93-4000-TP-FAD

FILE

RECEIVED-DOCKETING DIV

2007 JUL 10 AM 10: 32

PUCO

Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers	:	WC Docket No. 05-337 CC Docket No. 96-45

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

BACKGROUND AND INTRODUCTION

On May 1st, the Federal State Joint Board on Universal Service released a Recommended Decision regarding the Universal Service High-Cost fund (High-Cost fund). ("Recommended Decision", WC Docket No. 05-337, CC Docket No. 96-45) In this Recommended Decision, the Joint Board urged the FCC to take immediate action to impose an emergency cap on USF High-Cost funding to Competitive Eligible Telecommunications Carriers (CETCs) and established a comment cycle on broad-based reform of the High-Cost fund. In its request for comment on reform of the High-Cost fund, the Joint Board established a comment cycle in which initial comments were filed May 31st, 2007. Reply Comments are due July 2nd, 2007. The Public Utilities Commission of Ohio hereby submits its reply comments in this matter.

A number of parties filed comments furthering various proposals for reforming the USF High-Cost fund. Many of these proposals have merit, but none of them is ideal. Rather than discussing each and every Initial Comment at length the Ohio Commission will focus its Reply Comments on some broad observations regarding the proposals and significant comments, and make recommendations on how some of the proposals could be improved by adopting aspects of others.

GENERAL COMMENTS

Including CETCs in the High-Cost fund was, in effect, an experiment. As R. Buckminster Fuller said: "There is no such thing as a failed experiment, only experiments with unexpected outcomes."

Prior to the institution of CETC access to the USF High-Cost fund, it worked. Perhaps not perfectly, but it worked. It help achieve a societal goal without overburdening the society or overly distorting the market. In part, it worked because there was a balance between the provision for high cost funding to rural incumbent LECs, and the responsibility and obligations that they carried. Specifically, the rural ILECs had the carrier of last resort obligation, which meant that they were required to serve all comers in their service territory. Had they been able to pick and choose their customers, as competitors can, there would have been no financial need on their part for the high cost fund. It would have been a pure windfall, and there would be in many high-cost areas no service, or lesser service.

Adding CETCs to the High Cost fund without a concomitant responsibility to serve all comers upset that balance. If the High Cost fund is to return to reasonable function, that balance between benefit and responsibility must be restored and maintained. Some consideration also needs to be given to the question of whether, in many areas, it makes sense to have CETCs at all. As noted by Chairman Martin, it is quite possible that the creation of CETCs has led to inefficiencies caused by having multiple carriers in markets that are, by definition, "prohibitively expensive for even one carrier".[1]

It is worth considering that using a single mechanism to deal with multiple societal goals often leads to conflict between those goals. For any societal goal, there may come a time when that goal no longer needs artificial support, or needs to be supported differently. The mechanism that supports a societal goal should stand alone, so that when the time comes that it is no longer needed, or is in need of adjustment, the support can be altered or discontinued without disturbing the support of other societal goals.

The original High Cost fund was focused on the societal goal of basic telephone service being universally available. It should return to that original goal. Additional societal goals, whether providing a competitor (or alternative provider), providing ubiquitous broadband services, or some other societal goal, should be supported via a segregated, though possibly parallel, mechanism.

DISCUSSION

A. Many commenters, across a broad range of interests, support discontinuing the "identical support" rule.

State Commissions, incumbent wireline carriers, and even some wireless

---

1 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

carriers support discontinuing the identical support rule.[2] In general, the proponents of continuing identical support are the Cellular CETCs who have benefitted greatly from what can only be described as a windfall.

The arguments for continuing identical support generally hinge on the concepts of technological neutrality and competitive neutrality. All else being equal, the proponents argue, the amount of support provided shouldn't differ with technology or whether one is a competitor or an incumbent. The problem is, of course, all else is <u>never</u> equal.

In the current environment, the technologies for the provision of service are interdependent, and are not becoming less so. Cellular services are generally only "wireless" between the end-user and the cell tower. At some point, the vast majority of calls, even cellular-to-cellular calls, depend on wires. These wires are generally leased from an ILEC. If that ILEC is receiving High-Cost support, then a part of the "efficiency" that the cellular carrier has is a direct result of that High-Cost support of the ILEC.[3] Changes which inappropriately reduce the High-Cost support afforded to ILECS, then could well have the effect of limiting the availability of cellular services in rural areas, by making it more difficult and expensive to connect cellular towers to the PSTN, and to each other.

Of course, the Rural ILECS still have various regulatory burdens including,

---

2 Among those specifically stating that identical support should end are; BEK Communications at 4, Consumers Union at 56, Embarq at 23 *et seq.*, Frontier Communications at 5, Texas Statewide Telephone Cooperative at 2, Windstream at 8, T-Mobile at 9-10, Telecom Consulting Associates at 2 *et seq.*, South Carolina Regulatory Staff at 2-3, New Jersey Board of Public Utilities at 11, and Nebraska Public Service Commission at 11. (This is not an exhaustive list.)

3 The Ohio Commission alluded to this in its Reply Comments on the Proposed Interim Cap on CETC High Cost Funding at 5.

in many cases, providing interconnection. These are not burdens that have been imposed heretofore on CETCs. The absence of these burdens, particularly interconnection, also argues strongly against maintaining the identical support rule. The incumbent ILEC has to stand ready to provide each and every service they offer to any residential or business location that may, at any time, request service. Not only that, but they generally have to do so within very short timeframes. For example, under Ohio's Minimum Telephone Service Standards, with very few exceptions, a wireline provider who fails to have service in place and operational within 5 business days of an application for service must waive at least half of the regulated installation and set-up charges. Failure to have service in place and operational within 10 business days results in all installation and set-up charges being waived.[4] Such a standard would make no sense for a wireless carrier, given the technology involved. Even wireline competitors are not, in general, required to provide service to all comers. They can refuse a customer based on the availability of facilities.

Competitive and technological neutrality isn't as simple as "treating every carrier identically", it is avoiding giving one competitor or technology undue advantage in the market. Given the differences in the services being offered, and the technological dependence of "wireless" services on wireline providers (and often wireline competitors on incumbent providers), "competitive and technological neutrality" <u>requires</u> different treatment in terms of cost support mechanisms. To

[4] Currently Ohio Administrative Code 4901:1-5-16(D). These rules are under review, but are not expected to change significantly, though the exact citation may change.

maintain "identical support" for different technologies with different service requirements unduly advantages a class of competitors in the market.

B. Wireless CETCs have enjoyed a windfall under the identical support rule, and have returned little or nothing in exchange for the support.

On June 13th, 2007, Criterion Economics, L.L.C. released two papers discussing the impact of CETC High-Cost funding on wireless service penetration and availability in the "lower 48" states. The first study, by Nicholas Vantzelfde (Vantzelfde study) , discusses the allocation of CETC High-Cost funding between wireless and wireline companies, and then compares the coverage of wireless carriers receiving High-Cost support, with the coverage in the same areas provided by wireless carriers who do not receive such support.[5] The second study, by Criterion economist Kevin Caves and Chairman Jeffrey Eisenach, uses regression analysis to examine the relationship between subsidies and wireless availability.[6] Of these two studies, the first is particularly impactful on the question of wireless CETCs and the goals of universal service.

The Vantzelfde study first notes that, of the $820 million in USF High-Cost funding collected by CETCs in 2006, the vast majority (about $638 million) went to wireless CETCs.[7] Then the study notes that of that $638 million, roughly 80% of it went to 7 wireless carriers. The largest single recipient in 2006 was Alltel, at about

---

5 *The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds,* Criterion Economics, L.L.C. available at http://www.criterioneconomics.com/docs/Criterion%20USF%20Press%20Release%20061307.pdf

6 *The Effects of Providing Universal Service Subsidies to Wireless Carriers,* Criterion Economics, L.L.C. available at http://www.criterioneconomics.com/docs/Criterion%20USF%20Paper%20Final.pdf

7 Vantzelfde study, at Page 6

$228 million.[8] Possibly the most telling point in the paper is this: "In total, there are 143.8 million people who are covered by one or more unsubsidized carriers in the 814 study areas where other wireless CETCs are receiving funds. Unsubsidized carriers cover 97.3% of the population, while subsidized carriers cover less than 70% of the population in these study areas." [Emphasis added][9] If wireless (i.e. cellular) carriers are successfully and profitably providing service to 97.3% of the population in USF High-Cost study areas without drawing on the High-Cost fund, and serve a greater percentage of subscribers in those study areas than those companies that do, what is the positive effect of providing High-Cost funds to cellular carriers?

C. Some mechanism is required to enable service provision, regardless of technology, in areas that are currently unserved or underserved.

The comments of DialToneServices and General Communication Inc. point out a valid need, and a gap in the historical (pre-CETC) USF High-Cost funding mechanism. In fact DialToneServices could be the "poster child" for providing traditional High-Cost support to non-incumbent carriers, in that they provide service "for many "uncertificated" areas – i.e., geographic areas that are not included within any ILEC service territory, and where no service is available at all from an ILEC or any other carrier."[10] While this is not a situation that exists in Ohio, it is clear that this is exactly the type of situation the Universal Service High-Cost fund was created to resolve. Regardless of whether one feels that access to competitive choices is necessary to make the service provided to rural consumers

8 *Id* at 8
9 *Id* at 10
10 Dialtone Services, L.P. comments at 2

"reasonably comparable" to that available to urban consumers, not having service available at all is certainly less than reasonably comparable. Therefore, whatever mechanism is developed, some accommodation must be made for this situation.

D. Cost support must be balanced with accountability and responsibility.

As alluded to above, and as mentioned by a number of commenters, there is in many cases an imbalance in the current USF High-Cost mechanism between the provision of High-Cost support to CETCs and a clearly defined public interest supporting awarding that support. DialToneServcies quite reasonably maintains that all ETCs participating in a reverse auction "...should be required to comply with real and meaningful "provider of last resort" obligations. As part of this obligation, all ETCs must be required to provide service to all requesting customers within the bid area at standard installation rates. ETCs should not be allowed to impose additional fees for "aid to construction," line maintenance or line extensions." The Ohio Commission, in general, concurs. It should be noted that, as discussed above, rural ILECs already operate under almost exactly these constraints.[11] It is a new consideration for CETCs, however.

As a new consideration, it would be reasonable to allow a period of time for facilities to be constructed that permit service to be available throughout a service area, particularly for wireless companies, or those who are truly providing service in areas that previously had no telecommunications infrastructure at all.

E. Reverse Auctions are not a panacea.

---

11 Some Rural ILECs do have within their rate structures contributions toward construction for certain extreme situations. However these are within the regulatory limits imposed by the States and are reasonably accounted for when determining the cost basis for USF support.

As was noted earlier in these comments, there are differences in services and operational constraints between wireless and wireline service providers (and the Ohio Commission would note between incumbent and competitor). Commissioner Adelstein noted as much in comments to the OPASTCO 2004 Annual Winder Convention: "Wireline and wireless carriers provide different types of services and operate under different rules and regulations. Their cost structures are not the same."[12] While the Commissioner was specifically addressing the identical support rule, the concept is applicable to any structure that treats such different services and providers identically.

Auctions work best where the services or commodities being auctioned off are more alike than dissimilar. The differences in operations between wired and wireless, incumbent and competitor are sufficient that a global reverse auction process may not result in either universal service or economic efficiency. The CTIA's and Alltel's proposed reverse auctions, which would lump all ETCs regardless of technology or regulatory requirements, into a single process, ignore this reality[13]. Verizon has proposed two reverse auction processes, one for wireline CETCs and another for wireless CETCs.[14] This is a step towards resolving this problem, but may not go far enough.

F. Disaggregation may be unnecessary.

---

[12] OPASTCO 2004 Annual Winter Convention, as quoted in the Comments of GVNW Consulting, Inc. at 14.

[13] DialToneServices proposal to provide a "bid to zero incentive" (DialToneServices Comments at 5) goes beyond this to distort the reverse auction concept itself by giving High-Cost Fund cost support to parties that bid zero, proving that they don't need the cost support.

[14] *See*, generally, Comments of Verizon and Verizon Wireless, particularly at Appendix titled "Modernizing Universal Service: Verizon's Plan for Comprehensive Reform"

The purpose of disaggregation of service areas is to differentiate truly high-cost areas from lower cost areas that may be within the same service area, so that support can be targeted to the areas that need it most. While this is conceptually a good idea and a worthy goal, administratively it may become a significant burden. In addition, it may invite arbitrage and cream-skimming in ways that have not yet been imagined, yielding more of Buckminster Fuller's "unexpected outcomes".

As has been stated earlier, the Ohio Commission believes that any ETC receiving USF High-Cost funding (or indeed any USF funding) should be required to provide service to any and all customers who request it in a given service area. Under this requirement, there may be no need to disaggregate the service areas further than already exist, particularly in a reverse auction mechanism. Whatever the service area is, the bidding ETC would be required to commit to provide service throughout that area under 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.

G. A proposed structure for the USF High-Cost Fund mechanisms.

At the outset, the Ohio Commission indicated that it would, in these comments, "...make recommendations on how some of the proposals could be improved by adopting aspects of others." While we have attempted to address these suggestions throughout the document, it may be a worthwhile exercise to assemble these thoughts into a proposed structure for reforming the USF High-Cost mechanisms. The plural is quite intentional as the Ohio Commission believes that no single mechanism will serve to meet the sometimes conflicting societal goals and different structures within the markets at hand.

The High-Cost Mechanism

First, as noted earlier, the High-Cost fund would return to its original purpose, providing support for basic telephone services where, absent cost support, service might be unavailable, inadequate, or unaffordable. This fund would be available only to incumbent providers who were certified by their respective State Commission as ETCs or to those other providers who may be certified in certain areas as "Sole Provider ETCs".

A "Sole Provider ETC" under this structure would be any provider which, while not an incumbent under the Act, is the only provider of any telecommunication service in a geographic area, regardless of the technology used. Status as a "Sole Provider ETC" would be certified by the State, and subject to appropriate criteria.

Support would be cost-based, using existing structures and methods where possible, though unique cost studies may be required of Sole Provider ETCs. Service providers taking funds under this mechanism would also take on the carrier of last resort obligation, as well as Equal Access obligations. While it may be inappropriate at this time to require an interconnection obligation of Sole Provider ETCs at some point in the future they may become subject to the interconnection obligation, as non-exempt rural ILECs are. It is likely that the funding for this mechanism would come from all states, as it does currently.

<u>The Competitive Services Mechanism</u>

Second, should the Joint Board conclude that support to competitive providers should continue, a segregated Competitive Services mechanism would be instituted. Funds under this mechanism would be available only to CETCs as certified by the States. Funds would be awarded based on a reverse auction process. Bids in the reverse auction would be capped at the per line[15] High-Cost Fund allocation to the ILEC or Sole Provider in the study area. By capping reverse auction bids at the per line support of the incumbent or sole provider, the mechanism prevents awarding High-Cost support to service providers which would be, by definition, less efficient than the incumbent. Separate bidding processes would be in place for wireless and wireline providers. Funds would be available on a per-line basis to the winning CETC, and may be made available to additional CETCs who agree to accept that level of support. All providers must agree to a carrier of last resort-like obligation, in that they must, within a reasonable timeframe be able to provide service to any customer who requests it. Failure to do so would put their CETC status, and thus their funding, in jeopardy. This mechanism could be funded by a USF charge which would apply only in states that have certified CETCs. By limiting the funding source to states that have certified CETCs, the support for the fund is paid only by those consumers seeing the most

[15] "per line" in this case would mean per loop or loop equivalent in place, connected, and active, regardless of whether the end user is served by the ILEC or a wireline competitor leasing the ILECs facilities.

direct benefit.

The Broadband Services Mechanism

If it seems, in the opinion of the Joint Board, that a Universal Support Fund mechanism to support ubiquitous broadband is needed, then it could be implemented in a manner similar to that proposed for Competitive Services Mechanism. However, in light of the work of the "Connect Kentucky"[16] and "Wyoming Broadband Model"[17] projects, it may not be needed. However, this mechanism can, and probably should, be the subject of a separate proceeding.

CONCLUSION

The Joint Board has a number of proposals and ideas before it, each party or group of parties has their own particular viewpoint. None of them is perfect, not even that of the Ohio Commission. However, perfection is a fleeting shadow in an environment of rapid technological, market, and social change. A perfect solution today may not be so perfect next year, or even next week. What is required is a structure that is first, an improvement on the current situation, second, equitable, and finally, sufficiently flexible to accommodate adjustment and change without requiring major restructuring on a grand scale.

The Ohio Commission believes that the best chance of success in this lies not in adopting any single proposal, but in identifying the useful features of a number of proposals, and developing a series of structures that can be individually adjusted to take into account the different, interdependent, and changing technologies and

16 Discussed in the Comments of CenturyTel Inc., at 26

17 Discussed in Alltel's Exhibit 1 "Proposal for a Competitive and Efficient Universal Service High-Cost Approach" at 32-36

business models that make up the telecommunications industry in the United States. It is the Ohio Commission's hope that its Reply Comments in this proceeding will be helpful in this development.

Respectfully Submitted,

/s/ Stephen A. Reilly

Stephen A. Reilly
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 9th floor
Columbus, OH 43215
614.466.4396
Fax: (614) 644.8764