

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the FCC's May 14, 2007 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceedings.¹ The NPRM seeks comment on the Federal-State Joint Board on Universal Service's (Joint Board) recommendation that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive.²

OPASTCO is a national trade association representing over 520 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as

¹ *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007).

² *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (Recommended Decision).

defined in 47 U.S.C. §153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include broadband, video services, mobile wireless services, long distance resale, and competitive local exchange service.

OPASTCO strongly supports the Joint Board's recommendation to immediately impose an interim cap on the high-cost support received by competitive ETCs and urges the Commission to adopt it without modification. The Joint Board's recommendation is the most logical and equitable way in which to rein in the rapid growth of the High-Cost universal service program while the Joint Board and FCC contemplate long-term reforms to sustain the Fund.

II. THE COMMISSION SHOULD IMMEDIATELY ADOPT THE JOINT BOARD'S RECOMMENDATION TO IMPOSE AN INTERIM CAP ON HIGH-COST SUPPORT PROVIDED TO COMPETITIVE ETCs, WITHOUT MODIFICATION

As a result of the rapid and excessive growth in support being received by competitive ETCs, the High-Cost program is in serious jeopardy of becoming unsustainable if immediate action is not taken. Support for competitive ETCs has grown from \$15 million in 2001 to almost \$1 billion in 2006, and based on current estimates, the support received by these carriers will reach at least \$1.28 billion in 2007, almost \$2 billion in 2008, and \$2.5 billion in 2009³ if action is not taken to contain it. In addition, the Universal Service Fund (USF) contribution factor for second quarter 2007 is 11.7 percent,⁴ the highest it has ever been. Therefore, the Joint Board's recommendation

³ Recommended Decision, ¶4. It should be noted that these estimates are conservative in that they only consider support to be received by existing competitive ETCs. They do not factor in the additional growth that would occur if new competitive ETCs are designated.

⁴ *Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 5074 (2007).

to impose an emergency, interim cap on the support received by competitive ETCs is essential to stabilize the size of the High-Cost program until measures can be adopted that will sustain the program for the long term.

Limiting the interim cap to the support provided to competitive ETCs, as recommended by the Joint Board, is entirely logical since it directly targets the source of virtually all of the growth in the High-Cost program in recent years. As the Joint Board states in its Recommended Decision:

In recent years, this growth [in high-cost support] has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETC's own costs. While support to incumbent LECs has been flat or even declined since 2003, by contrast, in the six years from 2001 through 2006, competitive ETC support grew from \$15 million to almost \$1 billion – an annual growth rate of over 100 percent.⁵

Thus, the Joint Board's recommendation correctly avoids negatively impacting rural ILECs and their customers, which have posed no additional burden on the Fund in several years, and instead focuses on addressing the discrete source of the problem. Commissioner Larry Landis's analogy is apropos: "...if you are offering emergency medical treatment to a badly injured person who is bleeding profusely from the arm, you don't address the short-term problem by applying a tourniquet to the patient's leg."⁶ In other words, there is no rational justification for applying a cap to the support received by all high-cost support recipients, when the targeted approach recommended by the Joint Board is all that is called for to effectively address the problem on an interim basis.

In addition, limiting the interim cap only to high-cost support provided to competitive ETCs is, without question, equitable. Since 1993, caps have limited the

⁵ Recommended Decision, ¶4.

⁶ *Id.*, Statement of Commissioner Larry S. Landis, p. 20.

amount of support available to rural ILECs from the high-cost loop support (HCLS) mechanism, which is the largest of the support mechanisms through which these carriers receive funding. In fact, since July 2001, when these caps were “re-based” by the Commission,⁷ rural ILECs have forgone **over \$2.5 billion** in federal high-cost support.⁸ The nature of the capping mechanism on HCLS has created significant unpredictability for rural ILECs from year to year, as an increase in support for any carrier lessens the support for other carriers. It is important to recognize that since competitive ETCs began receiving support, the HCLS they have received has been permitted to grow unfettered as the number of competitive ETCs has grown and as their line counts have grown. Thus, any assertions that an interim cap applied only to the support received by competitive ETCs would not be competitively neutral or equitable are simply baseless.

The Joint Board states that their recommendation to cap competitive ETC support is “...largely because [they] conclude that the identical support rule has become dated and may no longer be the most appropriate approach to calculating support for competitive ETCs.”⁹ Indeed, for years now, competitive ETCs – primarily wireless carriers¹⁰ – have been reaping windfalls of support through the illogical identical support rule, which bases the support they receive on the unrelated costs of the rural ILEC providing ubiquitous service throughout the area. Moreover, the rules have allowed competitive ETCs, upon designation, to immediately begin receiving the rural ILEC’s cost-based per-line support amount for all of their existing customers in the designated

⁷ 47 C.F.R. §§36.603-36.604.

⁸ Source: National Exchange Carrier Association USF data submissions. Note that the \$2.5 billion figure does not include any of the support forgone from the caps in place prior to July 2001.

⁹ Recommended Decision, ¶7.

¹⁰ The Congressional Budget Office estimates that 95 percent of the high-cost support received by competitive ETCs goes to wireless carriers. See, Congressional Budget Office, *Factors That May Increase Future Spending from the Universal Service Fund* (June 2006), Summary, p. IX; Chapter 3, p. 12.

territory, whom they were successfully serving without any support. Therefore, imposing an interim cap on competitive ETC support is a necessary measure to contain the rapid growth in unjustified distributions to these carriers while the Joint Board and Commission contemplate long-term policy changes to address this "...outdated approach to USF funding."¹¹

It should be noted that AT&T, the largest wireless carrier in the United States,¹² has submitted a plan for stabilizing the High-Cost program in the short term¹³ that proposes much bolder steps for addressing the growth in competitive ETC support than the Joint Board's Recommended Decision. Specifically, AT&T's plan would immediately halt the approval of new competitive ETCs and impose a freeze on the number of lines for which wireless competitive ETCs receive high-cost support. It would also reduce by 25 percent the support that wireless competitive ETCs receive through the support mechanisms designed to replace access charges. Surely, if the nation's largest wireless carrier is willing to acknowledge the source of the runaway growth in the High-Cost program, and recommend a strong, targeted interim plan to address it, the Commission should be willing to adopt the more modest recommendations of the Joint Board.

The Joint Board's recommended interim cap obviously would not stop funding from continuing to flow to competitive ETCs, nor would it adversely affect wireless service in rural areas.¹⁴ And most importantly, an interim cap on competitive ETC

¹¹ Recommended Decision, ¶12.

¹² www.wireless.att.com/about/.

¹³ *AT&T Letter to the Hon. Deborah Taylor Tate and the Hon. Ray Baum*, WC Docket No. 05-337, CC Docket No. 96-45 (fil. Mar. 22, 2007).

¹⁴ The FCC's Eleventh CMRS Competition Report found that less densely populated counties (100 persons per square mile or less) have an average of 3.6 mobile competitors. The report concluded that "...CMRS providers are competing effectively in rural areas." *See, Implementation of Section 6002(b) of the Omnibus*

support would not harm the availability of universal service throughout the country since virtually all Americans have access to service from *at least* one ETC (the ILEC) and, in most cases, more than one.¹⁵

OPASTCO agrees with the Joint Board's recommendation for the duration of the interim cap to be one year from the date of any Joint Board recommended decision on comprehensive high-cost universal service reform. The Telecommunications Act of 1996 requires the FCC to act on a Joint Board recommendation within one year after receiving it.¹⁶ Therefore, by one year from the date of a Joint Board recommendation on comprehensive universal service reform, the FCC will have adopted an Order that provides a long-term approach to addressing the excessive and unjustified growth in competitive ETC funding.

OPASTCO is also in agreement with the Joint Board's recommendation to impose a cap on competitive ETC support for each state. This approach would encourage state commissions to be very judicious in their decisions regarding applications for ETC designation, because the designation of any additional ETCs would not draw additional federal dollars into the state; it would simply require a fixed amount of funding to be reallocated among all of the competitive ETCs in the state. At the same time, however, a state-based cap would still afford state commissions the flexibility to designate additional ETCs if they believe that it will serve the public interest.

Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 10982-10983, ¶¶86, 88 (2006).

¹⁵ Approximately 70 percent of rural study areas have at least one competitive ETC claiming support. *See*, Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2007* (May 2, 2007), Appendix HC18.

¹⁶ 47 U.S.C. §254(a)(2).

On the other hand, were a single cap applied to the support received by all competitive ETCs nationwide, some states may be incented to quickly move to designate additional competitive ETCs. This is because additional ETC designations would still draw more federal support into a state and the overwhelming majority of the “burden” caused by the designations would fall on competitive ETCs throughout the rest of the country. This outcome would not be fair to the competitive ETCs in the other states, as well as the states themselves, which have no control over the designations made outside of their jurisdiction. By imposing the interim cap on a state-by-state basis, each state commission will have control over the amount of funding received by competitive ETCs in their state.¹⁷

Finally, the interim cap in each state should be set at the level of support actually distributed to competitive ETCs in that state in 2006, as the Joint Board recommended. Using 2006 data would enable the Commission to base the cap on actual support amounts rather than on projections which may or may not be a reasonably accurate reflection of what the competitive ETCs in each state will actually receive. In addition, as the Joint Board notes, using actual distributions over four quarters would account for any seasonal or one-time fluctuations that may be reflected in any single quarter.¹⁸ While the use of 2006 support distributions will likely result in a lower cap in most states than the level of support that is being distributed in 2007, the critical need to stabilize support for competitive ETCs, coupled with the fact that the cap is an interim measure, more than justifies using 2006 support levels.¹⁹

¹⁷ The limited exception to this is in cases where the FCC may choose to designate an ETC pursuant to 47 U.S.C. §214(e)(6) when a carrier is not subject to the jurisdiction of a state commission.

¹⁸ Recommended Decision, ¶13.

¹⁹ *See, Id.*

III. CONCLUSION

The FCC should immediately adopt the Joint Board's recommendation to impose an interim cap on high-cost support provided to competitive ETCs, without modification. The recommended cap would effectively and fairly stem the rapid growth in support to competitive ETCs – caused in large part by the identical support rule – while the Joint Board and Commission consider comprehensive reforms to the High-Cost program that will address this issue for the long term.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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June 6, 2007

CERTIFICATE OF SERVICE

I, Brian J. Ford, hereby certify that a copy of the comments of the Organization of the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 6th day of June, 2007, to those listed on the attached list.

By: /s/ Brian J. Ford
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