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From: d. crothers [mailto:dcrothers@yahoo.com]  
Sent: Friday, April 11, 2008 3:33 PM  
To: Jeffcoat-Sacco, Illona  
Cc: Cramer, Kevin; Clark, Tony T.; Wefald, Susan E.  
Subject: Fwd: NDATC Recommendations for PSC's USF Workshop

Note: forwarded message attached.

Ms. Jeffcoat-Sacco:

Please find attached two documents submitted by the North Dakota Association of Telecommunications Cooperatives for review by the Public Service Commission. Commissioners Wefald and Clark asked that these comments be submitted by the close of business today at the conclusion of the April 8 open meeting.

The first is a draft of comments the Commission may want to submit to the Federal Communications Commission in response to that agency's three Universal Service Fund NPRM's.

The second document is the "talking points" paper that Commissioner Wefald asked us to provide her at the conclusion of the March 25th workshop.

On behalf of the Association, please extend the rural industry's appreciation to members of the Commission for their "workshops". We found them beneficial and are appreciative of the Commission's work on this important issue.

If you have any questions on this issue or any other matter of concern, please contact me.

Best wishes,

David Crothers  
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1 **PU-08-160** Filed: 4/11/2008 Pages: 18  
**NDATC's View on USF Reform, Identical Support  
Rule and Reverse Auctions**

North Dakota Association of Telecommunications Cooperatives

David Crothers

RECEIVED

APR 11 2008

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
**PUBLIC SERVICE COMMISSION**

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 NORTH DAKOTA PUBLIC SERVICE COMMISSION**

The North Dakota Public Service Commission (“NDPSC”) files these comments in response to the Federal Communication Commission’s (“FCC’s”) three Notices of Proposed Rulemaking (“NPRMs”) released January 29, 2008.<sup>1</sup>

The NDPSC...[describe the NDPSC and the carriers it regulates]

The NDPSC is keenly aware of the large role federal universal service plays in providing telecommunication in rural North Dakota. We have a significant interest in each of the three NPRMs and how rules promulgated therefrom may potentially affect citizens of North Dakota.

<sup>1</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 08-22 (rel. Jan. 29, 2008); *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 NPRM*) (attached as Appendix A to FCC 08-22); *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*).

While these initial comments will be general in nature, we look forward to participating in other fora as the Commission addresses federal universal service issues.

The NDPSC recommends the Commission modify certain tentative conclusions or details of the proposals it has published in the NPRMs. We have formed our recommendations based upon our own study of the issues raised in the NPRMs as well as from input of telecommunications carriers operating in North Dakota. In preparation for these comments we have held two workshop sessions where carriers have participated and have provided us their views regarding the issues raised in the NPRMs. (Participating carriers included the rural local exchange carriers, Qwest, and Alltel.) As the Commission would expect, there are differences of opinion among the wireline and wireless eligible telecommunications carriers (“ETCs”) in North Dakota. However, despite the differences raised among the carriers, we have determined that there are several salient points upon which the carriers generally agree. Furthermore, there are several other points we recommend you consider in your deliberations of these NPRMs.

1. Establish accountability for competitive eligible telecommunications carriers

In the *Identical Support Rule NPRM*, the Commission has tentatively concluded that competitive ETCs (“CETCs”) should receive support based upon their own costs and not based on the costs of the ILECs. We agree with the Commission’s proposed removal of the identical support rule and understand that both the North Dakota rural carrier group and Alltel agree with this principle. We note that Alltel strongly objects to being placed on an accounting method similar to that of the rural carriers (*i.e.*, Part 32 Accounting); however, we also note that the Commission has made a tentative conclusion to use GAAP as a foundation for determining CETC support

levels and not employ Part 32 Accounting to CETCs.<sup>2</sup> We are encouraged by the Commission's steps that would require CETCs to receive federal support based on specific costs.

We are also encouraged by the approach the Commission has proposed to involve the state commissions in the review of cost-based CETC support.<sup>3</sup> We recommend one change to this proposal. State commissions should have a role in determining the amount of CETC support and the Commission has proposed that state commissions make this determination independently. We recommend the Commission direct the CETCs to submit costs to the federal universal service fund administrator ("USAC") for initial review of CETC costs. After its initial review, USAC should then make recommendations to state commissions and allow the state commissions to make a final determination of CETC support. This change in process will allow USAC to establish a uniform procedure for CETC cost submissions while at the same time allow state commissions to finalize and direct the distribution of CETC support in a manner consistent with the public interest. We do not recommend there be a change in procedure for the incumbent local exchange carriers ("ILECS") as their costs are currently submitted to USAC as well as NECA, independently audited, and subject to USAC audits and review. We recommend the Commission make this change in accounting for CETC support.

2. Recommend rejection of proposed cap on high-cost support

As part of the *Recommended Decision NPRM*, the Commission seeks comments on the Federal-State Joint Board on Universal Service's ("Joint Board's") recommendation to place a cap of \$4.5 Billion on federal high cost universal service support. We recommend the Commission not impose this support cap on federal high cost universal service. We note the Joint Board

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<sup>2</sup> *Identical Support Rule NPRM* at para 18.

<sup>3</sup> *Id.*, at para 13.

recommendation comes with no findings showing that this funding amount is sufficient to achieve the Congressionally mandated goals of universal service. This omission is especially obvious as the Joint Board proposes expansion of the goals of universal service to include mobility and broadband objectives. Our observation is that the Broadband fund proposal is severely underfunded at \$300 Million especially when other Commission discussions of broadband service suggest a large increase in broadband upload and download speeds for all customers.<sup>4</sup> We also respectfully disagree with the Joint Board's conclusion that customers who pay for federal universal service – customers who have bills for interstate and international telecommunications – are impaired by the application of a large federal universal service surcharge. To a large extent these customers are the same customers who have benefitted from significant shifting of costs from the interstate access service regime to the federal universal service regime which has resulted in a lowering of their interstate toll charges.<sup>5</sup> Inasmuch as the Joint Board relied solely on a consumer burden theory to justify its recommendation of a cap on federal high cost funding, we recommend the Commission reject any cap on the high cost fund programs. With the steps the Commission has suggested to place CETC support on a cost-based funding basis, the need to cap the program is not apparent.<sup>6</sup> We recommend the Commission reject any proposal to cap federal high cost support until the Commission has determined the extent to which federal universal service goals will include mobility and broadband, and has some experience in administering programs to achieve these new goals. Any current discussion of a program cap is premature and does not comprehensively address the need to provide sufficient support for all federal universal service goals.

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<sup>4</sup> *Reverse Auctions NPRM* at para 35.

<sup>5</sup> The Commission has recognized this shift in cost recovery. See *e.g., Identical Support Rule NPRM* at para 23.

<sup>6</sup> The need for a cap on federal support has also been reduced because of merger conditions imposed on Alltel, for example, that caps federal support for an apparent indefinite period of time.

3. Recommend rejection of reverse auction proposal

We strongly recommend the Commission not use reverse auctions to distribute federal universal service support. There are far too many uncertainties regarding the Commission's tentative conclusions for us to recommend this radical approach to distribute federal universal support. Generally, we have reviewed the material and have heard the views from the North Dakota carriers and conclude that any potential advantages received in using a reverse auction mechanism are far outweighed by the more likely disadvantages emanating therefrom. The increased uncertainty of funding in capital markets, the increased uncertainties in quality of service standards, the duration of a winning bidder's claim on a service area and the establishment of a reserve price that does not artificially cap support as new requirements – such as broadband – are imposed all lead us to make this recommendation. We recommend you reverse your tentative conclusion regarding the reverse auction proposal and conclude that reverse auctions should not be developed to determine and/or distribute high-cost support.

Sincerely,

NDPSC



**RECEIVED** Universal Service Talking Points  
North Dakota Commission Workshop

APR 11 2008

March 25, 2008 1:30 pm

**PUBLIC SERVICE COMMISSION**

## Introduction

1. Why we are discussing Federal Universal Service Reform.
  - a. Large increases in federal universal service disbursements generally caused by:
    - i. 1997 School and Library program
      1. E-rate disbursements in 2008 projected to be \$2.13B (2Q annualized)
    - ii. Migration of interstate cost-based recovery for ILECs to a new universal service mechanism (ICLS)
    - iii. Seemingly unending CETC disbursements to multiple carriers in overlapping geographic areas without any cost-based framework
      1. CETC disbursements last year (2007) projected to be \$ 1.3 Billion. This is an increase from \$100 Million in 2001. (Projections are used because final disbursements are not yet available.)
  - b. Concurrent with increases in disbursements, the contribution base is declining, causing increases in the interstate/international revenue contribution factor
    - i. FCC announced that factor for second quarter 2008 will be 11.3 percent
    - ii. ND interstate access minutes of use are declining over time. For example the

decline in interstate access minutes from 2006 to 2007 was approximately 10 percent for the rural ND group.

- c. These factors have led the Joint Board to
    - i. recommend an immediate freeze on CETC support. (May 1, 2007)
    - ii. recommend long-term reforms for universal service distribution. (Nov 20, 2007)
  - d. Joint-Board has made no explicit recommendation on the contribution base. It merely concluded that the support factor was at the high-end limit.
2. There isn't much appetite for interstate and intrastate access reform. (The FCC hasn't addressed the Missoula Plan and isn't expected to.) As access revenues decline over time, there is increased pressure placed on universal service programs. Access reform and universal service are combined – especially because the FCC has placed access reform cost recovery into federal universal service programs.
- a. Apparent need to correct the concept that access users should not contribute to cost recovery of the local loop. Common line usage should receive a recovery of cost from interstate toll providers. Currently only SLC and ICLS programs recover the interstate portion of the loop allocation – essentially giving interstate toll providers a free ride for a critical element of their service.
    - i. As a concept this is good for toll rates; however, the contribution to the interstate local loop shouldn't be viewed as an extreme burden – it is merely a shifting of costs from toll rates to a contribution factor.

## Three Notices of Proposed Rulemaking

### I. Identical Support Rule

3. What the FCC proposes (08-4)
  - a. eliminate the identical support rule. (at 1 and 5)
  - b. seeks comments on how to determine CETC costs of providing supported services. (at 1 and)
  - c. seeks comments on whether CETC support should be capped at the level of the ILEC support. (at 1 and 25)
  - d. admits FCC predictions regarding CETC support were inaccurate (at 9)
4. ND ILECs recommend the ND Commission
  - a. Support removal of identical support rule.
  - b. Require all CETCs to demonstrate costs in order to receive support.
    - i. ILECs have to make a cost showing for all support except possibly for weighted DEM portion of LSS which is based on unweighted DEM costs. Requiring CETCs to provide cost support is fully consistent with competitive neutrality principles. (at 12)
  - c. Review of costs should be at the national level. ND Commission should not be the initial or only reviewer of CETC costs.
    - i. USAC should review costs and make recommendation to state Commission.
    - ii. State Commission should have opportunity to review USAC recommendation and finalize the determination of cost support.
  - d. Make no recommendation on the accounting methods used to determine CETC cost support.
  - e. Agree with FCC that interstate access cost-recovery that was shifted to USF should not be received by CETCs. This support is interstate access cost-recovery support. (ICLS) (at 23)

- f. Support the imposition of a ceiling of CETC support received by the ILEC in a study area. (at 25)
  - i. FCC may take guidance from the existing HCLS program. A CETC ceiling should be an overall cap for all CETCs – similar to HCLS cap for ILECs. The accounting method, with thresholds, will determine how the CETC support will be distributed. Similar to how HCLS is distributed among ILECs today.
- g. What to do with CETCs that will not provide evidence of their costs?
  - i. Phase out support as these carriers are electing to not participate in the competitively neutral cost reporting requirements.

## II. Reverse Auctions

5. What the FCC proposes (08-5)
  - a. Seeks comments on merits of using reverse auctions to determine the amount of high-cost universal service support serving rural, insular and high-cost areas. (at 1)
  - b. Concludes reverse auctions offer several potential advantages. (at 1)
  - c. Reviews
    - i. CTIA "winner gets more" (at 5)
    - ii. Verizon wireless – wireline – ILEC (at 6)
    - iii. Alltel pilot program for broadband (at 8)
6. ND ILECs recommend the ND Commission
  - a. Strongly discourage the use of reverse auctions. Any potential advantages are overshadowed by significant disadvantages.
    - i. USF needs to be sufficient, predictable and sustainable. Unclear auctions will meet this statutory requirement.
    - ii. Literature on procurement auctions does not show there are administrative efficiencies over non-auction methods.
      1. These auctions are different from spectrum auctions.
    - iii. Serious concerns on the availability of loans as auctions introduce increased uncertainty into the rural ILEC industry. Likely to increase the cost of capital.
    - iv. Achieving minimum cost goal for universal service needs to recognize the interplay between wireline and wireless service generally.
      1. Commission needs to keep the end goal in mind. Minimum cost is not the end goal. Rather, the goal is that reasonably comparable services at

reasonably comparable prices are available.

- b. Major questions on implementation of auctions suggest Commission should not adopt auctions
  - i. Who is eligible to participate?
  - ii. What is the duration of the winning bidder?
  - iii. How to ensure public interest with or without multiple ETCs?
  - iv. How to ensure compliance with service quality?
  - v. How to determine the geographic area of auction?
  - vi. How to establish the reserve price?
- c. Auctions should not be used. The supposed "market based approach" will be hyper regulatory adding to administrative and operational costs with no offsetting benefit.

### III. Long-Term Reform – Joint Board Recommended Decision

7. What the FCC proposes (08-22)
  - a. Seeks comment on ways to reform the high-cost universal service program.
8. What the Joint Board recommends (07J-4)
  - a. A overall high cost cap of \$4.5 billion annually
  - b. Creation of three silos of support
    - i. POLR maintenance
    - ii. Wireless build-out and limited maintenance
      1. state administration
    - iii. Broadband build-out
      1. state administration
  - c. Transition issues
  - d. Advocates principles
    - i. Cost control
    - ii. Accountability
    - iii. State participation
    - iv. Build-out infrastructure to unserved areas
    - v. Does not confirm continued use of the competitive neutrality principle it recommended in late 1990s.
9. ND ILECs recommend the ND Commission
  - a. Strongly discourage an overall cap on USF distribution at a time when Broadband is being deployed.
    - i. Encourage the FCC to separate and isolate interstate cost recovery costs from federal universal service support mechanism.
      1. Joint Board fails to recognize that interstate revenues support federal USF and that per minute costs to consumers have declined.
      2. Joint Board also fails to recognize that the contribution factor is paid by end-users who generate interstate and international revenues. These

customers are generally not low income users. Further, the contribution factor is not applied to low-income users. Thus the conclusions of the Joint Board regarding the level of the contribution factor do not take into account all factors.

- b. Encourage the FCC to reject the Joint Board conclusion that the fund size is sufficient to meet the needs in rural areas of the nation.
  - i. This is especially important when other Joint Board recommendations will increase cost.
  - ii. Discussion of a fixed budget for universal service has no support in the record. There is no determination that the current level of funding is sufficient to meet the requirements of the Act, especially when new broadband service is being considered. Consequently, discussion of a cap on universal service is premature.
  - iii. The exclusion of non-rural support in the cap (subject to 10<sup>th</sup> Circuit remand order from the FCC) confirms there is no adequate foundation for a cap in the record.
  - iv. A very real concern is that the Broadband program, discussed below, may siphon support from the POLR fund if an overall cap is imposed.
- c. Strongly encourage the FCC to broaden the base of contributors to even-out the future universal service funding needs.
- d. Recommend the FCC not convert to the three silo approach.
  - i. Joint Board has not reached an agreement on future reforms to the POLR fund (at 19).

- Consensus is needed to understand POLR fund in the future. Sufficiency of POLR support is very important.
- ii. After a cap on CETC support and the requirement that CETC support be cost based, there may not be a need to adopt the silo approach.
  - iii. The rural and non-rural approach currently used is adequate and should await the FCC's remand order on non-rural sufficiency.
  - iv. The proposal should be tabled.
- e. There is merit in removing the parent-trap rules. They are largely antiquated and are largely preventing investment in areas generally abused by RBOCs in the past. (at 20)
- i. The Joint Board recommendation is inconsistent by suggesting additions to costs when it seeks to cap the fund. These proposals work at cross purposes.
- f. There is also merit to considering all costs, including transport costs. (at 21) However, such considerations can be made within the existing programs.
- i. Like the parent trap issue above, the Joint Board recommendation is inconsistent by suggesting additions to costs when it seeks to cap the fund. These proposals work at cross purposes.
- g. Recommend that FCC not adopt base support levels for all states and additional support or "base plus" for states with state universal service programs. (at 29 and 52)
- i. Discourages investment in net receiver states because the sufficient support level for universal service isn't covered by federal contributions from all states.

- ii. Not found to meet the sufficiency standard required by the Act.
- iii. The Act encourages state programs that complement the federal program; however, the Act does not mandate that states must have universal service programs in order to satisfy the goals of universal service.

## Rural North Dakota Group Replies to 8 April Workshop

10. Much of what was discussed by Alltel is beyond the scope of the NPRMs. In nearly every issue, Alltel would like to revisit the consensus raised in the Joint Board and develop the recommendation anew.
  - a. We agree there are some areas of the Joint Board recommendation (regarding long term reform) that needs more consideration. But the rural group does not object to all that has been proposed. (*e.g.*, we support the removal of the identical support rule.)
11. It is important to realize that Alltel's claim that wireless is substituting wireline is not believed by the FCC. In the identical support NPRM, paragraph 9, the FCC has concluded that its assumptions/predictions on this matter have been wrong. For the vast majority of consumers, wireless is not viewed as a substitute for wireline service.
12. Alltel argues it does not want to be put into a Part 32 accounting system for proving its costs. The FCC does not recommend this approach. The FCC's tentative conclusion is to use GAAP, not Part 32. Much of what Alltel said appeared to be either a straw man or hyperbole.
13. The FCC has a Qwest remand at bar and is reviewing the sufficiency of non-rural support mechanisms. No long-term reform of high-cost support should occur prior or independent to the FCC's action on this matter.
14. ILECs have more than enough accountability provisions in how they submit costs, review costs and audit costs.

The NECA black box alleged by Alltel is fiction. There is plenty of data provided by NECA to the FCC showing very detailed cost support. Independent audits, field reviews and program audits all demonstrate that rural ILECs are accountable to the program and the nation for support they receive from the Federal program.

15. The Alltel claim that universal service policy should be customer driven is ill conceived. The purpose of universal service is to provide service to areas of the nation where the customers are few and costs are high. Determining universal service by "majority vote" or consumer choice is a recipe for reduction of support in those areas where support is most needed.