

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

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

**COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

**I. INTRODUCTION AND SUMMARY**

Verizon and Verizon Wireless (collectively “Verizon”) support the Joint Board’s recommendation that the Commission impose an interim cap on the amount of high cost support to competitive eligible telecommunications carriers (“ETCs”).<sup>2</sup> As the Joint Board and numerous members of the industry have acknowledged, the unchecked growth in the support provided to competitive ETCs has put the fund in “dire jeopardy of becoming unsustainable.” *Recommended Decision*, ¶¶ 4-5. Competitive ETC support has grown from \$1.5 million in 2001 to nearly \$1 billion in 2006, with even larger increases expected in 2008 and 2009 unless something is done to contain it.

The Joint Board’s recommendation is an appropriate and reasonable response to this urgent problem. Such a cap will stabilize the fund over the short term and allow the Joint Board

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (Fed.-State Jt. Bd., rel. May 1, 2007) (“*Recommended Decision*”); see also *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 07-88, ¶¶ 1, 4 (rel. May 14, 2007) (“*NPRM*”).

and the Commission the time and the opportunity needed to adopt real, comprehensive reform. The Commission should act quickly in adopting and implementing the Joint Board's recommendation.

As the Joint Board has recognized, the growth of the high cost fund threatens the overall sustainability of the USF program. High cost support has nearly doubled since 2001, ballooning from \$2.6 billion to approximately \$4 billion per year, and the contribution factor jumped more than 20 percent in the last quarter alone, from 9.7 percent in the first quarter of this year to an all-time high of 11.7 percent in the second quarter.<sup>3</sup>

The interim cap will accomplish three important objectives: first, the cap will help stem the explosive growth in the high cost fund, while the Joint Board and the Commission are considering comprehensive universal service reform; second, it will provide immediate consumer benefits by reducing pressures on the fund that have led to an increasingly high contribution factor – a trend that threatens consumers' continued ability to purchase affordable telecommunications services; and, third, it will protect consumers during the transition to a more efficient and market-based universal service system.

Moreover, caps on universal service support are neither new nor novel. Funds for both the Schools and Libraries program as well as the Rural Health Care program are capped. Likewise, the Commission has long imposed caps on high cost support to incumbent local exchange carriers ("LECs"), as the Joint Board correctly noted. *Recommended Decision*, ¶ 5. Significantly, the Commission adopted these caps for precisely the same reason that the Joint

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<sup>3</sup> *Recommended Decision*, ¶ 4, n.11 (citing *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2 (2006), and *Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 5074 (2007)).

Board has proposed that competitive ETC support be capped — to ensure that support is specific and predictable and to avoid excessive growth of the high cost fund.

The Commission has the clear legal authority to impose the interim cap recommended by the Joint Board. Indeed, the courts have recognized the Commission's broad discretion to impose caps or other cost control measures to avoid excessive growth in the universal service fund. Furthermore, the proposed cap is consistent with the purpose of the fund, which is to ensure access to affordable telecommunications services for consumers, not to ensure funding of telecommunications carriers.

Accordingly, the Commission should adopt the Joint Board's recommendation and act quickly to impose an interim cap on CETC support. The Commission and the Joint Board also should move forward expeditiously with comprehensive reform of the universal service system.

## **II. THE COMMISSION SHOULD ADOPT THE JOINT BOARD'S RECOMMENDATION AND ACT QUICKLY TO IMPOSE THE INTERIM CAP.**

### **A. Imposing An Interim Cap On Competitive ETC Support Is A Critical First Step Towards Long Term Reform.**

While the high cost fund suffers from various problems, the most immediate threat to the fund's sustainability is the ever-increasing support provided to competitive ETCs. Despite efforts by the Joint Board and the Commission to tighten the requirements for ETC designation and expand the contribution base,<sup>4</sup> the financial strains on the high cost fund have continued unabated. As the Joint Board correctly observed, high cost support has nearly doubled since

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<sup>4</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 05-46 (April 21, 2005); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006), *aff'd in part, vacated in part*, *Vonage Holdings Corp. v. FCC*, No. 06-1276, 2007 WL 1574611 (D.C. Cir. June 1, 2007).

2001, ballooning from \$2.6 billion to approximately \$4 billion.<sup>5</sup> And the source of this dramatic growth is clear – “increased support provided to competitive ETCs ....” *Recommended Decision*, ¶ 4. While support to incumbent LECs has been “flat or even declining since 2003,” support to competitive ETCs “grew from \$15 million to almost \$1 billion” between 2001 and 2006. *Id.* ¶ 4 (emphasis added).

Moreover, high cost support to competitive ETCs will continue to increase dramatically unless the Commission quickly adopts the interim cap. Without any action by the Commission, the Joint Board estimates that high cost support to competitive ETCs will reach at least \$1.28 billion and could rise to as much as \$1.56 billion in 2007. *Id.* According to the Joint Board, “[h]igh-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.” *Id.* ¶ 4. These estimates do not take into account the fact that Cingular – now AT&T – has filed with the Commission for ETC status in Virginia and Georgia and seeks additional ETC designations at the state level, even though it is readily able to compete without universal service subsidies.<sup>6</sup> Adopting the Joint Board’s recommendation will address the most immediate cause of growth in the universal service fund.

There is no question that this tremendous growth in competitive ETC support has contributed to escalating universal service surcharges on consumers’ bills. The current 11.7

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<sup>5</sup> *Recommended Decision*, ¶ 4 (citing *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2 (2006)).

<sup>6</sup> See Cingular Petition For Designation As An Eligible Telecommunications Carrier In The State Of Georgia, CC Docket 96-45 (filed Dec. 13, 2006); and Cingular Petition for Designation As An Eligible Telecommunications Carrier In The State Of Virginia, CC Docket 96-45 (filed Nov. 7, 2006). See *Application of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Arkansas*, Arkansas Public Service Commission Docket No. 06-081-U (filed June 6, 2006).

percent contribution factor is the highest since its inception and likely will continue to increase absent Commission action. *Id.* n.11. Larger and larger USF surcharges adversely affect the affordability of telecommunications services.<sup>7</sup> Accordingly, adopting the Joint Board's recommendation is good for consumers and will provide tangible benefits to consumers' wallets.

For all these reasons, the Commission should keep the interim cap in place until the Commission adopts comprehensive universal service reform, rather than the one-year period from the date that the Joint Board makes its recommendation regarding reform, as the Joint Board has proposed. If the interim cap is permitted to expire before the Commission adopts this comprehensive reform, the same problems that led the Joint Board to recommend the cap could once again threaten the overall health of the program. Keeping the cap in place unless and until comprehensive reform has been adopted would still be only an interim cap but would shield consumers from the risk that the fund will continue to grow out of control before real change is adopted.

In short, an interim cap pending comprehensive reform is logical and reasonable – it responds to the immediate threat to the sustainability of the high cost fund by capping support to competitive ETCs; results in immediate relief to consumers by easing financial demands on the high cost fund in the near term; and protects consumers by keeping the cap in place until the Commission adopts comprehensive universal service reform. Accordingly, the Commission

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<sup>7</sup> Universal service surcharges are a major component of the taxes and fees on voice services, which at least one study recently found to be excessive and harmful to consumers. David Tuerck, Paul Bachman, Steven Titch, and John Rutledge, "Taxes and Fees on Communication Services," Heartland Policy Study #113 (The Heartland Institute, May 2007), at Executive Summary (the "Heartland Institute Study"). The Heartland Institute Study found that taxes and fees on communications services were on average twice as high as taxes and fees on other goods. *Id.* The study concluded that several reforms, including reform of the USF, were required. *Id.*

should adopt the Joint Board's recommendation and move quickly to impose an interim cap on competitive ETC support.<sup>8</sup>

**B. Universal Service Caps Are Neither New Nor Novel.**

Caps have long been employed as a means of controlling growth of the universal service fund. For example, funding for both the Schools and Libraries program and the Rural Health Care program is capped.<sup>9</sup> These are important programs, but at the same time, the Commission has made clear that because consumers ultimately pay for the universal service program, it is reasonable to place some sort of limit on the amount of funding these programs receive.

The same rationale explains the caps on high cost support to incumbent LECs. As the Joint Board noted, "incumbent LEC high-cost loop support is already capped . . . ."<sup>10</sup> Indeed, the Commission imposed this cap on incumbent LECs for precisely the same reason that the Joint

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<sup>8</sup> The Joint Board's recommendation has enjoyed wide support in the industry and has been endorsed by rural and nonrural carriers, wireline and wireless carriers, as well as multiple trade associations. *See, e.g.,* Iowa Telecommunications Association, Notice of Ex Parte, WC Docket No. 05-337, CC Docket No. 96-45 (May 17, 2007); Western Telecommunications Alliance, Notice of Ex Parte, WC Docket No. 05-337, CC Docket No. 96-45, GN Docket No. 07-45 (May 10, 2007); USTelecom, Letter to Chairman Kevin Martin and FCC Commissioners, WC Docket No. 05-337, CC Docket No. 96-45 (May 2, 2007); Qwest, Notice of Ex Parte, WC Docket No. 05-337, CC Docket No. 96-45 (April 27, 2007); Edie Herman and Howard Buskirk, *Joint Board Recommends End to Equal Support Rule*, COMMUNICATIONS DAILY May 3, 2007 at 2 (noting OPASTCO's support for the interim cap).

<sup>9</sup> 47 C.F.R. § 54.507(a); *see also Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 9054 (1997) (adopting an annual cap on universal service support for schools and libraries), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, D.A. No. 97-157 (June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) ("*First Report and Order*"); 47 C.F.R. § 54.623; *First Report and Order*, ¶¶ 704-05 (imposing a funding cap on support distributed to recipients of rural health care program funds).

<sup>10</sup> *Recommended Decision*, ¶ 5. Since 1993, the Commission has imposed a cap on high-cost loop support. *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, ¶ 31-32 (2001) ("*MAG Report and Order*").

Board now recommends capping competitive ETC support: “to limit fund growth and moderate annual fluctuations in the size of the fund pending the Commission’s consideration of permanent changes to the high-cost assistance mechanisms.”<sup>11</sup> More recently, the Commission found that the cap on incumbent LECs’ high-cost loop support “balances the various goals enunciated in section 254 of the Act,” including “keeping the fund specific, predictable, and competitively neutral,” achieving “service and rate comparability,” “ensur[ing] that the fund is within the range of sufficiency,” and “minimiz[ing] burdens on carriers to contribute to the universal service mechanisms.”<sup>12</sup>

As the Joint Board also noted, the Commission imposed a cap on Interstate Access Support (“IAS”).<sup>13</sup> According to the Commission, this cap “provides a specific and predictable amount of explicit support” consistent with the goals of Section 254.<sup>14</sup> Likewise, the amount of safety valve support available to an individual rural carrier is capped, as is the total amount of

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<sup>11</sup> *MAG Report and Order*, ¶ 33 (finding that “[p]rior to the adoption of the indexed cap, the high-cost loop fund had grown by approximately 60 percent in eight years, with annual rates of growth ranging from one percent to more than 19 percent”). The Commission subsequently decided to retain the cap on high-cost loop support following the 1996 Act, reasoning “that the indexed cap would prevent excessive growth in the existing high-cost loop fund during the period preceding the implementation of a forward-looking support mechanism.” *Id.* ¶ 34.

<sup>12</sup> *Id.* ¶ 38. In the same order, the Commission noted that the cap on high cost loop support did not apply to support to competitive ETCs. However, the Commission expressed its intent to monitor this situation, noting that “the size of the fund could grow significantly as competition increases, particularly if there is a net increase in the total number of lines served in the study area.” *Id.* ¶ 126.

<sup>13</sup> *Recommended Decision*, ¶ 5. The Commission created the IAS in its 2001 *CALLS Order* as an explicit means to offset the loss of implicit support through interstate access charges. *See Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, Order on Remand*, 18 FCC Rcd 14976, ¶ 14 (2003).

<sup>14</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Rcd 12962, ¶ 201 (2000).

safety valve funding.<sup>15</sup> Consistent with the Joint Board’s recommendation to cap competitive ETC support, the Commission established the safety valve caps to “prevent uncontrollable growth” and to “help minimize the burden on contributors to the universal service support mechanisms.” *MAG Report and Order*, ¶ 107.

In short, caps on certain support amounts have always been part of universal service. Caps can be used to target efficiently – and lawfully – universal service support and ensure that the fund remains stable and predictable. The Commission can expect similar results for the high cost fund by adopting the Joint Board’s recommendation and moving swiftly to cap support to competitive ETCs.

**C. Universal Service Caps Are Lawful.**

The Commission has broad authority to impose caps on universal service funding, as the Fifth Circuit recognized in *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000). In *Alenco*, a group of incumbent LECs serving predominantly rural areas challenged two Commission orders that, in part, found that the Commission should continue to impose an indexed cap on high cost loop support.<sup>16</sup> In rejecting this challenge, the court found that the cap “reflects a reasonable balance between the Commission’s mandate to ensure sufficient support

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<sup>15</sup> See 47 C.F.R. § 54.305(e); see also *Federal-State Joint Board on Universal Service (Valor Telecommunications of Texas, L.P. Request for Waiver of §54.305 of the Commission’s Rules)*, 20 FCC Rcd 782, ¶ 4 (2005) (citing *MAG Report and Order*, ¶ 99). Safety valve support is intended to encourage investment by rural carriers that acquire exchanges in high-cost areas and subsequently “make post-transaction investments to enhance network infrastructure.” *Federal-State Joint Board on Universal Service, CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC, Petition for Waiver of Section 36.612(a)(3) of the Commission’s Rules*, Order, 21 FCC Rcd 14633, ¶ 3 (2006).

<sup>16</sup> See *First Report and Order; Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).

for universal service and the need to combat wasteful spending.” *Alenco*, 201 F.3d at 620. The court also made plain that the Commission’s “broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.” *Id.* at 620-621.

The Fifth Circuit’s reasoning applies equally here and makes clear that the Commission may lawfully cap competitive ETC support. As the Joint Board has found, “the federal universal service fund is in dire jeopardy of becoming unsustainable” and “immediate action must be taken to stem the dramatic growth in high-cost support.” *Recommended Decision*, ¶¶ 4-5. Although the fund is intended to benefit consumers by ensuring that they have access to telecommunications services at affordable rates, increased demands on the high cost fund – driven in large measure by increased support to competitive ETCs – threatens consumers’ continued ability to do so. The cap on universal service support to competitive ETCs is a reasonable cost control measure that is well within the Commission’s discretion and will ensure that consumers continue to have access to affordable telecommunications services. The Commission has the legal authority to impose the cap, even if it may result in some competitive ETCs receiving less support than they did in past years because, as the *Alenco* court made plain, the purpose of universal service is “to enable all customers to receive basic telecommunications services,” not “to ensure sufficient funding of every local telephone provider as well.” *Alenco*, 201 F.3d at 620.

Imposing a cap on high cost support to competitive ETCs also would not violate the principle of competitive neutrality, particularly when support to incumbent LECs is already

capped.<sup>17</sup> As the Joint Board correctly recognized, “[f]undamental differences exist between the regulatory treatment of ETCs and incumbent LECs,” and incumbent LECs are subject to a host of regulatory obligations that do not apply to competitive ETCs. *Recommended Decision*, ¶ 6. For example, unlike competitive ETCs, retail rates of incumbent LECs are subject to regulation at both the federal and state levels.<sup>18</sup> Likewise, in many states incumbent LECs have carrier of last resort obligations that do not apply to competitive ETCs.<sup>19</sup> Because competitive ETCs and incumbent LECs are treated differently for many regulatory purposes, incumbent LECs and competitive ETCs are not required to be treated precisely the same for universal service support purposes under the guise of competitive neutrality. Indeed, as explained above, the Commission previously recognized as much in capping high cost support to incumbent LECs but not to competitive ETCs.

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<sup>17</sup> In implementing the requirements of Section 254, the Commission has sought to distribute universal service support “in a competitively neutral manner,” which, according to the Commission, “is a fundamental principle of universal service reform.” *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, ¶73 (1999), *rev’d on other grounds Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001). Competitive neutrality is not one of the six principles in Section 254 upon which the Joint Board and the Commission must base their policies for the preservation and advancement of universal service. Rather, the Commission adopted the principle of competitive neutrality under its Section 254(b)(7) authority, which authorizes – but does not *require* – the Commission to base its universal service policies on “additional principles.” *First Report and Order*, ¶¶ 46-55.

<sup>18</sup> See Jonathan E. Nuechterlein and Philip J. Weiser, *Digital Crossroads: American Telecommunications Policy in the Internet Age*, at 51-52 (2005).

<sup>19</sup> See generally Kan.Stat. Ann. § 66-2009(a) (2006) (providing that “[l]ocal exchange carriers that provided switched local exchange services in the state prior to January 1, 1996, or their successors, shall serve as the carrier of last resort in their exchanges and shall be eligible to receive [state universal service] funding”); S.C. Code Ann. § 58-9-10(10) (2006) (requiring that the incumbent LEC “must be a carrier of last resort within its existing service area” unless the state commission determines otherwise).

The law is clear that competitive neutrality does not require the Commission to provide the exact same levels of support to all ETCs.<sup>20</sup> As the Tenth Circuit held, Section 254 “does not impose a requirement of parity with respect to . . . the distribution of funds between and among carriers.”<sup>21</sup> Thus, the interim cap on competitive ETCs does not run afoul of the competitive neutrality principle merely because it may impact differently the amount of support received by competitive ETCs as compared to incumbent LECs.

Furthermore, the current support system is not competitively neutral and is skewed because it counts every line and handset the same, which is another cause of rapid growth in the fund. Consider, for example, a family that has one wireline connection, and then purchases five new wireless handsets. Under the current rules, this decision increases the USF support for this family by a factor of six. The wireless ETC receives support for five handsets and the incumbent LEC receives support for the one wireline connection. Although in this case, two networks that have been built to serve this household, the fund values one network five times more than the other. Such an outcome is hardly competitively neutral. While the interim cap proposed by the Joint Board will not fix this particular problem, it would help prevent this problem from getting worse.

## **CONCLUSION.**

For the foregoing reasons, the Commission should adopt the Joint Board’s recommendation and impose an interim, emergency cap on the amount of high-cost support that

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<sup>20</sup> See, e.g., *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 80 (2d Cir. 2002) (competitive neutrality “does not require precise parity of treatment”).

<sup>21</sup> *Qwest Communications International v. FCC*, 398 F.3d 1222, 1233 (10th Cir. 2005)

competitive ETCs may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

Michael E. Glover, *Of Counsel*

Edward Shakin  
Christopher M. Miller  
VERIZON  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201-2909  
(703) 351-3071

John T. Scott, III  
VERIZON WIRELESS  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005  
(202) 589-3760

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