

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

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

**COMMENTS OF TDS**

The Federal-State Joint Board on Universal Service (“Joint Board”) recently recommended that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (“CETCs”) may receive.<sup>1</sup> TDS Telecommunications Corp. (“TDS”) emphatically supports this recommendation as the best solution to curb the unsustainable growth of the universal service fund until the Commission can undertake comprehensive reform.<sup>2</sup>

**I. THE JOINT BOARD PROPERLY FOCUSED ON THE ROOT CAUSE OF UNIVERSAL SERVICE FUND GROWTH: WITHDRAWAL OF FUNDS BY CETCS**

The universal service fund has grown in the past six years from \$2.6 billion per year in high cost support to approximately \$4 billion.<sup>3</sup> This explosive growth is directly attributable to

---

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

<sup>2</sup> TDS is the parent company of over one hundred ILEC subsidiaries serving more than 700,000 local access lines in small and rural communities throughout the United States. Operating as TDS Metrocom, TDS is also the parent company of several competitive local exchange carrier subsidiaries in Wisconsin, Illinois, Michigan, Minnesota and North Dakota.

<sup>3</sup> *Recommended Decision* at ¶4.

ballooning CETC support. As the Joint Board explained: “While support to [ILECS] *has been flat or even declined since 2003*, by contrast, in the six years from 2001 and 2006, competitive ETC support grew from \$15 million to almost \$1 billion — *an annual growth rate of over 100 percent.*”<sup>4</sup> The Commission has itself acknowledged the role played by CETCs in the expansion of the universal service fund.<sup>5</sup>

The reasons behind the disparity between ILEC and CETC pressures on the Fund are obvious. First, mechanisms that reimburse carriers for actual expenses on a lagging basis, as well as a cap on support levels, tend to cabin growth in ILEC support. Second, the numerous CETCs designated in the past six years are supported on the basis of ILEC costs, despite the enormous disparities in the carriers’ relative responsibilities and customer usage models.<sup>6</sup> As the Joint Board recognized, “[t]he identical support rule seems to be one of the primary causes of the explosive growth in the fund.”<sup>7</sup> TDS strongly agrees with the Joint Board that any comprehensive reform of high-cost support must address this root cause of universal service fund instability. In the interim, a cap on CETC support — the driving force behind Fund growth — is a necessary step.

---

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Federal-State Joint Board on Universal Service, Virginia Cellular, LCC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion & Order, CC Docket No. 96-45, 19 FCC 1563, ¶31 (2004) (noting the Commission’s concern “about the impact on the universal service fund due to rapid growth in high-cost support distributed to competitive ETCs”). Meanwhile, CETC support does not necessarily increase penetration of services to rural communities. See *Federal-State Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4285 (2004) (recognizing that growth in high-cost support often “represents supported wireless connections supplement, rather than replace, wireline service”).

<sup>6</sup> For instance, wireless carriers typically employ a nationwide, rather than study-area specific, pricing plan. Moreover, due to the mobility of wireless phones, wireless carriers may realize revenues in rural areas from customers who do not live in those areas, but only travel through by highway.

<sup>7</sup> *Recommended Decision* at ¶12. See also *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2002) (describing the harm to consumers of excessive subsidy).

## **II. THE JOINT BOARD SET THE PROPER INTERIM CAP PARAMETERS**

The Commission should accept the Joint Board's thoughtful parameters and institute the interim cap as recommended.

### **A. Action Must Be Immediate.**

The Joint Board emphasized the need for immediate action. As indicated above and reflected in the Recommended Decision, recent universal service fund growth has been dramatic. With more than 30 ETC petitions pending in various state jurisdictions<sup>8</sup> and dozens pending at the Commission — notably including larger, nationwide carriers such as Cingular — this trend will only continue, increasing pressure on consumers and threatening Congress' mandate that universal service be “specific, predictable and sufficient.”<sup>9</sup>

### **B. A State By State Cap Is Appropriate.**

TDS agrees with the Joint Board that a CETC cap should be applied at the State level, especially in light of the alternatives.<sup>10</sup> Under a nationwide cap, States would retain the incentive to designate ETCs as aggressively as possible in order to increase their share of universal service funds received. Although the overall universal service fund would remain constant given the cap, such a race to designation would complicate administration of the Fund, result in an inefficient distribution of funding, and further weaken state ETC designation criteria. At the other end of the range, a freeze at the study area level would instead tie the states' hands to designate additional CETCs in study areas where no CETCs are currently designated.

---

<sup>8</sup> *Recommended Decision* at ¶4 n.15.

<sup>9</sup> 47 U.S.C. § 254(b)(5).

<sup>10</sup> *Recommended Decision* at ¶9.

**C. Support should be frozen at 2006 levels.**

Finally, TDS agrees with the Joint Board that the base period for the interim cap for a given state should be the level of CETC support actually distributed in that state in 2006 — the last full year of available data. Universal service support continues to balloon in 2007 and that pattern should not be institutionalized.<sup>11</sup> Basing the interim cap on data from this year fails to accomplish the central objective of the cap: meaningfully limiting the growth of the Fund. Moreover, using data from 2006 alleviates the need to rely on Universal Service Administrative Company projections.<sup>12</sup>

**III. AN INTERIM CAP WOULD NOT VIOLATE ANY PRINCIPLE OF COMPETITIVE NEUTRALITY**

The Commission should not credit the anticipated argument that an interim cap on CETCs would not be “competitively neutral.” As Chairman Kevin Martin has repeatedly noted, competition is not the central concern of universal service.<sup>13</sup> More fundamentally, the Joint Board recognized that ILECs have numerous obligations, including rate-of-return regulation, equal access, and carrier of last resort obligations, that do not fall on CETCs.<sup>14</sup> An interim cap is short term in nature, focused on the root cause of a severe problem, and its overall effect is no more competitively biased than any of these obligations. The Commission thus is attacking the problem in an appropriate manner, since CETCs are largely responsible for recent Fund growth.

---

<sup>11</sup> *Recommended Decision* at ¶13.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g., Federal-State Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an ETC, Memorandum & Order, CC Docket 96-45 (April 12, 2004) (Dissenting Statement of Commissioner Kevin J. Martin); Federal-State Board on Universal Service, Recommended Decision, CC Docket 96-45, 19 FCC Rcd 4257 (2004) (Dissenting Statement of Commissioner Kevin J. Martin).*

<sup>14</sup> *Recommended Decision* at ¶6.

#### **IV. THE COMMISSION HAS AUTHORITY TO ISSUE AN INTERIM CAP**

Section 4(i) of the Act gives the Commission broad authority to organize its proceedings and procedures to serve the public interest, and Section 254(b)(5) directs the Commission to ensure that there is “sufficient” support. If the Commission determines, as it must, that the Fund is threatening to become insufficient, then it has the authority under these sections to take measures and reasonable steps to protect the Fund. A cap — not a cut off but a cap — meets this test.

The Commission commonly adopts interim measures while it undertakes recommended long-term reform. In 1980, for instance, the Commission established a Joint Board to reexamine how telephone equipment costs were allocated between intrastate and interstate services. The Commission issued an interim freeze of the separations formula allocating costs, which the D.C. Circuit upheld.<sup>15</sup> The Commission in other examples has responded to urgent problems with interim freezes.<sup>16</sup>

Absent action by the Commission, carriers relying on high-cost support could experience a serious disruption as the universal service fund continues to grow and the contribution factor continues to increase.<sup>17</sup> As the Joint Board has explained, “[h]igh-cost support has been rapidly increasing in recent years and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable.”<sup>18</sup>

---

<sup>15</sup> *MCI Telecom Corp. v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984).

<sup>16</sup> See, e.g., *In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, First Report & Order, 11 FCC Rcd 16570 (April 23, 1996).

<sup>17</sup> *Recommended Decision* at ¶4 n.11 (noting that the contribution factor is currently at “the highest level since its inception”).

<sup>18</sup> *Id.* at ¶4.

Meanwhile, the D.C. Circuit has repeatedly held that “[a]voidance of market disruption pending broader reform is, of course, a standard and accepted justification for a temporary rule.”<sup>19</sup>

## V. CONCLUSION

For the reasons stated above, TDS urges the Commission to adopt the recommendation of the Joint Board to impose an interim cap on universal service support for CETCs. TDS welcomes the opportunity to participate in the reform efforts to follow.

Respectfully Submitted,

*/s/ Gerard J. Waldron*

Gerard J. Waldron  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 662-6000  
*Counsel to TDS Telecommunications Co.*

June 6, 2007

---

<sup>19</sup> *CompTel v. FCC*, 309 F.3d 8, 14 (D.C. 2002) (citing *ACS of Anchorage v. FCC*, 290 F.3d 403, 410 (D.C. Cir. 2002); *MCI Telecom Corp*, 750 F.2d 135).