

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

In the Matter of)	
)	
Federal-State Joint Board on)	WC Docket No. 05-337
Universal Service)	

**COMMENTS
of the
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

To: The Joint Board

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TABLE OF CONTENTS

I	Introduction and Summary	1
II	The Competitive Bidding Proposals of Verizon and CTIA Do Not Resolve the Infirmities Previously Identified	3
A.	The Verizon Proposal.....	3
B.	The CTIA Proposal.....	6
1.	Technological and capability differences between wireline and wireless carriers are so substantial that a combined competitive bidding process would not be competitive or technologically neutral	6
2.	Neither “Winner-Take-All” or “Everybody Wins” Auctions Should Be Adopted.....	7
3.	Continuation of essentially the current Carrier Eligibility and Obligations as proposed by CTIA Is Inadequate for Either a Cost Based or a Competitive Bid System	8
4.	The International Experience Cited by Cost Quest is Of Limited Applicability to the United States.....	10
III	NETWORK COST MODELING REQUIRES VALIDATION.....	11
IV	DISAGGREGATION OF SUPPORT WILL NOT BE NECESSARY WHEN THE PORTABILITY RULE IS ELIMINATED	13
V	THE PORTABILITY RULE SHOULD BE ELIIMINATED.....	14
VI	IT IS NOT NECESSARY TO ADD BROADBAND AS A SUPPORT SERVICE AT THIS TIME.....	15.
VII	CONCLUSION.....	17

Board's 2006 Public Notice, because, among other reasons, neither the Commission nor state regulators have the ability to either properly structure requests for proposals for particular areas, nor to supervise the bidding winners. RICA urged the Commission and Joint Board to act upon the extensive record which has been accumulating over many years with no decision, and specifically to eliminate the "identical support" rule and base support on each ETC's costs.

The new proposals by Verizon and CTIA do not resolve the problems identified by RICA and others in last year's comment round. RICA continues to support elimination of the identical support rule, as it has for many years, and its members are prepared to conduct cost studies to establish eligibility for support, in accordance with the existing rules applicable to rural ILECs. RICA does not support continued use of the identical support rule until a new model can be developed and validated. Nor does RICA support mandatory disaggregation of USF support, even though some of its members would benefit, because disaggregation is only relevant in the context of the identical support rule, which should be eliminated.² Finally, although virtually all RICA members offer broadband capabilities to their subscribers, it does not yet appear that the record would support the findings required by Section 254(c)(1)(A)-(C) to designate broadband, per se, a supported service. RICA members are actively deploying networks that support broadband services and fully supports the efforts of the Joint Board to ensure that universal service network support is directed to carriers committed to the provision of universal service in the nation's high cost to serve areas.

often not eligible for the Universal Service Support that a rural ILEC would be if it were serving the same communities with the same investment and expenses.

² The problems with Verizon's proposal to disaggregate study areas in order to determine auction reserves are discussed in Section II, below.

II THE COMPETITIVE BIDDING PROPOSALS OF VERIZON AND CTIA DO NOT RESOLVE THE INFIRMITIES PREVIOUSLY IDENTIFIED

A. The Verizon proposal

Verizon proposes that Commission first conduct an auction to determine support for wireless ETCs, using ILEC wirecenters, singularly or in combination, as the geographic area and existing support amounts as the maximum bid or reserve, as measured at both wire center and study area levels. Subsequently, this model would be used to auction support where there are multiple wireline ETCs. Only one wireless and one wireline winner would be selected in each area. Subsequently, support for ETCs in areas where there was no auction might be determined on the basis of a “representative” sample of areas where auctions were conducted; otherwise those areas would remain at the capped level.

Although Verizon has obviously given this issue serious thought in an effort to develop an effective process, and makes some useful additions to the discussion. For example, converting support to a flat amount could help eliminate much of the misperception about how the current system functions to provide support to cover the costs of constructing a network to fulfill the obligation of an ETC to provide service “throughout the service area.” The current expression of support as a per line calculation is simply a convenient tool to use for the purpose of describing the support³, but this tool creates a misperception since the USF support is applied to the ETC’s entire network, and not to the cost of specific lines. Notwithstanding the value of certain aspects of the Verizon proposal discussion points, many of the critical issues identified in the last round of comments remain unresolved by the Verizon proposal, and some new ones are introduced.

³ 47 U.S.C. 214(e)(1).

First, and perhaps not surprisingly, Verizon fails to grasp the significance of the extreme disadvantage to which small rural wireline CLECs would be placed by its proposal. Small companies are at a severe inherent disadvantage in an auction because carriers with hundreds or thousands of times their revenue can always outbid them for any particular small local area. This result might be of no consequence to anybody but the small company's owners were it not for the fact, demonstrated over and over since 1897, that small companies committed to the communities they serve generally do a much better job of serving the public in rural areas.

Second, in a single winner system with the wire center or combination of wire centers as the basic bidding unit, small carriers which have invested millions of dollars in a network designed to serve a "service area"⁴ composed of a particular group of wire centers, will potentially face the prospect of some parts of their network qualifying for support and others not which could effectively destroy their economic ability to serve the entire "service area."⁵ Wire centers are not simply a fungible commodity like bushels of Number 2 Red Wheat; they are integral parts of a common network design.

Third, setting the reserve price at the existing support levels, preserves the inequity of the present system caused by the interaction of the "identical support" rule and the state-wide average rule. As RICA has repeatedly pointed out, when its members compete in a high cost area of an ILEC with rates based on average statewide costs there often is no support available under current rules, even though an identical area served by a rural ILEC with identical costs could well be eligible for

⁴ See, 47 U.S.C. 214(e)(5).

⁵ The use of ILEC wire centers as the basic unit of support would also exasperate the current issues with wireless ETCs whose license areas usually don't correspond with rural telephone company study area boundaries which leads them to seek redefinition of the service areas because they don't want to serve the out-of-license area by resale.

support.⁶ In these situations the purposes of the Act are not achieved, competition in the high cost area is discouraged, and rural subscribers do not receive service comparable to urban subscribers because the non-rural ILECs invariably minimize their investments in rural areas. In areas where there would be no auction, continuing support at capped levels would appear to have the same effect.

A further problem in the Verizon auction proposal arises from the application of the reserve price to individual wire centers of rural ILECs. Verizon proposes to disaggregate support in a study area to wire centers based on a simple proportionate line calculation, but that proportion may have little or no cost causation relationship, at least for outside plant.

All of these issues and more are symptoms of the underlying failure of Verizon's plan adequately to accommodate the fact that any USF auction would not take place in a "Greenfield," but in a nation where wireline facilities are almost ubiquitously available. Professor Lehman's paper last year pointed out that where there have been relatively successful auctions for support, it has been in underdeveloped countries with little or no existing infrastructure, especially in rural areas. Verizon's only answer to the resulting stranded investment issue seems to be a "transition" period during which carrier's losing support would somehow adjust to having to bear the burden of the costs it has incurred to provide universal service. The simple fact is that if the Commission implements a plan that allows large companies to take the support for wire centers served by small

⁶ RICA's Comments in the 10th Circuit Remand proceeding discussed the relationship between the non-rural support mechanism and the portability rule in depth. The U.S. Court of Appeals for the 10th Circuit has twice remanded the rules to the Commission, the last time in 2005, but the Commission has yet to revise the rules. *Qwest Corp. v. F.C.C.*, 398 F.3d 1222 (10th Cir. 2005); *Federal- State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Doc. No. 96-45, WC Doc. No. 05-337, 20 FCC Rcd 19731 (2005). RICA Comments March 27, 2006.

companies (both competitive and incumbent small LECs) on a pick and choose basis, the rationale of the small company's business plan will be destroyed and the resulting business failure will inevitably harm service to consumers.

Even if Verizon's plan were applied to "service areas," small rural CLECs, or rural ILECs viewed as potential competitors, would still be at the mercy of any large carrier which wanted to eliminate them as a competitor. With 2006 operating revenues of \$88 Billion and assets of \$188 Billion, Verizon's resources are tens of thousands times those of the typical rural CLEC.⁷

B. The CTIA Proposal

The Joint Board requested comments on CTIA's November 8, 2006 Reply Comments and the appended paper by Cost Quest, which advocates the use of "reverse auctions" and proposes particular rules. CTIA and Cost Quest argue that: (1) all ETCs should compete in the same auction; (2) the result of auctions should be "winner-gets-more" rather than "winner take all;" (3) supported services beyond a basic minimum should be a matter of consumer choice; and (4) eligibility criteria should be clear and the winner should be held accountable for results.⁸

1. Technological and capability differences between wireline and wireless carriers are so substantial that a combined competitive bidding process would not be competitive or technologically neutral.

CTIA argues, contrary both to the Verizon proposal discussed above, and also contrary to many comments filed last year, that because wireline and wireless carriers compete for the same subscribers, the Commission's competitive neutrality principle requires that a single bidding process for USF support be established. Although, the percentage of subscribers viewing wireless as a

⁷ See, <http://investor.verizon.com/financial/annual/2006>

substitute for wireline may be growing, the great majority of subscribers continue to view wireless as a complementary rather than replacement service. Each technology has inherent characteristics that distinguish it from the other, such as mobility on the one hand and superior ubiquity, reliability, compatibility with the 911 system, and capacity to support broadband service on the other.⁹ Given these relevant and material differences, separate auctions would avoid apples to oranges problems, and would be consistent with CTIA's position that the auctions should not be "winner-take-all."

2. Neither "Winner-Take-All" or "Everybody Wins" Auctions Should Be Adopted

While RICA does not endorse CTIA's auction proposal, CTIA is correct to the extent that it recognizes that winner-take-all auctions would be harmful to competition and that the "everybody wins" would eliminate any incentive to participants to lower their bids.¹⁰ An additional problem with "winner-take-all" is that it appears inconsistent with the public interest in having complementary wireline and wireless universal service throughout the nation. The effect of a "winner-take-all" approach is that such a rule would lead to universal service network support for only a wireline or wireless carrier, depending on which carrier bid the least. This "race to the bottom" will discourage the investment necessary to provide meaningful broadband technology in rural areas.

The "winner-takes-more" solution proposed by CTIA, however, is hardly a significant improvement on the "winner-take-all" approach. "Winner-takes-more" would penalize carriers that realistically estimate their costs of providing quality service by providing the carrier with less support than its competitor, which may have not really intended to provide the same quality of

⁸ CTIA Reply Comments, Nov. 8, 2006 ("CTIA Reply")

⁹ In many rural areas, wireless service is not available away from major highways.

service or underestimated its costs. Thus, neither of these plans avoids the “race-to-the-bottom” aspect of auctioning USF support.

3. Continuation of essentially the current Carrier Eligibility and Obligations as proposed by CTIA is inadequate for either a cost based or competitive bid system.

In last year’s comments, RICA pointed out that a major obstacle to establishing a competitive bidding system for USF support is the necessity to precisely define what obligations carriers would be agreeing to undertake in return for receipt of support, and to enforce compliance with those specifications once the support is awarded. RICA argued that the inability of regulators to produce area specific requirements and adequately supervise auction winners meant that a competitive bidding system would fail to ensure that the defined services and quality levels were actually received by subscribers.¹¹ While CTIA correctly recognizes the need for specificity and supervision, it incorrectly believes the present rules are adequate.¹²

Even with the enhancements to the ETC rules recently adopted by the Commission – which are not mandatory for the states - the specification necessary to ensure that bidders are obligated to provide comparable service is simply not detailed enough nor location specific enough.¹³ Further, the existing rules were written specifically to address wireless carriers that have not yet build facilities throughout their service area,¹⁴ and are often a poor fit for wireline carriers that have

¹⁰ CTIA Reply at 20.

¹¹ RICA Comments Oct. 10, 2006, 3-5.

¹² CTIA Reply Comments, Nov. 8, 2006, App. A, 22-25.

¹³ 47 C.F.R. 54.202

¹⁴ In 2000, the Commission ruled that ETC designation could be granted on the basis of a carriers’ promise to serve throughout the area, even if it did not have the present capability to provide the service. *Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168 (2000), *recon. pending, appealed sub nom., United States Telecom Association v. Federal Communications Commission*, No. 00-1428, United States Court of Appeals for the District of Columbia Circuit (administratively

modern, ubiquitous facilities.¹⁵ In addition, the existing rules do not fully implement the requirement of Section 214(e)(1) that an ETC “shall, *throughout the service area* for which the designation is received—(A) offer the services....” Instead the rules only require ETCs to offer service to customers making a “reasonable” request, or “if service can be provided at reasonable cost” by adjusting its facilities or reselling.¹⁶

No standards are provided by the rules or in the order adopting them by which the Commission or a state commission can objectively determine compliance. What is the measure, for example, of an “unreasonable” request for service? The result is that without more rigorous standards, ETCs basing bids on estimates of costs of constructing and/or operating a quality network will be disadvantaged in competition with others who base their bids on the minimum possible expenditure. Further, wireless and wireline ETCs will be subject to different consumer protection and service quality standards. For example, wireless carriers are permitted by Section 54.202(a)(4) to commit to compliance with CTIA’s code, which is under their collective control, while wireline carriers may have to meet state commission requirements. Similarly, wireline carriers are separately required to provide equal access to long distance carriers, but wireless are not (as long as they are not the only ETC in the service area).¹⁷ RICA submits that the appropriate standard is to require all ETCs to comply with carrier of last resort responsibilities in order to truly ensure the provision of universal service.

terminated without prejudice to refilling, Mar.26, 2007). (“*South Dakota Declaratory Ruling*”).

¹⁵ See, e.g., Section 54.202(a)(1)(i)(B) which is cellular technology specific even though ostensibly applicable to all carriers. See also, Section 54.202(a)(4) which is illogical when applied to ILECs.

¹⁶ 47 C.F.R. 54.202(a)(1)(i) and 54.202(a)(1)(i)(B) (emphasis added).

¹⁷ 47 C.F.R. 54.202(a)(5).

CTIA argues that ETCs should be able to offer service packages above and beyond the minimum. It is not clear why this point is made, since nothing in the current rules or any proposal restricts ETCs from offering other services in addition to the supported services. The more difficult, if unstated, question is whether an ETC should receive any advantage in an auction for offering additional services or services at a higher quality than required. Should the administrator of the auction be confined to considering only the support dollars bid by auction participants or will the administrator be able to give any weight to qualitative factors.¹⁸ If such considerations are excluded, then consumers of carriers receiving USF support may never get more than the bare minimum, especially in rural areas with little competition. On the other hand, if non-quantitative factors can be considered, can the neutrality of the process be maintained? The difficulty of resolving this tension is an additional reason to base support on a carrier's demonstrated costs and not auctions.

4. The International Experience With Auctions Cited by Cost Quest is of Limited Applicability to the United States.

Although there is nothing wrong with examining how issues such as universal service are dealt with in other countries, any such comparisons must always be careful to consider the impact of different circumstances on whether similar outcomes are likely. In the case of telecommunications, the United States is materially different from most of the rest of the world. First, as a result of the homestead acts and other historical factors, as well as the great breadth of arable land, rural population dispersion is much greater in the United States. Farm families tend to live on their farms,

¹⁸ The issue of whether a state commission can deny ETC designation when it finds an applicant's commitment inadequate is raised in reconsideration petitions that have been pending before the Commission since 2000. *South Dakota Declaratory Ruling*.

rather than in villages typical of much of the rest of the world.¹⁹ Secondly, as a result of the programs of the Rural Electrification Administration (now Rural Utilities Service), the regulatory requirements of state commissions and the FCC/Joint Board separations rules, wireline telephone service is essentially ubiquitously available.

Professor Lehman's paper, filed in the last round of comments in this proceeding by NTCA, explored the differences between countries where universal service support was subject to competitive bidding. Professor Lehman concluded that competitive bidding worked reasonably well in undeveloped countries without existing infrastructure, but was not satisfactory where facilities had been widely deployed.²⁰ Among the reasons for this is the extreme difficulty of creating a transition mechanism that permits recovery of prudent investment, but is not biased in favor of any current provider. CTIA's consultant, Cost Quest, acknowledges, for example, that no competitive entry resulted in Australian and Indian auctions for areas where the incumbent already had facilities.²¹

III NETWORK COST MODELING REQUIRES VALIDATION

The Joint Board requests comment on the presentations on GIS technology and network modeling at its February *en banc* meeting. Specifically, information is requested as to whether these

¹⁹ Alaska, despite its great size, has minimal agriculture and rural people tend to live in villages. Hawaii and the insular territories have a different historical development experience and do not have the vast farming area such as that between the Appalachians and the Rockies.

²⁰ Dale E. Lehman, *The Use of Reverse Auctions for Provision of Universal Service*, attached to Comments of NTCA, Oct. 10, 2006.

²¹ CTIA Reply Comments, App. A at 11. The UN report cited does show Australia's population density to be considerably below the United States, but a very large portion of Australia is uninhabited, compared to the United States where much of the non-urban area is inhabited. The same chart, for example, shows that Australia's population is 93% urban, compared to 81% in this country. Many rural telephone companies have large service territories with densities around one subscriber per mile or less. The Australian national average population density is approximately 7.8

tools could be used to calculate and determine support, or identify areas where competition and market forces will not provide comparable services.²² It is natural to expect, as the presentations indicated, that techniques and capabilities have improved since the Commission adopted the current model used to determine cost for non-rural telephone companies.

The Rural Task Force Report demonstrated that the existing model could not reliably predict the costs for any given rural telephone company service area. Whether these improvements presented in February could overcome the deficiencies of the current model could not be determined from the presentations. Essentially, validation of a model requires that its predictions be tested against a statistically valid sample of actual calculations. For example, does the model's prediction of the forward looking cost of serving a representative sample of particular areas compare closely with the results of actual study of those areas. The Commission never performed such a validation of the outputs of the original model; instead, it only purported to validate the inputs.

If the Joint Board now wants to move forward with modeling costs for rural telephone companies, ILEC and CLEC alike, it must develop a plan that would lead to valid tests of any proposed model. Assuming validity is determined, the Joint Board must then determine how to adjust the results to deal with the fact that, except when building in a "Greenfield" (which would include total overbuilding of existing facilities) forward looking costs do not represent the actual costs experienced in actual operations. This conclusion is self evident; no capital intensive business ordinarily changes out its entire investment every time an improvement in technology becomes available. Second, the Joint Board must recognize that wireline and wireless systems have different cost structures so that an accurate prediction of cost for one technology usually will not be accurate

persons per square mile (3/square kilometer), higher than at least three states.

for the other.

The use of geographic information system or other modeling tools could be useful for providing support to carriers whose service areas include both densely populated lower cost to serve locations and higher cost to serve rural areas. RICA, however, submits that no model will be as accurate as actual costs. Moreover, no model or tool should be adopted in the absence of factual validation.

IV DISAGGREGATION OF SUPPORT WILL NOT BE NECESSARY WHEN THE “IDENTICAL SUPPORT” RULE IS ELIMINATED.

The Public Notice asks whether all carriers should be required to disaggregate support below the study area or wire center level. Disaggregation was instituted as an option for ILECs because the identical support rule would allow a competitor to offer service in the low cost portion of a study area, and then receive support based on the study area average, which might be much higher. As noted by the Joint Board, most rural telephone companies did not disaggregate voluntarily. The probable reason for this is that because the rural companies generally have excellent service and have much smaller areas of higher density. Their major competition has come from wireless carriers whose larger service areas tend to cover both high and low cost areas. Where this is not the case, the Commission and states have applied the statutory requirement for ETCs to serve the entire study area of a rural telephone company unless changed to deny designation to prevent cream skimming.²³

In some circumstances, RICA members would benefit from a mandatory disaggregation rule

²² Public Notice at 3, para. 5.

because they are competing in areas adjacent to their existing facilities. Nevertheless, RICA recommends that the Joint Board not endorse adoption of such a rule because so doing would tend to prolong the life of the identical support rule. Instead, the Joint Board should urge swift action to eliminate identical support and determine that universal service network support should be based on the recipient carrier's actual costs.

V THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED

As indicated above, RICA has advocated repeal of the identical support rule for several years in comments and during an *en banc* session. RICA and many others have shown that the rule is both illogical and damaging. The rule is illogical because it fails to relate need for support with the actual support provided in any rational way. As a result, it is not conceptually possible to demonstrate compliance with the requirement of Section 254(e) that USF be used only for provision and maintenance and upgrading of supported services. The rule is damaging to the integrity of the fund because it is directly responsible for the extremely rapid growth in support to wireless carriers. While some RICA members do receive support under the existing identical support rule, many others receive no support despite providing service in high cost areas where a rural ILEC would be eligible for support, but where the ILEC's average costs are not above the applicable thresholds.²⁴

RICA members are willing and able to provide the same cost information provided by rural ILECs as a condition of receiving USF support. Alternative methods of determining cost may be developed in the future, but the end of the identical support rule should not be further extended until those are adopted because the current recipients of windfall support will have every incentive to

²³ See, 47 C.F.R. 54.207 (c), (d).

²⁴ Wireline ETCs, such as RICA members, appear to account for only approximately 3% of USF support to competitive carriers.

continue the successful delay they have practiced for many years. RICA also believes that a cost based support system would prove to be an effective control on the number of multiple ETCs receiving support for the same area.

VI. IT IS NOT NECESSARY TO ADD BROADBAND AS A SUPPORTED SERVICE AT THIS TIME; UNIVERSAL SERVICE SUPPORTS NETWORKS THAT ENABLE BROADBAND SERVICES

Finally, the Public Notice asks for comment on whether “broadband” should be added to the list of supported services. RICA recognizes that the question of how to improve nationwide broadband deployment is a matter of considerable public discussion at the present time. Although most of its members offer broadband capabilities to a large portion of their subscribers, either through DSL, fiber to the home or over affiliated cable systems, RICA recognizes that there are many rural areas served by large ILECs where such services are not available. Many of these areas are the same rural areas where the large carriers, facing competition in their urban areas, have avoided making the necessary investment to upgrade their facilities to those that would support broadband. Nevertheless, until the serious other problems with the USF are resolved, it is at best premature to add a supported service, particularly one that may not be economically feasible for some ETCs.

Although the Communications Act does provide, as the Public Notice indicates, that the supported universal services should evolve, the Act also imposes significant constraints on the Commission’s freedom to designate services for support. In particular, Section 254(1) limits supported services to those that: “(A) are essential to education, public health, or public safety; (B) have...been subscribed to by a substantial majority of residential customers; (C) are being deployed

in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience and necessity.”²⁵

While it was relatively straightforward for the Commission to determine that basic telephone service is “essential,” it is not quite so obvious that broadband meets this test, however desirable and useful ubiquitous availability of broadband may be. RICA members recognize that a reliable broadband system is essential for the economic and social health of isolated rural communities. Former NTIA heads Mehlman and Irving recently referred to broadband as the “transformative technology of our generation.”²⁶ Nevertheless, at a minimum, the record needs more on this point than exists so far.

The more difficult hurdle is probably subsection (B). The Commission’s latest information concludes that there are approximately 64.6 million high speed lines in service as of one year ago.²⁷ Whatever the meaning of “substantial majority of residential customers” it does not appear that this number could meet that standard.²⁸ That conclusion is even more clear if high speed lines are limited to those provided by telecommunications carriers, which is a possible reading of the interaction between subsections (B) and (C).

RICA fully supports the national objective of ubiquitous broadband deployment and the utilization of USF to support networks that enable broadband. RICA members are at the forefront

²⁵ 47 U.S.C. 254(c)(1)

²⁶ Mehlman and Irving, *Bring on the Exaflood*, Wash. Post, May 24, 2007, A31. (“Mehlman and Irving”).

²⁷ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Doc. No. 07-45, FCC 07-21 (2007). (“Section 706 NOI”)

²⁸ Mehlman and Irving cite a McKinsey & Co. report that the broadband penetration rate is 25%.

of such deployment. The Section 706 NOI makes clear, however, that there are many questions which must be answered before the Commission can add broadband services to the list of supported services.

VII CONCLUSION

For many years the industry and regulators have known that the “identical support” rule both lacks a rational basis and causes unnecessary growth in the USF (although those receiving its windfall have not been willing to say so). Nevertheless, nothing has been done. Now instead of fixing the problem, the Commission and the Joint Board want to explore a competitive bidding system as a means of reducing support to rural areas. RICA recognizes the theoretical attractiveness of a process common to business and industry for obtaining a desired good or service at the best possible price. The devil, as the saying goes, is in the details.

None of the proposals so far, however, have begun to analyze with sufficient depth the practical real world issues, and there is no model of a comparably developed country successfully instituting such an auction. This is not to say that developing an appropriate process is impossible, but progress in making obvious fixes to the system should not be delayed for the many years it will take to resolve the difficult questions. Much the same can be said for developing a modeling system to predict costs in particular rural areas. The Joint Board should recommend: 1) an immediate end to the identical support rule; 2) a requirement that all ETCs that seek universal service network support to fulfill carrier of last resort responsibilities consistent with the requirements of the Act;²⁹ and 3) that the universal service network support for a qualifying ETC

²⁹ Carriers not qualifying for high cost support may nevertheless obtain ETC designation in order to participate in the life line and link up programs.

should be based on its own costs, consistent with the rules applicable to rural incumbent ILECs.

Respectfully submitted,

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