

**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

**COMMENTS OF THE WYOMING OFFICE OF CONSUMER ADVOCATE
ON THE USE OF REVERSE AUCTIONS TO DETERMINE THE AMOUNT OF
HIGH-COST UNIVERSAL SERVICE SUPPORT**

Introduction

On January 29, 2008, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM) seeking comment on the merits of using reverse auctions, also referred to as competitive bidding, to determine the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) serving rural, insular, and high-cost areas. The Commission first seeks comment on the general concept of using reverse auctions relative to High-Cost Support. In seeking a discussion about reverse auctions, and particularly the advantages of competitive bidding, the Commission notes the three distinct proposals that have been made: (1) CTIA's proposal for a "winner-gets-more" reverse auction, (2) Verizon's proposal for a limited trial to sort out a winning bidder in areas in which there are currently multiple wireless ETCs, and (3) Alltel's proposal for a pilot program to promote broadband deployment in unserved or underserved rural areas.

Beyond the initial invitation for comment on the concept of reverse auctions, the Commission raises a number of quite specific questions relative to the implementation of competitive bidding. The list of issues includes questions about eligibility requirements for bidders, multiple versus single winners in any one area, the method of distribution of any support provided as the result of an auction process, the appropriate geographic area

for any individual auction, maximum support levels to be imposed, obligations that should be mandated for both bidders and winners of the bidding process, and the design of the auction.

The Wyoming Office of Consumer Advocate (WYOCA) has a number of concerns about reverse auctions that leads it to conclude that the time is not right to implement reverse auctions as the overarching framework for currently needed high-cost funding reform. Instead, we suggest that competitive bidding might better be used as a tool within a broader framework, if it is to be used at all. The broader framework, as noted in the WYOCA companion comments on broader universal service funding reform, should look at the appropriate, necessary funding to achieve the stated national goals for telecommunications – whether those goals are to focus on voice or to expand into broadband. The reform must focus on a wider set of goals than simply finding ways to reshuffle the existing level of funding. It must address maintaining and expanding modern telecommunications service throughout the nation at rates that are just and reasonable for both urban and rural customers.

The Concept of Reverse Auctions

In its Notice of Proposed Rulemaking, the Commission suggests that the use of competitive bidding may be compelling since it is a market-based approach to determining the distribution and need for universal service. We agree that in theory, the competitive aspects of this market-based approach to determining the level and distribution of high-cost support has some appeal. For example, the market would ideally determine the appropriate level of support that is needed, putting an end to the on-going debate of whether enough funding is being provided or whether the funding is excessive and wasteful. Additionally, the market-based approach, in theory, would be competitively neutral in that any form of technology could win the bid, as long the carrier

of that technology were willing and able to meet each of the qualifications set out in the bidding standards¹.

Unfortunately, the WYOCA does not see these theoretical benefits actually coming to fruition, as the reverse auction discussions seem to focus on the number and type of restrictions and limitations that should be placed on any winning bids. For example, the benefit of actually knowing what the correct amount of support is for any particular area could be completely wiped out if there were caps put on the level of support to be provided in any one geographic area. It is possible that everyone would bid at the level of the cap – whether that level of funding was necessary or not. It is also possible that the cap would not be enough funding for that particular area, either resulting in no bids or bids where there was no intention of providing comparable service. In the latter case, the bidder may be looking at the situation of taking the funding provided, and then taking whatever shortcuts are necessary to provide service within the capped level of funding. Thus, caps could completely wipe out one of the major benefits that could be derived from the use of reverse auctions.

Furthermore, the realities of today's market may not allow for the benefit of competitive and technological neutrality within the context of a reverse auction. Today's providers often rely on each other's networks to originate, complete, and transport calls. If some pieces of those networks were to be eliminated (or diminished in quality) because of the lack of support, it only makes sense that other providers would have difficulty providing universal service in an area without having to recreate much of the other provider's lost network. And, it is hard to imagine how that lost piece of the overall network could be recreated at a capped level of current support amounts.

Today, carriers seeking eligible telecommunications carrier (ETC) status are required to meet a specified list of requirements in order to be granted the right to draw from the universal service support fund. These obligations are stated at 47 CFR 54.201

¹ We note, however, that the 1996 Act contains no requirement that universal service policies should promote competition or that funding mechanisms be technology-neutral. This is a point made by NASUCA with which we agree.

and 202. However, these requirements are not the same as carrier of last resort obligations and can be satisfied with the use of another carrier's facilities. The mere fact that a carrier is an ETC does not mean that such carrier is able and willing to be the sole carrier in an area without assistance from other existing carriers. If the Commission were to move forward with the implementation of reverse auctions, it should assure that bidders are truly qualified to provide service in an area at the stated bid price. This will require thorough oversight by the regulator (whether federal or state or both).

It also appears that the use of reverse auctions could change the entire regulatory regime relative to telecommunications. Over the past ten or more years, the regulation of telecommunications has become very light-handed, in response to the increasing competitiveness of the market. This current regulatory structure, as well as technological advancements, have allowed an increasing competitiveness in the telecommunications market and the opportunity for customer choice of technologies in all but many of the most remote and sparse portions of the nation. The WYOCA anticipates that regulation may need to become more heavy-handed under a regulatory scheme that only allows for one provider to receive high-cost support in a geographic area in order to ensure compliance with the reverse auction requirements. We are particularly concerned about retail pricing regulation under a reverse auction environment where there would likely only be one supported carrier in each geographic area. Today, there is only minimal retail pricing regulation left by most states – often because policy makers have determined that there is no need to supplement the constraints of the market with strict regulation. General regulatory oversight is usually deemed to be enough, with many policy makers not even seeing the need for general oversight. But, if the constraints of the competitive market – including pricing constraints -- have been removed due to the unsustainability of service without high-cost support to multiple carriers, it seems logical to assume that regulation will have to step in where the competitive market no longer assures just and reasonable pricing. This new regulatory regime would be a complete reversal of the recent direction of encouraging competition in lieu of regulation. The WYOCA hopes that there might be other means of addressing the restructuring of

universal service support without imposing additional heavy regulatory burdens on industry and customers alike.

Single versus Multiple Winners

The Commission seeks comment on whether each reverse auction should have multiple winners or a single winner for each geographic area. Clearly, the answer to that question depends on one's prioritization of the issues surrounding universal service.

Many interested parties, such as NASUCA, have advocated that each area have one winner such that the size of the fund will be more limited and thus, the fund will likely remain more sustainable further into the future. We agree that if sustainability or capping of the fund is a priority for the Commission, allow only one winner per area. However, we ask that the Commission note our above-stated concerns about the potential of only one supported provider having an impact on the integrated network. If, for example, a wireless carrier were to be the winning bidder, such that the incumbent wireline provider no longer received support and this impacted the sustainability of the wireline network, the fund would be sustainable at a lower cost, but at what cost of service quality, service options, and price to the customer?

In the alternative, we are intrigued by the CTIA proposal. This proposal has been termed a "winner-gets-more" proposal where the lowest bidder would receive the most funding for the designated area, but the other qualified providers in the area would receive some lesser amount of funding. Allowing multiple winners might eliminate the concern about the loss of some important network participants, but there is a strong likelihood that the fund size would not decrease under this proposal. Additionally, there is some risk that without strong regulatory oversight, there would be an opportunity for gaming the bidding process – such that a bidder could bid zero for an area whether or not there was a real intent to serve that particular market in a meaningful way – simply to keep others from receiving appropriate and potentially necessary support to provide quality service.

The CTIA proposal is also intriguing from the standpoint of keeping alternative providers in the market. The Telecommunications Act of 1996 does not require identical support or other incentives to entice or keep alternative carriers in a market. The WYOCA supports neither the identical support rule nor incentives for competitors. But, a competitive market is developing and it would be a shame to do anything that would encourage competitors to leave the market – particularly if the provider leaving was the incumbent who had lost the reverse auction bid. We worry that a single winner reverse auction might do this very thing.

Geographic Areas

The Commission seeks comment on the appropriate geographic area for reverse auctions. At paragraph 19 of the NRPM, the Commission cites some concern that using the geographic service area of any particular carrier might provide an advantage to one provider over another. The Commission also seeks input on whether smaller geographic areas should be used in any competitive bidding process that is implemented.

The WYOCA is a proponent of smaller, disaggregated service areas for determining support levels and has been for a number of years. In fact, our understanding of the intention of the Commission -- ever since the early days of the modern incarnation of the high-cost fund -- was that there would be disaggregation of carriers' service areas for the purpose of providing support. This is stated in the Commission's Universal Service Report and Order dated May 8, 1997, at paragraph 192:

We agree with the Joint Board's analysis and conclusion that it would be consistent with the Act for the Commission to base the actual level of universal service support that carriers receive on the cost of providing service within sub-units of a state-defined service area, such as a wire center or a census block group (CBG). [Footnote omitted.]

Disaggregation of support made sense then and it makes sense now. Smaller geographic areas allow for a more targeted approach to support and allow more of the

funding to reach the truly higher cost areas. This is true whether or not reverse auctions are the method of funding that are adopted for high cost support.

Reserve Prices

The WYOCA is concerned about the concept of a reserve price as discussed in the NPRM. As described in paragraph 36 of the NPRM, the reserve price would be a “maximum subsidy level that participants in the auction would be allowed to place as a bid.” Our first concern is that all of the bids would congregate around that reserve price, such that it would be impossible to know whether or not the unrestricted price would actually be substantially higher or lower. If a person is negotiating and indicates that he/she will pay \$x but not a penny more, why would the counterparty charge a penny less? The analogy applies here. The reserve price becomes a target price.

Our second concern is that the reserve price is nothing more than a cap. As discussed elsewhere in these comments, if the level of subsidy is capped, it is impossible to know the true amount of support that carriers believe they need. It is therefore impossible to know whether the level of support being provided is reasonable or adequate to provide services that are reasonably comparable in price and quality throughout the nation.

As described in the NPRM and the reverse auction proposals, one of the positive qualities of competitive bidding is to allow the market to “allow direct market signals to be used as a supplement to, and possible replacement of, cost estimates made from either historical cost accounting data or forward-looking cost models.”² But, as soon as there are constraints put on the level of support, the market signals are no longer visible and have been potentially altered so as to become artificial. This one constraint eliminates one of the primary benefits of the use of a reverse auction.

² Paragraph 11 of the NPRM.

We are also concerned about capping the competitive bids at current support levels when the issues of *affordability, sufficiency, and reasonable comparability*, have been challenged and rejected by the courts twice³. These levels that are proposed to be used are based on the same formulas and definitions rejected by the courts. There is no reason to believe that the outcome would be any different if a challenge were again presented to the use of these numbers.

Broadband Reverse Auction Pilot Program

The NPRM seeks comment on whether reverse auctions should be tested with a pilot program for the distribution of either high-cost support or broadband internet access support. The WYOCA suggests that given the untested nature of reverse auctions relative to universal service funding, and given the importance of assuring that high-quality services are maintained throughout the nation at affordable prices, it would be risky and inappropriate to jump into reverse auctions with both feet without a trial run. Furthermore, such a trial would best be focused on areas currently unserved or underserved, since these areas have more to gain than to lose with such a trial.

We are, however, concerned about introducing broadband support through the use of a reverse auction trial. There are still areas of the nation without adequate, affordable voice services. If the Commission insists that it would like to test the use of competitive bidding in the universal service setting, then it would be best used to complete the provision of traditional voice services throughout the nation before expanding the chasm of haves and have-nots with broadband services. Furthermore, we are concerned about the introduction of broadband services into the universal service support arena without a clear direction of what is expected of all eligible telecommunications providers relative to broadband.

³ *Qwest Corporation v. FCC*, 258 F.3d 1191 (10th Cir. 2001) and *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

Section 254 (c) of the Telecommunications Act of 1996 requires the Commission to define the services that are to be supported under the universal service support mechanisms. Currently, broadband is not a supported service. Eligible telecommunications carriers are currently required to provision their lines and networks in such a way as to permit the carriage of broadband services without interference. But, the offering of broadband service itself (including all of the head-in equipment that is necessary) is not currently a supported service. Therefore, the addition of broadband service itself would be a significant change to the list of services supported by universal service funding. If the Commission chooses to make this change, it should do so in a clear and understandable manner for all eligible telecommunications carriers. This is not, however, what is proposed with the suggestion of a broadband reverse auction trial. The broadband trial that is inferred in the NPRM (and the trial suggested by Alltel) would sneak the nose of the camel under the tent and begin to support small portions of broadband in some areas without a clear and distinct finding that broadband is now a service that is necessary to the wellbeing of the public⁴. If the Commission is to incorporate broadband into universal service, it should do so in a broad, comprehensive way where all unserved or underserved areas have the opportunity to receive service comparable to the majority of the country. No, broadband should not sneak into universal service through a trial of competitive bidding. Broadband should be incorporated as a significant, boldly announced, major reform of the universal service fund, if it is to be incorporated at all. However, that then raises the question, *Can the country afford universal broadband service?* While we don't know the answer to this question, we are certain that we will not be able to have universal broadband at the current level of funding that many propose to cap. Capping the fund at current levels and providing universal broadband service are fundamentally inconsistent⁵.

⁴ The process for determining changes to supported services is found at Section 254(c) of the Telecommunications Act of 1996.

⁵ We agree with Commissioner *Copps' Statement of Approving in Part, Concurring in Part* with the Joint Board proposal released November 20, 2007: "By recommending a cap of the fund at current levels, the Board cripples the ability of USF to support broadband in a credible manner."

Conclusion

The time is not right to implement reverse auctions as the overarching framework for currently needed high-cost funding reform. Overarching reform is needed but it should not be built around the concept of reverse auctions. If reverse auctions are to be implemented, they should be used to complete the provisioning of voice services in unserved and underserved areas of our nation. As to broadband, if it is to become a supported service, it should be introduced through the Commission's docket on comprehensive high-cost reform, and not through the use of a reverse auction.

Respectfully submitted on the 17th of April, 2008.



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