

**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 PUBLIC UTILITIES COMMISSION OF OHIO  
REGARDING REVERSE AUCTIONS**

---

**BACKGROUND AND INTRODUCTION**

On January 29, 2008, the Federal Communications Commission (Commission) released a series of three Notices of Proposed Rulemaking in the above mentioned dockets. These Notices addressed proposed rules and questions regarding reforming the high-cost universal service program<sup>1</sup>, the role and funding awarded to Competitive Eligible Communications Carriers (CETCs)<sup>2</sup>, and the merits of the use of reverse auctions in the determination of the amounts of funding to be provided to ETCs<sup>3</sup>. These Notices appeared in the Federal Register on March 4<sup>th</sup>, 2007. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its comments in regard to the Notice of Proposed Rulemaking regarding the use of reverse auctions.

As was discussed in the Notice, the Commission has considered, as long ago as

---

<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support Rule NPRM).

<sup>3</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions NPRM).

1997, the use of forms of competitive bidding to determine high cost support.<sup>4</sup> Particularly of note is that the FCC at that time recognized that the rise and advance of technologies could well lead to a reduction in the funding required for high-cost support, and that a bidding process would be a possible mechanism to capture that reduction:

In that regard, the bidding process should also capture the efficiency gains from new technologies or improved productivity, converting them into cost savings for universal service.<sup>5</sup>

More recently, the Federal-State Joint Board on Universal Service issued a Public Notice requesting comment on revising the rules relating to the high-cost fund<sup>6</sup>, including various proposals presented by the telecommunications industry for structuring a competitive bidding process for high-cost funding. The comments submitted in response to that Public Notice formed the basis for the Joint Board's Recommended Decision regarding High Cost Universal Service Support.<sup>7</sup> The Ohio Commission's comments with regard to reverse auctions are made in the context of the 2007 Recommended Decision. Applicability of reverse auctions to other potential restructurings of the High-Cost Fund, or other Universal Service Fund mechanisms is beyond the scope of the Ohio Commission's comments.

Given the progress of technology, competition and the telecommunications industry, and the recognized need for restructuring of the Universal Service Fund's high-cost mechanism, the Ohio Commission believes that it is an appropriate time to not only

---

<sup>4</sup> *Id.* at ¶3.

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

<sup>6</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. (Joint Board May, 2007 Public Notice).

<sup>7</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 (Fed.-State Jt. Bd. 2007) (2007 Recommended Decision).

consider the use of competitive bidding to determine high-cost funding requirements, but to implement them.

## **DISCUSSION**

### **A. Reverse Auctions**

The Ohio Commission agrees with the Commission's tentative conclusion that reverse auctions offer several potential advantages over the current mechanisms and that a high cost universal service support mechanism should be developed. However, combining traditional wireline universal service support in the same fund as other types of services, such as wireless and broadband support, is part of what precipitated the crisis in the High-Cost Fund. Therefore, the Ohio Commission believes that reverse auctions should be implemented consistent with the 2007 Recommended Decision, having separate funds and auctions.

As is stated in the Notice, reverse auctions have the capability to allow direct market signals to supplement, and possibly replace traditional costing methodologies. By using more direct market signals, a great deal of both economic and administrative efficiency may be gained. If the auction is properly structured, including requirements for service provision and expansion under the bid, it is possible to achieve a high level of confidence in the result, using a process that is consistently implemented across the various states, but at the same time allows the market to take into account the different conditions in each state.

However, there is the risk in any auction process (particularly in an area such as universal service provision) that there may be very few bidders, or even only one, for a given area. Costing mechanisms, whether historical or forecast, provide an alternative

methodology to make a determination if the auction fails, and accountability and confirmation in the event that the bidding in the auction is suspect.

## **B. Single vs. Multiple Winners**

The Ohio Commission believes that there should be one winner per auction for the Mobility, and Broadband funds.<sup>8</sup> Therefore, we agree with the Commission's tentative conclusion. As already noted by Chairman Martin, it makes little sense to provide support for multiple suppliers of a service in markets that are "prohibitively expensive for even one carrier".<sup>9</sup> Further, the winner for each auction should also have a requirement to serve the entire area that they won, as the Ohio Commission stated in our reply comments to the Joint Board May, 2007 Public Notice, docketed in the 96-45 proceeding.<sup>10</sup> As was stated in those earlier comments, absent a requirement to provide service "universally" within a given area, cost support funding, no matter how it is structured or allocated, may provide nothing more than a windfall.

## **C. Eligibility**

The Ohio Commission does not agree with the Commission's tentative conclusion that bidders for the Mobility and Broadband Funds must hold an ETC designation prior to the participation in an auction. The Ohio Commission believes that auctions should be

---

<sup>8</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Comments of the Public Utilities Commission of Ohio Regarding High Cost Universal Service Reform, Filed April 17, 2007 (Ohio Commission High Cost Comments) at Pages 5 – 9. The Ohio Commission concurs with the Joint Board that the POLR fund should be awarded initially to the ILEC, except where no ILEC exists for a given area. If no ILEC exists, than a reverse auction may be a suitable way to identify a carrier who will provide service consistent with the "provider of last resort" (POLR) obligation.

<sup>9</sup> FCC Chairman Martin's reply to Representative Edward J. Markey's April 2, 2007 letter regarding Universal Service Issues. Both Representative Markey's letter and Chairman Martin's reply are available at: [http://markey.house.gov/index.php?option=com\\_content&task=view&id=2825&Itemid=46](http://markey.house.gov/index.php?option=com_content&task=view&id=2825&Itemid=46).

<sup>10</sup> *Federal-State Joint Board on Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No 96-45, field July 2, 2007 (Ohio July, 2007 Reply Comments) at 2-3.

structured so as to permit any competitor in the market to bid, in order to determine who can best serve an area. This is especially true in light of the additional requirements that the Commission has suggested to apply to auction participants.<sup>11</sup> If a bidder cannot meet these requirements, it holds that they would not be able to support any area that they would win.

By opening the bidding process to providers who do not have a current ETC designation, and allowing the states to both administer the reverse auction and certify ETC status, the chance of a successful auction is maximized. By maximizing the pool of potential bidders for a given area, the risk of an insufficient number of bidders, or of significant gamesmanship among the bidders is decreased.

It should be noted that Section 254(e) states, in relevant part: “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>12</sup> [Emphasis added] Section 214(e) states, in relevant part: “A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area.” Nothing in either Section indicates that a reverse auction cannot be part of the selection and designation process, so long as the designation is made before the carrier is considered “eligible to receive support”. Given this understanding of the Act, any carrier may be eligible to bid, only the winning bidder (who meets all other requirements) becomes a designated Mobility or Broadband ETC and therefore eligible to receive support.

#### **D. Geographic Areas**

---

<sup>11</sup> Reverse Auctions NPRM at page 11, ¶26.

<sup>12</sup> 47 U.S.C. § 254(e).

The Ohio Commission generally agrees with the Commission's tentative conclusion that the wireline ILEC's study area is the appropriate geographic area on which to base reverse auctions. Further disaggregation of the areas will, in many instances, only add cost and delays to the restructuring of Universal Service and increase the opportunity for bidders to engage in "cream skimming" or structure their bids so as to maximize their opportunity for a windfall. Based on the 2007 Recommended Decision, only ILECs will be the recipients of the POLR fund,<sup>13</sup> and so would not be subject to an auction process, however the study area is defined and well known. It forms a suitable basis for structuring auction processes for the Mobility and Broadband Funds.

However, there may be benefit in identifying subsets of a larger ILEC's service territory. In Ohio, as in many other states, ILECs serve both the most urban, high density (and therefore low-cost) areas and much of the more rural, less dense, higher-cost areas. For the Broadband and Mobility Funds, such a large and diverse area may be exceedingly difficult to develop a comprehensive bid for, and may eliminate some smaller but highly efficient providers from bidding. Therefore, states should be given the authority to make such reasonable subdivisions as appear necessary.

#### **E. Universal Service Obligations**

As we stated in our earlier Reply Comments<sup>14</sup>, the Ohio Commission believes that any ETC receiving USF High-Cost funding should be required to provide service to any and all customers who request it in a given service area. Whatever the service area is, the bidding ETC would be required to commit to provide service throughout that area under

---

<sup>13</sup> 2007 Recommended Decision at Pages 19-20, ¶43.

<sup>14</sup> Ohio July, 2007 Reply Comments at 10.

the same rates, terms and conditions. When making its bid for an area, the bidding ETC would presumably take that requirement into account. The winning bidder would then be presumably the most efficient provider for that service area, consistent with those terms and conditions.

As stated above, the auction winners should have the obligation to serve all comers. Therefore, they should also be required to construct or obtain any facilities that are needed to serve a customer, no matter how rural. Mobile carriers, who will be recipients to the Mobile Fund, may be able to cover more rural customers in a given area at less cost than a traditional provider. Once the facilities have been erected, the Mobile Carriers should require less ongoing funding from the Mobility Fund. The Joint Board's recommendation of a construction grant mechanism as a part of the restructured High-Cost Fund takes this into consideration.

All bidders should be required to demonstrate how they intend to provide universal service within an area, and commit to a timeframe for such provision. Bidders should also indicate their ability to remain functional during emergencies.<sup>15</sup> As the assumed sole provider of supported Mobility or Broadband services for an area, it seems reasonable that any bidder should be able to show that it can support any area that wishes to receive funding for. Further, to meet the goals of Universal Service, especially in unserved or underserved areas, there must be growth in service availability. In order for a State to choose the most efficient provider, it is imperative to have an opportunity to consider the provider's plans to support and provide service throughout an area.

---

<sup>15</sup> Since the reverse auction mechanism would be, under the 2007 Recommended Decision, only applicable to the Mobility and Broadband funds, the ability to remain functional during emergencies may be more a factor in identifying an auction winner than a flat exclusion. However, given the progress of technology and the potential of greater dependence of first responders on both mobile and broadband services, this may become an absolute requirement.

## **G. Auction Design**

The Ohio Commission recommends that separate auction processes be conducted for the Broadband and Mobility Funds, but believes that package or combinatorial bidding may be appropriate and should be permitted between the Mobility and Broadband funds. The incremental cost to provide broadband services when an existing (possibly wireless) infrastructure is in place (or is receiving cost support) is likely to be less than the cost to provide broadband alone. To the extent that carriers bid for both Mobility and Broadband Funds, they should be permitted to submit two bids for each area in the Broadband reverse auction; one based on the assumption that they receive Mobility Fund support, and the other based on the assumption that they do not. In this way a carrier, and the funding mechanism, can capture the economies of scope.

In addition, a provider should be able to place package or combinatorial bids for multiple pre-identified geographic areas. In this way, economies of scale may be captured.

As is noted earlier in these comments, if the number of bidders is too small to give confidence in the result, more traditional costing methodologies may provide a useful adjunct which should be kept available.

## **CONCLUSION**

Under the structure outlined in the 2007 Recommended Decision, the use of reverse auctions to determine both the recipient of Mobility and/or Broadband Fund high-cost support and the amount of that support may have significant advantages in terms of both economics and administration. However, it is important that the process recognize



certain realities within the market. Certain categories of service are sufficiently well established and the costs are fairly well known. For other services, this is not the case.

This difference is inherently recognized in the 2007 Recommended Decision, in which the High-Cost fund is divided into three funds, POLR, Mobility, and Broadband. For the POLR Fund, existing mechanisms, as modified along the lines of the 2007 Recommended Decision, should work well. For the Mobility and Broadband funds and services, a new method is likely to be required, and reverse auctions, if structured appropriately, with responsibility appropriately delegated, are a reasonable methodology under which to proceed.

The Ohio Commission would like to thank the FCC for the opportunity to submit these comments.

Respectfully submitted,

**MARC DANN**  
Attorney General of Ohio

---

**Stephen A. Reilly**  
Assistant Attorney General  
Public Utilities Section  
180 E. Broad Street, 9<sup>th</sup> floor  
Columbus, OH 43215  
(614) 466.4396  
Fax: (614) 644.8764