

**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

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: January 16, 2008**

**Released: January 29, 2008**

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (60 days after date of publication in the Federal Register)**

By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking (*Notice*), we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) regarding comprehensive reform of high-cost universal service support.<sup>1</sup> We also incorporate into this *Notice* the following two Notices of Proposed Rulemaking (NPRMs): (1) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the "identical support rule;" and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas.<sup>2</sup> We also will incorporate the records developed in response to those Notices of Proposed Rulemaking into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*) (attached as Appendix A).

<sup>2</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*).

## II. BACKGROUND

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition.<sup>3</sup> Section 254(b) of the Act, which was added by the 1996 Act, directs the Joint Board and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.<sup>4</sup> Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates.<sup>5</sup> Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section.<sup>6</sup>

3. 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.<sup>7</sup> 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 provides service.<sup>8</sup> In response, the Joint Board made a number of 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.<sup>9</sup> Instead, the Joint Board recommended that it and the Commission continue to 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.<sup>10</sup>

4. 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*.<sup>11</sup> In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

<sup>4</sup> See 47 U.S.C. § 254(b).

<sup>5</sup> 47 U.S.C. § 254(b)(1), (3), (5).

<sup>6</sup> 47 U.S.C. §§ 214(e), 254(e).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

<sup>8</sup> *Id.*

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (Fed.-State Jt. Bd. 2004).

<sup>10</sup> *Id.* at 4294, para. 88.

<sup>11</sup> 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; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11268-70 (2001) (*Rural Task Force Order*); see also *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending the *Rural Task Force Order* plan).

support mechanisms for rural carriers.<sup>12</sup> The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.<sup>13</sup> 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, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs.<sup>14</sup>

5. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support provided to competitive ETCs to stem the dramatic growth in high-cost support.<sup>15</sup> Specifically, the Joint Board recommended that the Commission cap the amount of support that competitive ETCs may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.<sup>16</sup> The Joint Board further recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost universal service reform.<sup>17</sup> The Joint Board also recommended that the Commission consider abandoning or modifying the so-called “identical support” rule in any reform it ultimately adopts.<sup>18</sup> On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board’s recommendation regarding the interim cap on competitive ETC support.<sup>19</sup>

6. In a companion Public Notice, released May 1, 2007, the Joint Board sought comment on various proposals to reform the high-cost universal service support mechanisms.<sup>20</sup> Specifically the Joint Board sought comment on the following issues and proposals: 1) the use of reverse auctions to determine high-cost universal service support; 2) the use of GIS technology and network cost modeling to better

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<sup>12</sup> 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 (Fed.-State Jt. Bd. 2004).

<sup>13</sup> See *id.* at 16094, paras. 36-37.

<sup>14</sup> 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 (Fed.-State Jt. Bd. 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, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006) (*Aug. 2006 Public Notice*). 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 ETCs. 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 (Wireline Comp. Bur. 2007). Statements, slides and audio transcripts are available at [http://www.fcc.gov/wcb/tapd/universal\\_service/JointBoard/welcome.html](http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html).

<sup>15</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, 8999-9001, paras. 4-7 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*).

<sup>16</sup> *Recommended Decision*, 22 FCC Rcd at 9000-03, paras. 5-13.

<sup>17</sup> *Id.* at 9002, para. 8.

<sup>18</sup> See *id.* at 9002, paras. 8, 12.

<sup>19</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (*2007 Notice*).

<sup>20</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 9023 (Fed.-State Jt. Bd. 2007) (*May 2007 Public Notice*). Comments were due May 31, 2007, and reply comments were due July 2, 2007.

calculate and target support at more granular levels; 3) disaggregation of support; 4) the methodology for calculating support for competitive ETCs;<sup>21</sup> and 5) whether universal service funding should be used to promote broadband deployment.<sup>22</sup>

7. Finally, the Commission recently adopted two Notices of Proposed Rulemaking, which seek comment on specific high-cost universal service comprehensive reform proposals. First, on January 9, 2008, the Commission adopted the *Identical Support NPRM*, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to ETCs and tentatively concludes that the Commission should eliminate the "identical support" rule.<sup>23</sup> Second, on January 9, 2008, the Commission adopted the *Reverse Auctions NPRM*, which tentatively concludes that reverse auctions should be used as the disbursement mechanism to determine the amount of high-cost universal service for ETCs serving rural, insular, and high-cost areas and seeks comment on how to implement reverse auctions for this purpose.<sup>24</sup>

### III. DISCUSSION

8. On November 20, 2007, the Federal-State Joint Board on Universal Service issued its *Recommended Decision* regarding comprehensive reform of high-cost universal service.<sup>25</sup> In this *Notice*, we seek comment on the Joint Board's recommendations contained in the *Recommended Decision*.

9. We also incorporate by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM* into this *Notice*. In addition, we will incorporate the records developed in response to those two items into this proceeding. We thus request that parties who file comments in response to either or both of those items include those comments as part of their filings in response to this *Notice*. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

### IV. PROCEDURAL MATTERS

#### A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended,<sup>26</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice. The IRFA is in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for

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<sup>21</sup> Specifically, the Commission sought comment on "whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support." *Id.* at 9026, para. 7.

<sup>22</sup> *Id.* at 9024-27, paras. 3-8.

<sup>23</sup> *Identical Support Rule NPRM*, para.1. The "identical support" rule provides that a competitive ETC receive the same per-line high-cost universal service support amount that the incumbent local exchange carrier (LECs) receives for the relevant area. *Id.*

<sup>24</sup> *Reverse Auctions NPRM*, para. 1.

<sup>25</sup> *Recommended Decision*, FCC 07J-4.

<sup>26</sup> 5 U.S.C. § 603.

Advocacy of the Small Business Administration.<sup>27</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>28</sup>

## B. Paperwork Reduction Act Analysis

11. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.<sup>29</sup> Public and agency comments are due 60 days after this notice of proposed rulemaking is published in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>30</sup>

## C. *Ex Parte* Presentations

12. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>31</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>32</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.<sup>33</sup>

## D. Comment Filing Procedures

13. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,<sup>34</sup> interested parties may file comments 30 days after publication of this Notice in the Federal Register, and reply comments 60 days after publication of this Notice in the Federal Register. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal:

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<sup>27</sup> See 5 U.S.C. § 603(a).

<sup>28</sup> *Id.*

<sup>29</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

<sup>30</sup> Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

<sup>31</sup> 47 C.F.R. §§ 1.1200-1.1216.

<sup>32</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>33</sup> 47 C.F.R. § 1.1206(b).

<sup>34</sup> 47 CFR §§ 1.415, 1.419.

<http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number referenced. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

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

15. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or [theodore.burmeister@fcc.gov](mailto:theodore.burmeister@fcc.gov), or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, or [katie.king@fcc.gov](mailto:katie.king@fcc.gov).

**V. ORDERING CLAUSES**

16. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403 and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216, this Notice of Proposed Rulemaking IS ADOPTED.

17. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**

**Federal-State Joint Board on Universal Service Recommended Decision**



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
	)	
	)	
	)	

**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,<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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*.<sup>6</sup> 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.<sup>7</sup> The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.<sup>8</sup> 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.<sup>9</sup>

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

<sup>3</sup> *Id.*

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

<sup>5</sup> *Id.* at 4294, para. 88.

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> See *id.* at 16094, paras. 36-37.

<sup>9</sup> 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.<sup>10</sup> The Joint Board observed that high-cost support has been increasing in recent years<sup>11</sup> and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund was in dire jeopardy of becoming unsustainable.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> Further, in September 2007, the Joint Board released a Public Notice<sup>17</sup> 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.<sup>18</sup> The Mobility Fund would be tasked primarily with

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<sup>10</sup> 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*”).

<sup>11</sup> 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.

<sup>12</sup> *Recommended Decision on CETC Caps*, para. 4.

<sup>13</sup> *Recommended Decision on CETC Caps*, paras. 5-14.

<sup>14</sup> *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.

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* at para. 1.

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

<sup>18</sup> 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,<sup>19</sup> and thereafter awarded by designated state agencies to finance particular construction projects or the operations of broadband providers.<sup>20</sup> 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.

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<sup>19</sup> We consider below whether states should be required to provide matching funding.

<sup>20</sup> 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.<sup>21</sup> This can exacerbate the differences in treatment between comparably situated customers.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> We note widespread

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<sup>21</sup> See 47 C.F.R. § 54.305.

<sup>22</sup> 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 (10<sup>th</sup> Cir. 2001) (“*Qwest I*”); *Qwest Corp. v. FCC*, 398 F.3d 1222 (10<sup>th</sup> Cir. 2005) (“*Qwest II*”).

<sup>23</sup> 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.

<sup>24</sup> *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.<sup>25</sup> 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,<sup>26</sup> which is approximately equal to the 2007 level of high-cost funding.<sup>27</sup> 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,<sup>28</sup> 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

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<sup>25</sup> See, 47 C.F.R. § 54.307.

<sup>26</sup> 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*.

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

<sup>28</sup> 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.<sup>29</sup>

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;<sup>30</sup> 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.<sup>31</sup> 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

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<sup>29</sup> 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.

<sup>30</sup> 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).

<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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,<sup>34</sup> 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.

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

<sup>33</sup> 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.

<sup>34</sup> 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.<sup>35</sup> 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,<sup>36</sup> 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.<sup>37</sup>

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.

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<sup>35</sup> See *Recommended Decision on CETC Caps*, at para. 4.

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

<sup>37</sup> *Qwest Corp. v. FCC*, 398 F.3d 1222, 1238 (10<sup>th</sup> 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,<sup>38</sup> and it authorizes states to maintain their own universal service funds.<sup>39</sup> The courts have also previously said that the act “plainly contemplates a partnership between the federal and state governments to support universal service”<sup>40</sup> and that “it is appropriate—even necessary—for the FCC to rely on state action.”<sup>41</sup> The Commission has also previously recognized the importance of states in accomplishing universal service goals.<sup>42</sup>

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 Order<sup>43</sup> and should include, but not be limited to: parameters for defining the quality of broadband and mobility services, including acceptable broadband transmission speeds;<sup>44</sup> parameters for setting

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<sup>38</sup> See 47 U.S.C. §214(e).

<sup>39</sup> See 47 U.S.C. §254(f).

<sup>40</sup> *Qwest I*, above, at 1203; *Qwest II*, above, at 1232.

<sup>41</sup> *Qwest I*, above, at 1203.

<sup>42</sup> 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).”).

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

<sup>44</sup> 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 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).

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 robust<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

## 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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<sup>45</sup> 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.

<sup>46</sup> 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.

<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

## **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.<sup>50</sup>

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.<sup>51</sup> 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.<sup>52</sup> The Act also recognizes that universal service is an evolving level of

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<sup>48</sup> 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.

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

<sup>50</sup> 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.

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

<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup>

58. We conclude that broadband Internet service satisfies the statutory criteria for inclusion.<sup>56</sup> 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.<sup>57</sup> 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.

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<sup>53</sup> See 47 U.S.C. § 254(c)(1).

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

<sup>55</sup> 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.

<sup>56</sup> See 47 U.S.C. § 254(c)(1).

<sup>57</sup> 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.<sup>58</sup> 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).<sup>59</sup> Although these counts include both business and residential customers,<sup>60</sup> 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.

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

<sup>59</sup> FCC, *Trends in Telephone Service*, 2007 report, FCC, tables 8.1 and 11.2.

<sup>60</sup> 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.<sup>61</sup> 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

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<sup>61</sup> *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 21<sup>st</sup> 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 10<sup>th</sup> 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).<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>

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 funds<sup>3</sup> 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,<sup>4</sup> relying primarily on the private sector for addressing unserved areas<sup>5</sup> 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.

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<sup>2</sup> See esp. paragraph 27.

<sup>3</sup> See paragraphs 50-52.

<sup>4</sup> See esp. Paragraph 54

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

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 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.

## APPENDIX B

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 13 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice of Proposed Rulemaking (*Notice*) and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition.<sup>4</sup> Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.<sup>5</sup> Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.<sup>6</sup>

3. In this Notice, we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support.<sup>7</sup> We also incorporate into this Notice the following two Notices of Proposed Rulemaking (NPRMs): (1) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the "identical support rule;" and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, *et seq.* (Communications Act or Act).

<sup>5</sup> See 47 U.S.C. § 254(b). Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. § 254(b)(1), (3), (5).

<sup>6</sup> 47 U.S.C. §§ 214(e), 254(e).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*) (attached as Appendix A).

determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas.<sup>8</sup> We also will incorporate the records developed in response to those Notices of Proposed Rulemaking into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, and sections 1.1, 1.411-1.419, and 1.1200-1.1216 of the Commission's rules.<sup>9</sup>

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted.<sup>10</sup> The RFA generally defines the term "small entity"<sup>11</sup> as having the same meaning as the terms "small business,"<sup>12</sup> "small organization,"<sup>13</sup> and "small governmental jurisdiction."<sup>14</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>15</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>16</sup> Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>17</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>18</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>19</sup>

<sup>8</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*).

<sup>9</sup> 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, 214, 254, 403; 47 C.F.R. §§ 1.1, 1.411-1.419, 1.1200-1.1216.

<sup>10</sup> 5 U.S.C. § 604(a)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3).

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register." 5 U.S.C. § 601(3).

<sup>16</sup> 15 U.S.C. § 632.

<sup>17</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

<sup>18</sup> 5 U.S.C. § 601(4).

<sup>19</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>20</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,<sup>21</sup> Paging,<sup>22</sup> and Cellular and Other Wireless Telecommunications.<sup>23</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

### 1. Wireline Carriers and Service Providers

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>24</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>25</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> According to Commission data,<sup>27</sup> 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

9. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under

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<sup>20</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

<sup>21</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>22</sup> *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>23</sup> *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>24</sup> 15 U.S.C. § 632.

<sup>25</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>27</sup> *Trends in Telephone Service* at Table 5.3.

SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>28</sup> According to Commission data,<sup>29</sup> 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees.<sup>30</sup> In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

## 2. Wireless Carriers and Service Providers

10. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>31</sup> and “Cellular and Other Wireless Telecommunications.”<sup>32</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>33</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>34</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>35</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>36</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

11. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>37</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer

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<sup>28</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>29</sup> *Trends in Telephone Service* at Table 5.3.

<sup>30</sup> *Id.*

<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>32</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>33</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

<sup>34</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>35</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

<sup>36</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517212.

employees.<sup>38</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>39</sup> We have estimated that 221 of these are small under the SBA small business size standard.

### 3. Satellite Service Providers

12. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.<sup>40</sup>

13. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>41</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>42</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>43</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

14. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>44</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>45</sup> Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>46</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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<sup>38</sup> *Id.*

<sup>39</sup> *Trends in Telephone Service* at Table 5.3.

<sup>40</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>41</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>42</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>43</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>44</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>45</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>46</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

15. This Notice seeks comment on ways to reform the high-cost universal service program. Specifically, the Notice seeks comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support.<sup>47</sup> The Joint Board recommended the creation of three distinct high-cost funds; a broadband fund, a mobility fund, and a provider of last resort fund.<sup>48</sup> If the Commission ultimately adopts the Joint Board's recommendations, new or additional reporting requirements may be required for carriers to receive support under a three-fund approach. Additionally, the Notice incorporates by reference two NPRMs addressing the adoption of a reverse auctions approach for distributing high-cost support, and the elimination of the identical support rule for competitive eligible telecommunications carriers.<sup>49</sup> Projected reporting, recordkeeping, and other compliance requirements are discussed in the IRFAs of those NPRMs.<sup>50</sup>

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>51</sup>

17. This Notice seeks comment on ways to reform the high-cost universal service program, including recommendations issued by the Joint Board. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching

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<sup>47</sup> See generally *Recommended Decision*.

<sup>48</sup> *Recommended Decision* at paras. 11-43.

<sup>49</sup> See Notice at para. 1.

<sup>50</sup> *Identical Support Rule NPRM*, App.; *Reverse Auctions NPRM*, App.

<sup>51</sup> See 5 U.S.C. § 603(c).

its final conclusions and taking action in this proceeding. To the degree that the other NPRMs that the Notice includes by reference offer alternatives that may minimize the significant economic impact on small entities, those alternatives will be considered as well.

**F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules**

18. None.



**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice).*

Today, the Commission adopts several proposals to reform the high-cost universal service program. 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 ensuring that rural areas of the country are connected and have similar opportunities for communications as other areas. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive universal service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high-cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their costs of providing service are lower. In addition to recommending an interim cap, the Joint Board has recognized the problems of maintaining this identical support rule.

I am supportive of several means of comprehensive reform for the universal service program. I have circulated among my colleagues at the Commission an Order that adopts the recommendation of the Joint Board to place an interim cap on the amount of high-cost support available to competitive ETCs. And today we adopt a Notice of Proposed Rulemaking that would require that high-cost support be based on a carrier's own costs in the same way that rural phone companies' support is based. I'm supportive of both measures as a means to contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected.

I continue to believe the long-term answer for reform of high-cost universal service support is to move to a reverse auction methodology. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current growth in the fund and ensuring a move to most efficient technologies over time. Accordingly, I am pleased that we adopt today's Notice of Proposed Rulemaking to use reverse auctions to distribute universal service support.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS,  
APPROVING IN FCC 08-22  
APPROVING IN FCC 08-4  
APPROVING IN PART, DISSENTING IN PART IN FCC 08-5**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving in Part, Dissenting in Part).

The Commission adopts and seeks comment on three Notices of Proposed Rulemaking concerning: the Federal-State Joint Board on Universal Service's (Joint Board) recommendation on comprehensive reform of the high-cost Universal Service support mechanism; the elimination of the "Identical Support" rule; and the merits of using reverse auctions in distributing high-cost support to eligible telecommunications carriers (ETCs). I am pleased that the Commission today initiates all three NPRMs simultaneously as I have long believed that Universal Service reform must be done in a comprehensive, systematic manner. I write here to express my views on all three proceedings.

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

That being said, the Joint Board made an assortment of recommendations of its own. I agreed with some of them and not with others. In my view, the most important part of the recommendation is its inclusion of broadband as part of USF for the 21<sup>st</sup> Century. My views on the recommendation are explained in further detail in my statement that accompanied the Joint Board's recommendation and which is attached as an appendix to the NPRM adopted today. I believe the recommendation merits further action by the Commission, and therefore, I am pleased to support the NPRM initiated today.

Let me briefly take this opportunity to thank the members of the Joint Board who worked tirelessly on the difficult task of developing a comprehensive proposal for the FCC's consideration. I congratulate Chairwoman Tate for her leadership in bringing these recommendations to the Commission. We are all deeply indebted to her co-chair, Commissioner Ray Baum of Oregon, for his tireless and energetic work in shepherding the Joint Board toward consensus on many items. And I want to pay tribute to the always visionary yet practical efforts of the indefatigable Billy Jack Gregg whose endless good counsel is sewn throughout the Joint Board's recommendations.

With regard to the NPRM on the Identical Support rule, it is clear to me that the costs of investing and maintaining wireless and wireline infrastructure are inherently different. I believe that wireless can and should be a part of Universal Service, but the time has come to put an end to the irrational and costly

system of supporting wireless carriers based on the cost of wireline incumbents. I therefore am supportive of the tentative conclusion that we eliminate this rule. The NPRM is particularly important because it seeks comment on how best to replace this rule and in particular the methodologies by which CETCs should be able to recover costs for Universal Service support purposes.

The NPRM on reverse auctions is much more of a mixed bag. On the one hand, I support the Commission's decision to seek comment on the merits of reverse auctions as a method for distributing high-cost Universal Service support. The Joint Board spent a great deal of time examining the use of reverse auctions, but I must say that our review raised in my mind many more questions than it answered. For instance, how do we ensure that the winning bidder provides adequate quality of service? What happens if the winner later decides it is no longer profitable to continue its operation? And who will be responsible for establishing the rules and enforcing them? Ironically, this purportedly market-based approach strikes me as hyper-regulatory. For these reasons, I must dissent from the NPRM's tentative conclusion that the Commission should develop an auction mechanism to determine high-cost support. I believe that the options I outlined above—including broadband as part of Universal Service; elimination of the Identical Support rule; stepped-up accounting oversight; and Congressional action to enable Universal Service collections on an intrastate as well as an interstate basis provide a more effective and less disruptive approach to Universal Service reform.

The good news is that these three items, particularly the Joint Board recommendation, put the urgent need for comprehensive Universal Service reform squarely in front of the Commission. I hope the FCC will deal with these recommendations 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 am looking forward to working with my colleagues in order to turn these proposals into workable solutions.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN,  
APPROVING IN FCC 08-22  
APPROVING IN FCC 08-4  
CONCURRING IN PART, DISSENTING IN PART IN FCC 08-5**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Concurring in Part, Dissenting in Part).

Through these Notices, the Commission seeks comment on potentially profound changes to the Universal Service High Cost program. While I am not without reservations about some of the proposals in these items, I am pleased that the Commission is engaging in serious consideration of how to preserve and advance universal service, one of the bedrock principles of U.S. telecommunications policy. I am particularly encouraged that the Commission is seeking comment on the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), and I thank the members of the Joint Board for their considerable efforts to bring us this Recommended Decision.

Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. In Section 254 of the Communications Act, Congress affirmed the broad principle that “consumers in all regions of the nation . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” Implementing universal service as intended by Congress in Section 254 of the Act is among the highest priorities for the Commission.

The task before us – ensuring the continued vitality of universal service – is particularly important as technology and the marketplace continue to evolve. Our choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow with the rest of the country. History has shown that many rural consumers would be left behind if it weren’t for the support made available through our universal service policies.

The Joint Board’s Recommended Decision for comprehensive reform of the high cost support mechanism – and, in particular, the decision to include broadband as a supported service – is a landmark development. I have long argued that the universal service fund is an integral component of our efforts to meet the broadband challenge. So, the decision to embrace broadband, through the list of supported services and through targeted funding for unserved areas, and the recognition of the effectiveness of the current High Cost Loop Fund in supporting the capital costs of providing broadband-capable loop facilities for rural carriers are encouraging developments.

I must express a degree of reservation over the amount of support allocated to the Broadband Fund, among other limitations on support. Maintaining our commitment to connectivity, particularly in the broadband age, is more important than ever, and the Commission must start to provide realistic

assessments of what will be required. To that end, I am also concerned about the impact of reverse auctions and whether such mechanisms can provide adequate incentives for build out in Rural America. For these reasons, I dissent from the tentative conclusions in the separate Reverse Auctions Notice. While I appreciate the majority's willingness to flesh out details of their reverse auction proposal, I cannot support these premature tentative conclusions, and would have preferred a more balanced presentation of the potential disadvantages of such an approach.

There remain many questions about the Recommended Decision and details to be vetted. While I reserve judgment on many of the proposals, there is much here that warrants careful consideration. The Joint Board has wrestled with many difficult issues, including the unique role of providers of last resort, compensation for multiple providers, and the role of the States in fostering universal service, and I look forward to seeking comment on their recommendations. I agree with the Joint Board's recommendation on the identical support rule and support the separate Notice seeking comment on alternative approaches.

As we move forward with these proceedings at the Commission, I would like to express my sincere gratitude to all the members and staff of the Joint Board. The Joint Board, and the many parties who participated in those proceedings, engaged in a long and arduous effort to bring us these recommendations. I know that we will benefit considerably from their expertise and judgment, and I look forward to the coming dialogue on these proposals with our state commission colleagues, consumers, providers, and the many others with a stake in the future of universal service.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (*Joint Board Comprehensive High Cost Recommended Decision Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule Notice*) (Approving).
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (*Reverse Auctions Notice*) (Approving).

As Federal Chair of the Federal-State Joint Board on Universal Service (Joint Board) I am particularly pleased that we are taking this significant step forward in the journey toward comprehensive reform of the high-cost universal service program. This is an important program at the heart of rural America. Its purpose, to connect all Americans to telecommunications at affordable rates, has over the years permitted people to be connected even in rural and remote parts of our nation. Going forward, the Universal Service Fund will continue to play a critical and increasing role in one of our top priorities at the Commission – encouraging broadband deployment to all corners of America.

Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. It is also significant that we also incorporate by reference the *Identical Support NPRM* and *Reverse Auctions NPRM*, including the records to be developed in response to those NPRMs. I look forward to receiving public input and examining these issues.

I would like to thank my Co-Chair, Commissioner Ray Baum of the Oregon Public Utility Commission. I am especially pleased that all eight Joint Board members, large and small/rural and urban/donor and recipient, were able to come to this consensus and hope this will move us forward and provide the basic building blocks for fundamental reform to ensure Fund stability and viability in a fiscally responsible manner. All of the Joint Board members deserve praise for their commitment to the in-depth analysis of these complex issues, their desire to positively affect public policy and to make decisions in the public interest in a thoughtful and deliberative manner. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-4 (Identical Support Rule Notice) (Approving).*
- Re: *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-5 (Reverse Auctions Notice) (Approving).*

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, this system is in dire need of comprehensive reform. I have maintained that we must follow five principles when considering reforms to the Universal Service Fund. We must: (1) slow the growth of the Fund; (2) permanently broaden the base of contributors; (3) reduce the contribution burden for all, if possible; (4) ensure competitive neutrality; and (5) eliminate waste, fraud and abuse. A number of proposals have been put forth, particularly the Joint Board's recommendations for comprehensive reform sent to the Commission on November 19, 2007.

By adopting these three notices of proposed rulemaking, we are moving forward to advance specific reforms to the way the Universal Service High Cost Fund is administered. I favor a comprehensive approach where we can consider all ideas and options for reform of this important program. This year the Commission has an historic opportunity to implement meaningful and lasting fiscal reform that balances stakeholders' concerns and promotes the interests of consumers. We should seize this opportunity and take a bold step forward.