

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

In the Matter of)	WC Docket No. 05-337
High-Cost Universal Support: Federal-State)	
Joint Board on Universal Service)	CC Docket No. 96-45

**COMMENTS OF THE
NEW YORK PUBLIC SERVICE COMMISSION**

The following comments are submitted on behalf of the New York State Public Service Commission (NYPSC) in the Federal Communications Commission's (FCC) above-referenced dockets on the recommended decision of the Federal-State Joint Board on Universal Service (Joint Board).¹ As discussed in more detail below, the NYPSC commends the FCC's and the Joint Board's acknowledgement of and proposed solutions to the escalating levels of high cost support. However, the NYPSC believes many of the proposed reforms, other than the use of reverse auctions and elimination of the identical support rule, are premature. The FCC also should obtain more granular data on the deployment and adoption of broadband services before considering funding broadband services via the high cost support mechanism. Additionally, the NYPSC believes any reforms should be technology and platform neutral and does not support the establishment of three new technology-specific funds.

The NYPSC remains fully committed to universal, affordable, and reliable telecommunications services for all customers. The level of high cost funding has spiraled out of control and reforms must be put in place to target the support to locations where at least one reliable local service provider - with offerings priced in an affordable range - would not exist without the availability of high cost subsidies. The NYPSC believes the overall size of the fund must be reduced and the high cost funding mechanisms that continue need to be fair, equitable,

¹ The NYPSC comments submitted in response to the following are included as an attachment: *High-Cost Universal 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 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) (Reverse Auctions NPRM).

competitively neutral, and targeted to focus the effect of any subsidy on a precisely defined problem. Rather than taking a position regarding the specific costs to be included in high cost subsidies, we address only the broader implications for competition and efficiency raised by the Joint Board's recommendations.

In making our recommendations, we observe that the primary purpose of universal service support is to ensure affordable access for customers, not to protect any specific carriers from the results of competition. Indeed, to employ any rule that would impede competition would run counter to the Act's recognized purpose of fostering a competitive market in telecommunications. To achieve the foregoing, all competitors must have an equal opportunity to compete for high cost support for serving end users in high cost areas.

Operational Support in High Cost Areas

The NYPSC has consistently advocated for regulatory parity for competing technologies; the technology restrictions for the proposed POLR fund violate that principle. To award high cost support only to wireline based companies distorts the market and poses a barrier to technological innovation. In order to maintain competitive neutrality, high cost operational support should be awarded to any ETC, irrespective of the technology platform. Any incumbent local exchange carrier, competitive local exchange company, cable company providing local telecommunications services, or wireless company that becomes an ETC should be eligible to compete for high cost funding.

The NYPSC supports the award of federal high cost funding to a single, lowest cost ETC bidder. In our Competition III proceeding, we found that facilities-based digital phone service (i.e., cable phone), application based phone service (e.g., Vonage), and wireless service are sufficiently close substitutes for traditional wireline local service.² The NYPSC believes that the fund can no longer be expected to support two or more connections to the network and consumers should no longer be funding duplicative networks. A competitive bidding process that awards high cost subsidies to one winner for a given area would drive support levels closer to the

² *Examination of Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Case 05-C-0616, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006).

actual costs incurred. It would allow for bids to better reflect the expected lower costs which come from the economies of scope and scale that could be achieved if a single company were given the ability to service all customers in a specified area, thereby reducing the burden on consumers.

States have an interest in ensuring reliable local telecommunications service for their residents. The chosen service provider must be able provide service to all residents of the geographic area for which it bids. Recurrent service outages and traffic congestion prevent end users from being able to make calls and undermine the public health, safety and welfare. At a minimum, existing rules that require ETCs to satisfy applicable consumer protection and service quality standards should be enforced.

Additionally, high cost support should be available only to the service provider that supplies the primary connection to the network for a customer at a single location. Continually adjusting downward the high cost support per line as lines proliferate is not consistent with the goals of universal service, nor is increasing the burden on consumers that ultimately contribute the funding. The universal service goal is to ensure that all customers, regardless of their location, have comparable accessibility to basic telecommunication services at reasonable rates. Funding multiple lines for one customer at a single location distorts that goal.

Mobility and Broadband Funds

A rationally reformed system would be platform neutral. Creating Broadband and Mobility Funds to increase deployment of these technologies in unserved areas is premature and smacks of designing a solution for the perceived problems of today, not implementing a flexible solution that can accommodate technological change. It is unclear how the proposed funds would accommodate wireless broadband technology, or other similar innovations, that have the potential to provide more efficient services at lower cost. There are multiple white space wireless broadband device trials ongoing. The reforms implemented must allow for these new types of devices and technology that would reduce the cost of high cost subsidies borne by consumers.

Subsidies for high cost areas should be directed to areas where it is uneconomic for telecommunications providers to deliver their services. It not clear that it is necessary to use federal universal service funds for mobile services' build-out to unserved areas. There is no

widespread market failure for mobile services. According to the recent report released by the FCC, approximately 99.8 percent of the total U.S. population has one or more mobile service providers in the census blocks where they live.³ While the NYPSC does not support establishing a technology specific fund for mobile services, it recognizes the benefits of a funding mechanism that would increase mobile service coverage along state and federal highways, contributing to the safety and welfare of travelers in an area where it might be otherwise uneconomic to install facilities.

The NYPSC supports the expanded deployment of high speed advanced services, both in New York and across the nation. Increased access to broadband services will allow rural and low-income Americans to participate more fully in the nation's economy. It will continue fostering economic productivity and increase quality of life. However, programs to increase deployment must do so in a way that is targeted, coordinated, efficient, and fiscally responsible.

More and better intelligence on broadband availability, adoption, speeds, and prices is necessary in order to make effective broadband policy and target aid to where it is uneconomic to build-out high speed infrastructure.⁴ The US Internet Industry Association noted the importance of knowing where broadband has not already been deployed, "The remaining issues of deployment have been assisted by state and local mapping projects (such as those of California and Kentucky), which have helped to identify areas where additional focus and investment are needed."⁵ The FCC has taken the first steps in gathering the necessary information in its

³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 07-71, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Twelfth Report, (released February 4, 2008).

⁴ In gathering the data, however, care must be taken to distinguish between impediments to economic deployment of infrastructure (and the ability to make these services available at an affordable price) and obstacles that prevent the adoption of broadband services by segments of the populace. The latter should be beyond the scope of universal service funding, even if the definition of essential services is expanded to include access high speed telecommunications.

⁵ *Deployment of Broadband To Rural America: An Evaluation of Current Broadband Services To Rural Americans and The Impact of Internet Public Policy On Broadband Deployment*, US Internet Industry Association, March 4, 2008.

proposed amendments to broadband deployment data reporting.⁶ To contemplate funding broadband services before such data are available is premature.

Without knowing where broadband currently exists and at what speeds, it is impossible to assess the degree of subsidization required to increase broadband deployment, and whether such amounts reasonably could be provided through high cost support from the USF. The \$300 million proposed in the Joint Board's recommendation would add only 300,000 more broadband connections, an increase of 1 percent in the national penetration level according to the National Exchange Carrier Association, Inc. (NECA).⁷ Reducing the strain on consumers to fund high speed services in high cost areas, and maximizing financial incentives to make prudent business decisions, might better be achieved by a low cost, subsidized loan program than by an award of capital construction monies. NYPSC believes that policies must be implemented to promote private-sector investment and leverage public/private partnerships. Any broadband funding under the high cost program must be coordinated with existing government programs such as those administered by the federal Department of Agriculture and the hundreds of state and local projects that have already been undertaken with state and local taxpayer dollars.

Detailed and accurate data is the bedrock of good policy. It is consumers who ultimately pay universal service contributions, and any increase in the fund size will increase the burden on consumers. Until more granular data on broadband deployment is available, expanding the high cost support mechanism to include broadband services is premature and not fiscally responsible.

If the FCC expands the high cost subsidy program to include broadband services, it is important not to penalize states and municipalities that already have worked diligently to provide advanced telecommunications services access to their residents. The Joint Board recognized "...that underscoring the importance of individual state actions will best promote wireless and broadband build-out for unserved areas."⁸ Any program reforms must not undermine the many

⁶ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol Subscribership*, WC Docket No. 07-38, Public Notice, (March 19 2008).

⁷ "The Packet Train Needs to Stop at Every Door", National Exchange Carrier Association, Inc., June 2006.

⁸ *High Cost Universal Support*, WC Docket No. 05-337, Federal-State Joint Board on Universal Service Recommended Decision, (released November 20, 2007), at para. 44.

aspects of broadband deployment in the nation that are already working. Under the current high cost program, 45% of the funding is given to 10 states, which appears to be an inequitable distribution. If broadband funding is given to unserved areas, regardless of location, then that disproportionate allocation among states may continue. The FCC should require funding for broadband projects over a certain level to be matched by a percentage of state funding to incent and maximize program efficiencies. Block grants to states, which take into consideration realistic local needs, would also contribute to the efficient use of high cost subsidies for broadband deployment.

The NYPSC concurs with the Joint Board's caution that that unrestricted growth in the USF could erode public support for funding affordable and reliable telecommunications services for all customers. Implementing a cap on the high cost portion of the fund is essential to maintaining public confidence in the program and must be done in the short term. Waiting until other reforms are put in place may jeopardize the entire program. The FCC should cap high cost subsidies at the current level of \$4.4 billion as a mechanism to slow the USF's uncontrolled inflation.

The NYPSC agrees with the FCC that long-term universal service reform is necessary and urges that quick fixes not be the focus. NYPSC believes the overall size of the fund must be reduced and the high cost funding mechanisms that continue need to be fair, equitable, competitively neutral, and targeted to focus the effect of any subsidy on a precisely defined problem. Most importantly, the system must technology neutral and flexible enough to accommodate future technological innovations.

Respectfully submitted,

Peter McGowan
Acting General Counsel
Public Service Commission
State of New York
Three Empire State Plaza
Albany, NY 12223-1350