's initial comments, the identical support rule should be eliminated. It is neither cost-based nor designed properly to encourage network investment in unserved areas; it is not grounded in fundamental USF principles that are intended to provide necessary support for the network. The identical support rule should be eliminated and replaced with mechanisms that lead to support based on cost.

The failed effects of the identical support rule were noticed by several groups, including one representing wireless interests:

If there is any industry consensus, it is that this dissemination of identical high cost support has led to a ballooning of the Fund, leading to higher consumer telecommunications bills, and an illogical situation where high cost support originally meant to support a single network where costs were so high that the market could not support such a network is now used to artificially prop up competition. Multiple ETCs that may or may not need the support depending upon the costs receive high cost support where one network cannot stand alone without support. This situation makes no economic sense and taxes consumers of interstate telecommunications services who must support multiple providers of the same service.¹¹

¹¹ Comments of Rural Telecommunications Group, Inc. at 3 (RTG).

Proponents of identical support advance various arguments in support of the rule. For example, the comments of SureWest are grounded in the Commission's additional principle of "competitive neutrality."¹² Yet, it is not clear that the principle of competitive neutrality requires continued application of the identical support rule. Competitive neutrality may be best achieved by conditioning high-cost support on the respective costs of each individual carrier receiving support. The competitive neutrality principle is one among multiple principles that should be balanced against each other. Moreover, as described succinctly by Iowa Telecom, competitive neutrality was never "on the original [statutory] list."¹³ Rather, the Commission developed this standard pursuant to permissive authority granted by the statute.¹⁴ The Commission could (and should) reconsider this principle if it concludes that the competitive neutrality principle requires continued enforcement of the identical support rule.

USTelecom characterizes the current level of support to CETCs as "a clear threat to fund sufficiency."¹⁵ USTelecom explains, "When an ILEC ETC loses lines, its network costs stay essentially the same, while a mobile CETC receives an increase in the support for the exact same network it had prior to the ILEC line loss."¹⁶ This situation is exacerbated when increased support to wireless CETCs is the result of "family plans" that saturate single households with multiple handsets. By contrast, Verizon's

¹² See generally Comments of SureWest Broadband.

¹³ Comments of Iowa Telecom at 4.

¹⁴ See 47 USC § 254(b)(7).

¹⁵ USTelecom at 11.

¹⁶ USTelecom at 11.

recommendation that so-called “per-line support” for ILECs be frozen ignores the fundamental fact that USF support is dedicated to supporting the network, not consumers *per se*. Verizon’s assertions that are premised upon notions of an “incumbent LEC’s per-line subsidy” ignores the fact that ILECs do not obtain high-cost support on a per-line basis, but rather upon the basis of network costs that are accounted, verifiable, and auditable.

(b) Carriers should be moved to “own costs” basis of support.

Not surprisingly, those most supportive of the identical support rule are those that presumably benefit from it most, which begs the question of whether those entities would receive less support on an actual costs basis. In the absence of cost data, however, a factual conclusion remains elusive; as stated above, CTIA has stated that “wireless carriers do not keep financial records on a study area basis, or often even on a statewide basis.”¹⁷ CTIA also states that “proposals to require wireless ETCs to maintain and report their costs in a manner akin to the Part 32 Uniform System of Accounts . . . seriously underestimate the difficulties of this approach.”¹⁸ Currently, ILEC support is calculated through a series of complex and detailed steps set forth in Parts 32, 36, and 64 of the Commission’s rules;¹⁹ the process is arguably necessary to ensure the proper calculation and distribution of support in a manner that ensures against waste, fraud, and abuse.

¹⁷ CTIA at 25.

¹⁸ CTIA at 24.

¹⁹ A LEC reports its expenses, investments, and revenues in accordance with the Universal System of Accounts (47 CFR §§ 32.1, *et seq.*) Costs are then divided between regulated and non-regulated services (47 CFR §§ 64.901-904) Finally, the separations process divides costs associated with regulated services between the state and Federal jurisdictions (47 CFR 36).

ITTA does not advocate the application of wireline accounting rules *per se* to wireless carriers, but rather a similar basis of accountability for funds received. And, as demonstrated in ITTA comments, support flowing to ILECs that are required to demonstrate their costs has, in fact, decreased or remained steady in recent years.²⁰

(c) Access replacement support should be stripped from carriers that never would have received access revenues.

As set forth in ITTA’s initial comments, access replacement support should be eliminated from support provided to mobile CETCs as a first step toward implementing cost-based recovery for mobile providers.²¹ CTIA’s claim that “access replacement” support must be available to all ETCs is premised on a faulty proposition: CTIA claims, “[a]ccess replacement is universal service support by another name and must be available to all carriers on a competitively neutral basis,”²² but its reasoning lacks historical basis. Specifically, CTIA argues that “wireless carriers – unlike local exchange carriers – have never been empowered by regulation to recover access charges and instead have been forced to recover the costs of access almost entirely from their end-user customers.”²³ This assertion, by itself, may be technically correct, but ignores half of the story. In brief, “[i]nterstate access charges are tariffed charges imposed by incumbent LECs to recover the costs of providing access to their networks for interstate or long distance service.”²⁴

²⁰ See ITTA at 7.

²¹ See ITTA at 28-31.

²² See CTIA at 17, 18.

²³ CTIA at 18.

²⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of Regulation, Prescribing*

The access regime evolves from historic network practices arising prior to the emergence of a wireless network. The continued extension of access replacement to wireless carriers is perpetuation of faulty policy that produces unintended adverse consequences.

3. Wireline Reverse Auctions are Neither Necessary Nor Justified When Less Hazardous and Burdensome Alternatives are Available.

As ITTA stated in its comments, wireline reverse auctions are a complex and hazardous solution to perceived problems that can be addressed more efficiently, less onerously, and with greater likelihood of meeting the statutory imperative of ensuring specific, predictable, and sufficient USF support.²⁵ Even parties advocating positions generally in opposition to ITTA agree that wireline auctions raise many fundamental questions, including those relating to stranded investment. As articulated by Comcast, “[d]eveloping and implementing a reverse auction mechanism in an industry characterized by high levels of fixed, and oftentimes sunk, investment raises a variety of difficult and complicated issues that the *Reverse Auctions NPRM* neither identifies nor addresses.”²⁶ And, representatives of the financial community warned of risks carriers would face in their efforts to obtain capital to deploy infrastructure. CoBank was clear: “If a telecommunications provider is faced with the possibility of losing access to universals service support funding through a reverse auction system, lenders will restrict

the Authorized Rate of Return for Interstate Services of Local Exchange Carriers: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, FCC 01-304, at para. 16 (2001).

²⁵ ITTA at 36-42.

²⁶ Comcast at 7.

the amount of debt made available.”²⁷ As discussed herein and in initial comments, support levels to incumbent wireline carriers has remained steady or decreased in recent years. Accordingly, there is no justification to impose on wireline carriers drastic and hazardous measures to control non-existent growth.

C. THE VIABILITY OF THE EXISTING WIRELINE NETWORK IS INTEGRAL TO THE SUCCESS OF CURRENT AND FUTURE MOBILE AND BROADBAND DEPLOYMENTS.

1. The Network Provides Backbone Functions for Mobile and Broadband Traffic.

The Alaska Telephone Association characterized well the role that incumbent wireline providers fill:

It is the providers or carriers of last resort that supply the backbone network of the country’s public switched telephone system, on which competitive carriers typically rely for backhaul and interconnection. Indeed, the POLR’s fundamentally represent the essence of universal service as it is their obligation to deploy and maintain service to subscribers in all communities located within the boundaries of their certificated service areas, no matter how remote or difficult to access.²⁸

Concurrent with fulfilling POLR obligations, rural carriers were identified by the Joint Board as having done a “commendable” job deploying broadband. Despite that finding, AT&T concludes incorrectly that rate of return ILECs have delayed deployment of broadband in order to artificially preserve access revenues.²⁹ The theory is refuted by common sense: there is no overriding incentive for a carrier to delay deployment of what is fast becoming a major economic driver and focus of consumer attention. ITTA agrees with AT&T that intercarrier compensation must be addressed, and soon, but disagrees

²⁷ CoBank at 4.

²⁸ Alaska Telephone Association at 7, 8.

²⁹ AT&T at 6 (“Once the pressure to maintain access revenues is eased, these carriers will have far more incentive to deploy and market broadband services.”).

with AT&T's proposition that ILECs have "shorted" both consumers and shareholders in a bid to preserve decreasing sources of revenue.

Similarly, CTIA mischaracterizes the state of the market and technology when it argues that "[t]he current system is designed to subsidize legacy wireline networks, while American consumers have moved on to mobility and broadband."³⁰ This comment risks ignoring the fact that without the so-called "legacy wireline" network, most wireless calls would not complete. The wireline network remains the backbone for nearly all wireless communications applications; implications that a Nationwide framework of wireless and broadband communications can exist independently of a wireline infrastructure ignore reality and obscure facts. A similar error attends CTIA's claims concerning USF contributions made by wireless carriers. CTIA focuses on its assertion that wireless carriers paid one-third of USF contributions in 2005.³¹ More important, however, is, "What quantity of wireless communications rely upon the wireline network?" Wireline and wireless networks are intertwined, and the wireless network relies inextricably upon the wireline foundation. Support for wired networks is, ultimately, support for wireless service, as well. As stated in ITTA's initial comments, the Joint Board set forth a rational three-pronged approach to establish separate programs to ensure a comprehensive National wireline, wireless mobile, and broadband experience.

³⁰ CTIA at 7.

³¹ CTIA at 9, 10.

2. Study Area Consolidations Would Fail to Ensure Proper Support

CTIA suggests that ILECs with more than 50,000 access lines in a state, regardless of how those lines might be scattered across various study areas, be treated as “non-rural” and transitioned to high-cost model-based support;³² Verizon proposes consolidation of all study areas in a state, and to require carriers serving rural areas with 100,000 lines or more to receive support under non-rural mechanisms.³³ Either proposal, as a general matter, would move USF in the wrong direction, since each would obstruct the flow of support to truly high-cost areas. High-cost support, instead, should be explicit and targeted to genuinely high-cost areas.

Reliance on implicit subsidies is not realistic. Carriers cannot depend upon customers with low-cost lines for contributions to cover the cost of high-cost lines in the face of vibrant and growing competition in low-cost areas. USF support is intended to support high-cost loops. For carriers serving rural areas, the cost of a loop in a low-density region is high regardless of whether the carrier also serves a metropolitan area within the state. As noted in ITTA’s initial comments, “The distances between individual end users and the carrier’s need to aggregate a critical mass of traffic in a switch together often necessitate the use of particularly long loops, increasing costs dramatically.

³² CTIA at 26.

³³ Verizon at 23, 24.

Accordingly, the Commission has stated that ‘for universal service purposes ... cost differences caused by differing loop lengths are the most significant cost factor.’³⁴

Proposals to consolidate study areas which do not account for the high-cost loops and the infeasibility of presumed reliance on implicit support must be rejected.

3. Caps Should Not Substitute for Rational Control.

Calls for a cap on high-cost support must be rejected.³⁵ As demonstrated in ITTA comments³⁶ and Commission materials,³⁷ support to incumbent carriers has either declined or remained steady in recent years, while support to CETCs has increased dramatically. The Commission’s recent adoption of an interim cap on CETC support is a triage measure that is intended to stabilize the Fund while long-term reform efforts are undertaken. Generally, the imposition of an overall cap on the support places at risk deployment of adequate networks. There is at this point simply no compelling reason to assume the risk a cap engenders. A cap would undermine necessary flexibility built-in to existing Commission rules, which are intended to compensate for dynamic market conditions. Subjecting the market to an overall cap could suffocate innovative efforts by depriving carriers of support to which they may be entitled under today’s rational and flexible adjustment policies. Ironically, while a portion of ILEC support has been subject to a cap, total support provided to ILECs has remained steady, or declined. Unnecessary

³⁴ ITTA at 16, citing *Federal-State Joint Board on Universal Service (Forward-Looking Mechanism for High Cost Support for Non-Rural LECs): Fifth Report and Order*, CC Docket No. 96-45, FCC 98-279, 13 FCC Rcd 21,323, at para. 75 (1998). See ITTA at 13-18 for a complete discussion.

³⁵ See Comcast at 3 (proposing interim cap); Verizon at 4.

³⁶ *Federal-State Joint Board on Universal Service: Comments of the Independent Telephone and Telecommunications Alliance*, CC Docket No. 96-45, WC Docket No. 05-337, at 9 (filed May 31, 2007).

³⁷ Joint Board RD at para. 39

growth in the USF can be stemmed by more rational distribution of support to competitive carriers, including wireless providers. An overall cap is not necessary, and would risk limiting the ability of the USF to react to extraordinary situations.

4. Rational Access Reform Should Not Be Sacrificed in the Interest of an Expedient Solution.

AT&T promotes access reform within the context of USF reform.³⁸ ITTA concurs with USTelecom's assessment that "it certainly would be preferable for intercarrier compensation reform to be integrated with comprehensive universal service reform," but, like USTelecom, "recognizes the gargantuan nature of that task."³⁹ USF should not be tied unnecessarily in a single proceeding to the progress intercarrier compensation reform (especially if so doing keeps either issue from being adequately addressed), notwithstanding the fact that intercarrier compensation reform must be addressed forthwith.

III. CONCLUSION

As described herein and in initial comments, USF reform must be premised upon the rational distribution of support necessary to deploy and maintain networks. Successful USF mechanisms should be preserved while dysfunctional processes are refined. Support for wireline providers of last resort must recognize (a) the backbone function their networks serve supporting wireless and advanced broadband communications, as well as (b) cost drivers endemic to low-density, high-cost rural areas. The Commission should adhere to the Joint Board's rational recommendation to support

³⁸ See, generally, AT&T.

³⁹ USTelecom at 8.

mobile wireless voice services. Finally, all carriers should be supported on the basis of their own reportable and auditable costs; the identical support rule should be eliminated.

Respectfully submitted,
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