

**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 NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.**

By a *Notice of Proposed Rulemaking* released May 14, 2007,<sup>1</sup> the Commission seeks comment on a recommendation by the Federal-State Joint Board on Universal Service to impose an interim emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (CETCs) may receive.

In these comments, the National Exchange Carrier Association, Inc. (NECA) expresses its support for such a cap as a reasonable interim step to control universal service fund growth pending reform of current high-cost funding mechanisms.

**I. DISCUSSION**

The Joint Board's *Recommended Decision* and the Commission's *NPRM* present a compelling case for capping CETC support. After noting that the fund has grown from \$2.6 billion in 2001 to approximately \$4 billion, the *Recommended Decision* correctly points out this growth is almost entirely attributable to payments made to CETCs:

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<sup>1</sup> *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) (*NPRM*).

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. Based on current estimates, competitive ETC support in 2007 will reach at least \$1.28 billion if the Commission takes no action to curtail this growth. Moreover, if the Commission were now to approve all competitive ETC petitions currently pending before the Commission, high-cost support for competitive ETCs could rise to as much as \$1.56 billion in 2007. High-cost support to competitive ETCs is estimated to grow to almost \$2 billion in 2008 and \$2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.<sup>2</sup>

Expressing concern such growth will destabilize the fund, the Joint Board recommended the Commission cap the amount of support that CETCs may receive for each state based on the average level of CETC support distributed in that state in 2006.<sup>3</sup> The proposed cap would apply for a period of one year after the Joint Board makes recommendations on comprehensive and fundamental USF reform.<sup>4</sup>

NECA supports imposition of an interim cap on CETC funding as recommended by the Joint Board. As NECA and many other parties noted in comments submitted in response to the Joint Board's recent *Public Notice* on basis of support issues,<sup>5</sup> growth in high cost funding is primarily attributable to the effects of the current "identical support" rule.<sup>6</sup> This rule, which requires the Administrator to pay CETCs the same per-line amount received by ILECs, was adopted by the Commission in 1997,<sup>7</sup> when the high cost

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<sup>2</sup> *High Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 07J-1 (rel. May 1, 2007) (*Recommended Decision*) at 3.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Federal State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, CC Docket No. 96-45, WC Docket 05-337, Public Notice, FCC 07J-2 (rel. May 1, 2007) (*Public Notice*).

<sup>6</sup> See, e.g., NECA Comments, WC Docket No. 05-337 (May 31, 2007) at 9, citing *Recommended Decision* at 12; NTCA Comments at 19, RICA Comments at 14.

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) at ¶¶ 287-288.

program included only high cost loop and local switching support. Even at the time, commenters expressed concern about paying CETCs support based on costs incurred by ILECs to install and maintain copper loops and local switching facilities.<sup>8</sup> In the case of wireless carriers, who do not provide local loops and typically utilize large regional switches, costs associated with these technologies are largely irrelevant.

Since 1998, per-line support calculation methods have changed substantially, with high cost loop and local switching support now representing only about 40 percent of per-line CETC payments.<sup>9</sup> As the chart attached to these comments shows, the bulk of CETC support amounts now include Interstate Common Line Support (ICLS), Interstate Access Support (IAS), High-Cost Model (HCM) support, and safety valve or safety net funds. In fact, almost half of CETC support payments in the third quarter of 2007 are attributable to ICLS and IAS programs alone. Such “access replacement” amounts are even less relevant to wireless CETC circumstances than loop-based payments.

The Joint Board and the Commission have recognized that existing CETC universal service funding mechanisms cannot be maintained much longer without fundamental change. Chairman Martin in particular has long expressed concerns regarding the fundamental illogic of using universal service to subsidize multiple competitors in areas where costs are prohibitively expensive for even one carrier.<sup>10</sup> The Joint Board has recently asked for further comments on a variety of approaches to

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<sup>8</sup> *E.g.*, Rural Telephone Coalition Comments at 18; Western Alliance Comments at 5; GVNW Comments at 8, CC Docket No. 96-45 (Aug. 2, 1996).

<sup>9</sup> Universal Service Administrative Company Quarterly Filing of High Cost Support Projections for 3Q2007, Appendix HC-01, (May 2, 2007).

<sup>10</sup> *See, e.g., Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004), Dissenting Statement of Commissioner Kevin J. Martin, at 1.

resolving these issues, and it appears from comments submitted in response there is a growing consensus supporting elimination of the identical support rule.<sup>11</sup>

The need for prompt interim action is apparent. The current interstate contribution factor stands at 11.7% -- the highest level ever. Based on revenue data recently released by USAC, NECA estimates that if a cap on CETC payments were put in place today, the contribution factor for the third quarter of 2007 would decrease to approximately 10.6%. Absent such a cap, funding would likely climb above 11% for the remainder of the year, and could, of course, increase to dramatically higher levels in the future if no action is taken.

The Commission has often taken interim action to deal with pressing problems of this type, pending reform of complex regulatory structures.<sup>12</sup> Courts have recognized the necessity of taking interim actions in such circumstances and have normally provided the Commission with wide latitude to act. As one example, in upholding the Commission's 1996 interim decision permitting LECs to assess carrier common line charges and transport interconnection charges on IXCs, the D.C. Circuit concluded it should defer to the FCC's judgment as to the need for a temporary solution because, without some

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<sup>11</sup> Many commenters expressed concerns to the Joint Board that, while an ILEC may receive support payments for one or perhaps two loops installed to a customer's home, wireless CETCs receive the same per-line support amount for multiple phones supplied to each household. *E.g.*, Mid-Rivers Telephone Cooperative Comments, WC Docket No. 05-337 (May 31, 2007) at 14; WTA Comments at 24.

<sup>12</sup> In the 1980s, for example, the Commission instituted an interim freeze on carriers' allocation of the Subscriber Plant Factor ("SPF") costs to the interstate jurisdiction, pending resolution of broader separations reform proposals. *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Decision & Order, 89 FCC 2d 1 (1982). More recently the Commission froze separations factors pending further separations reform. *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 (2006). In 2004 the Commission adopted a two-phase interim plan for carrier unbundling of network elements to address the mandate of the court of appeals, while avoiding marketplace disruption. *See Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783 (2004).

interim cost recovery mechanism, “universal service soon would be nothing more than a memory.”<sup>13</sup> The same compelling concern may well apply here.

As to administrative issues, NECA supports the Commission’s proposal to cap CETC funds on a state-by-state basis. This approach has the advantage of preserving the status quo and avoiding incentives for states to designate additional CETCs. Using historical data from calendar year 2006 (as opposed to more recent quarterly data, or projections of 2007 payments) is also reasonable, particularly given the immediate need for action.

## II. CONCLUSION

For the reasons described above NECA supports implementation of a cap on CETC payments as proposed in the Commission’s *NPRM*.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, Inc.

By: 

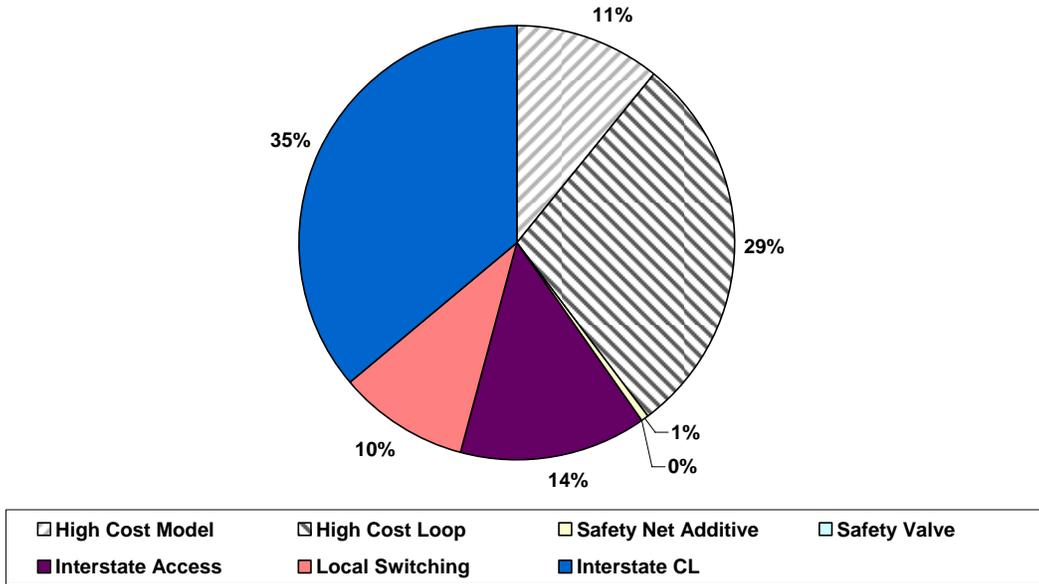
Richard A. Askoff  
Its Attorney  
80 South Jefferson Road  
Whippany, NJ 07981  
(973) 884-8000

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<sup>13</sup> *Competitive Telecommunications Association v. FCC*, 117 F.3d 1068, 1074-75 (8<sup>th</sup> Cir. 1997). *See also*, *Central Maine Power Co. v. FERC*, 252 F.3d 34, 44 (1<sup>st</sup> Cir. 2001) (“[I]f prompt action is necessary and delay would be harmful, agencies sometimes do need to take interim action, deferring to further proceedings other facets of the problem or alternative solutions that may take more time to develop.”)

**Attachment**

**CETC High Cost Support**  
3Q2007 - \$1.4 Billion (annualized)



Source: USAC Quarterly Filing for 3Q2007, Appendix HC-01, May 2, 2007

## CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Comments was served this 6<sup>th</sup> day of June 2007, by electronic filing and email to the persons listed below.

By: /s/ Elizabeth R. Newson  
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC. 20554

Best Copy and Printing, Inc.  
Room CY-B402  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
[fcc@bcpi.web](mailto:fcc@bcpi.web)

Antoinette Stevens  
Telecommunications Access Policy Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC. 20554  
[Antoinette.Stevens@fcc.gov](mailto:Antoinette.Stevens@fcc.gov)