

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

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

RECOMMENDED DECISION

Adopted: November 19, 2007

Released: November 20, 2007

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

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I. INTRODUCTION

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

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

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

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

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

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

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

II. BACKGROUND

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

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

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

³ *Id.*

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

⁵ *Id.* at 4294, para. 88.

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

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

⁸ See *id.* at 16094, paras. 36-37.

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

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

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

III. FUNDAMENTAL HIGH-COST DISTRIBUTION REFORM

A. Scope of Reform

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

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

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

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

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

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

¹⁵ *Id.*

¹⁶ See *id.* at para. 1.

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

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

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

1. The Broadband Fund

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

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

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

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

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

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

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

2. The Mobility Fund

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

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

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

3. The Provider of Last Resort Fund

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

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

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

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

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

B. Funding Levels, Caps and Transition

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

²¹ See 47 C.F.R. § 54.305.

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

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

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

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

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

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

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

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

²⁵ See, 47 C.F.R. § 54.307.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. CETC Reform and the Broadband and Mobility Funds

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

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

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

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

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

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

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

D. LEC Reform and the POLR Fund

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

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

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

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

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

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

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

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

E. Partnership with States

1. States' Roles and Responsibilities

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

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

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

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

³⁸ See 47 U.S.C. §214(e).

³⁹ See 47 U.S.C. §254(f).

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

⁴¹ *Qwest I*, above, at 1203.

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

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

⁴⁴ That speed may differ from the current working definition that the Commission currently utilizes. Currently, the FCC considers “high speed” services to be those capable of transmission rates of 200 Kbps in at least one direction and “advanced services” to be those capable of transmission rates of 200 Kbps in both directions. FCC, “*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and* (continued....)

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

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

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

2. State Matching Funds

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

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

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

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Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,” CC Docket No. 98-146, Second Report, 15 FCC Rcd. 20,913, para. 11 (2000).

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

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

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

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

F. Avoiding Duplicate Support

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

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

G. Supported Services and Carrier Eligibility

1. Services Supported By Universal Service - Broadband

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

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

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

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

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

⁵² See 47 U.S.C. § 254(c)(2).

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

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

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

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

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

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

⁵³ See 47 U.S.C. § 254(c)(1).

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

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

⁵⁶ See 47 U.S.C. § 254(c)(1).

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

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

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

2. Services Supported By Universal Service – Mobility

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

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

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

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

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

⁶⁰ Residential line counts are not separately reported.

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

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

3. Carrier ETC Designations and Support Eligibility

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

IV. ISSUES FOR FURTHER COMMENT

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

A. Allocating Funds among States

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

B. Identifying Unserved Areas

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

information on which areas are without service, as well as potential issues which could impair such efforts. The Commission should also seek comment regarding under-served areas that may be receiving marginal or unacceptable levels of mobility or broadband service. Commenters should address the appropriate means to ensure that customers in those areas have an equal opportunity to obtain adequate and reliable mobility and broadband service.

C. Defining Broadband

72. The Joint Board recommends that the Commission seek comment on the appropriate level of broadband service for which universal service support would be eligible. The Commission has already sought comment on the current definition of broadband.⁶¹ We note that the current Commission definition of “high speed” data transmission, 200 kilobits per second, has been in place for years. While that standard was once useful, we now believe that a more rigorous requirement may be justified, closer to the capacities more typical of the most common national broadband plans. If so, an objective method would be needed to determine such upload and download capacities, and a regular review would be necessary.

D. Impacts on Lifeline/Link-Up

73. The impact of the proposed high-cost fund transition on Lifeline and Linkup initiatives is also an important consideration. The Joint Board recommends that the Commission seek comment on whether Lifeline/Link-Up customers may be negatively affected by any aspects of the transition to the new three fund approach. Parties should feel free to include specific proposals to remedy any infirmities created by a three fund approach.

E. Implementation, Transition, and Review

74. The addition of a new Broadband Fund and the transition from current wireless competitive ETC allocations to the new Mobility Fund will necessitate a careful and deliberate implementation process. The Joint Board recommends that the Commission seek further comment on how best to create as clear a transition path as possible for all providers. Specifically, comment should be sought on how to implement the transition of support from current areas that no longer need support, to areas unserved by either broadband or mobility providers, including timelines. Specifically, we recommend seeking comment on whether a five-year transition is desirable.

75. The Joint Board also believes there should be a future review of the transition process, and the results of support allocations under the new funds. At such a date it may be appropriate to make refinements to funding mechanisms and distributions. The Commission should seek comment on whether a review should occur after three or five years, and what issues should be addressed during this review. For example, should specific parameters be used to determine the effectiveness of fund support to unserved areas? On what aspects should the review be focused?

F. Compliance with Federal Law

76. The Joint Board recommends that the Commission seek comment on any aspects of our three funds approach which would require reconciliation with federal law. The transition from existing

⁶¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,*” GN Docket No. 07-45, Notice of Inquiry, FCC 07-21 released Apr. 16, 2007.

support mechanisms to more appropriate mechanisms serving high-cost and unserved areas will create some difficulties for carriers and possibly customers. The Commission should seek comment on specific policy areas requiring adjustment to comply with applicable federal regulations.

V. RECOMMENDING CLAUSE

77. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to Sections 254(A)(1) and 410(c) of the Communications Act of 1934 as amended, recommends that the Commission adopt recommendations set forth herein concerning comprehensive reform for the high-cost portion of the universal service fund.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

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

Today, the Federal-State Joint Board on Universal Service recommends to the Commission a number of important proposals to address the structure of the high-cost universal service program. I want to thank my colleagues on the Federal-State Joint Board for their contributions and efforts to improve the universal service fund. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have similar opportunities for communications as other areas. I believe our universal service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

I support today's Joint Board recommendation to revise the current definition of supported services to include broadband Internet access service. Congress did not envision that services supported by universal service would remain static. Instead, it views universal service as an evolving level of communications services. With each passing day, more Americans interact and participate in the technological advances of our digital information economy. Deployment of these telecommunications and information technologies support and disseminate an ever increasing amount of services essential to education, public health and safety. A modern and high quality communications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the economic, educational, and healthcare opportunities available on the network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to communications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services.

The broadband program recommended by the Joint Board is tasked primarily with disseminating broadband Internet access services to unserved areas. This is a laudable goal as we work to make broadband services available to all Americans across the nation. As proposed, the program would have limited resources. Additional support for this broadband program could be made available by requiring competitive ETCs to demonstrate their own costs and meet the support threshold in the same manner as rural providers.

I am also pleased that the Joint Board supports reverse auctions as a mechanism by which the new broadband and mobility funds would be administered. I continue to support the use of reverse auctions to determine high-cost universal service funding for eligible telecommunications carriers. I believe that reverse auctions provide a technologically and competitively neutral means of restraining fund growth and prioritizing investment in rural and high-cost areas of the country.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

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

I am honored to serve as Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board). During my tenure my goal has been to encourage thoughtful discussion among my colleagues and facilitate consensus whenever possible. I have striven to keep our work on a timetable paced to fulfill our statutory role in a thoughtful and deliberative manner. Along with the other Joint Board members, over the past six months I spent countless hours holding regular meetings and conference calls, issuing notices and referrals, and reviewing comments. I would be remiss not to mention that one of the most knowledgeable and articulate Joint Board members, Mr. Billy Jack Gregg, former Consumer Advocate of West Virginia, retired in September, and that his expertise was invaluable. He will be sorely missed, but many of his original concepts are still apparent in this decision. Certainly, all of the Joint Board members deserve praise for their commitment to the in-depth study of these complex issues, their desire to positively affect public policy and to make decisions in the public interest. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

I fully support the principles of universal service that this country has recognized for decades and Congress codified in Section 254(b) of the Telecommunications Act of 1996 (1996 Act): *to promote the availability of quality services at just, reasonable and affordable rates, to increase access to advanced telecommunications services throughout the Nation, and to advance the availability of such services to all consumers.*

In accordance with the process envisioned by Congress in the 1996 Act, in 2002 the Commission asked the Federal-State Joint Board on Universal Service (Joint Board) to review certain rules related to the high cost universal service support mechanisms and recommend any reforms to the Commission to ensure that these principles are advanced. The high cost fund is the largest universal service program, and the one most often thought of when someone refers to universal service. This is an important program and its purpose to connect all Americans to the telephone system has over the years permitted telephone connections to reach even those in rural and remote parts of our nation at a reasonable rates.

The Joint Board's Recommended Decision is an initial step on the road to more comprehensive long term reform of the Universal Service Fund. I support the recommendation to eliminate the identical support rule. I also agree with the Recommended Decision that reverse auctions could offer advantages over current high-cost distribution mechanisms. The Joint Board sought and received numerous in-depth comments and several creative proposals for reverse auctions, and I look forward to exploring this issue further. I also look forward to examining whether some type of cost-based mechanism is an appropriate replacement methodology for calculating support for eligible telecommunications carriers (ETCs) in high cost study areas.

While I support some of the recommendations, others raise questions that need to be addressed in more depth. For instance, is it prudent to create three new government administered funds instead of reforming the existing high cost fund? It is clear that we must more clearly target and direct the funds than is done at present, as Congress in Section 254 of the 1996 Act specifically intended to assist Americans who live in "rural, insular and high cost areas." Most citizens know that when the government starts creating new funds, more often than not it ends up impacting their pocketbooks. Moreover, does it make economic sense to provide ongoing support for three services that ultimately compete for the same

customers? A problem we recognized but did not cure in this Recommended Decision. Indeed, this Commission has worked to help ensure technological and competitive neutrality in communications markets, that is, to the extent possible, all providers of the same service must be treated in the same manner regardless of the technology that they employ. For instance, the Commission has adopted the same regulatory approach for broadband Internet access service provided over cable systems, telephone wires, power lines, and wireless platforms, to help ensure a level playing field among competing platforms.

I also believe that many questions remain with respect to two of the new funds: the Broadband Fund and the Mobility Fund. Should these new funds be more targeted, limited to unserved areas or used to enhance substandard service and/or to provide continued operating subsidies? What is the source of funding for the proposed \$300 million and when will it accrue? What will the transition plan and period be? How should the proposed Broadband Fund relate to other current existing government programs such as those administered by the federal Department of Agriculture, the (14) fourteen broadband bills that are currently pending in Congress, and the hundreds of state and local projects that have been undertaken with state and local taxpayer dollars? While we all support the expansion and deployment of broadband to every corner of this Nation, we must do so in a way that is efficient, targeted and fiscally responsible.

Growth for rural incumbent local exchange carriers (ILECs) for high cost loops has been flat or has even declined since 2003. I question whether it is prudent to penalize these carriers since they are not responsible for the growth in the high cost fund and ILEC high-cost support is already capped or subject to a targeted limit. In many cases, these carriers are already providing broadband to rural Americans.

As stewards of public funds, we must remain mindful that it is consumers who ultimately pay universal service contributions, and any increase in the fund size will increase the burden on consumers. Therefore I respectfully approve in part and concur in part from the Recommended Decision.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART

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

Five years ago I dissented to a recommendation by a different Federal-State Joint Board on Universal Service that concluded advanced services should not be eligible for Universal Service support and that broadband, specifically, should not be included in the definition of Universal Service. Today, the Joint-Board happily reverses course and finds that broadband does indeed meet the statutory criteria of section 254 for inclusion as a supported service and that it is in the public interest to do so. I am enormously pleased to approve of this historic finding by the Joint Board because it establishes for the first time the right mission for Universal Service in the 21st century. This may well be the most important single action a Joint Board has ever taken.

Universal Service is a critical pillar of the Telecommunications Act of 1996. Congress concluded many years ago that a core principle of federal telecommunications policy is that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress wisely anticipated that the definition of Universal Service would evolve and advance over time. The Joint Board's recommendation to include broadband in the definition of Universal Service finally puts the program in sync with the intent of the Act.

I must express disappointment, however, that once the initial decision to include broadband was made, councils of caution found their way to the fore. Instead of bold recommendations to implement our historic decision, the Joint Board only suggests that \$300 million of federal dollars be dedicated to this challenge. And none of this would be new money, but rather a mere reshuffling of dollars among different pots.

That's like fighting a bear with a fly swatter. Bringing broadband to the far corners of the nation is the central infrastructure challenge our country confronts right now. It is no different than the challenges previous generations of Americans faced to build the essential infrastructures of *their* times—the roads, turnpikes, bridges, canals, railroads and highways of centuries past. Broadband is *our generation's* infrastructure challenge, but we have fallen behind other nations in getting high-speed services out to our people. We have put ourselves in an untenable competitive position by denying the tools of high-speed opportunity to most Americans. Our challenge, then, is to think, plan and act boldly. I am disappointed that the Joint Board did not go farther in its recommendation.

To put it in context, in the mid-1950s Congress looked to complete the interstate highway system in 10 years at a cost of \$27 billion, which in 2005 dollars amounts to \$196 billion. While no one is suggesting that such a level of government support be invested here, I believe the Joint Board has basically closed its eyes to the level of challenge we face. It should have struck a better balance between our collective interest in having a sustainable fund for the future and the desire to ensure that high-speed broadband reaches all Americans. By recommending a cap of the fund at current levels, the Board cripples the ability of USF to support broadband in a credible manner. Nonetheless, today's recommendation to include broadband *is* important in and of itself. It's more than a small step forward, but it's not the giant leap for mankind that we need.

With regard to comprehensive reform, I believe there are a variety of ways to promote Universal Service and at the same time ensure the sustainability and integrity of the fund. I continue to believe that

much would be accomplished if the Commission were to include broadband on both the distribution *and* contribution side of the ledger; eliminate the Identical Support rule; and increase its oversight and auditing of the high-cost fund. Additionally, Congressional authorization to permit the assessment of Universal Service contributions on *intrastate* as well as interstate revenue would be a valuable tool for supporting broadband. Today the Joint Board makes an assortment of recommendations of its own. Some I agree with, some I do not, and some merit further discussion. For example, the Joint Board recommends three funds that are tailored to supporting the missions of voice, mobility and broadband. This seems a creative and reasonable approach. The Joint Board also recommends the elimination of the Identical Support rule, places renewed emphasis on the federal-state partnership in administering the Fund, and suggests that the FCC's current definition of broadband is antiquated. I agree with all of these decisions.

At the other end of the spectrum, the Joint Board focuses almost exclusively on supporting unserved areas, without sufficiently taking into account the fact that there are many underserved areas of the country where residents receive little service and, very often, service at levels that are the laughing stock of the rest of the world. The Joint Board also concludes that reverse auctions may be the appropriate method for distributing funds, despite the many unanswered questions regarding such a bidding approach on quality of service and provider of last resort obligations, not to mention many other concerns that have been raised about this type of bidding.

I concur in part because of the concerns I have enumerated here, plus others that I will discuss more fully during the pendency of these recommendations before the FCC. But it is time to get on with fixing Universal Service. While I have made clear that I do not agree with all of the recommendations that have been made, it is crucial to get a Joint Board recommendation to the Commission. This alone is a signal accomplishment, one many years in the making, and one that I have pushed for since becoming a Joint Board member. At least and at last we have tackled many of the issues, charted a direction for the future, and moved a recommendation to the Commission for follow-through action. While we may have been deflected from our important work for a time by disputes over a CETC cap and reverse auctions, in the end we decided to act in a more appropriately comprehensive fashion.

A new chapter begins now. I hope the FCC will deal with this recommendation expeditiously and comprehensively. This is no place for piecemeal actions. We need to think expansively and creatively about implementing the path-breaking broadband decision that has now been presented to us. This country desperately needs a comprehensive broadband strategy. The Joint Board recommendation provides the opportunity for the FCC to move toward such a strategy, working with our own rules and making suggestions to Congress in those areas where legislative action may be required to ensure such a strategy.

I wish to thank my Joint Board colleagues for their hard work on this proceeding. Chairwoman Tate and Chairman Baum should take merited pride in actually sending a recommendation forward. All of my state colleagues worked with tireless energy and determination to get this job done, and their expertise, experience and vision make today's action possible. The Commission and the country are fortunate to have such people to call upon. The Joint Board's staff worked long and hard to bring this recommendation to fruition, and their creativity and perseverance often made the critical difference. A final bow to our recently-retired colleague, Billy Jack Gregg, who stayed long enough to get us on-course. His ability to see both the forest and the trees of Universal Service is perhaps unmatched, and his imprint is writ large in our recommendation to bring Universal Service into the twenty-first century.

**STATEMENT OF
COMMISSIONER RAY BAUM
APPROVED/CONCUR IN PART**

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

I support the Recommended Decision (RD) of the Federal-State Joint Board on Universal Service. Its provisions contain fundamental forward-looking reforms that deserve the FCC's serious consideration. The RD proposes significant changes to the High Cost Fund component of the Universal Service Fund (USF). It does so by clearly directing funds to truly high cost and unserved areas, by expanding and redefining the scope of supported services to explicitly recognize mobility and broadband, and by increasing accountability to better benefit the consumers who pay to support the fund.

The RD recommends the FCC change the basic paradigm of High Cost support by creating three distinct categories of High Cost funding. This approach appropriately recognizes key distinctions between traditional wireline telephone services (the Provider of Last Resort or POLR Fund), wireless mobility services (the Mobility Fund), and high speed Internet access (the Broadband Fund). I am convinced that the best course is to make these distinctions explicit rather than continue to muddle support for each within traditional High Cost funding. This is particularly important for reforming wireless CETC support. Moving wireless CETC funding into a new Mobility Fund responds effectively to the concern that current High Cost support to wireless CETCs primarily subsidizes competition where competition already exists. The new Mobility Fund targets support toward the task of building infrastructure to bring wireless service to the unserved areas of rural America. As wireless build-out is completed across the country, the Mobility Fund should decrease in size over time.

The RD jump starts deployment of broadband to unserved areas by recommending the FCC establish a new Broadband Fund. All states would be eligible for a base allocation of funds. Supplemental allocations would match state efforts similar to Connect/Kentucky. This, along with the other recommendations in the RD, help ensure that monies are used effectively and efficiently. The Joint Board debated whether to use "unserved" or "under-served" to describe the areas to be targeted for infrastructure build-outs under the Broadband Fund, and under the Mobility Fund as well. In my mind, this discussion is largely over semantics. What constitutes a qualified area should be left to the individual states to decide on a case by case basis, within FCC guidelines. The key point here is that states will make these decisions within their fixed dollar allocations. Leave it to each state to decide whether it is a priority to spend some broadband dollars on areas where service is available, but not reliable. The state may have very important public safety reasons for doing so. That decision will neither burden the Broadband Fund nationally nor reduce funding to any other state.

The new Broadband Fund will greatly accelerate broadband access in rural areas served by the non-rural incumbent local exchange carriers (non-rural ILECs). The new fund will also assist rural ILECs (RLECs) who are caught in the "parent trap" when purchasing service areas from non-rural ILECs. The idea is to direct funds to those portions of the country where broadband deployment is lagging, and where Rural Utility Service (RUS) loans and other types of support are not available. The RD points out that current High Cost support mechanisms have allowed RLECs to more effectively deploy broadband to their consumers. RLEC access to low-interest RUS loans helps to fill any gaps.

As for overall funding, I support the recommendation to cap High Cost funding at \$4.5 billion for the near term. The RD appropriately exempts from the cap any additional funding that may be required when the FCC implements changes to comport with the 10th Circuit decision regarding the non-rural

mechanism. The RD supports capping the CETC side of the fund at \$1.0 billion based on year-end 2006. However, we need to acknowledge that a \$1.0 billion cap on CETCs is unlikely to happen, since the FCC appears to be moving toward a somewhat higher cap amount based on fund numbers at the end of June 2007. This June date is consistent with the FCC's approval of the Alltel transaction terms. As a result, the CETC cap is more likely to be in the neighborhood of \$1.15 billion.

While I support an overall cap on High Cost funding, I have practical concerns about capping the ILEC portion of the fund. First, capping the separate funds within the ILEC portion as recommended in the RD seems unnecessary. The ILEC side of the High Cost Fund is not growing and is not expected to do so in the near future. Second, I anticipate the ILEC portion of the fund will be subject to some adjustment during the next five years as a consequence of intercarrier compensation reform. The RD should have taken this into account.

In addition to these practical concerns, the RD did not meet my expectations when it failed to address some basic inequities in how High Cost support is distributed among non-rural ILECs and among the states. Inequitable distribution of support to states has been compounded by the equal support rule for CETCs. The exponential growth in the CETC portion of the fund over the last 6 years has gone to states where per line reimbursements to ILECs are the highest and where the politics are the most favorable. As a result, by the end of 2006, the top 10 states, exclusive of the insular jurisdictions of Alaska and Puerto Rico, received almost 45%, or over \$450 million, of the \$1 billion CETC support. Other similarly situated rural states received less than 10% of that amount. Mississippi (\$140m), Kansas (\$55m), Wisconsin (\$51m), and Washington (\$44m) lead the way with \$290 million. Idaho (\$0), Missouri (\$.1m), Utah (\$.3m) and Tennessee (\$1.5m) received the least with \$1.9 million. It is clear that the current distribution system is broken.

The current FCC rules have resulted in a vast misallocation of public dollars to the benefit of only a small portion of rural consumers, and to the detriment of the rest. The RD missed an opportunity to partially correct this misallocation when it failed to recommend replacing current support calculations based on statewide averages with calculations at the wire center level. Statewide averaging relies on implicit subsidization of rural rates by urban consumers. This kind of subsidy is not sustainable in an increasingly competitive environment. A change to a wire center basis for calculation of support would have targeted support where it is needed on a more granular basis. This could have been accomplished without increasing the size of the fund simply by reallocating existing support.

Again, I support an overall cap on the High Cost Fund of \$4.5 billion, including the new Broadband Fund. The Joint Board discussed funding the Broadband Fund at \$300 million dollars within the \$4.5 billion cap. This \$300 million dollar figure was originally projected to be available from the savings gained by capping the CETC portion of the fund at the 2006 year-end level (i.e., \$1 billion) as set forth in the Joint Board's original CETC cap recommendation in May of this year.

However, it now appears likely that the FCC will adopt a cap on CETC funding based on levels at the end of June 2007. This would eliminate about \$150 million, or half the savings, that would otherwise have been available for the Broadband Fund under our proposal. If the current collection rate is maintained through the end of 2008, probably the earliest date the fund could be implemented, the remaining \$150 million needed to fully support the Broadband Fund at \$300 million would be available under the \$4.5 billion cap by the end of 2008. In subsequent years, broadband funding could be supplemented by as much as \$150 million per year, subject to the cap and within the current surcharge. By the end of 2009, approximately \$450 million could be accumulated and available for broadband deployment. At that point the FCC should review the collection mechanism to determine whether additional funding is needed. As broadband build-out is completed across the country, the Broadband

Fund should decrease in size over time.

Finally, the RD leaves several details of the implementation of its fundamental reform concepts to the FCC for further clarification. This is entirely appropriate. At a policy level the RD recommends major changes by designating two new qualifying services, creating two new funds, imposing caps on the respective fund(s) and fundamentally reforming how at least 29% of the current fund is distributed. I urge the FCC to put the RD out for comment as soon as possible with the goal of instituting the recommended reforms by June of 2008.

**STATEMENT OF
CHAIRMAN LISA POLAK EDGAR**

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

Today this board sets in motion a plan to bring much needed real reform to the universal service high-cost fund. I support the Recommended Decision for a permanent cap to the current and future high-cost fund mechanisms at the projected fourth quarter 2007 level of approximately \$4.5 billion. If implemented by the FCC, the Recommended Decision will put an immediate halt to unfettered growth in the fund and provide the opportunity for fundamental and much needed reform. This is a victory for consumers everywhere who rightfully expect their federal government to be fiscally responsible with money collected from their monthly telephone bills.

I strongly support the FCC developing a unified Provider of Last Resort (POLR) mechanism. This is an opportunity to make real strides to ensure that funding for wireline POLRs is targeted to areas of need and distributed in a way that is more efficient, accountable, and fiscally responsible as envisioned by the Telecommunications Act of 1996. The current support mechanisms must be reformed to reduce duplicative funding to multiple providers and to better target financial support.

I am pleased that meaningful discussion has resulted in a Recommended Decision that will result in substantive change. However, I have lingering concerns that we have not accomplished all that can and should be done. As a Joint Board member from a net contributor state, I have concerns that expanding the scope of the fund to include broadband and mobility could inadvertently increase the overall fund size. While I recognize the importance of broadband Internet access and the importance of deploying it to unserved areas, I am wary of what lies beyond that initial objective and what financial impacts such deployment may have on consumers. I view these funding mechanisms as intended to facilitate service to unserved areas and not as long-term entitlements.

Broadband technology as a consumer product has been growing steadily. Actions should not be taken that would interfere with market forces already at work or discourage current state efforts which are helping to bring broadband to unserved areas. Equally important, we must be mindful to not unduly burden consumers in states that have already made concerted efforts to foster deployment of these new technologies. As deployment becomes more widespread and as advances in technology lower service costs, a reduction in the universal fund size should occur.

The Joint Board process requires that some concessions be made by each member to reach a consensus and majority support. While I support the Recommended Decision, I would have preferred that more emphasis be placed on substantive reform of current mechanisms prior to the adoption of the cap. It is likely that the complexity of current funding mechanisms and the funding of multiple ETCs has lead to both a fund size greater than is necessary to achieve the stated objectives of the Telecommunications Act of 1996 and duplicative funding to multiple providers. By capping the fund at current levels we may be continuing an excessive burden for telecommunications consumers going forward. I urge all participants to remain focused on the universal service objectives of availability and affordability while remaining mindful of fiscal responsibility.

**STATEMENT OF
COMMISSIONER LARRY S. LANDIS**

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

The proposals contained in today's Recommended Decision provide the framework for significant and much-needed reform of the high cost universal service program. Whether the promise inherent in those reforms is realized depends almost exclusively on what happens next, and on how the details of the framework outlined here may be implemented. Those processes and mechanisms must be weighed with great care, because in any public policy decision the odds are reasonably high that when we get to granular implementation the end result will be to produce outcomes which are unintended, undesired, or both.

The level of participation among stakeholders in this proceeding, together with the robustness of the comments and replies, as well as the ex parte communications, has contributed materially to the thinking leading up to today's Recommended Decision. While it is to be expected that the input of stakeholders will reflect their respective interests, for the most part they were thoughtful, productive, constructive and even imaginative, as opposed to reflecting an entitlement mentality which has at times clouded this ongoing debate.

There are four sections of this Recommended Decision which I believe warrant brief comment, because of the critical importance of getting it right when it comes to actual execution of the recommendations set forth here.

The first is the discussion of issues related to current mechanisms as they impact incumbent LECs (participants in the POLR fund, as proposed).¹ Competition is a reality today not only in our urban centers, but also increasingly in the small towns, villages and rural communities which are the population cores of rural areas across the country. It is essential that POLR support be matched as closely as possible to the high cost exurban ("truly rural") areas. This requires adoption of improved analytical and modeling techniques to examine those costs at a far more granular level than has been heretofore been possible. Failure to align support with costs as closely as possible could put rural service at risk as surely as the unmanaged ballooning of the high cost program.

An outgrowth of that concern is a recognition that rural is rural, and the time for distinguishing among RLECs, midsize companies and the largest LECs is past. Just as telecommunications policy should be technologically neutral, it should be neutral when it comes to providing appropriate support to those residing in high cost areas, regardless of the corporate logo or size of the provider delivering the service.

Second, great care and attention must be given to the method by which a transition from the existing, increasingly dysfunctional mechanisms to the proposed new Funds is effected. In the Recommended Decision, appropriate attention is given to the importance of effecting the transition over time, to give providers the time required to adjust their business models to account for shifts in emphasis and process. Too frequently, particularly when it has come to communications policy, remediation has taken the form of a "flash cut" to a new and presumably better framework.

¹ See paragraphs 19-23 passim, esp. paragraph 22.

That said, virtually nothing is said in this recommendation about the transition mechanism itself. That process should be guided by the first principle in the Hippocratic oath: “Do no harm.” Or if that is not possible, close attention should be given to minimizing the harm which occurs. A great deal has been said and written, including in this Recommended Decision, about the undesirability of continuing “subsidized competition.” We need to recognize that the providers who have benefited from the pathology of the existing system have done so in a manner which is entirely legal, if less than visionary.

It is essential that one provider not be advantaged over others as the proposed modifications to support for competitive, especially wireless, ETCs occur and wireless providers are transitioned to the proposed Mobility Fund.²

Third, it is time for the states to have a stake not only in policy decisions and in the administration of the high cost universal service program, but also to step up to at least a modest role in its funding. As our former colleague Billy Jack Gregg has pointed out, several states which are among the largest net recipients (disbursements less collections) of funds under the federal universal service program do not have a state universal service program or any other program targeted to address issues such as those addressed in this Recommended Decision.

I strongly support the recommendation that state matching funds³ should be a requirement for receipt of maximum funding under the proposed Broadband fund, and further believe comment should be sought on whether it is appropriate to structure all three funds in that manner, perhaps consistent with ability (but independent of political will) to pay for those states seeking to maximize the funds allocated to service areas within their boundaries.

Fourth, I concur in the view of my colleagues who support redefinition of supported services to include broadband, employing a mechanism such as that outlined in this recommendation. It is beyond debate that there are those areas in which buildout is sufficiently costly that no business case can be made for buildout, regardless of the technology under consideration, and it is to those areas I would expect the broadband dollars would be primarily directed.

An approach which draws upon the expertise of the states and which follows a logical progression such as is outlined in this Recommendation,⁴ relying primarily on the private sector for addressing unserved areas⁵ and utilizing funds from the Broadband Fund as a “funding source of last resort” will best and most efficiently reach the goal of ubiquitous broadband availability. Given that many states still do not have an accurate assessment as to precisely how widely available broadband is, and where it is and is not available, enthusiasm should be tempered by a degree of caution. I support the initially incremental approach which is contemplated by a \$300 million initial funding level. I hope that thereby we can avoid the temptation to unnecessarily throw resources at a need before its scope has been clearly and precisely defined.

It may be appropriate to seek input into the latent barriers to achieving more pervasive broadband use. Those who are without computers, whether by choice or circumstance, are still largely precluded from robust broadband usage. We also need to take into consideration those who have made what, for

² See esp. paragraph 27.

³ See paragraphs 50-52.

⁴ See esp. Paragraph 54

⁵ Such as the community-based demand development program which is the core element of the Connect Kentucky and Connected Nation model

them, is a rational decision that broadband is not a service they need or want, no matter how widely available and no matter what the cost.

**STATEMENT OF
COMMISSIONER JOHN D. BURKE**

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

The key universal service objectives of the 1996 Act are to provide rural areas with telecommunications services that are reasonably comparable to those available in urban areas, and to provide them at prices that are reasonably comparable to prices in urban areas. In recommending three separate high-cost funds, this Recommended Decision establishes a very different path to those goals. I support this change, believing that the proposed system would be more effective at achieving the objectives of the Act and more efficient at conserving resources.

I congratulate my fellow Joint Board members for their engagement in a collective process and their willingness to compromise. Each of us had to make substantial compromises, but the result is a stronger and more balanced recommendation. I also want to particularly thank the Joint Board state staff members who, near the end of our deliberations, were suddenly called upon to be responsible for drafting this document.

The most dramatic change we recommend is to support broadband deployment. Finding adequate funding for that program was our most difficult challenge. Since wireline and wireless voice services already receive support, one might anticipate that adding broadband would increase high-cost support by as much as one-half. I am pleased that we could find a way to offer substantial new funding for broadband deployment while still limiting the increase in fund size to about seven percent. I agree with Commissioner Baum's observation that, whenever the FCC ultimately chooses to impose a CETC cap, by setting that cap at a support level being distributed at an earlier date, it can make some of the existing support immediately available for the Broadband Fund.

I regret that the majority has not set forth more clearly the country's need for ubiquitous high quality mobility services. I applaud our statement that all consumers should have access to at least one carrier that provides a reliable signal. However, we also say that the primary goal of the Mobility Fund is to support new construction. There are many rural areas with weak and intermittent wireless service. I would have preferred to have included areas that have unreliable wireless voice service within the primary purpose of the Mobility Fund. If wireless service is indeed a substitute for wireline service, that wireless service should be, in all instances, reliable. Moreover, a broader definition may be more efficient. Providing support to improve weak signals may well provide more benefits to consumers and promote competition better than building new cell towers in remote unserved areas.

The states' role in this Recommended Decision becomes critical. The obligation to identify areas lacking wireless or broadband service is key to making our decision work. For states to authorize their own funding mechanisms, and thereby facilitate the matching grants proposal, will require effort. Solid models for such funding mechanisms exist in the Connect/Kentucky example and in Vermont's Act 79 of 2006. If adapted to each state's needs, this effort will create a partnership among the federal government, state governments and private industry that will, I believe, be the fastest and most cost efficient method of serving all of our citizens, even those in the areas that are hardest to serve.

**STATEMENT OF
ASSISTANT ATTORNEY GENERAL
PUBLIC COUNSEL SIMON FFITCH**

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

I support the Recommended Decision issued by the Joint Board today because it adopts an important framework for needed reform of high-cost universal service support. The decision establishes appropriate priorities by recommending that the FCC concentrate on reform of existing funding in order to eliminate excessive and unneeded USF support, to better target areas in need, to adjust to evolving technology, and to recognize changing consumer preferences.

The decision adopts a “cap and target” approach which should provide significant benefits for consumers. By recommending a cap on high-cost funding, the decision addresses the problem of uncontrolled growth in the fund size. The USF contribution currently adds approximately 11 percent to the interstate portion of the telecommunications bills of most Americans. This level of burden and the dramatic growth in fund size have become counterproductive to the ultimate goals of universal service. I therefore strongly support the recommendation to cap the fund.

In addition to capping the fund, the decision proposes ways to use existing funds more efficiently and effectively. This is accomplished through the three-fund approach, by recommending the end of the identical support rule, and by other proposed changes. A key aspect of this Recommended Decision is that it proposes a reasonable and practical way to reform existing support mechanisms and to redirect support to broadband and mobility needs, while at the same time keeping control on the overall size of the fund. In this way, the plan proposed in this Recommended Decision keeps the focus where it should be in this process -- on the interests of America’s telecommunications consumers.

Finally, it is important to note the significant role played by former Joint Board member and West Virginia Consumer Advocate Billy Jack Gregg in developing some of the core concepts that are part of the framework adopted in this Recommended Decision. Though his tenure ended September 30 of this year, his thoughtful work has been a valuable contribution to this effort.