

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

<b>In the Matter of</b>	)	
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<b>FEDERAL-STATE JOINT BOARD FOR UNIVERSAL SERVICE</b>	)	<b>WC DOCKET NO. 05-337 CC DOCKET NO. 96-45</b>
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**COMMENTS OF THE INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone and Telecommunications Alliance (ITTA) files these Comments in response to the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).<sup>1</sup>

**I. INTRODUCTION**

As described in ITTA Comments filed in this docket May 31, 2007,<sup>2</sup> recent growth in the high-cost program of the Universal Service Fund (USF, or Fund) has generated Congressional and regulatory scrutiny of the Fund. This attention is warranted in light of the increasing USF contribution factor and the attendant burden imposed upon carriers and consumers. The Recommended Decision is intended as an interim measure to stabilize the Fund and control Fund growth, and as such is an appropriate step as long-term solutions are developed.

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<sup>1</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1, at para. 4 (rel. May 1, 2007) (Recommended Decision).

<sup>2</sup> Referred to herein as “ITTA May 2007 Comments.”

## II. THE RECOMMENDED DECISION IS AN APPROPRIATE INTERIM MEASURE

Wireline incumbent carriers have long been subject to caps. The key difference is that, because incumbent support is based on the cost of providing service, caps *increase* the gap between the cost of providing service and the amount of support received. By contrast, there is little, if any, correlation between the costs competitive eligible telecommunications carriers (CETCs) incur providing service and the amount of support received (especially for the preponderance of CETCs that use wireless technology). The effect of the Joint Board's interim proposal will be to begin the de-coupling of CETC support from incumbent cost, while leaving a very substantial pool of available support for CETCs. As highlighted in ITTA's many filings with the Joint Board and the Commission, ITTA does not oppose support to wireless and other CETCs. ITTA does, however, believe attention is required in regard to how the program is designed to produce public benefits. ITTA and its member companies have made detailed suggestions about how to structure such programs. If the Commission adopts the Joint Board's interim recommendation, then stakeholders will have both the opportunity and the incentive to work together to craft and implement thoughtful programs.

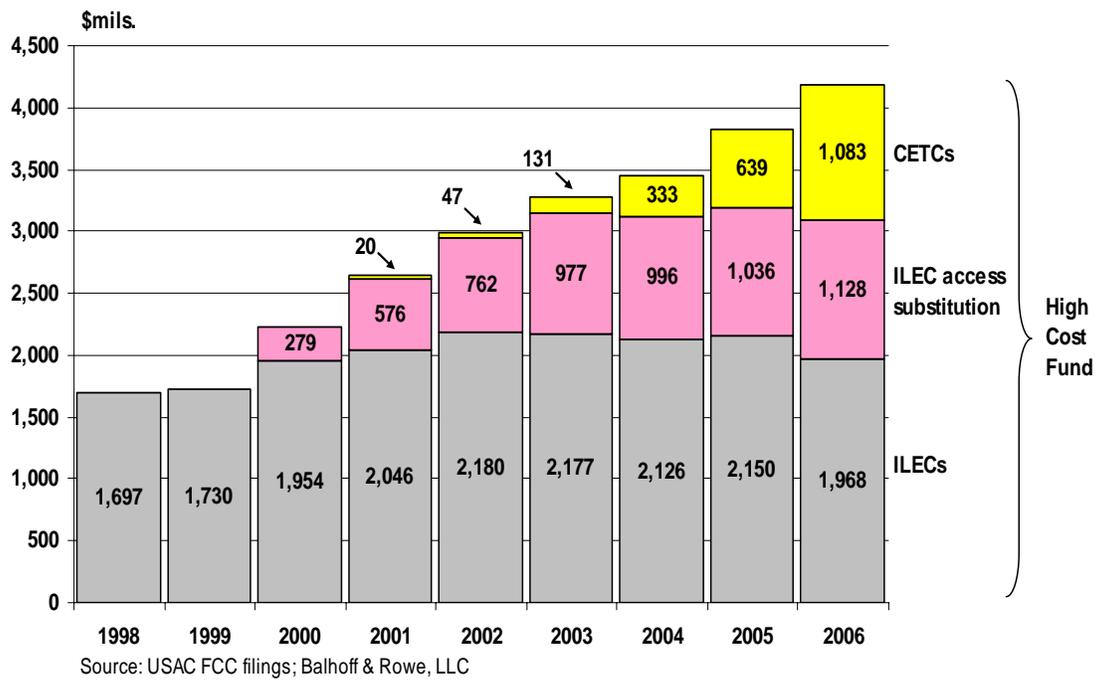
The high-cost component of USF that is the subject of the current proceeding generally funds three primary uses: (1) support provided to incumbent carriers (ILECs); (2) access charge replacement; and (3) support provided to CETCs. As illustrated in ITTA's May 31 Comments, and in materials included in the Recommended Decision,<sup>3</sup> support to incumbent carriers has remained flat or declined since 2003. Access replacement is a "revenue/cost neutral" reallocation of previously implicit support monies

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<sup>3</sup> See, Recommended Decision, Separate Statement of Kevin J. Martin.

that has increased slightly, partially offsetting the decline in the traditional high-cost support to ILECs. Only high-cost support to CETCs has risen sharply, with the increase in CETC payments accounting for all of the “real” growth in the high-cost program over the period.

**Figure 1: Growth In High Cost Fund**



ITTA has on other occasions provided this information to the Commission, including comments on last year's reverse auctions proposal, filed in October 2006,<sup>4</sup> and in *ex parte* presentations on the same topic.<sup>5</sup>

The Joint Board recognized in its Recommended Decision that CETCs are identified by public and private parties as the largest source of USF growth in recent years.<sup>6</sup> CETC funding grew from \$1 million in 2000 to \$131 million in 2003; the Universal Service Administrative Company (USAC) estimates that the trend will continue, with CETC support rising from approximately \$1 billion in 2006 to \$2.5 billion in 2009.<sup>7</sup> Inasmuch as CETC support represents the major growth driver in the Fund, appropriate short-term solutions to the USF growth-problem must be tailored to resolve that burgeoning pressure. The extent to which long-term solutions may involve a cap on

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<sup>4</sup> *Federal-State Joint Board on Universal Service: Comments of Balhoff & Rowe LLC, on Behalf of the Independent Telephone and Telecommunications Alliance*, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 10, 2006) (ITTA Reverse Auctions Comments).

<sup>5</sup> *Federal-State Joint Board on Universal Service: Notice of Ex Parte Presentation of the Independent Telephone and Telecommunications Alliance*, WC Docket No. 05-337, CC Docket No. 96-45 (Mar. 22, 2007).

<sup>6</sup> *See also* Statement of FCC Chairman Kevin Martin Before the Federal-State Joint Board on Universal Service, (Feb. 20, 2007) (Martin *en banc* Statement); Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007) (Verizon Proposal); Letter from Mary L. Henze, AT&T, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (Mar. 22, 2007) (AT&T plan, or filing).

<sup>7</sup> Recommended Decision at para. 4.

CETC support are best left to the discussion regarding long-term solutions which, as ITTA described in its Comments, must be considered within an analytical sequential framework.<sup>8</sup> As a result, ITTA applauds the Recommended Decision, which places a rational interim cap on CETC support in order to relieve the pressure on Fund disbursements while comprehensive high-cost USF reforms are developed.

The Joint Board's recent Recommended Decision is a sensible and logical interim measure because it addresses directly the fundamental growth problem caused by multiple CETC designations, if only in a potentially temporary fashion. The proposed emergency interim cap on the high-cost support that CETCs may receive, calculated on a per-state basis, protects current supported entities and their customers while ensuring that redundant CETC certifications do not expand the Fund unnecessarily. The emergency interim cap is consistent with the Joint Board's finding that "[i]n recent years, growth has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line support that the incumbent local exchange carriers receive, rather than the competitive ETC's own costs."<sup>9</sup>

The Joint Board's Recommended Decision addresses directly the funding directed toward supported CETCs. Capping support on a per-state basis while not dictating the number of supported entities breaks the artificial linkage between CETC support and the incumbent's costs. Moreover, the cap on a per-state basis has the benefit of underscoring the public interest component of CETC designations. States with finite CETC support at

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<sup>8</sup> See ITTA May 2007 Comments at pp. 16-18.

<sup>9</sup> Recommended Decision at para. 4.

their disposal likely will undertake more rigorous analyses to determine the most appropriate allocation of scarce resources. The Joint Board recognized this benefit as it noted that the interim cap “allows states some flexibility to direct competitive ETC support to the areas in the state that are most in need of support.”<sup>10</sup> This recognition is consistent with prior ITTA filings urging a more considered approach to distributing CETC support. ITTA has previously urged this type of standard, notably in a Petition for Reconsideration filed in 2005 (joined by TDS and the Western Telecommunications Alliance),<sup>11</sup> and again in comments before the Commission in 2006 and this year.<sup>12</sup> In that Petition and the comments, ITTA urged the Commission to adopt more specific criteria that would allow the overall impact on the Fund to be taken more clearly into account in individual ETC designation proceedings. The Petition proposed specific standards that could guide the public interest aspect of an ETC designation process,

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<sup>10</sup> Recommended Decision at para. 9.

<sup>11</sup> *I/M/O Federal-State Board on Universal Service: Petition for Reconsideration of TDS Telecommunications, Independent Telephone and Telecommunications Alliance, and Western Telecommunications Alliance*, CC Docket No. 96-45 (filed Jun. 24, 2005) (*Petition for Reconsideration*).

<sup>12</sup> *See, Federal-State Joint Board on Universal Service: Petition of Cingular Wireless, LCC, for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia: Comments of the Independent Telephone and Telecommunications Alliance and the Western Telecommunications Alliance*, CC Docket No. 96-45 (Dec. 4, 2006); and, *Federal-State Joint Board on Universal Service: Petition of Cingular Wireless, LCC, for Designation as an Eligible Telecommunications Carrier in the State of Georgia: Comments of the Independent Telephone and Telecommunications Alliance and the Western Telecommunications Alliance*, CC Docket No. 96-45 (Feb. 20, 2007).

including a cap on the total number of ETCs that could receive universal service support for serving a high-cost area.<sup>13</sup>

As described above, support to CETCs represents by far the largest portion of recent USF growth, as described above. The Joint Board's Recommended Decision is a logical response to that growth. In *Federal-State Board on Universal Service - Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier: Memorandum Opinion and Order*, CC Docket No. 96-45, DA 00-2895, 16 FCC Rcd 39 (2000) (*Cellco*), the Commission determined that, "for those areas served by non-rural telephone companies . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. *The carrier need make no further showing to satisfy this requirement.*"<sup>14</sup> In March 2005, the Commission recognized tacitly that the facts on the ground changed and, accordingly, revised its approach.<sup>15</sup> Citing *Federal-State Board on Universal Service - Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338, 19 FCC Rcd 1563 (2004) (*Virginia Cellular*), the Commission stated that "merely showing that a requesting carrier in a non-rural area study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not

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<sup>13</sup> *Petition for Reconsideration* at 9-12.

<sup>14</sup> *Cellco* at para. 14 (emphasis added).

<sup>15</sup> See *I/M/O Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2006) (*ETC Order*).

necessarily show that an ETC designation would be consistent with the public interest in every instance.”<sup>16</sup> In the Recommended Decision, the Joint Board did not address certification of CETCs *per se*, but rather empowered the certifying entities to determine the manner in which to best allocate capped resources. This is an important step, and one that is consistent with the Act.

The 1996 Act describes benefits of competition as including lower prices.<sup>17</sup> In a perverse result, the introduction of supported CETC-based competition tends to raise consumer prices through larger USF assessments. This contradicts the purpose of the 1996 Act and cannot be characterized as consistent with the public interest. Under the Recommended Decision, certifying entities (generally state public utility commissions) would confront whether multiple supported carriers in a single market represent the most efficient use of resources. Certifying entities might also address whether it is appropriate to grant CETC status and attendant USF support to carriers that previously operated profitably in the geographic markets, while not being subject to COLR obligations and not receiving access payments. ITTA does not dispute the value of providing support that eases excess costs of carriers that are fulfilling a public policy purpose, but urges that Fund resources are intended to provide services where absent support service would either not be provisioned or where such service would not be comparable to that offered in urban areas, either as regarding functionality or rates.

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<sup>16</sup> *ETC Order* at para. 42.

<sup>17</sup> *See* Preamble to 1996 Act. The 1996 Act was intended to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage rapid deployment of new telecommunications technologies” (emphasis added).

Much criticism of the Recommended Decision has emanated from the mobile (wireless) industry, which receive the bulk of CETC support and are the primary source of Fund growth. ITTA highlights that the interim cap is aimed at *all* CETCs, whether wireline or wireless, much the way *all* incumbent wireline carriers currently operate under a cap. Moreover, ITTA recognized the value of mobility in its recent comments on Universal Service, proposing the creation of a mobility program within the Fund in order to support rationally the deployment of mobile carrier networks.<sup>18</sup>

### III. CONCLUSION

ITTA submits that the interim measure proposed in the Recommended Decision is a sensible modification beneath which action toward a long-term solution can advance to further the public policy goals envisioned by universal service policies and speed access to telecommunications and advanced services throughout all areas across the Nation.

Respectfully submitted,

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<sup>18</sup> See ITTA May 2007 Comments at pp. 55-57.