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 merits of using reverse auctions to determine the amount of high cost universal service support provided to eligible telecommunications carriers (ETCs) , as well as elimination of the identical support rule.[1] As discussed in more detail below, NYPSC generally supports the use of a competitive bidding process such as reverse auctions as a means to reduce the size of the federal high cost fund. As contemplated, a single winner should receive the high cost funding for a specific geographic area; that winner should be required to provide specified services at a given price, for a certain interval, and meet basic service reliability standards. NYPSC also supports elimination of the identical support rule, if a single winner in a reverse auction mechanism is not adopted by the FCC.

NYPSC remains fully committed to universal, affordable, and reliable telecommunications services for all customers. It is concerned, however, with the operation of the existing high cost fund and with the perverse economic incentives the existing programs create. 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. NYPSC believes the overall size of the fund must be reduced and the high cost

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[1] *High-Cost Universal Support: Federal-Sate 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-Sate 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).

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.

Reverse Auction

NYPSC supports the establishment of a reverse auction process which would award federal high cost funding to a single, lowest cost ETC bidder. This would eliminate the disparities in the existing program which treats large carriers far less generously than small carriers and allows competitive ETCs to receive support unrelated to their costs. It would level the playing field for reimbursement between rural and non-rural companies in high cost areas and would avoid traditional regulatory cost and rate-setting issues. Consumers would no longer be funding duplicative networks, and the competitive bidding process would drive support levels closer to the actual costs incurred. It would allow for bids to 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.

In order to maintain competitive neutrality, high cost 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 participate in the reverse auction process.

The NYPSC in its Competition III proceeding 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] To award high cost support only to wireline based companies imposes market distortion and poses a barrier to technological innovation. The winning bidder must be able provide service to all residents of the geographic area for which it bids.[3] While the NYPSC does not recommend a particular geographic area in which high cost support should be awarded (e.g., the incumbent LEC's study area, wire center, county, etc.). Some of the geographic areas proposed may disadvantage some

[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).

[3] Wireless is a substitute for wireline only when the handset works inside the house.

competitors and not others: incumbent LECs' territories do not match municipal or county boundaries and wireless companies service areas may not encompass the incumbent LEC's study area. NYPSC believes the region chosen must be small enough to target the subsidy to areas where the high cost problems exist and, optimally, reduce the bloated level of high cost funding. The larger the geographic region that is used, the greater likelihood of implicit cross subsidies from lower cost to higher cost areas.

A reasonable term for the winning bidder's commitment to provide specified services at a given price must be a part of any auction design. It should discourage price manipulation and be long enough to provide incentive for efficient investment decisions. However, it should not be so long as to pose a heightened risk of non-performance.

States have an interest in ensuring reliable local telecommunications service for their residents. Recurrent service outages or 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.[4] The winning bidder must have incentives for meeting certain basic service reliability and quality standards. Continued eligibility for competing in future auctions could be such an incentive.

The NYPSC supports a limitation on high cost area subsidies: only the primary service line for a customer at a single location should qualify. 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.

Identical Support Rule

If the FCC adopts a competitive bidding mechanism with one winner for high cost support from the Universal Service Fund, then there is no need for the identical support rule. However, if the FCC does not adopt reverse auctions or a similar competitive bid process with

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[4] *Federal-State Joint Board Order on Universal Service*, Report and Order, FCC-5-46, 20 FCC Rcd 6371, at 6383 (March 17, 2005).

one winner, then NYPSC recommends elimination of the identical support rule. This rule allows all competing ETCs to receive the same level of funding regardless of their costs. Although it was expected that the funding would shift from the incumbent to a competitive provider for a line lost, instead it led to funding of duplicative and overlapping networks, supporting competitors as opposed to competition, and failed to ensure the universal availability of telecommunications services at reasonable rates. Support under the identical support rule has underwritten multiple, and otherwise uneconomic, ventures in high cost areas. This has led to spiraling contribution levels to the fund by consumers due to the increased number of ETCs in a given area and an increased number of lines provided by ETCs eligible for subsidy.

NYPSC recommends a return to the fundamental goal of universal service: ensuring there is at least one reliable local service provider, with offerings priced in an affordable range, in all areas. In order to reduce the ballooning level of high cost support, a more carefully tailored program should be implemented which ties subsidies to the costs of the most efficient service provider, thereby incorporating the economies of technological innovation and reducing the overall cost to consumers.

NYPSC believes that the fund can no longer be expected to support two or more connections to the network. 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. If a lower cost service provider is preferred by customers and becomes the chosen service provider, then it should be reimbursed a portion of its excess costs, and not receive a windfall amount based on a competitor's possibly inflated costs that it can use to increase its profits at the expense of consumers. Elimination of the identical support rule will end the practice of rewarding multiple uneconomic providers, but still target high cost subsidies to where there would otherwise be a market failure.

In sum, the NYPSC supports adoption of a reverse auction mechanism for high cost support. A single winner should be required to provide specified services at a given price, for a certain interval, and meet basic service reliability standards. The implementation of reverse auctions for award of high cost support to a single bidder is a complex undertaking. NYPSC recommends a pilot program in a limited number of geographic areas to study the viability of the reverse auction process for high cost support. This, or other actions intended to reduce the contribution level for high cost support, must be undertaken. However, the urgency of the need should not prevent taking the time at the outset to design and test a process that will lead to a better outcome. NYPSC also urges phased elimination of the identical support rule to ensure targeting high cost support to areas of market failure rather than proliferation of uneconomic duplicative networks.

Respectfully submitted,

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