FCC RULES IN FAVOR OF INTERIM CETC CAP; MOVE SEEN AS FIRST STEP IN BROADER REFORM

May 2, 2008 - TR Daily

The FCC officially adopted an interim cap last night on Universal Service Fund high-cost payments to competitive eligible telecommunications carriers, saying the move is intended to halt the soaring growth of USF payments while the Commission tries to come up with broad-based permanent reforms.

By a 3-2 vote that broke down along party lines, the agency agreed to support the recommendation of the Federal-State Joint Board on Universal Service and froze total annual support for CETCs in each state at their March 2008 levels. However, it granted exemptions to the cap to CETCs serving tribal lands or Alaska native regions as well those carriers who file their own cost data. The order also addressed most of the pending CETC petitions before the Commission as well.

FCC Chairman Kevin J. Martin called the decision not an end in itself, but a step on the path towards comprehensive reform, adding, Im supportive of these measures to contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected.

Supporters of the order noted consumers are currently paying a more than 11% surcharge on their interstate phone bills to cover the expanding high-cost fund, which has been largely fueled by a growth in the number of CETCs. Those carriers, most of which are wireless service providers, receive USF support based not on their own costs but on those of the incumbent provider, which are often higher. USF payments have grown from about $1.5 million in 2000 to more than $1 billion in 2007.

The decision handed down by the Commission came as little surprise, given Commissioner Robert M. McDowells announcement on Monday that he would support the interim cap, giving Chairman Martin the three votes he needed to get the measure passed (TRDaily, April 28). However, regulators backing the order said it was an important first step in attempting to revamp USF.

In adopting the USF joint boards recommendation with few modifications, the FCC said it supported the focus on CETCs because it is the aspect that most directly threatens the specificity, predictability, and sustainability of the fund. It noted that the current rules promote the sale of multiple supported wireless handsets to a household. A cap on incumbents, meanwhile, was not deemed necessary because their support growth rate has been relatively flat.

The majority of regulators also made it clear that they believed an interim cap on CETCs was allowed under the 1996 Telecommunications Act, and said that arguments made by CTIA and several wireless carriers that stated the move would violate the laws requirements that rural and urban rates should be comparable fell short because the group could not provide data showing how the cap would cause pricing in the two areas not to be equal.

Commissioner Deborah T. Tate, who serves as the federal chair of the USF joint board, saluted its members for putting together a proposal that will serve as the foundation for additional reforms. Their important input was crucial to bringing us to this point in the process, she said. They should all take pride in the fact that their interim recommendation was adopted . . . by the Commission and will immediately begin to curb the unsustainable growth - at least regarding the high-cost fund.

The state co-chair of the panel, in turn, heaped praise on the FCC for moving forward with the recommendation. The imposition of an interim cap as recommended by the [joint board] is the first necessary step toward enacting comprehensive reform, said Ray Baum, a member of the Oregon Public Utility Commission. This continues the momentum towards achieving that ultimate goal.

Democrats at the Commission, however, said the agencys actions would do little to bring real change to the USF system. They insisted that the FCC would be much better off tackling wide-reaching reform of the program rather than taking a piecemeal approach by approving an interim cap with the hope that further reforms will be implemented at a later date.

The Commission seems to forget that we do not have the luxury of time here, said Commissioner Michael J. Copps. Why is it slamming on the brakes when it comes to reform? The joint board gave us more, and it is those proposals we should be considering in a more comprehensive fashion. While I disagreed with some of the joint boards recommendations, at a minimum they put us on the road to real reform.

Commissioner Jonathan S. Adelstein, meanwhile, called the FCCs action a step backward in trying to craft better universal service policy. Going back to my days on the joint board, I have urged both our Commission and our state commission colleagues to exercise caution in granting CETC designations, he said. Yet, the cap mechanism adopted by the Commission . . . suffers from a major flaw because it penalizes most harshly the very states that heeded the calls for discretion in the designation process.

Investment analysts also had different takes on the decision. A report by Stifel, Nicolaus & Co., Inc., stated while the interim cap will be helpful to the Bells and other incumbents, it is problematic for wireless carriers and other CETCs whose USF support growth will be stifled by its implementation.

Raymond James & Associates, Inc., lauded the decision. We have advocated for years for the FCC to take action to address issues surrounding USF and we believe yesterdays actions are largely positive for the industry and the carriers in our coverage universe, it stated. We have long held the position that wireless CETC money was poorly justified and did little to support the build-out of essential services.

But Medley Global Advisors LLC said the order could lead to lawsuits. Taking this step will render the identical support rule ineffective, which is likely to invite litigation challenges from the entire wireless industry that argues a cap violates the statute and therefore puts them at a competitive disadvantage relative to their incumbent [local exchange carrier] peers, it said.

The FCC order, however, was well received by wireline carriers, their interest groups, and a few consumer groups. Robert Quinn, AT&T, Inc.s senior vice president-federal regulatory said the Commission was responsibly putting the brakes on a major cause of the careening growth of the USF. This is good news for consumers since their dollars are financing the fund every month through their phone bills.

Verizon Communications, Inc., expressed similar sentiments. Consumers will be happy to hear the FCC is taking control of the funds growth, said Tom Tauke, the companys executive vice president of public affairs policy and communications. This is a responsible first step. The next step is comprehensive reform of the universal service high-cost fund to make it more efficient.

Shirley Bloomfield, Qwest Communications International, Inc.s senior vice president-federal relations, called the cap a good interim step until comprehensive reform of the USF program is achieved that ensures all rural customers have access to affordable and quality telecommunications services.

The Commissions long-awaited order protects consumers from the continually increasing burden of funding runaway growth in universal service, said Walter McCormick, president and chief executive officer of the U.S. Telecom Association. The order is an important step toward comprehensive reform and we look forward to working with the Commission to achieve that goal.

The Organization for the Promotion and Advancement of Small Telecommunications Companies said the FCCs action would ensure the health of the USF, which is critical for rural communities that many of its member companies serve. The **Western Telecommunications Alliance** agreed, stating that the use of scarce program dollars to support multiple wireless carriers was undermining the system.

Curtis Stamp, president of the Independent Telephone & Telecommunications Alliance, called the Commissions order a vital first step toward controlling the fastest growing part of the USF. He also commended the agency for ensuring the interim caps effect on USF doesnt have an unintended effect on price-cap carriers.

Were enthusiastic about the FCCs first step toward reforming [USF], said Vera McIntyre, chairwoman of Communications Consumers United, a consumer advocacy group in favor of universal access for advanced telecom services. As an organization that supports the use of broadband deployment in communities, we hope this cap will allow the FCC to develop a more competitive and beneficial environment for consumers.

And Frontier of Freedom, a conservative public policy group, said the Commissions order was a positive step forward in opening up rural markets to provide consumers with lower pricing through competition and less wasteful spending of taxpayers money. We are now one stop closer to a free market with fair competition, said George Landrith, the groups president.

But those representing wireless carriers saw it differently. Sprint Nextel feels an interim cap is a fractional approach to addressing a much larger problem and will soon introduce a proposal that will equitably reform universal service without administrative complexity and preserve the benefits of the fund for consumers, it stated.

The Rural Cellular Association said it was wrong for the Commission to single wireless providers out. Wireless carriers have an excellent record of using USF support for rural service improvements, it said. It defies logic to single out competitive carriers for a cap on support when problems with the overall fund remain unaddressed.

And Alltel Corp., in a statement, said limits of any kind on wireless USF are bad for consumers, especially in rural areas. Were studying the impact of the cap.

Meanwhile, the Commission invited interested parties to file comments in related proceedings, such as the intercarrier compensation reform rulemaking and several USF-related dockets, in an expedited manner. - Ted Gotsch, ted.gotsch@wolterskluwer.com

TR Daily, May 2, 2008