Before the
Federal Communication 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 MID-RIVERS TELEPHONE COOPERATIVE, INC. REGARDING JOINT BOARD RECOMMENDATION TO CAP HIGH-COST FUND

Mid-Rivers Telephone Cooperative, Inc. (MRTC) hereby files its comments in connection with the Commission's Notice of Proposed Rulemaking on the recommendation of the Federal-State Joint Board on Universal Service that the Commission impose an interim cap on the amount of high-cost support (HCS) that competitive eligible telecommunications carriers (CETCs) may receive.

Summary

With modifications as proposed herein, MRTC supports the interim action recommended to the Commission by the Joint Board on April 26, 2007. The Commission must be careful to avoid causing harm to universal service policy while a long term solution is being developed.

With regard to the application of the cap proposed by the Joint Board, MRTC recommends the following modifications to the interim plan:

- The cap should be applied only to non-rural, wireless CETCs. Rural[1] wireless CETCs should not be capped at all or, in the alternative, should be capped individually.

[1] MRTC submits that the definition of "Rural" as used in its comments shall mean the same as found in the Communications Act. *See* Title I-General Provisions, Section 3 [47 U.S.C. 153] @ para.37: "RURAL TELEPHONE COMPANY.--The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity (A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

- Wireline CETCs should not be subject to the proposed cap.

Reducing funds to rural wireless CETCs will seriously hinder wireless expansion into rural un-served areas where such wireless services are necessary to address FCC mandates and public safety concerns. Rural wireless CETCs should not be capped.

If capping the HCS for rural wireless CETCs is ordered, rural wireless CETCs should not have their HCS funds reduced if additional CETCs are approved. Rural wireless CETCs are unable to rely upon their size or urban low cost areas for support of their high cost areas. Since they are generally small, the additional designation of new CETCs into a group that includes rural wireless CETCs would have a significant impact on a rural wireless CETC while not having a significant impact on the revenues or viability of large national CETCs. HCS capping for rural wireless CETCs should be handled on an individual company basis and not as part of a group cap.

There is no need to cap wireline CETCs since they are not a significant cause of the HCS problem. Capping wireline CETCs will not contribute significantly to the solution, but it will harm universal service.

With regard to the term of the interim plan, it should be recognized that over time the interim solution will have significant negative impacts on rural areas and rural subscribers. It is absolutely critical that a long term solution be expeditiously determined and instituted. The Commission should strive to assure that the interim plan stay in effect for no more than the recommended year, less if possible.

Finally, the Commission should use the actual HCS support level in 2007 to determine the interim cap amount.

Mid-Rivers Communications

MRTC is a rural telecommunications company operating in Montana and North Dakota. The company was established in 1952 and does business as Mid-Rivers Communications. It operates as an ILEC in some geographic areas, as a CLEC in other areas, and, through its wholly owned subsidiary, Cable & Communications Corporation (C&CC), it has a rural wireless operation as well. The company has approximately 24,500 working wireline access lines of which approximately 18,700 are residential lines and 5,800 are business lines. The company, through C&CC, also has approximately 2,600 active wireless lines. MRTC employs 175 people.

The Mid-Rivers Rural ILEC Division

MRTC provides one-party telephone service with advanced calling features in a 30,000 square mile area located in a 21-county portion of eastern Montana and three counties in North Dakota. MRTC is the largest land mass telephone cooperative in the Continental United States. The company operates over 10,100 route miles of telephone line and continues to install fiber optic cable. Approximately 1,400 miles of fiber optic cable are installed in its service area. MRTC and C&CC have invested over $200 million in telecommunications facilities and assets.

The MRTC ILEC service area includes the most rural areas of Eastern Montana surrounding population centers where Qwest is the ILEC. The average population density of the ILEC area according to the 2000 Census was approximately one person per square mile. Many areas have densities as low as 0.3 to 0.4 people per square mile. The largest population center is the community of Roundup with approximately 1,900 people. In addition to being sparsely populated, the area is losing population as people move into the population centers outside the MRTC ILEC area or leave the region altogether.

MRTC and its wholly-owned subsidiary, C&CC, also offer long distance services, video entertainment services, broadband internet access services, wireless service, and business CPE. Although MRTC has diversified its operations over the years, it provides services only in rural areas which require higher levels of investment than generally required in urban areas.

HCS is essential to the operation and progress of MRTC’s ILEC in providing quality telecommunications services to its high cost service areas.

The Mid-Rivers Rural CLEC Division

In the early 1990’s the company perceived a demand for improved quality in the local telecommunications services that were then provided in some nearby exchanges served by other ILECs. To meet the unanswered demand, MRTC took advantage of the competitive opportunity afforded by the Communications Act of 1996 and launched facility based CLEC services in those exchanges beginning in 1997.

MRTC provided the first broadband services to these areas and presented a quality competitive choice for voice and data. As in the MRTC ILEC service area, the CLEC service area continues to experience out-migration of the population and therefore a decreasing number of access lines in the market.

Since launching its CLEC activities, MRTC has invested substantially in new facilities in seven exchanges to bring high quality, modern telecommunications services to its subscribers. Most of this investment has been used to overbuild ILEC facilities that were in poor repair. Construction was started in the town centers of the exchanges and has continued outward from the initial town center build to reach more remote subscribers. Today MRTC has additional plans to continue the expansion of its facilities to cover still more of the rural service area with modern, well maintained facilities. The planned construction budget for the CLEC operation is estimated at $4 million per year over the next five years to substantially complete the facility overbuilds in the seven CLEC exchanges. These plans will have to be altered if HCS is not available to the MRTC CLEC.

MRTC has been quite successful in penetrating new markets and now has over 13,800 telephone access lines in its CLEC exchanges. Its exchange market share in its facility based service area is as high as 98% with a penetration in all exchanges combined of 77%. The company believes that the reason for its success is the significantly improved level of service provided to customers both in the new services offered and in associated customer service.

The MRTC CLEC is an ETC in all of the areas that it serves. Its first ETC certification was granted for the Wibaux exchange in 2000 and the most recent ETC designation for Lewistown was granted in 2006. The MRTC CLEC serves all rural communities with populations ranging from 505 residents up to 8,162 residents (2005 estimates). These rural communities would not have received the improved and contemporary telecommunications they enjoy today without the MRTC CLEC and the availability of HCS. It should be noted that even though the ILEC in these exchanges receives HCS for the exchanges, they are evidently not using it to upgrade and improve services in the area to the same extent as MRTC.

MRTC continues to build out these CLEC areas and it relies upon HCS to enable its construction program. MRTC uses all of its HCS plus internally generated funds in its construction program.

The Commission recently ordered that the MRTC CLEC operation in the Terry exchange be treated as an ILEC for purposes of the interconnection provisions (section 251) of the 1996 Telecommunications Act in response to the company's request.[2]

HCS is not a windfall. It is essential to the operation and progress of MRTC's CLEC in providing quality telecommunications services to its high cost service areas. The Commission must continue to support facility based CETCs.

MRTC Wholly-Owned Subsidiary Cable & Communications Corporation

Under its wholly owned subsidiary, C&CC, MRTC operates a small independent wireless telephone system serving the most remote areas of Eastern Montana. C&CC currently operates 20 cellular towers, 17 of which are located in previously un-served wireless areas, with plans to add additional towers in un-served wireless areas depending upon the availability of funding. C&CC operates as a "fill-in" licensee, meaning that it places its wireless towers where no other coverage was available. Current and future wireless service areas include rural communities of only a few hundred people, along with many undefined rural areas not named on any map and not close to any major highway. These wireless towers provide the infrastructure necessary to meet public safety and emergency communications requirements. C&CC is the only wireless carrier providing service to significant portions of rural Montana. C&CC relies upon continued availability of HCS to construct additional towers to provide initial wireless service for the first time.

C&CC is also an ETC in its wireless operations. When granted ETC status for the wireless operation, C&CC submitted a five year construction plan to the Montana PSC

[2] See Wireline Competition Docket 02-78, Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2).

and regularly reports on the company's progress toward completing that plan. The 2005 and 2006 planned construction has been completed, and the planned 2007 construction activity is well under way. HCS is absolutely critical to this rural construction. C&CC is using all of the HCS that it receives and additional funds to build out the necessary wireless service network to un-served and underserved rural areas in Montana. Without HCS these areas would remain un-served and without access to the wireless services that are necessary for public safety and emergency communications.

HCS is essential to the operation and progress of C&CC's wireless CETC in providing quality telecommunications services to its high cost service areas.

Recommended Interim Action

With modifications as proposed herein, MRTC supports the interim action recommended to the Commission by the Joint Board on April 26, 2007. The purpose of the plan must be solely to provide temporary relief and time to devise and implement a long term solution.

As a threshold matter, MRTC respectfully questions those who express concern regarding the growth in the total HCS fund. As wireless CETCs have been designated throughout the past several years leading to increased HCS support, MRTC's first observation is that any growth expressed from a zero or small number baseline is usually a very large number. Any statistical measure must be viewed in the proper context. Growth rates in particular depend upon a starting point. MRTC would also observe that existing policy requiring wireless CETCs to commit to actually build networks in the areas in which they receive HCS suggests that the HCS is being used to build networks. Finally, regardless of the growth, in actual terms or as a rate of growth, the Commission must, in any long term solution to HCS, ultimately decide on how to target support to carriers that require support. Consistent with MRTC's targeted support policy recommendation, the Commission should also consistently target HCS in any interim policy it adopts. Thus, MRTC recommends the following modifications to the proposed plan. MRTC's recommendations apply to the targeted application of the cap, the term of the interim plan, and the base period on which to base the cap.

The Cause of the Problem

Due to the efforts directed at controlling the growth of the HCS, one could get the impression that growth in the HCS is undesirable or inappropriate. Under the proper conditions, growth in the HCS is both desirable and appropriate. It must, however, be properly anticipated and the necessary growth in funding must be provided. Certainly any long term solution to the current crisis would be faulty if it did not anticipate growth in the HCS and the lines which the HCS supports.

The root cause of the current crisis is that lines supported by the HCS have grown faster than anticipated. Regulators made the determination that wireless lines were perfect competitive substitutes for wireline service. As such, regulators assumed that as wireless lines were added to the HCS funding requirement, wireline lines supported by HCS would diminish.

The actual purchasing decisions of the public show that wireless services are not a perfect substitute for wireline services. While some consumers may discontinue wireline service in favor of wireless service, many more retain their wireline service <u>in addition</u> to wireless services. Wireless service is therefore more of a complementary service to their wireline service rather than a substitute.

The Commission must reassess its intent with regard to HCS support for wireless services, and provide funding to support its goals.

<u>Application of the Cap</u>

A cap on the overall CETC HCS fund, and especially one that is applied at a group level, is a makeshift emergency measure. The use of such measures can be effective at accomplishing a pre-determined outcome, however, such measures always have undesired and unintended consequences due to the broad nature of the action. As such, application of broad solutions should be as limited as possible so that the negative impacts are minimized.

The proposed interim solution to controlling the growth in the HCS should be targeted for maximum public benefit at minimum public cost. The impacts of the interim solution on carriers that are not creating the escalating draw on the HCS should be minimized or completely eliminated. If carriers that are not creating the problem are negatively impacted by the cap, the Commission's action will unnecessarily harm universal service goals with no benefit in containing the growth of the HCS.

<u>ILECs Should be Unaffected by the Interim Action</u>

MRTC agrees with the Joint Board and urges the Commission to find that the recommended cap not be imposed upon ILECs.

HCS support to ILECs has already been capped and is already having negative impacts on the targeted support level for ILEC lines. Care should be taken so that the current negative impacts are not exacerbated by the Commission's actions in this Notice.

The HCS and its predecessor support systems have been working to provide cost support to modern telecommunications services to high cost areas for decades. The issues that have led to this Notice have been caused by imperfect policy initiatives to introduce competition into the telecommunication industry in high cost areas. While competition in rural high cost areas is a worthwhile goal, the Commission's approach has been flawed.

<u>There is No Need to Cap Wireline CETCs</u>

It is clear that the overwhelming majority of the recent growth in the HCS has been and is being caused by the growth in the number of wireless CETC lines. Large, nationwide wireless CETCs that serve urban areas in addition to the rural areas are receiving large and increasing amounts of HCS and should be subject to the proposed cap. MRTC believes that any rational long term solution must address large carriers' ability to average costs statewide. Unless the Commission addresses this issue in any long term solution, the current problems facing HCS support will continue.

Wireline CETCs are not a major contributor to the growth of the HCS. To the extent wireline CETCs are supported by HCS, wireline CETCs are limited to the HCS draw of the incumbent. The limited support available to those wireline CETCs that have invested significant amounts to serve under-served rural customers does not create windfall opportunities for the CETC. In fact, HCS revenue is vital to these CETC's continued financial viability. There is no need to apply a cap to the HCS received by wireline CETCs, and no significant benefit would result from such a cap. The benefits of HCS in support of wireline CETC lines should be maintained during the interim period.

Since the primary cause of the HCS growth has been the growth of wireless lines and the Commission is seeking to reduce the growth of the HCS while a long term solution is devised, it is logical that in order to be most effective, the cap should not apply to wireline CETCs.

<u>Rural Wireless CETCs Should not be Capped</u>

MRTC, through C&CC, currently uses and plans to use all of its wireless HCS funding to construct plant in un-served or under-served areas. It has made commitments to the Montana Public Service Commission and the public with regard to its build out plans. This is the primary purpose of the HCS. Rural wireless CETCs like C&CC should not be forced to limit their rural construction programs because of a limit in their HCS funding. Capping the HCS funds received by rural wireless CETCs will seriously hinder wireless expansion into rural un-served areas where such wireless services are necessary to address FCC mandates and public safety concerns. Therefore, MRTC believes that HCS funding to rural wireless CETCs should not be capped.

If the Commission determines that HCS funding to rural wireless carriers must be capped, the cap should be applied on an individual company basis, *i.e.*, rural wireless carrier HCS funding should not be reduced if new wireless CETCs become eligible for HCS funding during the interim period. Because of their smaller size with exclusively high cost lines, rural wireless CETCs would be most affected by a redistribution of capped HCS funds within a defined group, i.e. a state, with the addition of new eligible CETC lines to the group.

To the extent a state decides to designate additional CETCs during the interim period, the designation should be identified by the state Commission as "interim and subject to final, long term changes to the HCS". Newly designated CETCs should draw their interim HCS from the capped revenues available to the existing group of large, non-rural wireless carriers rather than rural wireless carriers. In this manner, the newly designated CETC will be placed on notice that its support is provisional and interim. It will make interim business plans relying on undisrupted interim support and would not be required to make all of the investments necessary to comply with any build-out requirements imposed by such an interim designation.

If rural wireless carrier HCS is capped, the affected carriers must be exempted from previously submitted build-out requirements for the duration of the capping period. Rural wireless carriers depend upon HCS funding to provide a significant portion of the cash flow needed to pay for the planned construction programs. A limit on HCS funds would necessitate delays in meeting build out commitments.

Maximum Term for the Interim Cap

The Joint Board's interim proposal should be recognized as an emergency relief effort. While it is acceptable for short term relief, it is not an acceptable long term solution. The proposed freeze must not stay in effect for more than a very limited period of time. As a broad and temporary policy, its inevitable unintended consequences should not become permanent policy.

The Joint Board recommended that the interim cap remain in place for one year. One year should be the absolute maximum period permitted for the interim plan. MRTC's concern is that the interim solution might remain in effect long after its intended end through administrative extensions. Extensions will have damaging effects on the companies whose HCS funds are capped and on the planned construction of those companies.

The Commission should make every effort to conduct its determination of a long term solution in less time so that the interim plan can be replaced in less than a year.

A well designed long term solution, however, is absolutely critical. Furthermore, the long term solution must be significantly different than the simple cap approach proposed for the interim. The long term solution must encourage continued network deployment in rural areas. It must also provide for both wireline and wireless service platforms in rural areas.

Base Period

The proposed 2006 base period is not an acceptable base period to use for the interim plan. A more appropriate base would be the actual HCS support levels for the calendar year 2007.

As these comments are filed, nearly half of 2007 has already passed. CETCs have been conducting business under the currently effective HCS funding levels. Commitments have been made for construction for forward looking periods which probably extend to the end or the year. Since HCS is used by many companies to fund construction, construction completed and committed to for 2007 would dictate a 2007 base period for any HCS cap.

State-by-State Cap

Because of their relatively small size, rural CETCs, both wireless and wireline, should not be included in the state-by-state group cap or any other group for capping purposes.

The entry of new and larger CETCs to any capped group could have disastrous impacts on rural CETCs.

Conclusion

MRTC supports with modifications the interim solution proposed by the Joint Board as a short term mechanism to prevent further growth in the HCS while a long term solution is being developed.

The interim solution must be targeted as narrowly as possible so that the beneficial effects of the HCS are not unnecessarily limited.

- The interim solution should be modified so that wireline CETCs are not included in the cap since they are not a cause of significant HCS growth.

- Rural wireless CETCs should not be affected by additional CETC authorizations. Because rural wireless CETCs serve exclusively high cost areas and because of their limited size, the dilutive impacts on them could be devastating. They should not be included in a group CETC cap.

- Rural wireless CETCs should not be capped at all. Any reduction to the HCS funds received by rural wireless CETCs will have a direct affect on the amount of construction that can be undertaken and would require a waiver from previously agreed upon build out commitments. This would be to the detriment of the Commission’s policies and goals.

The one year period recommended by the Joint Board should be the absolute maximum amount of time that the interim solution is permitted to stay in effect. An extended amount of time on the interim solution will have negative impacts on rural companies and the subscribers that they serve. The Commission must promptly develop an effective and fair long term solution that preserves HCS for rural services, both wireless and wireline.

The base period for the interim cap should be the calendar year 2007.

Respectfully submitted this 6th day of June, 2007.

Mid-Rivers Telephone Cooperative, Inc.

By Gerry Anderson

Gerry Anderson, General Manager