

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 )

**COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION**

**INTRODUCTION**

The Nebraska Public Service Commission (NPSC) hereby files these comments in response to the Federal Communications Commission's (Commission's) Notice of Proposed Rulemaking (NPRM)<sup>1</sup> released on May 14, 2007 in the above-captioned proceeding. The comment cycle requires initial comments to be filed within 14 days from the date notice of the NPRM is published in the Federal Register and reply comments 21 days from the date published in the Federal Register. Notice appeared in the Federal Register on May 23, 2007.

The NPSC supports the idea of an interim cap to stem the growth of the federal fund. However, the NPSC has very serious concerns if 2006 data is used for the base period unless the Commission will allow a waiver process to address unique circumstances. However, waivers could prolong a process that is fraught with urgency. Rather than using the 2006 base period, the Commission should use 2007 annualized

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007) (*NPRM*); *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*).

data to calculate the capped support. Nebraska consumers will be placed at a unique and tremendous disadvantage if 2006 data is used for the base period.

## BACKGROUND

In 2002, the Commission asked the Federal State Joint Board on Universal Service (Joint Board) to review some of the Commission's rules governing the high-cost universal service support mechanisms. The Joint Board made several recommendations regarding the designation of eligible telecommunications carriers (ETCs). In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the support mechanism to replace the plan adopted in the Rural Task Force Order. Since that time, the Joint Board has sought comment on a number of specific proposals for addressing long-term universal service reform. The NPSC filed comments on the comprehensive proposals on May 31, 2007.

## DISCUSSION

### *Interim Cap Proposal*

On May 14, 2007, in the *Recommended Decision*, the Joint Board states that "without immediate action to restrain growth in competitive ETC funding, the universal service fund is in dire jeopardy of becoming unsustainable".<sup>2</sup> The federal fund provides nearly \$4 billion per year in high-cost support to ETCs.<sup>3</sup> The tremendous growth in the

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<sup>2</sup> *Recommended Decision* at para. 4

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

fund size has been due to increased support for competitive ETCs which receive support based on the per-line support that the incumbent local exchange carriers receive and not based on their own cost to provide service. The *Recommended Decision* states that the support to incumbent ETCs has remained flat and even declined since 2003.<sup>4</sup>

Each individual state controls the designation of ETCs except in those cases the Commission assumes jurisdiction to grant ETC designations to wireless carriers when the state commissions have declared they have no jurisdiction. While state commissions should heavily consider the size of the federal fund in determining whether ETC status should be granted to a competitive ETC, states use a variety of standards for making that determination. Some states have routinely granted ETC designations to competitive ETCs while others use more rigorous standards in their designation process. Meanwhile, even without additional designations, the estimated support to competitive ETCs will reach \$2 billion in 2008.<sup>5</sup>

The NPSC supports the recommendation of the Joint Board to cap on an interim basis support given to competitive eligible telecommunications carriers (ETCs). Immediate action must be taken to curtail this explosive growth. The NPSC believes this interim measure is an appropriate step to stop the growth in the federal fund while the Commission considers a number of long term solutions which will make the federal fund more sustainable. There are a number of workable long term proposals which have already been released by the Commission for comment. However, in order to give

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

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

parties and the Commission adequate time to wade through those long term solutions, an interim measure must be put in place.

The NPSC believes capping support to competitive ETCs is reasonable given the uncertainty of their costs. In this proceeding, the Commission will be deciding whether such carriers are going to be required to produce a cost model of their own or whether it is still appropriate for competitive ETCs to receive the same amount of support given to the underlying ILEC. As provided in the NPSC's previous comments on the entire proposal, the NPSC believes that the Commission should no longer continue with the identical support model which has been used by the Commission in the past. Competitive ETCs should be required to demonstrate to the Commission a figure of their own costs through an approved cost methodology or reverse auctions rather than being given support based on a completely different network. There is also the question of whether the Commission should continue to fund a number of competitive ETCs in a given area. The emphasis, we believe, should be placed on making sure there is at least one adequate and reliable network in place for each technology (i.e. wireless and wireline) which is available to everyone.

In addition, the NPSC agrees with the duration of the cap as proposed by the Joint Board. It appears to the NPSC that the Joint Board gave this issue heavy consideration and has attempted to provide a fair solution to temporarily curb the growth of the fund while more permanent solutions are debated. The Commission's commitment to act quickly on the recommended decision should counterbalance the criticism of the proposed interim cap.

### *Operation of Interim Cap*

As far as the operation of the cap is concerned, the NPSC recommends the Commission annualize support and include 2007 support. Some ETCs did not receive a full year of support in 2006 and if the support is based on less than a one year base then support amounts will be skewed. Under the current proposal, on a quarterly basis, USAC would calculate the support each competitive ETC would have received under the existing uncapped portability rule and would sum these amounts by state.<sup>6</sup> The Joint Board recommended that the base period for the interim cap be 2006. If the support is based on less than a one-year base then ETCs which were only designated for a portion of the year may cause the capped amount allocated to that state to be insufficient. Further, the Commission should account for ETC designated support areas as of 2007 rather than 2006 if the ETC represents it is the only wireless or wireline ETC designated in the support area. The Commission should use the most current information relative to designated ETCs rather than using 2006. This would most accurately reflect the ETCs designated by state commissions.

If the Commission does not include 2007 automatically, the Commission should implement a waiver process so that individual states may request a waiver of the applicable “capped” year. Specifically as it relates to Nebraska, in 2006, the NPSC designated Alltel as an ETC in a number of wire centers in the state most of which did not already have a designated ETC. Then, in 2007, Alltel received designation for the remaining portions of the state which again were areas without a wireless ETC.

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<sup>6</sup> *NPRM* at para. 10.

Nebraska may be unique inasmuch as it did not have a wireless ETC designation for all wire centers in the state until 2007. The NPSC does not believe that Alltel should be penalized because it chose to separate the application process until it was able to serve the entire state before applying for designation. Because of the timing of the proposed cap, an ETC may not be able to serve its entire designated area.

The NPSC supports the recommendation to impose the cap on a state-by-state basis. However, the NPSC is concerned about the fairness of such a method. The Commission should take into account that some states have freely designated a number of ETCs within their borders while others have not. The states that have closely scrutinized ETC applications should not be penalized in terms of support for taking into consideration the burden on the federal fund. To the extent possible, applications for ETC designation have been closely scrutinized by the NPSC and the impact on the federal fund has been a consideration of the NPSC.<sup>7</sup> Nebraska has two wireless carriers receiving federal high-cost support. There is only one wireless carrier which is designated to serve the entire state.

Overall, the Commission should use 2007 annualized support in determining the cap formula. If the Commission adopts the proposal as described in the *Recommended Decision*, it should give states the opportunity to demonstrate why their USF support amounts should be changed through a waiver process.

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<sup>7</sup> Recently, an NPSC decision to deny ETC designation was overturned in an unpublished opinion. *See NPCR, Inc. d/b/a Nextel Partners v. Boyle et al.*, Case Number 4:04CV3236, Memorandum Opinion (D.Neb. 2006)(unpublished). In the opinion, the Court held that the impact of an additional designation of a wireless carrier on the federal fund was minimal. The NPSC believes that while each designation of a wireless carrier in a particular area may have a minimal impact on the federal fund, multiple designations in all the states has, collectively, a tremendous burden on the federal fund.



