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	)	CC Docket No. 96-45

Initial Comments of the
Montana Public Service Commission

I. Introduction and Summary

The Federal Communication Commission's ("FCC's") May 14, 2007, Notice of Proposed Rulemaking ("NOPR") seeks comments on the Federal-State Joint Board on Universal Service ("Joint Board") recommendation that the FCC immediately act to rein in the alleged "explosive growth" in the high-cost universal service disbursements. The NOPR provides some background information on prior Joint Board recommendations.

In its recent May 1, 2007, recommendation the Joint Board urged the FCC to adopt an interim cap on high-cost federal universal service fund ("FUSF") support received by competitive eligible telecommunications carriers ("CETCs"). The Joint Board recommends applying the interim cap until one year from the date of its recommended decision to the FCC on comprehensive FUSF support. The FCC, in turn, solicits comments on issues that include: 1) whether to limit the cap to just CETCs; 2) whether there are public interest concerns that warrant modifying the application to providers of certain services; 3) the duration, application, and base period of the cap; and 4) whether to impose the cap on a state-by-state basis.

The Montana Public Service Commission ("MTPSC") has commented previously on matters that relate to the issues raised in this NOPR and the MTPSC will use this opportunity to again apprise the FCC of preferable solutions. First, a more effective tool to establish technologically neutral support and to rationally limit the growth in the high-cost federal universal service fund is to base support on a carrier's own costs. That is, the identical support mechanism (the "ISM") or rule should be abandoned. Second, the FCC should not impose an interim cap in all circumstances. There should be exceptions to such a cap in states like Montana, otherwise an interim cap will have discriminatory impacts. Third, it is important to note the interim cap on which the FCC seeks comments is not the same as the cap on rural incumbent local exchange carriers' (ILECs') high cost funds. Fourth, the FCC's choice of 2006 as the base year for the interim cap may protect the FUSF revenues of those CETCs designated to serve urban areas but will likely stymie CETC expansion of wireless service in Montana thereby stifling the achievement of Congress's universal service goals. Since an interim cap will not allow for comparable service opportunities in high-cost rural areas, similar to opportunities availed in more urban areas, it also appears discriminatory. The MTPSC would add that the FCC's proposed interim cap simply appears a variation on the "block grants" that some have recommended be provided to states, a suggestion that the MTPSC has previously opposed.

II. Background

The Telecommunications Act of 1996 (the "Act") makes clear in Section 254 the principles by which universal service is to be advanced and preserved. The comparability of services and rates in rural and high cost areas to those in urban areas is a fundamental principle. An interim cap does not serve to achieve this principle in Section 254. In fact, it violates this principle and therefore appears discriminatory. The MTPSC has apprised the FCC and, or, the Joint Board about the merit of eliminating the ISM. As the alleged problem of growth in the FUSF worsened and recommendations to eliminate the ISM were not implemented, the FUSF has grown. While the time for action was years ago, there is no time like the present to reconsider eliminating the ISM. To impose a cap, interim or otherwise, is the wrong direction to now take.

III. Discussion

The MTPSC's main comments are twofold. First, the MTPSC has for some time now recommended eliminating the ISM.[1] Our most recent recommendation to do so is in response to the Joint Board's August 11, 2006, Public Notice regarding high-cost FUSF support.[2] The option to eliminate the ISM has been an FCC choice for years.

The FCC's proposed interim cap appears based, in part, on the Joint Board's assertion that "<u>High-cost support has been rapidly increasing in</u>

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[1] The PSC's December 14, 2004, comments to the Federal-State Joint Board on Universal service (CC 96-45) included the following cost evidence in support of eliminating the ISM: "*To further illustrate the need to eliminate the identical support rule we offer the following information. Western Wireless' CEO, John Stanton, in his presentation to this fall's Qwest Regional Oversight Committee (ROC) meeting of September 12 and 13, Missoula, Montana, presented estimates of relative wireline and wireless investment costs. Those costs are as follows: (1) national wireline carriers' cost is $2,492; (2) national wireless carriers' cost is $920; (3) rural wireline carriers' cost is $7,195; and (4) rural wireless carriers' cost is $1,734. It is apparent from the presentation that to base support to wireless carriers upon the cost of the ILEC would bequeath an extraordinary subsidy to the wireless industry. As OPASTCO comments, and the Montana PSC agrees, the "identical support" rule must be eliminated*." (Italics added, footnote excluded.)

[2] See the MTPSC's, November 8, 2006, Reply Comments to the Federal-State Joint Board on Universal Service. WC Docket No. 05-337 and CC 96-45; Public Notice FCC 06J-1.

recent years."[3] (Emphasis added.) This assertion is, however, ambiguous. While the FUSF growth due to CETC designations has increased monotonically since year 2000, the annual percentage rate of growth has at the same time nearly decreased monotonically. From 2000 to 2001 the annual rate of growth in the FUSFs that CETCs receive was 1000%. From 2003 to 2004 the annual growth rate dropped to 143% per year. Most recently, the annual percentage growth rate for 2005 to 2006 further dropped to 28%.[4] Thus, for the Joint Board to now predict a 90% plus annual percent growth rate for 2006 to 2007 is suspect. While the best time to have stepped in and mitigated the issues surrounding the ISM was years ago, it is never too late to base a CETC's FUSF receipts on its own costs and not on the ISM. The MTPSC shares the FCC concerns with what was once avoidable growth in the FUSF as that growth, combined with the proposed interim cap, now threatens to impact the availability of universal service in Montana.

Second, the PSC advises the FCC to carefully consider the discriminatory impact that a cap will have on high-cost rural areas in states like Montana, relative to the impact in populous states with low-cost urban areas. We illuminate again a central universal service principle in Section 254 of the Act. In order to advance and preserve universal service, consumers in all areas of the country, including those in rural and high cost areas, should have access to telecommunications and information services, including interexchange and advanced services that are reasonably comparable to those services provided in urban areas. A cap, interim or otherwise, is discriminatory and will not enable the FCC to achieve this principle. That this principle is fundamental is evidenced by the 10Th Circuit

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[3] See the FCC's May 14, 2007, Notice of Proposed Rulemaking, (CC 96-45, WC 05-337) Appendix A, Recommended Decision, paragraph 4.

[4] Thus, the growth in the size of the FUSF that CETCs receive appears to behave like an "S-curve" (logistic).

Court of Appeals two remands to the FCC, the last of which remains unanswered.

As Montana is not like more urban areas of the country, to not recognize its unique demographic and cost characteristics will result in punitive impacts on Montana's telecommunications sector, in contradiction of universal service goals of Section 254. The interim cap will punish Montana's CETCs and, in turn, its consumers for problems that appear to stem, in part, from ETC designations by the FCC and other states. Thus, the sweeping nature of the proposed interim cap is at odds with Section 254 of the Act, however well-intended it is to address real, or imagined, problems.

Montana's rural ILEC study areas are not laden with multiple layers of designated CETCs. Take wireless communications in Montana. There are areas of Montana for which there is no wireless service. The PSC has just designated one wireless carrier in two different rural ILEC service areas. The wireless carrier cannot begin to economically serve all of the unserved areas of the two wireline carriers, but the FUSFs it expected to receive will enable it to begin to do so. To impose a cap on the amount of FUSFs this CETC and other CETCs receive may put in jeopardy the build out commitments of some Montana CETCs. This may occur because the dilution of FUSF receipts, and in turn universal service, is inherent to the FCC's interim cap proposal.

An example illustrates. The MTPSC has designated Mid-Rivers Telephone Co-op, Range Telephone Co-op, and 3 Rivers Telephone Co-op each in different areas of Montana. The MTPSC has just designated Triangle Communications Systems, Inc., to, in part, serve unserved areas of still another rural study area. If the FCC's interim cap is approved, the funding presumed to be received to achieve build out obligations contained in MTPSC orders will be jeopardized, assuming 2006 is the base year. All four CETCs will receive diluted funding vis-à-vis expectations in their petitions and in the MTPSC's orders. This outcome is also inconsistent with the MTPSC's early effort to codify and apply comprehensive rules on ETC designations that, according to some, were good rules upon which to discriminate between good and bad ETC petitions.

The historical growth in the amount of FUSFs that CETCs receive appears, in large part, due to designations by other states and the FCC. In 2006, Montana CETCs will receive $7.2 million of the $820 million that all CETCs receive. The FCC has, in the past, been busy designating wireless carriers. The FCC designated Virginia Cellular an ETC in the face of an allegedly burdened FUSF. The FCC designated Nextel as an ETC in New York, Pennsylvania, Florida, Georgia, Alabama, etc., again apparently concluding Nextel's designation would not dramatically burden the FUSF. In contrast, Montana has unserved wireless areas that would have, relatively speaking, miniscule impacts on the overall size of the FUSF that CETCs receive, yet with an interim cap only diluted support will be available for any Montana carriers seeking to serve such areas. A wireless CETC that seeks to serve unserved areas in Montana will be penalized, along with other Montana CETCs, by the FCC's proposed interim cap.

The MTPSC is aware of the fact that "mobility" associated with wireless service is not a supported service but it is arguably an advanced service. Mobility is like frosting on a cake for those customers that get both the supported services and in addition the added advantage of mobility when a wireless CETC is designated. There are consumer and economic development benefits that result from increased availability of wireless service. Mobility is a benefit the FCC has also, correctly, recognized in its ETC designations. The FCC, for example, weighed wireless (mobility) benefits when it designated Virginia Cellular an ETC.[5]

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[5] See the FCC's January 22, 2004, Memorandum Opinion And Order, CC 96-45, FCC 03-338, in the Virginia Cellular petition, ¶ 29.

Again, Montana's rural ILEC study areas are not laden with multiple layers of wireless CETCs. Whereas wireless service is probably taken for granted in urban areas of the country, in Montana's high cost rural areas it is not, and if the interim cap is in place, Montana's consumers will be deprived of such service in relationship to availability in more urban areas of the country. Certain of Montana's high cost rural areas will not benefit from mobility if the interim cap causes wireless ETCs to scale back on investment plans.

We would also add that those who have influenced the evolution of the issue that precipitated the FCC's NOPR on an interim cap appear to take a one-sided view. It is as if all of the detractors of CETC designations lined up on one side of the Titanic. There is, however, need to consider the benefits of CETC designation, benefits that play out in terms of economic development, public interest benefits to consumers, and ultimately universal service. If the FCC is to have a balanced decision, it must not ignore universal service benefits to the exclusive focus on fund size.

The FCC seeks comment on whether to impose a cap on the amount of support that CETCs receive in each state based on the average of the competitive CETC support distributed in that state in 2006. First, a 2006 basis will provide convenient protection for those CETCs that were designated in other states and by the FCC for more urban areas of the country. It will penalize Montana's CETCs and their customers. Thus, if the FCC adopts an interim cap, it should not pick the same base year for each state; if that approach is not one the FCC can approve, then the FCC should set a calendar year 2010 base. Such a forward date would allow the wireless CETCs in Montana and their customers to be treated comparably to how CETCs have and will benefit in other states.

The MTPSC would add that the FCC's proposed interim cap simply appears a variation on the themes of "block grants" that would be provided to states.[6] The MTPSC previously opposed block grants. Given the similarity to the proposed interim cap, our opposition to block grants appears equally applicable to the FCC's proposed interim cap.

IV. Conclusion and Recommendation

The MTPSC strongly urges the FCC to not impose ubiquitously a cap on CETC receipt of FUSFs. States like Montana with high-cost rural areas should not be penalized by the decisions others made to designate CETCs with abandon and without first adhering to comprehensive rules on ETC designations. The MTPSC was judicious in its effort to establish rules to evaluate ETC petitions. To now impose an interim cap without an exception for states like Montana is discriminatory vis-a-vis the more urban areas of the country and achievement of the Act's universal service goal will be stifled.

Dated the 6th day of June, 2007.

Montana Public Service Commission

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[6] The MTPSC has previously commented to the FCC in opposition to block grants. See the MTPSC's July 20, 2005, Reply Comments to the FCC (CC 01-92).