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

COMMENTS OF AT&T INC.

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June 6, 2007

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1. Introduction and Summary.

Just last week, AT&T filed comments enthusiastically supporting fundamental reform of the Commission's federal high-cost support mechanisms to ensure that they preserve and advance the full range of congressional universal service objectives set forth in section 254(b), in light of marketplace developments – including, importantly, the rapid growth of competition[1] and the equally sharp increase in duplicative federal high cost support paid to multiple competitive eligible telecommunications carriers (CETCs).[2] These twin developments, coupled with the fundamental flaws inherent in the existing federal high-cost support mechanisms, have left the federal high cost support regime in crisis – as Chairman Martin recognized in calling on the Joint Board to explore new ideas and develop innovative recommendations to address these

[1] As AT&T observed, despite Congress's direction that universal service support be made explicit because it recognized that implicit subsidies would no longer be sustainable in a competitive environment, the Commission and states repeatedly have shied away from grappling with the implicit subsidies that remain in intrastate rates, and which still are the primary source of universal service support for the majority of high cost customers served by purportedly "non-rural" carriers. Comments of AT&T, WC Docket No. 05-337, CC Docket No. 96-45 at 1-2 (filed May 31, 2007) (AT&T Joint Board Comments). That implicit support has been whittled away as new entrants, unburdened by carrier of last resort obligations, have focused their efforts on the most profitable customers, depriving the true carriers of last resort of the implicit subsidies that made it possible to continue offering affordable service to low revenue, high cost customers. *Id.*

[2] *Id.*

"difficult issues."[3] In response, the Joint Board has proposed that the Commission take immediate action to restrain the continued, dramatic growth in disbursements under the federal high cost support mechanisms by imposing an interim, emergency cap on payments to CETCs.[4]

AT&T strongly supports the Joint Board's willingness to consider novel ways of addressing the challenging issues posed by universal service reform, and its effort to develop a proposal for immediate action to bring the rapid growth in the federal universal service fund under control. Stabilizing the federal universal service fund (and the Commission's existing high-cost support mechanisms in particular) is the critical first step to achieving lasting change, facilitating such longer term reform by providing the Commission, Joint Board, and the industry breathing room to consider in a reasoned way the complex and difficult issues that must be addressed to fulfill the promise of the 1996 Act and achieve universal service objectives in a competitive environment. Indeed, without immediate action to stabilize the fund, long-term reform will be far more difficult, and may even be impossible.

For these reasons, AT&T generally supports the Joint Board's proposal for an interim, emergency cap on federal high-cost support payments to CETCs. This proposal undoubtedly will impose some burdens, at least in the short-term, on CETCs – including AT&T – by reducing the amount of high-cost funding available to deploy and maintain facilities used to serve high-cost customers and complicating investment decisions. But these burdens, if strictly limited in duration and minimized to the extent possible, will be well worth it if they lead finally to more

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[3] Opening Remarks of Chairman Kevin Martin, Federal-State Joint Board on Universal Service En Banc Meeting at 5-7 (Feb. 20, 2007) ("Martin En Banc Statement") (observing that the Commission's current high cost mechanisms are "in need of repair and revision" because "[t]he current trajectory is unsustainable").

[4] *High-Cost Universal Service Support, 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) (*Notice* or *NPRM*), Appendix A (*Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (*Recommended Decision*)).

fundamental reform. AT&T therefore supports capping, on an interim basis, CETC support, but recommends certain, limited changes to the Joint Board's proposal in order to ameliorate some of the deleterious effects that likely would attend implementation of the cap as originally proposed. Most importantly, AT&T proposes that the Commission not only cap the total amount of support available to CETCs in any particular state based on the level of support paid to CETCs in 2006, but also limit the CETCs eligible to receive such capped funding in each state in any given year to those designated as CETCs as of a particular date during the prior year. In other words, if a carrier receives CETC status in the middle of a year, it would not receive funding until the following year. Otherwise, all CETCs in a given state could be faced by significant reductions in support if additional carriers are designated as CETCs with little notice – potentially up-ending completely capital investment plans and budgets, contrary to the principle that such support be "predictable."[5]

2. The Commission Should Modify the Interim Cap on CETC Universal Service Support to Minimize any Disruption to Investment Plans.

In its *Recommended Decision*, the Joint Board proposed that the Commission immediately adopt an interim, emergency cap on the amount of federal high-cost support that CETCs may receive in each state based on the average level of support distributed to CETCs in that state in 2006, in order to prevent further increases in high-cost support due to the designation of additional CETCs or line growth among existing CETCs while the Joint Board and Commission consider fundamental reforms to address issues related to distribution of such support.[6] The Joint Board stressed that the cap it proposed should be strictly interim in nature to address the growing crisis in high-cost support while the Commission and Joint Board consider

[5] *See* 47 U.S.C. § 254(b)(5).

[6] *Recommended Decision* at paras. 1 and 5.

further reform, and should expire automatically one year from the date of any Joint Board recommended decision on comprehensive and fundamental reform, which it committed to adopt within six months.[7] The Joint Board thus properly recognized that the interim cap should not be permitted to become the permanent (or long-term) solution to the issues and problems inherently raised by the Commission's existing high-cost support mechanisms, nor should it provide a rationale for further delay in tackling those issues.

Under the state-based cap proposed by the Joint Board,[8] the Universal Service Administrative Company (USAC) would calculate the support available to CETCs on a quarterly basis using a two-step process. First, USAC would calculate the support each CETC would have received under the existing, uncapped equal per-line support rule and total these amounts by state.[9] Second, USAC would calculate a state reduction factor to reduce this amount to the CETC cap by comparing the total amount of uncapped support to the capped amount for each state, and (where the uncapped amount is greater than the capped amount) dividing the state cap amount by the uncapped amount to yield the reduction factor.[10] USAC then would apply the state-specific reduction factor to the uncapped amount for each CETC to arrive at the capped level of high-cost support available to each CETC.[11]

As noted above, AT&T generally supports the Joint Board's proposal that the Commission adopt a state-wide cap on CETC support based on support distributed in each state

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[7] *Id.* at para. 8.

[8] The Joint Board proposed a state-based cap to allow the states some flexibility to direct CETC support to areas in states that most need such support and avoid creating an incentive for each state to designate as many new CETCs as possible in order to maximize federal USF funds flowing to a particular state (as might occur with a national cap). *Id.* at para. 9.

[9] *Id.* at para. 10.

[10] *Id.* If the uncapped amount is less than the capped amount, no reduction would be required.

[11] *Id.*

during 2006. However, it is concerned that the cap, as originally proposed, could result in precipitous, unforeseen, and significant decreases in per-line support available to a CETC in particular state if the state Commission acts expeditiously, as they often do, to approve additional ETCs serving a large number of lines, resulting in a significant change to the state reduction factor with little advance notice to existing CETCs. Such reductions would throw into disarray capital infrastructure deployment projects that depend on such funding, and which may have been planned for quite some time. Under the proposed cap as originally conceived, CETC support would be calculated on a quarterly basis, with no downward limit on the reduction of support provided to any particular CETC in the event a state commission designates additional CETCs serving, potentially, large numbers of lines, which could result in precipitous drops in support to existing carriers. While CETCs generally can and do plan for changes in support resulting from fluctuations in the number of lines they serve, they cannot (nor can they reasonably be expected to) anticipate the potentially very significant impact that designating new CETCs could have on the state reduction factor in any given quarter, and thus could see the amount of federal universal service support on which they depend fall by large margins with very little notice.

Such sharp declines in support funding could wreak havoc on CETC budget and infrastructure deployment plans. As the Commission no doubt is aware, large capital investments, such as deployment of a new cell site or switch, requires considerable lead time in order to plan the project, procure land or building space, obtain necessary permits, procure any necessary facilities and equipment, and to construct and test those facilities, before commencing operations. Deploying a new cell site, for example, may take 12 to 18 months, or more, to go from the drawing table to operational status. Because of the lag between planning a new cell site and beginning operations, for example, a wireless CETC generally must plan and construct new cell sites to increase service to rural areas based on the amount of federal high-cost support it is projected to receive once it begins operations, but well before having such funding in hand.

It is not just the significant lag time between planning and operations that requires CETCs to develop infrastructure deployment and budget plans based on projected federal universal service high-cost support. Many states require CETCs to submit expenditure plans regarding their proposed use of federal high-cost support in order to obtain recertification of eligibility to receive support in the following year; such plans often must be submitted six months or more before the start of the coming year. In Mississippi, for example, all ETCs must submit their annual Universal Service Utilization Plans describing their planned use of high-cost support funds by June1, every year, as a part of their annual reporting and certification requirements.[12] Likewise, in Oregon, every July 15, each ETC must update its network improvement plan for the following two years, which must include: (1) a forecast of the amount of support, by type (*i.e.*, local switching support, high cost loop support, interstate common line support and interstate access support), the ETC expects to receive during each of the next two years, as well as an explanation of how that forecast was derived; and (2) detailed information regarding each project that will use support funds, including the start/completion date by quarter.[13] And, in the state of Washington, an ETC must file every year, by July 31, a plan describing how it will use universal service support in the following year, which must include:

[12] *See* Order Establishing Requirements for Eligible Telecommunications Carriers, *In the Matter of Eligible Telecommunications Carrier Designation for Federal Universal Service Support*, Docket No. 05-AD-662 at 6-9, 19 (MS PSC April 6, 2007).

[13] *In the Matter of Public Utility Commission of Oregon, Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support*, Order No. 06-292, Docket No. UM 1217, Ordering ¶ 3; Appendix A, ¶ 7.3.2 (OR PUC 6/13/06).

(1) its plan for using federal support received between October 1 of that year and September 30 of following year; (2) the specific, planned investments and expenses on which the ETC expects to base any request for federal support from any federal high-cost support mechanism; (3) a substantive plan of the investments and expenditures to be made with federal support.[14]

If the interim, emergency cap is adopted and implemented as originally proposed, such expenditure plans could well be rendered meaningless as CETCs would have far more difficulty forecasting both how much support they expect to receive in the coming year (or years), and, therefore, the projects and investments they will be able to complete with such funds – at least with any precision. In addition, a reasonably prudent CETC likely would have to suspend, or significantly curtail, deployment of additional infrastructure and equipment because of the risk that the universal service support on which such investment may depend may not be forthcoming, or could drop precipitously and without warning. The interim, emergency cap, as proposed, thus would be extremely disruptive to CETC infrastructure deployment, as well as inconsistent with the statutory requirement that federal (and state) universal service support mechanisms must not only be specific and sufficient to preserve and advance universal service, but also "*predictable*."[15]

For these reasons, AT&T recommends that the Commission not only adopt a state-based cap on CETC funding, but also limit the CETCs eligible to receive such capped funding in each state in any given year to those designated as CETCs as of a particular date (such as those carriers designated as CETCs on or before October 1) during the prior year. Thus, for example, any CETC granted ETC status in a particular state on or before October 1, 2007 (the date by

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[14] *See* Wa. Admin. Code 480-123-080.

[15] 47 U.S.C. § 254(b)(5).

which ETCs must be certified to receive high cost support for the following year), would be eligible for capped support for the period beginning in January 2008. If a state granted a carrier ETC status later in the year, however, that carrier would not be eligible for capped CETC funding under the federal high-cost support mechanisms in that state in 2008. Of course, carriers designated as CETCs during that period should not be required to fulfill ETC obligations – including any certification and reporting requirements (except for filing line-count data) – until they are eligible actually to receive capped federal high-cost funding. Such carriers should be required to file line count data as soon as they receive ETC status (as is currently required) to enable USAC accurately to forecast CETC support as early as practicable, and to provide existing CETCs advance notice that the per-line support available in a particular state likely will decline the following year (and to adjust their investment and budget plans accordingly). Under this proposal, USAC would calculate and apply the state reduction factor quarterly, as described in the *Recommended Decision*, except that USAC would only include those CETCs eligible to receive funding under the cap to calculate the reduction factor for each particular quarter.

AT&T's proposed modification to the cap would preserve state flexibility to designate additional ETCs and direct CETC support to areas in need of additional support, while ensuring that existing CETCs' reasonable expectations regarding USF high-cost funding are not unduly disrupted and federal universal service policies are met. AT&T notes in this regard that the support available to any particular CETC could, and likely would, fluctuate to a limited extent based on relative line growth or decline among those CETCs eligible to receive capped support as is the case today, but would not be subject to the wild and precipitous reductions that could occur if new CETCs' line volumes were included without delay in calculating the state reduction factor in the quarter immediately after those carriers are granted ETC status. AT&T does not recommend that the Commission freeze line counts as amongst the CETCs eligible for capped support for two reasons. First, even under the existing mechanism, the amount of high-cost available to a particular carrier fluctuates based on whether that carrier gains or loses lines, which is the result of market forces, and the cap should not be designed to insulate carriers from competition. Second, and more importantly, the potential decrease in funding resulting from changes in relative line counts among existing eligible CETCs is likely to be relatively small and manageable as is presently the case, particularly in comparison to the huge drops that could occur if the Commission did not modify the cap as AT&T proposes. AT&T's proposal also would provide existing CETCs with greater advance notice of future reductions in support than would be the case under the *Recommended Decision*. AT&T's proposal thus would preserve state flexibility, tame the unbridled growth in funding for CETCs, while still preserving CETC's reasonable expectations regarding funding, consistent with the statutory requirement that support be "predictable."

Finally, the Commission should clarify how the cap will operate during the first year of implementation, assuming it is adopted. The *Recommended Decision* could be read to suggest that the cap would apply to limit the total amount of high-cost support disbursed to CETCs in 2007 in each state to the level of CETC support actually distributed in that state in 2006, irrespective of when the cap is adopted and whether the amount of high-cost support disbursed already in 2007 is approaching or already has surpassed the amount actually disbursed in 2006. Read that way, the cap could immediately cut off any further disbursement of high-cost universal service support to CETCs in a particular state as soon as the cap is adopted, and without warning. Moreover, adopting such an interpretation would raise questions about what would happen if support disbursed in 2007 already exceed actual 2006 levels; would CETCs require to pay back amounts disbursed in excess of the cap? Implementing the cap in that manner thus would be inordinately disruptive to CETCs' business and investment plans, and contrary to the principle that support should be predictable. Accordingly, the Commission should clarify that disbursement of capped CETC funding during the four quarters following the effective date of an order adopting the cap shall not exceed the total amount of CETC support disbursed in 2006.

3. Conclusion.

For the foregoing reasons, the Commission should adopt the interim, emergency cap on CETC funding proposed by the Joint Board, but modified as proposed herein.

Respectfully submitted,

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