

**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 Universal Service)	CC Docket No. 96-45

COMMENTS OF CORR WIRELESS COMMUNICATIONS, LLC

Corr Wireless Communications, LLC (“Corr”) offers these brief comments on the Commission’s Notice of Proposed Rulemaking with respect to the Joint Board’s *Recommended Decision*¹ to impose an interim cap on high cost support to competitive ETCs. Corr is disappointed that the Joint Board was not able to develop a comprehensive long term solution to the problem of USF funding. As a wireless carrier which provides lifeline services in high cost areas of Alabama, Corr is deeply concerned that the viability of the USF be preserved while also ensuring access to the fund by competitive ETCs like itself. As we recognized in our comments to the Joint Board in connection with the “reverse auctions” proposal, the competing considerations of stemming the uncontrolled growth of the fund while preserving non-discriminatory funding to carriers providing necessary services must both be accommodated. Since the Board and the industry have not yet been able to come up with solution that meets all of the competing demands on the Fund, a cap is perhaps a necessary temporary measure, pending the development and adoption of a permanent “fix.” A cap is a quick and efficient way to stop the growth

¹ *Recommended Decision*, WC Docket No. 05-337, FCC 07J-1, rel. May 1, 2007.

in USF revenue requirements while maintaining something like the status quo. That said, Corr believes that unless the Board's Recommendation is modified in several critical respects, it will not achieve its intended purpose and will in fact seriously disadvantage one segment of a competitive industry.

I. The Cap Should Apply Across the Board

The most glaring and fundamental defect in the Board's cap proposal is that it focuses entirely on the competitive ETCs as the cause of the explosive growth in the need for high cost support. This "blinders-on" approach to the problem ignores the undisputed fact that almost 80% of high cost support goes to LECs. It is as though an airplane that needs to transport a full cabin of passengers first loaded it up with grossly obese people all carrying extra luggage. Then when the last few slim passengers carrying small carry-ons try to board, the airline announces that *they* are causing the plane to exceed the weight limit and they must therefore await the next flight. By focusing solely and myopically on the incremental growth at the margin, one can brand the newcomers as "causing" the problem when, of course, it is the *overall* load of the plane that is the problem. The Joint Board has fallen into a casuistic fallacy unworthy of a college sophomore. Indeed, in this example, as in the LEC/competitive ETC situation, it is actually the bloated parties soaking up the vast majority of the funding who should bear the greatest responsibility for overtaxing the system.

One graphic example of how the fund is being tapped by LECs in ways that overburden the system occurred recently in Alabama. There the Alabama PSC

approved the application of a LEC for the reallocation of millions of dollars of unspent USF funds from high cost support to purposes such as building out DSL in rural areas, diversifying fiber routes, and replacing infrastructure damaged in a hurricane. It is as though the USF is a cookie jar from which the LEC can take funds as needed for construction projects. No matter how worthy the project, it is not at all clear that these funds are being expended for valid purposes (broadband deployment is, of course, not a supported service). And diversifying routes and rebuilding infrastructure may be perfectly needed projects, but why is the American public supporting these capital improvements rather than the LEC's own investors? And more to the point, why should the American public support those projects at the expense of supporting a competitive ETC who might need the funds to provide much more basic phone and emergency services to rural areas. Yet this is what the Joint Board's recommendation permits and even fosters.

With this in mind, Corr urges the Commission to make three changes in the cap, one fundamental and two procedural. First, the cap should be applied across the board to all carriers participating in the fund. There is no reason in law or equity why only the competitive ETCs should be capped and not the LECs; they are no more to blame for the growth in the Fund than the last-boarding passengers on the airplane. Everybody who participates in the Fund is causing the Fund to be large, not just the new entrants. Therefore, everybody should suffer the same inability to increase funding until an overall solution is arrived at. This approach accurately and fairly assigns the cause of the problem where it belongs – to all

participants – and then requires all those participants to suffer equally while the solution is worked out. Any other approach is not only grossly unfair, but serves to distort the competitive dynamic between LECs and ETCs by regulatorily favoring the one competing group with a huge subsidy not available to the other.

The Commission should recognize that it is wireless carriers who have the most pressing need for capital expenditures to build out service in presently underserved areas, areas where phone service is spottiest and the number of competing carriers is limited. By contrast, most LECs have mature networks requiring little in the way of cap ex to serve new customers. Rather, as we saw in the case of the Alabama order, USF funds are being used to add new service offerings like DSL, “diversify routes” and provide other enhancements of existing networks rather than providing the basic phone service that Congress intended. If anybody needs access to high cost support, it is rural wireless carriers. Access to USF funds should be both technologically and competitively neutral. *Federal-State Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, 8944-5. The Board’s recommendation blithely discards that key principle with virtually no consideration of the adverse effect on competition which must be engendered and little justification for putting the regulatory thumb so heavily on the LEC side of the scales. The distinctions offered by the Joint Board at Paragraph 6 of the *Recommended Decision* do not present any basis whatsoever for capping one group but not the other.

A secondarily salutary effect of imposing the cap on everyone is that LECs will lose the incentive to delay still further the permanent resolution of the USF funding issue. It stands to reason that if one side to a dispute is given a highly favored position pending the resolution of the dispute, that party will have every incentive to drag the process out for as long as possible. (We have no doubt that this is one reason that the debate over interconnection compensation has dragged on for almost a decade – the parties who are heavily favored by the existing regime continue to prolong the debate in order to maximize the benefit they receive before reform is implemented.) As long as the debate goes on, the economic benefit of delay continues to flow. But if all players feel the pinch of the cap, all will have an incentive to reach a solution as soon as possible. This one simple step may alone speed the resolution of the USF funding issue by a year or two.

That said, Corr believes that the Board has not allotted enough time for the cap to remain in effect. The Board seems to contemplate (somewhat optimistically given the pace of reform to date) that it will have a recommendation on comprehensive reform of the high cost support process within six months, and the cap would expire one year from the issuance of that recommendation. While Corr enthusiastically endorses the speediest comprehensive reform of the USF system, the Board's timetable fails to allow enough time to fairly implement what will no doubt be a complete overhaul of the existing system. Once the Board issues its recommendation, the Commission has a statutory period of one year to act on the recommended decision. Given the many-tentacled and high stakes nature of the

problem, it would not be at all unusual or unwarranted for the Commission to take the full year or most of it to consider the issues. Yet the Board would have the cap sunset a year from the date of *its* recommended decision rather than at some remove from the *Commission's* adoption of an order in the matter. The cap might be sunset at a point when the Commission's order had not even gone into effect or was subject to the inevitable appeals. Both LECs and competitive ETCs need to be able to do some advance planning with the knowledge that they either will or will not have USF funding available at some discernable level. The normal budget process will not permit changes to be made instantaneously since capital planning must generally be done months or years in advance.

With these practical considerations in mind, Corr suggests that the cap – as applied to all participants across the board – should sunset eighteen months after the Commission's decision in this matter becomes final. That will provide participating carriers with sufficient time to revise their construction and operation plans to take into account what we anticipate will be a fundamentally altered regulatory landscape. And the quicker the Commission and the Joint Board get to a final decision, the quicker that landscape can be improved.

In addition to extending the cap to account for the time needed to implement these changes, the Commission should calculate the base cap amount based on the most recent four quarters of high cost support rather than using calendar year 2006 as the base period. The Joint Board used 2006 in order to have a full year of historical data smoothing out seasonal fluctuations and also to avoid relying on

projections for 2007. *Recommended Decision* at Para. 13. However, these objectives can be realized while also capturing the most recent support profile by simply using the most recently completed four quarters from March 31, 2006 to this March. The 2006 data is already somewhat dated and fails to account for any ETCs who became eligible in the first quarter or first half of 2006. By not including those carriers in the equation, the distribution formula will be skewed. To accomplish its purpose while maintaining ease of administration, the Commission should use the March 31, 2006 – March 31, 2007 period as its base.

II. Cap Should be at State Level

The Joint Board recommends that the cap should be applied on a state by state basis. Corr supports this aspect of the proposal. We believe that this will reduce incentives for states to compete with each other in the short term to get a larger share of the fixed high cost support pie. Rather, they will perhaps be more judicious in distributing the USF funds available to that state among the potential recipients, both LEC and competitive ETC. Forced to make some choices as to where the money is most productively assigned, the states may realize that diversifying fiber routes and providing DSL is less important than ensuring high quality mobile service to rural areas. Questionable allotments (such as the distribution in Alabama noted above) would be less likely to occur if effectively unlimited funds were not available for distribution. Moreover, the states are probably in the best position to allocate the now limited resource to where it is most needed.

In this formulation, for the duration of the cap the high cost support previously allotted to competitive ETCs in each state would remain at the same proportion of total high cost support for that state as it was in 2006. This will ensure a continuing rough parity in the USF distributions until a permanent solution can be adopted.

III. Conclusion

Corr recognizes that the proposed cap is an interim measure. Nevertheless, the Commission should revise the cap as requested here to avoid both further skewing the competitive imbalance between LECs and competitive ETCs and creating incentives to stall movement toward a more permanent solution.

Respectfully submitted,

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