

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

TO: The Commission

**COMMENTS SUPPORTING
INTERIM CAP ON PORTABLE CETC SUPPORT**

The Western Telecommunications Alliance (“WTA”) submits its comments in response to the Notice of Proposed Rulemaking (*High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*), WC Docket No. 05-337 and CC Docket No. 96-45, FCC 07-88, released May 14, 2007. WTA urges the Commission to adopt the proposal in the Joint Board’s Recommended Decision¹ for an interim, emergency cap on the amount of portable high-cost support that competitive eligible telecommunications carriers (“CETCs”) may receive.

WTA, a trade association that represents approximately 250 rural incumbent local exchange carriers (“ILECs”) operating west of the Mississippi River, recognizes that the recent explosive growth of high-cost support endangers the stability, sufficiency and viability of Universal Service Fund (“USF”) programs that have brought essential telecommunications infrastructure and critical economic development opportunities to many rural areas. It supports the proposed CETC cap because portable CETC support is one of the few USF programs that has not previously been subjected to a cap, and is the

¹ Recommended Decision (*High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*), WC Docket No. 05-337 and CC Docket No. 96-45, FCC 07J-1, released May 1, 2007.

particular USF program that is careening out of control and threatening the future of the entire fund. WTA also supports the Joint Board's recommendations regarding the length, operation and base period for the interim CETC cap.

A. Application of the Interim Cap to CETCs

The USF is presently comprised of the following six basic programs: (1) the Schools and Libraries program (capped at \$2.25 billion); (2) the Rural Health Care program (capped at \$400 million); (3) the high-cost support program for rural carriers (of which the High Cost Loop segment has been capped for over ten years); (4) the high-cost support program for non-rural carriers (of which the Interstate Access Support portion has been capped since its implementation); (5) the portable high-cost support program for CETCs (which has never been capped); and (6) the low income customer program (which has never been capped). Put simply, CETCs are the only group of carriers that have never been subject to a cap with respect to any portion of their USF support. It is well past time that this special dispensation is terminated, and that CETCs have their USF support capped just like other carriers.

This is particularly fitting because portable CETC support is the program that is threatening the sustainability of the entire USF due to its rapid and uncontrolled growth. As demonstrated in Appendix A to the Recommended Decision, the portable high-cost support received by CETCs skyrocketed from virtually nothing in 2000 to approximately \$1.0 billion in 2006, and (if left uncontrolled) is projected to continue increasing by roughly \$500 million a year to approximately \$2.5 billion by 2009. This dramatic growth has been, and will continue to be, primarily the result of the gold rush by wireless CETCs for portable high-cost dollars based upon ILEC costs pursuant to the "identical support

rule.” In stark contrast, distributions of high-cost support to ILECs have remained at approximately \$3.0 billion since 2002, and have been declining recently due to the increasing bite of the cap on the high-cost loop support received by rural ILECs.

In light of the prevalence of caps on other USF programs and the current role of CETC support as the primary cause of USF instability, assertions that capping the CETC program would violate the principle of “competitive neutrality” are laughably ridiculous. The competitive neutrality principle previously added by the Commission to the statutory Universal Service principles in Section 254(b) of the Communications Act should level the playing field, not establish and maintain special privileges for wireless and other CETCs.

As the Joint Board indicated, a cap on CETC support will improve, rather than obstruct, competitive neutrality because CETCs presently benefit from the substantial and fundamental differences between their regulatory treatment and that imposed upon ILECs. This imbalance heavily favors CETCs because they currently receive the same “per-line” high-cost support as ILECs even though they do not have the same costs and regulatory requirements. For example, CETCs are not subject to state Carrier of Last Resort requirements that substantially increase ILEC costs by requiring them to serve high-cost, low-revenue areas and customers. Likewise, CETCs can maximize their toll profits because they are not subject to equal access obligations like ILECs, and can rapidly change their local service rates and packages to gain competitive advantages because they are subject to little or no rate regulation. Also, CETCs are largely exempt from the labor-intensive and expensive accounting, cost allocation, reporting and other regulatory obligations imposed by federal and state commissions upon ILECs.

WTA believes that it is time, in particular, for the Commission to re-examine the assumption that wireline ILECs and wireless CETCs are competitors. Wireless CETCs provide a significant mobility element for many end users, but are not likely to drive out or substantially replace wireline ILECs in most business and residential markets. Rather, wireline and wireless services are predominately complementary or supplementary services, with substantial majorities of businesses and residences subscribing to both services and likely to do so for many years to come.² Whereas the media have published stories about people “cutting the cord,” the majority of such individuals appear to be students and young professionals who are likely to subscribe again to wireline services when they become more settled in their careers and family situations. Likewise, while wireless trade associations brag about the growth of the number of wireless phones vis-à-vis wireline phones, a great deal of this alleged “pattern” is explained by the fact that digital subscriber line (“DSL”) and fiber connections allow an increasing portion of households to be served by a single wireline, whereas the multiple residents of such households may each have their own wireless phones. The workings of the “identical support rule” are increasingly leading to anomalies wherein a rural ILEC receives a certain amount of high-cost support (based upon its actual costs) for serving a particular rural residence, while a wireless CETC receives 2, 3 or 4 times that amount of support (an amount wholly unrelated to its own costs) for providing separate wireless phones to the separate individuals living at that same rural address.

² Virtually all businesses subscribe to single-line or multi-line wireline service, while many of their employees carry business or personal wireless phones. Likewise, most stable and established residences subscribe to one or two wirelines (increasingly, to a single DSL line) as well as to separate wireless phones for most or all adult and adolescent residents.

The “identical support” rule was adopted and rationalized by previous Commissions as promoting the principle of “competitive neutrality.” However, it has never been explained satisfactorily why any ETC should receive USF support in amounts that do not bear (or even purport to bear) any relationship to its own investments, costs, facilities or services in the affected rural area, and which appear to significantly exceed such costs in many instances. Distributing high-cost USF support to CETCs on the basis of an ILEC’s costs makes no more sense than requiring taxes to be calculated and paid by one entity on the basis of another entity’s income, or providing medical treatment to one person on the basis of another person’s medical history and test results.

Whereas the Joint Board and Commission should eventually eliminate the “identical support rule,” its continuing existence at this time is yet another reason why imposition of the recommended CETC cap does not violate any reasonable principle of competitive neutrality.

B. Length of Interim CETC Cap

WTA notes that the proposed CETC cap is only an interim emergency cap, and that it will be reexamined (and potentially extended, modified or terminated) at the time that the Joint Board and Commission address long term changes to high-cost support programs. In light of the fact that Section 254(a)(2) of the Communications Act gives the Commission one year to act upon universal service recommendations of the Joint Board, the proposed length of the interim CETC cap (one year from the date of the Joint Board’s promised recommended decision addressing fundamental high-cost reforms) is reasonable and equitable.

C. Operation of the Interim CETC Cap

WTA supports the proposed imposition of the interim CETC cap on CETC support within each state. It is the state commissions that have the statutory Section 214(e)(2) jurisdiction and discretion to designate multiple CETCs in rural telephone company service areas, and that have elected to designate 2, 3, 4 or more wireless CETCs in some rural telephone company areas. It is, therefore, the state commissions that should deal with and alleviate any problems that they have created.

WTA notes that, because ILEC and wireless CETC services primarily complement rather than compete with each other, the receipt of high-cost support by an ILEC and the non-receipt of such support by a wireless carrier do not significantly enhance or impair the ability of one to serve the area vis-à-vis the other. However, if one wireless carrier gets high-cost support and another wireless carrier serving the same area does not, competition between the two wireless carriers will be impacted greatly (and perhaps decisively). Therefore, if a state commission has designated one or more wireless carriers as CETCs in certain service areas, but has not yet accepted or acted upon requests by additional competing wireless carriers for CETC designation in the same areas, it should have the ability to address the situation and minimize the adverse impacts upon wireless-to-wireless competition.

D. Base Period of the Interim CETC Cap

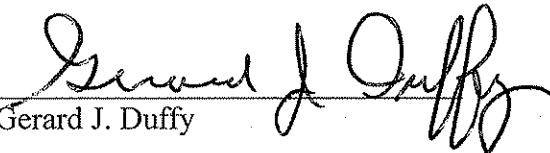
WTA supports the Joint Board recommendation that the base period for the interim CETC cap be calendar year 2006. The capped amount of CETC support for each state will be the actual amount of CETC support distributed in that state for calendar year 2006.

WTA believes that an annual support base will smooth and average out seasonal fluctuations, and that an actual support base will be somewhat more reliable and equitable than a projected base. More important, the use of the completed year 2006 as the base period rather than any incomplete or future period will eliminate incentives for large numbers of additional carriers to seek CETC designation while this proceeding is pending and before the base period is completed.

E. Conclusion

Given the explosive and dramatic growth of portable CETC support, WTA urges the Commission to act expeditiously to adopt and implement the interim emergency CETC cap recommended by the Joint Board. Rather than remaining the last carriers subject to no USF cap, CETCs should have their portable high-cost support capped immediately to stop the hemorrhaging that is threatening the sustainability of the entire USF.

Respectfully submitted,
**WESTERN TELECOMMUNICATIONS
ALLIANCE**

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Dated: June 6, 2007