



# PUBLIC NOTICE

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## FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE SEEKS COMMENT ON THE MERITS OF USING AUCTIONS TO DETERMINE HIGH-COST UNIVERSAL SERVICE SUPPORT

WC Docket No. 05-337

CC Docket No. 96-45

**Comment Date: (45 days from publication in the Federal Register)**

**Reply Comment Date: (75 days from publication in the Federal Register)**

1. In this Public Notice, the Federal-State Joint Board on Universal Service (Joint Board) seeks comment on the use of reverse auctions (competitive bidding)<sup>1</sup> to determine high cost universal service funding to eligible telecommunications carriers (ETCs) pursuant to section 254 of the Communications Act of 1934, as amended (the Act).<sup>2</sup> We ask that interested parties provide comment regarding whether and how competitive bidding could be utilized to further the goals of the Act, the Commission's universal service goals, and any other criteria or issues described in the August 2004 Public Notice.

2. Commenters are also invited to supplement the record with respect to any additional issues or facts that have been raised since the previous comment periods closed.<sup>3</sup> The Joint Board continues to

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<sup>1</sup> The term "reverse auction" is used generally to emphasize that in this context the bidder is specifying the amount of money it must receive to provide universal service in a given area for a given period of time. Competitive bidding may be a more familiar way of referring to this type of auction. In this Public Notice, the terms "reverse auction," "auction," and "competitive bidding" are used interchangeably. They are meant to be construed broadly and include "any market process in which the identities of the buyers or sellers and the prices and other terms of trade are determined by an explicit comparison of bids or offers." *Procuring Universal Service: Putting Auction Theory to Work*, Paul Milgrom, Lecture at the Royal Swedish Academy of Sciences, December 9, 1996 (© 1997 by the Nobel Foundation).

<sup>2</sup> See 47 U.S.C. §254(e).

<sup>3</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, 19 FCC Rcd 16083 (2004) (August 2004 Public Notice). In the August 2004 Public Notice, the Joint Board sought comment on issues referred to it by the Commission related to universal service support for rural carriers and the basis of support for competitive eligible telecommunications carriers. Specifically, the Joint Board sought comment on three main issues: (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of (continued....)

consider various methods of revising High-Cost Universal Service funding.<sup>4</sup>

## I. BACKGROUND

3. In its *Universal Service First Report and Order*, the Commission addressed the use of competitive bidding mechanisms for universal service purposes stating, “[w]e agree with the Joint Board and the commenters that a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for a given area.”<sup>5</sup> The Joint Board found, however, “that the record before it was insufficient to support the adoption of any particular competitive bidding mechanism.”<sup>6</sup> The Commission also noted that “it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future.”<sup>7</sup> Due to the lack of an adequate record, the Commission decided, at that time, to defer consideration of auctions for universal service purposes. The Commission explained that it would “issue a FNPRM examining specifically the use of competitive bidding to define universal service support for rural, insular, and high cost areas.”<sup>8</sup> The Commission has not subsequently explored this concept in significant detail.<sup>9</sup>

## II. ISSUES FOR COMMENT

4. In many contexts, auctions have been used as a way to introduce market forces into the allocation of scarce resources. Generally, proposals to use auctions in the universal service context contemplate competitive bidding for the obligation to serve a specified area at an acceptable quality of service for a specified term, with the benefit of receiving universal service support to do so. By limiting the number of supported networks in each area and selecting the most cost-effective proposal(s), auctions

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universal service support for transferred exchanges. *Id.* In August 2005, the Joint Board sought further comment on several proposals for addressing these issues by individual Joint Board members and staff members. *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005) (*August 2005 Notice*). Specifically, the proposals included: “The State Allocation Mechanism: A Universal Service Reform Package,” proposed by Joint Board Member Ray Baum; “Three Stage Package for Universal Service Reform,” proposed by Joint Board Member Billy Jack Gregg; “A Holistically Integrated Package,” proposed by Commissioner Robert Nelson; and “Universal Service Endpoint Reform Plan (USERP),” proposed by Joel Shifman, Peter Bluhm, and Jeff Pursley.

<sup>4</sup> *Id.*

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8948, para. 320 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>6</sup> *Id.* at 8949, para. 321.

<sup>7</sup> *Id.* at 8950-51, para. 324.

<sup>8</sup> *Id.* at 8949-50, paras 321-25.

<sup>9</sup> The Joint Board previously sought comment on whether and how auctions might be utilized to award support. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 F.C.C.R. 1941, 1950 paras. 20 (2003).

could minimize the burden on customers providing the support. The winning network provider(s) would receive support subject to reasonable service performance and service area coverage requirements. The Joint Board finds that building a record addressing this potential mechanism has merit as the Joint Board continues to consider how best to address the questions referred by the Commission.<sup>10</sup> Accordingly, we seek comment on the appropriateness of using auctions to identify the recipients and funding level for recipients of universal service funding.

5. Overall Appropriateness of Auctions. We are therefore seeking comments from interested parties on the overarching concept of using auctions to determine universal service support as well as the details associated with the accompanying obligations. We seek comment on whether there are general lessons that can be learned from academic literature or elsewhere about the overall appropriateness of auctions for determining universal service support. Have auctions been used for similar purposes elsewhere and do these applications shed any light on the advisability of using auctions for universal service? Are there conditions under which auctions for universal service support yield significant benefits to the preservation and advancement of the fund? What are other major advantages or disadvantages of using auctions for determining universal service support? How do any such advantages or disadvantages compare with the relative advantages or disadvantages of the current high cost mechanisms? What are the advantages or disadvantages to telecommunications consumers in an area subject to auctions? Are there advantages or disadvantages that pertain to all telecommunications consumers, even those in areas not subject to high-cost support auctions? We seek comment on these questions.

6. Legal Issues and Framework. We seek comment on how the concept of utilizing competitive bidding to administer certain functions in the universal service program fits into the statutory scheme established by Congress. The Act instructs the Joint Board and the Commission to base their policies for the preservation and advancement of universal service on a set of defined principles.<sup>11</sup> For example, section 254(b)(5) directs the establishment of specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.<sup>12</sup> Rates for quality services shall be just, reasonable, and affordable.<sup>13</sup> The Act also establishes that through universal service, consumers in all parts of the country should have access to reasonably comparable services at reasonably comparable rates.<sup>14</sup> The Act also requires that universal service support be “sufficient” to achieve the universal service goals of the Act.<sup>15</sup> Accordingly, we seek comment on whether and how a competitive bidding proposal would serve to preserve and advance universal service and remain consistent with these important statutory goals, including rate comparability and affordability.

7. Jurisdictional Roles. We also seek comment more broadly on what would be the appropriate

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<sup>10</sup> The Joint Board emphasizes that no decision, tentative or otherwise, has been reached to recommend the adoption of competitive bidding for universal service support to any category of ETC.

<sup>11</sup> See 47 U.S.C. §254(b).

<sup>12</sup> See 47 U.S.C. §254(b)(5).

<sup>13</sup> See 47 U.S.C. §254(b)(1).

<sup>14</sup> See 47 U.S.C. §254(b)(3); *Qwest Communications Int’l Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

<sup>15</sup> See 47 U.S.C. §254(e).

roles of the Commission, the State commissions, and Universal Service Administrative Company (USAC) relative to: the administration of the auction process, oversight of the winning bidder(s), and the distribution of funds. The Act specifies an important role for State commissions in the designation of carriers eligible to receive universal service support – (eligible telecommunications carriers, or ETCs).<sup>16</sup> Specifically, we seek comment on how competitive bidding would comport with the ETC designation process established by the Act and the Commission. Further, to what extent may the Commission legally apply conditions on ETCs related to auctions, given state authority to apply conditions to state-designated ETCs?<sup>17</sup>

8. Supported Area(s). We solicit comments on how auctions could be designed to appropriately target support to areas in need of support. We seek comment on the appropriate geographic area for support. Should it be the same as an incumbent’s serving area or exchange? Are there attributes of certain areas or markets that make them more or less suitable for auctions? We also seek comments on optimal criteria that would be used to indicate the appropriateness of auctions in an area. Moreover, we seek comment on whether auctions are a mechanism that could be used effectively in some areas, but not in others. How would auction-appropriate areas be identified or distinguished from other areas?

9. Optimal Auction Structure. We seek comment on the optimal structure for conducting an auction of this type. We seek comment on what an optimal term would be for the bidders to seek in order to encourage effective bidding, optimal service, and efficient investment. Should there be any phase-in of responsibilities between the winner of the last auction and the winner of the next auction? What happens if an auction process does not result in competitive bidding or otherwise fails to deliver benefits, such as bids at or below current funding levels? What constitutes an auction failure and what should be the basis of support in those cases where the auction process fails?

10. Quality of Service Obligations and Enforcement. What should be the appropriate baseline for service quality for bids? What mechanisms or pressures would ensure that service quality is maintained through the duration of the winning term? For example, should the winning bidder(s) enter into a contract establishing its obligations with particularity and providing for penalties in the event of non-performance? Would these obligations be standardized? Who would administer and enforce the obligations of the contract? What incentives would the auction winner have to maintain and upgrade its telecommunications plant during its winning term?

11. Multiple Support Winners. Are there an optimal number of winners or supported providers per area? If multiple winners are preferred, how would the auction function? If multiple winners are preferred, is equal support for all winners preferable to individualized support? Should any level of support be provided to ETCs that did not “win” the auction, and if so, what level of support should this be? Would individualized support result from the respective bids of the winners, or by some other process? If multiple winners are preferred, is it desirable to have separate auctions based on the means of delivering supported services to be provided (e.g., broadband, mobile, fixed)? Should a bidder be required to be an ETC before offering a bid? We seek comment on how supported services should be specified for purposes of conducting auctions. How can competitive and technological neutrality be achieved through auctions? Specifically, how can supported services be defined in a way that permits all providers a fair opportunity to compete for support?

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<sup>16</sup> See 47 U.S.C. §214(e).

<sup>17</sup> See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (1999).

12. Selection of Winning Bids. We seek comment on how winning bids should be selected. Specifically, we seek comment on whether winning bidders should be selected based solely on price, or whether other factors should inform the decision. For example, if two bids each meet all minimum requirements, must the lower bid be selected, even if the higher bid includes higher quality of service or greater service capabilities?

13. Treatment of the Incumbent LEC. The universal service program provides support to both incumbent local exchange carriers (LECs) and competitive ETCs. Accordingly, we seek comment on how auctions generally, or any proposals specifically, should treat current recipients of universal service funds in an area. For example, how would an auctions mechanism avoid stranded investments? If an area is identified as suitable for an auction, is a transition period necessary before the auction result takes effect? If so, how long is appropriate and for what reasons? Is it appropriate to treat incumbent LECs differently than other ETCs in an area? If the incumbent currently receives support, is a transition necessary? If so, for how long? What is the appropriate regulatory treatment for any ETC that does not win support? Do ETC obligations continue? How does this fit with the requirements in section 214(e) of the Act?<sup>18</sup> Is different attention required if the incumbent LEC does not win support? Would such an incumbent LEC be relieved of certain pricing, service, carrier of last resort, or other regulations?

14. As described above, we seek comment on the general policy and legal questions, as well as the practical questions about how auctions might work as a part of the universal service program. Therefore, we encourage parties to submit specific, comprehensive auction proposals, in addition to auction proposals that have been referenced in past Commission universal service proceedings.<sup>19</sup> Attached to this Public Notice is an example of an auctions proposal that includes some of the level of detail that we are seeking from interested parties.<sup>20</sup>

### III. PROCEDURAL MATTERS

15. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. **Comments should be filed in WC Docket No. 05-337 only.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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<sup>18</sup> See 47 U.S.C. §214(e).

<sup>19</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8947-51, paras. 319-25. Although the Commission sought comment on using auctions for tribal areas in 1999, it did not resolve the issues related to auctions raised in that Notice when it adopted measures to promote subscribership and infrastructure deployment on tribal lands. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21217-24, paras. 93-114 (1999) (*Unserved/Tribal Areas NPRM*); see generally *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

<sup>20</sup> The proposal in the attachment is solely for the purpose of encouraging a constructive dialogue about how a universal service auction might be structured and operate, not as a final proposal. The attachment is not endorsed by any member of the Joint Board.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

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

17. For further information regarding this proceeding, contact Ian Dillner, Office of

Commissioner Tate, at (202) 418-2500, or Thomas Buckley, Wireline Competition Bureau, (202) 418-7400.

## **ATTACHMENT**

### **Discussion Proposal**

#### **I. PURPOSE**

This option proposes a cooperative federal-state program to introduce market forces into the universal service program by requiring competitive bidding for support. By limiting the number of supported networks in each area and selecting the most cost-effective proposals, the burden on customers providing the support would be minimized.

#### **II. SERVICES AND NUMBER OF ETCS SUPPORTED**

Section 254(b) of the Communications Act requires that consumers in rural areas have access to services, including advanced telecommunications and information services that are reasonably comparable to those available in urban areas. The current universal service program directly or indirectly supports traditional telephone service, broadband internet access, and wireless mobility. These would be the services supported in the competitive bidding option. No more than two ETCS would be supported in each area. Both ETCS would be required to support basic voice. One would be required to provide broadband internet access in addition to voice service and the other would be required to provide wireless mobility service in addition to voice service.

#### **III. UNIVERSAL SERVICE REQUIREMENT**

An ETC would be required to provide service universally, unless it obtained a waiver. Its own network would have to be capable of providing service to 90% or more of the households in the area supported, although this requirement could be phased in during the contract period. The ETC would serve the remaining households, whenever possible, by purchasing and reselling the most nearly equivalent service available from another vendor. For example, the broadband ETC would be required to purchase cable or satellite service where available and resell it to consumers not accessible by its own network at the same price charged for its own service. This would include a requirement to install, maintain, and lease any required terminal equipment.

#### **IV. CONTRACTS WITH ETCS**

All proposals would be evaluated for compliance with the requirements in the RFP. A winning and runner-up bid would be selected on the basis of multiple criteria, not limited to price. Contract negotiations would then begin with the winner. If an acceptable contract were not agreed to within 90 days, the universal service program representative would have the option to enter into negotiations with the runner-up, in addition to or in lieu of continuing negotiations with the winner.

The FCC would establish rules governing the contents of these contracts and, to the extent possible, standardize the provisions. The contracts would be for a ten-year term and would specifically address all of the requirements contained in Section 254 of the Communications Act, viz. service quality, comparable rates, services offered, etc.

The contract would require the ETC to relinquish or share at fair market value any essential facilities or rights in the served area at the end of the contract term without which a winning bidder for a subsequent term would not be able to provide universal service. If necessary, an arbitrator would make the



determination.

The contracts would require performance bonds and provide for penalties in the event of non-performance; repeated violations could result in early contract termination and the ETC would be prevented from rebidding.

## **V. PHASE-IN**

Incumbent ETCs—could elect an option to be treated as the winning broadband network bidder in their current service areas for the first ten year term. For this purpose, the service area would be the operations of the company in a state. They would have to meet all of the ETC requirements in return for annual universal service support equal to the support they actually received for the most recent full year plus an allowance for inflation. In the event that a suitable contract could not be agreed to between the rural ETC and the entity representing the universal service program, the normal competitive bidding process would be conducted for the area.

Competitive ETCs (i.e., wireless mobility providers)—would be subject to the normal competitive bidding process immediately.

## **VI. UNIVERSAL SERVICE GEOGRAPHIC AREAS**

The basic geography would be counties or equivalent, subject to an exception for rural incumbents described below. Bids could be for a single county or for groups of counties at the bidder's option. The bid could be made contingent on receiving support for the entire group of counties.

Rural Incumbent Carrier Exception—Incumbent carriers who meet the definition of a rural telephone company in the Communications Act could make bids covering their current franchised service area notwithstanding the fact that they do not serve entire counties.

## **VII. NON-COMPETITIVE BIDDING**

If in the opinion of the responsible entity the bidding for a particular area was not competitive, it should have the right to reject all bids and enter into negotiations with any potential provider, including companies that did not bid. The receipt of only one qualified bid would be considered prima facie evidence of non-competitiveness.

## **VIII. THE ROLE OF STATE COMMISSIONS**

States should be the responsible entity for recommending to the FCC the choice of the winning and runner-up bidder. Upon approval by the FCC, they would also be responsible for negotiating the contract with the winning or runner-up bidder, as described above. This contract would be subject to FCC approval.

The State Commission would also be responsible for ongoing contract administration, and, when necessary, applying sanctions. All State commission decisions would be subject to FCC review.

This role would not involve receiving or disbursing universal service funds, a function that would continue to be performed by USAC or a successor designated by the FCC.