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 RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

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SUMMARY

The recommendation made by the Federal-State Joint Board on Universal Service to impose a cap on high-cost fund disbursements to Competitive Eligible Telecommunications Carriers should be rejected for four straightforward reasons: The cap is unnecessary, it is unsupported, it is harmful, and it ignores statutory mandates, judicial holdings, and Commission policy.

The cap is unnecessary because the high-cost fund is not in a state of "emergency," and the proposed cap is not needed to stave off the "dire jeopardy" of the fund becoming "unsustainable." The Joint Board's *Recommended Decision* is filled with these assertions but is virtually devoid of any information or analysis demonstrating that consumers—the intended beneficiaries of the Universal Service Fund program—would be harmed if a cap is not imposed.

To the contrary, there is evidence showing that (i) the trends in telephone service costs have been decreasing, compared to consumer prices for other services; (ii) average monthly rates for wireless and other telecommunications services (other than local exchange service) have continued to trend downward, even when the USF charge is taken into account; and (iii) even if the Joint Board's projections for fund growth were credible, this projected growth would not cause any significant increase in monthly telephone bills.

In addition, the Joint Board does not support its claim that the high-cost fund cannot be sustained, without a cap, over the period of the next 18 months. The Joint Board presents assurances that long-term universal service reform will finally be delivered by the Joint Board and the Commission by the end of 2008, so that the cap will need to be in place only for an

interim period. But the Joint Board does not explain why the fund cannot survive the *status quo* between now and then.

The proposed cap is unsupported because the Joint Board fails to back up its numbers. The Joint Board projects that a failure to impose the cap will lead to large increases in the level of CETC support in 2008 and 2009 (even if no new CETC designations are approved), but the Joint Board provide no explanation of the methodologies and calculations used to derive the projections upon which it relies. Further, the Joint Board points with alarm to the recent 2% increase in the contribution factor, and attempts to use this increase as further justification for the cap. But the fact is that more than 75% of this increase in the contribution factor does not relate in any way to increases in demand for high-cost support. The Joint Board simply has failed to present any real numbers or reasonable projections that show why a cap is necessary.

The cap is harmful because it would stall competition, deprive consumers of marketplace choices and cost savings, and threaten to divert attention and resources from the main effort of delivering long-term universal service reform. Cutting back high-cost support to CETCs (and, in a number of states, blocking the availability of CETC support altogether) will inevitably slow market entry in rural and high-cost areas. Anyone who has observed the Commission's longstanding efforts to foster the emergence and growth of competition in the telecommunications marketplace will understand the lost opportunities and economic damage that would follow in the wake of a high-cost fund CETC cap that narrows the opening for competitive alternatives.

Harm to consumer welfare would inevitably result from imposition of the proposed cap. There is ample evidence showing that consumer preferences are shifting rapidly toward wireless services, and these services—so long as there is sufficient build-out of wireless infrastructure—

can provide important benefits in rural areas. Imposition of a cap, however, would dampen investment in this infrastructure, slow the pace of wireless technology deployment, and deprive consumers of the benefits and cost savings associated with wireless service.

Finally, the proposed cap conflicts with the goals and objectives that have shaped universal service policy since enactment of the Telecommunications Act of 1996. The Act mandates that the Commission must pursue the twin goals of preserving and advancing universal service while also promoting competition in local markets, but the cap would force competition over to the side of the road. Judicial holdings mandate that the universal service program must treat all market participants equally so that the market—and not regulators—will drive the provision of services to consumers. The cap, however, would ignore this mandate by pinching the flow of high-cost support to competitive service providers.

And, most significantly, the cap would violate the Commission's principle of competitive neutrality. This principle is intended to benefit consumers by ensuring that no unfair advantage is given to any class of service providers receiving universal service support. The cap, however, would unravel this principle by giving a clear advantage to ILECs. Cutting back high-cost disbursements to CETCs, while leaving disbursements to ILECs undisturbed, would impair competitive entry and the delivery of services by CETCs in competition with ILECs.

For these reasons, the Commission must conclude that the cap proposed by the Joint Board would not serve the public interest and therefore must be rejected.

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COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

Rural Cellular Association ("RCA"), [1] and the Alliance of Rural CMRS Carriers ("ARC"),[2] by counsel and pursuant to the Commission's *Notice of Proposed Rulemaking*, FCC 07-88 (released May 14, 2007) hereby provide comments on the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board"), FCC 07J-1 (released May 1, 2007) ("*Recommended Decision*"), proposing an "interim, emergency cap" on high-cost support to Competitive Eligible Telecommunications Carriers ("CETCs").[3]

[1] RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA's wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA's members serve fewer than 500,000 customers.

[2] ARC is a group of CMRS carriers who are licensed to serve rural areas in Colorado, Nebraska, Guam, Wisconsin, Alabama, Mississippi, West Virginia and South Carolina. ARC's membership is comprised of the following carriers (or their subsidiaries): Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., N.E. Colorado Cellular, Inc., Easterbrooke Cellular Corp., Airadigm PCS, Hargray Wireless and the Cellcom Companies.

[3] *Recommended Decision* at para. 1. These comments are filed within 14 days after publication in the Federal Register. *See Comment Cycle Established for Commission's Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, DA 07-2149 (rel. May 23, 2007).

RCA and ARC members provide PCS and cellular services in numerous small and rural markets throughout the country. Many of their members have received ETC status and currently receive high-cost support for their operations, while others have applications pending for ETC status and have not yet received high-cost support. And some RCA members have interest in pursuing ETC status or applying to modify the area where support is received.

I. INTRODUCTION

The Joint Board's recommendations could scarcely be more at odds with the 1996 Act,[4] which promised to preserve ***and advance*** universal service, consistent with the goal of bringing competition to all Americans, not just those in urban areas. Among "the four critical goals set forth for the new universal service program" the Commission identified "that the benefits of competition be brought to as many consumers as possible."[5] The cap proposed by the Joint Board in the *Recommended Decision* would directly conflict with this critical goal.

The *Recommended Decision* is quick to sound the alarm that immediate and drastic action is needed to salvage the viability of the high-cost fund. But the Joint Board provides no factual analysis to support its conclusory statements that there is an "emergency." After adopting rules that do not cause incumbent local exchange carriers ("ILECs") to lose support when consumers choose a CETC's service, the current state of affairs cannot be a surprise to the Commission, which has now failed to adopt any meaningful universal service reform of the distribution mechanism for six years.

The Joint Board, understanding that a convincing story line is needed to justify a cap that is so inherently and obviously unfair to carriers competing against ILECs, attempts to build a

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

[5] *Federal-State Joint Board on Universal Service*, *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5321-22, para. 2 (1997) ("*Fourth Reconsideration Order*").

case that the high-cost fund is in “dire jeopardy of becoming unsustainable.”[6] But the Joint Board’s case is largely constructed on projections of CETC funding levels that are unsupported and unexplained and relies on a 2% jump in the contribution factor which the Commission now admits to have very little to do with rising support levels. As shown below, there is no “emergency” and the appropriate response is to do what the statute requires—make support fully portable.

There is absolutely no evidence that *consumers* are being harmed by the increase in funding to CETCs. In fact, available evidence suggests the opposite—that consumers are benefiting from the Commission’s decision to remove implicit subsidies from rates and move them into an explicit federal universal service program. Wherever wireless service is available, consumers are seeing a dramatic drop in the price of wireless telephone service, to the point where wireless is now significantly cheaper than wireline service. This is evidenced by the fact that “cord-cutting” is most common among low-income groups.[7]

In many rural areas where wireless service is improving as a result of new competitive entry and universal service support, consumers are seeing the same benefits. However, the *Recommended Decision* completely ignores the interests of rural consumers who have not yet experienced the robust wireless telecommunications service that results from CETCs building new infrastructure with high-cost support. For these consumers, who pay into the USF, the substantial economic development benefits of having a modern telecommunications infrastructure available remain an unfulfilled promise, some eleven years after the 1996 Act.

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[6] *Recommended Decision* at para. 4.

[7] *See* Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July – December 2006*, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, May 14, 2007 (“*CDC Report*”), http://www.cdc.gov/nchs/nhis.htm (accessed May 31, 2007), at 2.

The *Recommended Decision* amounts to an unintended but significant assault on public safety and homeland security. Rural Americans depend on their wireless phones as much as, or more than, urban consumers. Time after time, wireless phones are a critical link for Americans caught in natural and man-made disasters. Law enforcement and emergency medical technicians rely on commercial wireless networks for critical communications needs. A cap would impede the ability of many carriers to build new towers in rural America.

As anyone who travels in rural America understands, there is much work to be done to knit together the kind of network that consumers can depend on everywhere they live, work, and play. The Commission has required wireless carriers to collectively spend hundreds of millions, if not billions, of dollars upgrading wireless networks to meet E-911 requirements. It is inconceivable that the Commission would now slow down the pace of construction, when new cell sites in rural areas would enable regular 911 calls to be completed and enable E-911 functionality to be useful to more people in more communities.

Finally, and significantly, the Joint Board makes the categorical assertion that its proposed cap does not violate the Commission's core principle of competitive neutrality, but the *Recommended Decision* makes virtually no attempt to explain how a proposal that is competitively biased on its face can somehow be considered consistent with the Commission's principle.

For these and many other reasons set forth below, the Commission should decline to adopt a cap and proceed expeditiously to reform universal service consistent with the 1996 Act and the agency's longstanding precedents.

II. THE JOINT BOARD FAILS TO DEMONSTRATE THAT AN INTERIM CAP IS NECESSARY TO PRESERVE AND ADVANCE UNIVERSAL SERVICE

The Joint Board, in order to justify its proposed cap, must explain why it believes the fund is in imminent danger of becoming unsustainable (indeed there is not even a definition of what "unsustainable" means), and why the proposed cap would cure this perceived problem. The need for such an explanation is heightened because (i) the proposed cap would give a clear advantage to ILECs by limiting only CETC disbursements from the fund, (ii) the cap would adversely affect consumers by suppressing competitive entry and hampering CETCs' provision of services, and (iii) there are serious concerns that the cap is an unwarranted and harmful distraction from the Joint Board's and the Commission's main task of completing work on long-term universal service reform.

The only explanation the Joint Board provides is that "[h]igh-cost support has been rapidly increasing in recent years . . ." and that growth is estimated to continue through the next two years.[8] This is not convincing, especially in light of the Joint Board's apparent and unsupported belief that the fund will become unsustainable before the Joint Board and the Commission complete their work on universal service reform.

A. There Is No Evidence a Cap Is Needed.

Given that the cap, as proposed by the Joint Board, would be in place for only 18 months, the Joint Board must demonstrate that the danger to the high-cost fund is so palpable, immediate, and severe that the fund could not survive the *status quo* for 18 months while the Joint Board and the Commission implement the "comprehensive and fundamental universal service reform" promised by the Joint Board.[9]

[8] *Recommended Decision* at para. 4.

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

The Joint Board argues that an immediate, interim cap is necessary because the fund "is in dire jeopardy of becoming unsustainable."[10] In support of this conclusion, the Joint Board makes three points. First, the most recent contribution factor of 11.7 percent is the highest level ever.[11] Second, CETC disbursements are projected to continue growing through 2009. And third, most of the growth in the fund in recent years has been driven by CETC disbursements, which in turn have been a result of CETCs' receiving funds based on ILEC per-line support instead of the CETCs' own costs.[12]

The Joint Board provides no explanation of the methodology or assumptions used to support its conclusion that "[h]igh-cost support to competitive ETCs is estimated to grow to almost $2 billion in 2008 and $2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009."[13] Given the fact that the Joint Board is apparently basing its defense of the proposed cap on the magnitude of these projected increases in the size of the fund, it is disappointing that the Joint Board has chosen not to share with the public the calculations lying behind the curtain of these estimates.[14]

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[10] *Id*. at para. 4.

[11] *Id.* at para. 4 n.11. The Joint Board's panic about the 2% increase in the contribution factor might have been quelled if the Joint Board had been privy to Chairman Martin's explanation that at least three-quarters of the increase has absolutely nothing to do with upward pressures on high-cost support. *See* Letter from Kevin J. Martin, Chairman, FCC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives (rel. May 14, 2007), Attachment ("Responses to Chairman Markey's April 2, 2007, Letter") ("Chairman Martin Letter") at 1. Both Representative Markey's letter and Chairman Martin's response may be viewed at: http://markey.house.gov/index.php?option=com_content&task=view&id=2825&Itemid=46. Chairman Martin's explanation undercuts the Joint Board's reliance on the 2% increase to support its claim that the fund is in "dire jeopardy of becoming unsustainable." The matter of the 2% increase is discussed further in Section II.B., *infra*.

[12] The Joint Board recommends the cap "largely because" of its conclusion that the identical support rule is outdated and may no longer be appropriate. *Recommended Decision* at para. 7. (As shown above, this third statement is erroneous in that the failure to fully implement portability is the cause.)

[13] *Id*. at para. 4. The Joint Board also projects that the level of the fund could rise to $1.56 billion in 2007 if the Commission were to approve all currently pending ETC designation petitions. *Id*.

[14] The estimates apparently have their origin in "charts presented by Chairman Martin" at an *en banc* Joint Board hearing in February of this year. *Id*. at para. 4 n.16. The charts, which are included in Appendix A of the *Recommended Decision*, provide no information about the development of the estimates, nor did Chairman Martin

The Joint Board's estimates of support to ETCs in 2008 and 2009, which amount to increases of 31% and 30%, respectively, over previous years, are puzzling in light of the Joint Board's indication that this growth is projected even in the absence of any CETC designations in those years. Although the Joint Board provides no explanation, one can only infer that these estimates are based on projections of rising line counts for currently designated CETCs. Given the fact that new CETC designations have played a significant part in past fund growth,[15] it becomes even more critical for the public to understand the basis for the Joint Board's predictions and to have an opportunity to test and comment on the validity of the methodology and assumptions that generated the Joint Board's estimates.

The Joint Board also makes no attempt to explain what it means when it says the fund could become "unsustainable," or why it is convinced that the fund will reach this condition sometime during the next 18 months, absent a CETC cap. The Joint Board presumes in the *Recommended Decision* that long-term reform of the high-cost fund will be in place by the end of October 2008. Thus, under the Joint Board's own assumptions, we can take as a given that, by the end of next year, there no longer will be any upward pressure on the fund's support levels.

If we accept the Joint Board's assumptions regarding the timetable for reform, then why is a cap needed? Even if we assume that the Joint Board is correct that high-cost support to CETCs will grow to almost $2 billion by the end of next year (even though, of course, the Joint

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in his opening remarks at the *en banc* hearing. *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271011A1.pdf (accessed May 31, 2007).

[15] According to USAC's annual reports, the number of CETC "study areas" increased from 349 in 2005 to 419 in 2006. USAC's projections list 436 CETC study areas for Second Quarter 2007. Annual reports are available at: http://www.usac.org/about/governance/annual-reports/. Second Quarter 2007 projections are available at: http://www.usac.org/about/governance/fcc-filings/2007/quarter-2.aspx. Based on USAC's disbursement data, just six of the new CETC designations occurring in 2005-2006 resulted in more than $45 million in new high-cost support in 2006. Additionally, AT&T Wireless Services received more than $57 million in Mississippi, more than ***ten times*** what it received in 2005. Increases of this magnitude cannot be assumed for future years. *See* http://www.usac.org/hc/tools/disbursements/default.aspx.

Board has not explained the basis for this projection), what compels a conclusion that this level of support would cause the fund to cease being "sustainable"?

Given that reform of the distribution mechanism is long overdue, the Joint Board not surprisingly found it prudent to come up with a deadline for action. But, in recommending this deadline, the Joint Board appears to be hoisted by its own petard, since it fails to demonstrate that the fund will somehow become "unsustainable" before the end of the 18-month period. If a solution will be in place by the end of next year, as asserted by the Joint Board, then there is no need for the Joint Board's draconian and anti-competitive cap.

B. The Fund Is Not Experiencing "Explosive" Growth as a Result of Funding to CETCs.

When facts are properly considered, the Joint Board's rhetoric that the high-cost fund is experiencing "explosive" growth as a result of CETC designations is demonstrably incorrect.

- From publicly available data, we calculate that three-quarters of the 2.0% increase in the contribution factor from 9.7% to 11.7% was as a result of true-up mechanisms within the program (1.5% of 2.0%). Only one-tenth of the 2.0% increase was due to increased high-cost support. This is consistent with Chairman Martin's statement last month in response to an inquiry from Representative Edward Markey.[16] See Exhibit 1 (Causes of Increase in USF Contribution Factor (First Quarter 2007 to Second Quarter 2007)).

- Universal Service Administrative Company ("USAC") projections between the fourth quarter of 2006 and the second quarter of 2007 show high-cost support

[16] Chairman Martin Letter at 1:

> Several factors contributed to the two percent increase of the contribution factor for the second quarter of 2007. The largest single factor was prior period adjustments that acted to reduce the Universal Service Fund's revenue requirements in previous quarters. Specifically, these prior period adjustments arose from additional contributions made by AT&T and Verizon on past under-reported revenue, and from a change in the amount of funds that the Universal Service Administrative Company held in reserve for bad debts. The absence of these prior period adjustments caused a 1.5 percent increase in the contributions factor. The remaining 0.5 percent of the increase was due to reductions in the funding base, increases in program demand, including for high-cost support.

rising 3.9%.[17] This is a much lower rate of growth than prior periods, suggesting that the growth rate is slowing.

- Although the Joint Board tries to paint an alarming picture of threats to the fund posed by significant percentage increases in CETC support, these percentage increases in annual growth rates are largely a product of the fact that CETCs are new entrants who started with a baseline of zero support from the fund. As competitive entry has advanced, CETCs' share of the fund has increased correspondingly.

- While the Joint Board claims that an "emergency" has been caused by recent growth in the fund, the Joint Board ignores the fact that the fund historically has weathered significant growth rates without becoming "unsustainable." Support to ILECs jumped from $1.7 billion in 1999 to $3.1 billion in 2003, and continued to increase from 2003 to 2005. Support to ILECs was growing during these periods even though ILEC line counts were decreasing.

Finally, as shown below, the Commission's own decisions have purposefully—and properly—allowed the fund to grow as a result of competitive entry.

C. Fund Growth Was Anticipated.

The Joint Board's implication that fund growth was somehow not anticipated indicates a lack of institutional memory dating back to the Commission's voluminous actions between 1996 and 2001. In fact, fund growth to current levels has always been anticipated as a result of several Commission decisions:

- <u>*Fulfilling Congress' mandate to move implicit support from carrier rates into an explicit program*</u>. Since 1996, the bulk of support that wireline carriers receive today has been removed from rates and placed into the fund. While this constitutes fund growth, it does not constitute increased consumer cost, as rates for interstate services (*e.g.,* long distance and wireless) have fallen due to regulatory mandates or the positive effects of competition.

- <u>*The Commission's decision not to fully implement portability*</u>. There was never a requirement that the fund grow beyond the amount of support moved from carrier rates into the explicit fund. Indeed, the Commission's initial decision was to make funding fully portable so that ILECs would lose support when they lose a customer. But the Commission reversed that decision and currently allows ILECs

[17] *Proposed Fourth Quarter 2006 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 06-1812, FCC Public Notice (rel. Sept. 11, 2006); *Proposed Second Quarter 2007 Universal Service Contribution Factor,* CC Docket No. 96-45, DA 07-1330, FCC Public Notice (rel. Mar. 15, 2007).

to keep all of their support, even if they lose all but one of their customers. This decision has fueled ***all*** of the growth in the fund because, with full portability, there would be ***no*** growth in the fund ***no matter how many CETCs were designated***. The Commission not only anticipated fund growth when it made this decision, it ensured it.

- *Continuing the modified embedded cost methodology for providing support to wireline carriers.* As many experts have testified, providing federal funds to carriers on a "the more you spend, the more you get" basis only invites waste and inefficiency, which have now been well-documented in scholarly works and the press.[18]

- *The decision* ***not*** *to require ILECs to disaggregate support.* The lack of disaggregation has provided significant support dollars to CETCs in relatively low-cost areas, which only invites carriers already serving there to apply. Our anecdotal experience is that support ***to CETCs*** could be reduced by 10% to 30% if all rural ILECs were required to disaggregate to the wire center level.

Thus, as consumers and telecommunications service providers continue to wait for the Joint Board and the Commission finally to adopt universal service reform, it should be emphasized that this reform—if done correctly—will solve the issue of growth in the high-cost fund by addressing the principal drivers of fund growth discussed above.[19] In the meantime, the

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[18] The Commission, of course, intended that the modified embedded cost methodology would be used only as a transitional mechanism for rural ILECs:

> As we stated in the *Order* [the *First Report and Order*], we ultimately intend to determine universal service support for all carriers using a forward-looking economic cost model because such a model will require carriers to operate efficiently and will facilitate the move to competition in all telecommunications markets. We decided, however, that we would "retain many features of the current support mechanisms" in order to provide rural LECs, generally the recipients of LTS [Long Term Support], sufficient time to adjust to any changes in universal service support, particularly a move to a forward-looking economic cost model for determining universal service support.

Fourth Reconsideration Order, 13 FCC Rcd at 5362, para. 74 (footnotes omitted).

[19] The Joint Board recently solicited additional comments in the above-captioned proceeding, asking interested parties to comment on various proposals to reform the high-cost universal service support mechanisms. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, FCC Public Notice, FCC 07J-2, May 1, 2007. U.S. Cellular and RCC jointly submitted comments in response to the Public Notice on May 31, 2007. In these comments we proposed several measures that would achieve the ongoing sustainability of the high-cost fund while also ensuring that consumers in rural and high-cost areas will receive the benefits of accelerated wireless infrastructure development. Specifically, we demonstrated that three steps are critical to accomplishing comprehensive universal service reform that will benefit consumers as intended by the Act. First, support to all carriers should be provided based on the costs of constructing and operating an efficient network. Replacement of the modified embedded cost methodology will finally erase incentives for ILECs' inefficient operation of facilities

Joint Board evidences a lack of institutional memory and a lack of understanding of the Commission's precedents when it claims that immediate restraint of CETC funding is necessary to save the fund from "dire jeopardy".

Finally, there is an additional aspect of fund growth which was anticipated and which the Joint Board ignores with pernicious effect in the *Recommended Decision*. The Joint Board is quick to assign the role of villain to CETCs. But, in addition to failing to make a persuasive case that CETCs must bear the brunt of responsibility for fund growth, and failing to support or explain the projections purporting to show substantial growth in CETC support over the next two years, the Joint Board takes no account of the fact that fund growth caused by CETC designations and market entry was purposefully permitted, fully anticipated, and reflects the effectiveness of Commission policies.

Growth in fund support to CETCs simply demonstrates "that the process of ETC qualification and provisioning of qualified lines by CETCs is working exactly as intended. . . . Under the current mechanism, growth in the support to CETCs is in significant part a measure of growth in new investment in rural areas."[20] Thus, absent a compelling showing that consumer welfare faces an immediate and crippling blow as a result of projected high-cost fund growth, there is no basis for the Joint Board's proposal to shut down the mechanism that is fueling this new investment. A much more rational and pro-consumer public policy would be to stay the

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and networks in rural and high-cost areas. *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, Comments of United States Cellular Corporation and Rural Cellular Corporation, May 31, 2007 ("Joint Comments") at 6-10. Second, high-cost support must be made fully portable. A rule providing that ILECs will no longer receive high-cost support associated with customers who switch to other carriers would guard against high-cost fund growth by increasing ILECs' incentives to operate efficiently. *Id*. at 11-12. And third, high-cost support to rural ILECs must be provided on a disaggregated basis upon market entry by competing carriers. More accurate targeting of support through disaggregation, in addition to providing greater incentives to construct facilities in high-cost wire centers, would also result in reduced support to CETCs, thus curtailing fund growth. *Id*. at 19-21.

[20] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Rural Cellular Association and the Alliance of Rural CMRS Carriers, May 5, 2003, Exhibit 1 (Don J. Wood, "Effective Long Run Management of the High-Cost Universal Service Support Mechanism") ("*Wood Paper*") at 7.

course (thus permitting competition to proceed unimpeded by the proposed cap) and to complete work on long-term reform.

III. THE JOINT BOARD MAKES NO SHOWING THAT CONSUMERS WOULD BE HARMED BY CONTINUED GROWTH IN THE HIGH-COST FUND

Universal service decisions must focus on the consumer, not any individual companies or classes of carriers. "Because universal service is funded . . . indirectly by the customers[,] excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some customers out of the market."[21] In order for a Commission decision to clear the bar of arbitrary and capricious rulemaking, the agency must demonstrate that its projected high-cost fund growth—if left unchecked—will in fact have a severe impact on customer rates, which in turn will "detract from universal service."[22] The consumer costs imposed by rising contributions levels also must be measured against corresponding consumer benefits derived from the distribution of those contributions. The Joint Board, of course, did not attempt such a showing in its *Recommended Decision*.

In evaluating the credibility of the Joint Board's claims that rising costs are posing a dire threat to the sustainability of the fund, the only relevant analysis is an assessment of the impact of these rising costs on consumers. Based on such an analysis, available evidence leads to the conclusion that, even accepting the Joint Board's unsupported assumptions, projected high-cost fund growth will not have any significant adverse impact on customer rates.

[21] *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("*Alenco*"). The court also concluded that "[t]he Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act . . . ." *Id*. (emphasis in original).

[22] *Id*.

A. The Cost of Contributions Will Not Rise Significantly Even if the Joint Board's Undocumented Assumptions Are Accepted.

Today, a wireless consumer with a $50.00 monthly bill contributes about $2.17 to the Universal Service Fund ("USF"),[23] of which only 32 cents (or 0.6% of the total bill) goes to CETC high-cost support.[24] If we accept the Joint Board's (undocumented) projection that the level of CETC support will double to $2 billion next year (and ILEC support remains constant, despite the continuing loss of ILEC lines), this same consumer would pay a federal USF charge of $2.48—an increase of only 31 cents.

Thus, from a consumer's perspective, even assuming the Joint Board's most dire (and undocumented) projections, there is no basis to conclude that the fund will be "unsustainable" by the end of next year unless CETC disbursements are capped. Any negative consumer impacts would be further mitigated by the fact that low-income consumers who qualify for federal Lifeline benefits—in other words, those most likely to be affected by a 31-cent increase—do not contribute to universal service mechanisms.

The Joint Board presents no information showing that overall increases in the size of the high-cost fund are a pocketbook issue for consumers. All the available evidence demonstrates the contrary. For example, Consumer Price Index ("CPI") data shows that, from 1995 through 2005, the annual rate of change for all goods and services was 2.5%, while the annual rate of change for all telephone services was -0.2%. In 2005, CPI for all goods and services rose 3.4%, while the increase for all telephone services was only 0.4%.[25] In addition, consumers are spending proportionately less today for telephone services than they were before the 1996 Act and the growth of competition. Spending for all types of telephone service in 1995 (including

[23] $50.00 x 37.1% safe harbor x 11.7% = $2.17.

[24] This example applies equally to a wireline consumer with $18-$19 per month in interstate usage.

[25] Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 7.2 (2006).

local, long distance, and wireless service) amounted to 1.7% of spending for all consumer goods and services. In 2005, consumer spending for these same telephone services accounted for 1.6% of overall consumer spending.[26]

Other telephone pricing trends illustrate that growth in the high-cost fund is not likely to have severe consequences for consumers. In recent years, average wireline residential local and interstate/international long distance telephone bills have been steadily declining, even taking into account the USF surcharge. Specifically, average monthly combined charges for local and interstate/international long distance telephone service, which amounted to approximately $42 in 1995, declined to approximately $28 in 2004 (the most recent year for which average bills can be calculated).[27] The local portion of these monthly bills remained approximately the same over this 10-year period, while the long distance portion shrank from approximately $15 per month to approximately $3.00 per month.[28]

In addition, treating December 1997 as a base index of 100, the following trends occurred between December 2000 and December 2005: (i) CPI for all goods and services ***increased*** from 107.9 to 122.0; (ii) CPI for all telephone services ***decreased*** from 98.4 to 95.2; (iii) CPI for wireless services ***decreased*** from 71.1 to 64.6; and (iv) CPI for landline local services ***increased*** from 110.0 to 129.5.[29]

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[26] FCC, *Trends in Telephone Service*, Table 3.3 (Feb. 2007) ("*Trends Report*").

[27] Average monthly charges for residential local service were taken from the *Trends Report* at Table 13.3 (Average Rate for a Residential Access Line). Average monthly charges for residential interstate and international long distance service were calculated by multiplying average revenue per minute in a given year by the average monthly interstate and international long distance minutes of use for the same year. *See Trends Report* at Tables 13.4 (Average Revenue Per Minute), 14.2 (Average Residential Wireline Monthly Toll Minutes).

[28] A chart illustrating the discussion above is attached as Exhibit 2

[29] Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, Table 7.4 (2006).

Wireless prices in particular demonstrate that any upward pricing pressure that may be caused by increases in the size of the high-cost fund is more than offset by the effects of a competitive marketplace. Wireless prices (reflected by average cost per minute) have dropped by as much as 20% to 30% ***per year*** between 1998 and 2005. The overall decline in revenues per minute for wireless services from 1993 through 2005 was 84.1%. Average monthly bills for wireless services fell by 18.7% from 1993 through 2005.[30]

Thus, with the exception of landline local services (which historically have been provided by monopoly carriers), telephone services generally, and wireless services in particular, have declined with the growth of competition. This compelling evidence contradicts the Joint Board's claim that the high-cost fund is in "dire jeopardy of becoming unsustainable" Moreover, the data recited above illustrates that increases in the size of the fund are not likely to cause consumer impacts that would warrant the harsh "remedy" proposed by the Joint Board.

B. The Projected Increase in Contributions Is More Than Offset by Direct Benefits That Universal Service Investments Deliver to Consumers.

The entire purpose of the 1996 Act was to introduce competition throughout the country so as to lower prices and increase choices for consumers. The universal service provisions, requiring support to be explicit, and portable to all eligible carriers using any technology, are entirely consistent with these purposes. As discussed above, the potential (worst case) effect of uncapped support distributions to CETCs over the next year is known, and cannot be shown to cause any significant harm to consumer welfare. However, the Joint Board's analysis completely ignores the substantial corresponding consumer benefits that competition has delivered—***in every area where meaningful competition exists.*** This is a critical point:

[30] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993–Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report,* 21 FCC Rcd 10947 (2006), App. A, Table 10.

Meaningful competition ***does not*** exist in rural areas where wireless network service quality is not sufficient to provide consumers with a viable substitute for wireline service.

The Commission's own data confirms this. An examination of the quantifiable consumer benefits of competition produces compelling figures. Between 1995 and 2005, the average cost per minute for wireless service has dropped from 43 cents per minute to 7 cents per minute.[31] Factoring in the current 11.7% contribution factor, the cost of a wireless call would be 7.8 cents per minute. Competitive forces have not only driven down prices, they have driven the average number of wireless minutes per month upward from 119 minutes to 740 minutes over the same period.[32] From this, it is easy to conclude that the price of telephone service for wireless consumers, who contribute more to the USF than any other class of consumers, has decreased dramatically, even when including the increase in the contribution factor.[33]

Rather than touting "explosive" growth, the Joint Board would have more accurately proclaimed the "dramatic" decrease in consumer rates and the "dramatic" increase in the quantity of service that wireless consumers are receiving as a result of competition. The Joint Board should have committed to accelerating universal service reform in rural areas to drive the benefits of competition that Americans living in urban areas now take for granted.

IV. RURAL CONSUMERS WILL BE HARMED IF A CAP ON CETC SUPPORT IS IMPOSED

There remains a further deficiency in the Joint Board's proposal that has serious implications not only for the availability of telecommunications services in rural and high-cost areas, but also for the health and safety of people residing in those areas. Common sense, as well as ample evidence, tells us that wireless technology and services are particularly well suited to

[31] *Id*.

[32] *Id*.

[33] Please see Exhibit 3 attached hereto.

render assistance in emergency situations in rural areas. All of us know about—and some of us may have experienced—the lifeline that cell phones can provide in the midst of emergencies and disasters.

The capability of wireless carriers to render these services, however, is dependent upon the deployment of infrastructure. And here lies the danger posed by the Joint Board's recommendation. It is a fact that imposition of the cap would slow, and in some cases halt, the efforts of wireless carriers to build out networks in rural and high-cost areas. Reduced levels of support, and the absence of any support in states in which no CETCs received any support in 2006, would translate into reduced investment in wireless networks. And this reduced investment would have real and severe consequences for the availability of emergency communications services for people living in rural and high-cost areas.

Apart from the serious public health and safety risks posed by the Joint Board's recommendation, the competitive harm that the cap would impose means that consumers in rural and high-cost areas, who have shown an increasing inclination to drop their wireline service and rely exclusively on wireless for their communications needs,[34] would be robbed of wireless alternatives. Draining away high-cost support from CETCs will harm consumers.

A. Denying Wireless Carriers the Ability to Invest in New Cell Sites Amounts to a Fundamental Assault on Public Safety in Rural Areas.

Today, wireless service is a critical link in public safety and homeland security. It is not exaggerating to say that a cell phone is the single most important safety tool a consumer can have. The public safety uses for a cell phone are too numerous to list. There are now literally

[34] *See CDC Report* at 7 (Table 2) (the percentage of adults in non-metropolitan areas with only wireless telephones has increased from 1.8% in the first half of 2003 to 8.0% in the second half of 2006).

thousands of stories of lives saved with cell phones, and lives lost when a phone (or adequate service) is unavailable.

People living in areas with high-quality wireless service have high expectations that a phone can be used in an emergency, which does not usually happen within easy reach of the wireline phone attached to the kitchen wall. They expect their children of driving age to be able to access emergency services if needed. They expect 911 and E-911 services to function. They expect to be able to use the phone when they travel or are displaced by a natural or man-made disaster.

Rural consumers share these desires, but sadly, many have much lower expectations. In Maine, 34 consumers and public safety officials submitted testimony describing the need for improved wireless service. We have attached as Exhibit 5 copies of their testimonies, which formed the basis for a grant of ETC status to a United States Cellular Corporation ("U.S. Cellular") subsidiary.[35] In the above-referenced docket, more than a thousand consumers have submitted brief comments opposing the Joint Board's proposed cap for various reasons, including most prominently the need for improved wireless service in rural areas.

The need for wireless service is further highlighted by the dramatic decrease in pay phones in our Nation's rural areas. According to the Commission's most recent *Trends Report*,[36] the number of pay phones in rural areas dropped by more than half between 1999 and 2006, at least partially as a result of consumers increasingly relying on wireless phones.[37] But in areas where wireless service is poor, the ability to complete an important call when away from home,

[35] While U.S. Cellular is not a member of RCA or ARC, the circumstances relating to its subsidiaries' CETC designations are relevant to these comments.

[36] *See Trends Report* at Table 7.6.

[37] *See* Exhibit 4 attached hereto.

or to report an emergency, is greatly reduced. Some small towns report that they do not have a single pay phone operating in their area.[38]

The ability of wireless networks to rapidly recover from disasters is now well known. U.S. Cellular recently experienced significant weather disasters in Missouri, Washington, and Oregon. In each case, the vast majority of the company's infrastructure survived and it was able to restore service due to electrical outages within hours—not days—by delivering portable diesel generators to affected cell sites.[39]

In the recent tornado that leveled Greensburg, Kansas, Rural Cellular Corporation ("RCC")[40] reports that its main cell site serving the town survived the storm and remained on the air due to a combination of battery backup and a diesel generator, immediately providing first responders and displaced citizens with vital communications services. The wireline network serving Greensburg was decimated.

In Mississippi, rural consumers have benefited from universal service funding. Cellular South[41] was designated as an ETC in 2001. As a result of the company's ability to invest

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[38] *See, e.g.,* testimony of Mr. Middleton in the application of N.E. Colorado Cellular to be an ETC in Nebraska, Docket No. C-3324, Transcript of Public Hearing in McCook, Nebraska, (July 18, 2005) ("McCook Hearing Transcript") at p. 260.

[39] *See also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, Comments of CTIA–The Wireless Association®, Aug. 7, 2006, at ii-iii:

> [P]rior to Hurricane Katrina, wireless carriers had pre-positioned portable cell sites, back-up generators, fuel, other equipment, and personnel, in areas close to the predicted impact area . . . . As a result of these preparations, wireless carriers were able to quickly move equipment and personnel into damaged areas. In addition, despite many complications, the wireless industry was able to repair damaged cell sites and switches; put up new cell sites; distribute over 25,000 wireless phones to individuals in the affected area; provide the public with free battery charging, calling and technical support; provide evacuees with temporary telecommunications capabilities; provide priority access to public safety personnel; supply emergency communications trailers, generators, and other equipment to public safety officials and emergency first responders on the ground; and suspend bill collection efforts, among other things.

[40] RCC is a member of RCA and of ARC.

[41] Cellular South is a member of RCA and of ARC.

available support, the state had a robust network in rural areas that formed a critical component of disaster response in the wake of Hurricane Katrina.[42] Literally hundreds of thousands of people who evacuated the coast northward into Mississippi's rural areas were able to use their wireless phones as a result of infrastructure investments made with high-cost support.[43]

In each of these cases, the benefits to consumers—who were able to communicate at such difficult times—are above calculation. It is thus beyond any sensible analysis why the Commission would endorse any proposal that would wholesale deny such benefits to any community that has poor wireline service that could be improved by a CETC's ability to construct new facilities.

Such a decision would be even more egregious in states such as Illinois, Missouri, Idaho, South Carolina, and Ohio—each of which has substantial rural areas and little or no support flowing to wireless carriers from the high-cost fund. Worse yet, wireline carriers in each state take in tens of millions to support wireline networks that were constructed decades ago, without meaningful accountability for their use of support, and without the ability to deliver to consumers the benefits of mobile wireless technology that they so clearly prefer.

In Illinois, U.S. Cellular has promised to deliver over 120 cell sites with high-cost support within the first five years after it is designated, over and above investments it will make with internally generated capital.[44]

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[42] Pursuant to Mississippi law, the company meets with the Public Utility Commission four times per year to outline how support is being invested for the benefit if Mississippi consumers. No such accountability is required for wireline carriers.

[43] A copy of a resolution from the Mississippi Legislature citing the company's outstanding response is attached as Exhibit 6.

[44] *See* Application of U.S. Cellular's subsidiary companies before the Illinois Commerce Commission to be an eligible telecommunications carrier in Docket No. 04-0653.

In Missouri, where U.S. Cellular was recently designated as an ETC, it has promised to deliver 39 cell sites with high-cost support within the first two years after it is designated, over and above investments it will make with internally generated capital.[45]

In Maine, U.S. Cellular reports use of high-cost support in its first several months as an ETC to construct 6 cell sites in very small towns such as Bingham, Fort Fairfield, and Jonesport, and has 21 more sites planned for construction in 2007. RCC, another ETC in the state, detailed in its most recent annual report to the Maine Public Utilities Commission how it used high-cost support to construct 19 cell sites from July 2005 to June 2006 in rural areas including Fort Kent, Leeds, and Edgecomb.

Similar stories could be cited in virtually every state where CETCs have been designated. It is beyond dispute at this point that wireless carriers are using support to construct high-quality competitive wireless networks in areas that would not otherwise support new towers. While carrier plans for the immediate future are often subject to protective orders, the Commission can easily learn from state regulatory commissions of the substantial new infrastructure investments being made by wireless companies and we would be pleased to provide this information.[46]

Far from being broken, it is apparent that the current high-cost support mechanism, which is requiring accountability by CETCs, is delivering critical health and public safety benefits to rural consumers in every area where CETCs have been designated. It is thus impossible to view a proposal to cap support to the very carriers who are delivering these benefits as anything other than an assault on public safety which must be rejected.

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[45] *See* Application of U.S. Cellular's subsidiary companies before the Missouri Public Service Commission to be an eligible telecommunications carrier in Case No. TO-2005-0384.

[46] Upon request, we would be pleased to provide the Commission with maps showing construction plans in many states that have been submitted under seal to protect the new CETCs from revealing proprietary information to competitors.

B. The Benefits of Competition Cannot Come to Rural America Without Universal Service Support.

The Commission has already ruled repeatedly that meaningful competition—wherein wireless can become a substitute for wireline service—cannot occur in areas where there are insufficient wireless cell sites to deliver a high-quality service.[47] There is substantial evidence that rural consumers in many areas of America are frustrated with their inability to receive high-quality wireless services, and that the introduction of high-quality wireless service has driven significant consumer benefit. For example, at a public hearing in McCook, Nebraska, consumers, ranchers, emergency medical technicians, and economic development directors all described how important wireless services are.[48] One woman remarked that she pays nearly $100 per month in long distance charges from her wireline telephone and cannot cut the cord because her wireless phone does not work where she lives.[49] Without any CETC having an ability to construct new facilities, she cannot switch to a service that offers state-wide (or greater) local calling area.

The same kind of evidence is readily available on a macro level as well. A recent study by the Centers for Disease Control and Prevention ("CDC") revealed that at least 12.8% of consumers are cutting the cord, an accelerating trend across the country.[50] The CDC study also noted that cord cutting is much higher, 22.4%, **among low-income consumers**.[51] This is a

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[47] *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling,* 15 FCC Rcd 15168 (2000) ("*South Dakota Preemption Order*").

[48] *See* McCook Hearing Transcript.

[49] *See id*. at p. 272.

[50] *CDC Report* at 2 ("Among the findings from the last 6 months of 2006, at least 12.8% of households did not have a traditional landline telephone, but did have at least one wireless telephone.").

[51] *Id*.

critical finding in that many, if not most, low-income consumers in rural areas cannot afford to subscribe to both wireline and wireless service.

If wireless does not form a substitutable service for wireline service, then low-income consumers are disproportionately harmed by the inability to choose lower-priced alternatives.[52] Most egregious, without the designation of a CETC, Lifeline-eligible consumers cannot lower their cost of voice service by switching to wireless and CETCs cannot access support to make new investments needed to provide high-quality service.

The CDC study also indicated (based on telephone status information obtained from July through December 2006) that 12.7% of adults in metropolitan areas use only wireless phones, while 8.0% of adults in non-metropolitan areas have cut the cord.[53] This statistic suggests that parity does not exist between urban and rural areas regarding the availability of competitive choices for telephone service. The cap proposed by the Joint Board would magnify this disparity, making it more difficult for consumers in rural areas to take advantage of the benefits of wireless service. In addition, the CDC study shows that the number of employed adults with only wireless phones is more than double the number of adults who have cut the cord but who are not working at a job or business.[54] This statistic suggests that wireless phones are playing an increasingly widespread role in the business sector (based on the reasonable assumption that employed adults with only wireless phones use those phones in part for business-related activities). The deployment of wireless technology in rural areas is thus an important component of economic development in those areas, as wireless phones continue to assume a more central

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[52] If support is properly targeted to high-cost areas, and the benefits properly measured in this way, this forms a sound policy answer to the question why urban residents should pay into the fund.

[53] *CDC Report* at 7 (Table 2).

[54] *Id*. at 6 (Table 2) (13.9% of adults working at a job or business have cut the cord, while 6.2% of adults who are not in the workforce (and who also are not students or homemakers) have cut the cord).

role in business communications. The proposed cap will have the effect of slowing this deployment, with adverse economic effects in rural areas.

V. IMPOSING A CAP ONLY ON ONE CLASS OF CARRIER WOULD VIOLATE THE COMMISSION'S CORE PRINCIPLE OF COMPETITIVE NEUTRALITY, CONFLICT WITH STATUTORY REQUIREMENTS AND COMMISSION PRECEDENT

The core principle of competitive neutrality, adopted by the Commission ten years ago[55] pursuant to Section 254(b)(7) of the Communications Act of 1934 ("Act"),[56] requires that universal service support mechanisms must be competitively neutral. The Commission intends the principle to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[57]

A central goal behind the principle is to "enable the emergence of competition in high-cost areas served by Rural Carriers . . . ."[58] The Commission, in adopting the principle, concluded that competitively neutral rules would guard against unfair competitive advantages that could suppress market entry and deprive consumers of service choices.[59] The competitive neutrality principle is consistent with the judicial determination that the universal service program "must treat all market participants equally . . . so that the market, and not local or

[55] *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8800-06, paras. 46-55 (1997) ("*First Report and Order*") (subsequent history omitted).

[56] 47 U.S.C. § 254(b)(7).

[57] *First Report and Order*, 12 FCC Rcd at 8801, para. 47.

[58] Rural Task Force, White Paper 5, *Competition and Rural Service* (Sept. 2000), at 11, http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/?OpenDatabase (accessed May 31, 2007).

[59] *First Report and Order*, 12 FCC Rcd at 8802, para. 48.

federal government regulators, determines who shall compete and deliver services to customers."[60]

The Joint Board expresses its belief in the *Recommended Decision* that its proposed cap does not violate the Commission's principle of competitive neutrality, and pins this belief on its claim that there are disparities in regulatory treatment between ILECs and CETCs and perceived deficiencies in the identical support rule.[61] Even assuming *arguendo* that there could be some basis for the Joint Board's assertions about regulatory parity and the identical support rule, these views do not give license to impose a cap that violates competitive neutrality and is, on its face, fundamentally and fatally flawed.

In addition to violating the competitive neutrality principle, the Joint Board's proposal ignores *Alenco*, which provides an avenue for imposing a cap that RCA and ARC support: making high-cost support fully portable. Finally, the proposed cap conflicts with statutory requirements that local markets must be opened to competition, and with Commission precedent governing the balancing of universal service with policies promoting competition. These deficiencies in the proposed cap are evident throughout the country, but would be most egregious in a number of states where high-cost support disbursements to CETCs would be severely restricted or entirely blocked.

[60] *Alenco*, 201 F.3d at 616. The court concluded that this principle of equal treatment is dictated not only by the economic realities of competitive markets but also by Section 214(e)(1) of the Act, 47 U.S.C. § 214(e)(1). *Id.*

[61] *Recommended Decision* at para. 6.

A. The Proposed Cap Directly Conflicts with Competitive Neutrality and with Prior Commission Precedent.

The proposed cap on support to CETCs is not competitively neutral, nor is it grounded in any sensible interpretation of the Act.[62]

The Joint Board justifies a cap on CETCs because:

> Fundamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs. For example, competitive ETCs, unlike incumbent LECs, have no equal access obligations. Competitive ETCs also are not subject to rate regulation. In addition, competitive ETCs may not have the same carrier of last resort obligations that incumbent LECs have.[63]

The Joint Board's conclusion ignores the Commission's own rulings on this very matter:

> Several ILECs assert that the Joint Board's recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR [carrier of last resort] obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. ***The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.***[64]

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[62] *See South Dakota Preemption Order*, 15 FCC Rcd at 15177, para. 22 ("[T]he proper inquiry is whether the *effect* of the legal requirement, rather than the method imposed, is competitively neutral.") (emphasis in original) (footnote omitted).

[63] *Recommended Decision* at para. 6.

[64] *First Report and Order*, 12 FCC Rcd at 8857-58, para. 144 (emphasis added) (footnotes omitted). Moreover, the Joint Board itself has recognized that regulatory parity should not be blindly pursued. In addressing ETC designation requirements, the Joint Board has indicated that it would not recommend that CETCs must be required to comply with all the consumer protection standards imposed on wireline incumbent LECs, because regulators "should not require regulatory parity for parity's sake." *Federal-State Joint Board on Universal Service*, *Recommended Decision*, 19 FCC Rcd 4257, 4271, para. 34 (2004). Thus, the Joint Board has recognized the fact that it would be bad public policy to design universal service mechanisms or rules that enforce regulatory parity between different classes of providers. It therefore follows that it would be bad public policy to design a cap that inherently violates the competitive neutrality principle and then seek to justify the mechanism on the ground that there is no regulatory parity between the provider who is disadvantaged by the cap and the provider who benefits from the cap. If there is no basis for requiring regulatory parity, then how can the absence of regulatory parity be a justification for an anti-competitive cap?

That is, the very factors cited by the Joint Board for discriminating between ILECs and CETCs were specifically rejected by the Commission.[65] Adopting the Joint Board's rationale for finding that a cap on CETCs would be competitively neutral would represent the very essence of arbitrary and capricious rulemaking.

Capping CETCs unfairly and disproportionately disadvantages wireless carriers, who form the overwhelming majority of CETCs. As proposed by the Joint Board, the cap also draws a completely arbitrary line that unfairly disadvantages those CETCs who are operating in states which currently receive little or no support.[66] That is, a CETC designated in Missouri during 2007 will be required to participate in a pool of $123,000 in annual support available to that state for CETCs as long as the cap is in effect.[67] CETCs designated in Connecticut, Delaware, Idaho, Illinois, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, Ohio, Rhode Island, South Carolina, and Utah will receive nothing, or virtually nothing.[68] In other states, the pool of support is tens, or even hundreds, of millions of dollars.[69]

The Joint Board's proposed cap would skew the marketplace, inhibit competition, limit the available quantity of services, and restrict the entry of potential service providers. The proposal therefore represents a significant departure from the competitive neutrality principle articulated in the *First Report and Order*:

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[65] *See, e.g., First Report and Order*, 12 FCC Rcd at 8820, para. 79 ("[W]e find that supporting equal access would undercut local competition and reduce consumer choice and, thus, would undermine one of Congress's overriding goals in adopting the 1996 Act. Accordingly, we do not include equal access to interexchange carriers in the definition of universal service at this time.").

[66] This issue is discussed further in Section V.E., *infra*.

[67] *See* Universal Service Administrative Company, *2006 Annual Report* ("*USAC 2006 Annual Report*") at 41, available at http://www.universalservice.org/_res/documents/about/pdf/usac-annual-report-2006.pdf (accessed June 4, 2007).

[68] According to the Universal Service Administrative Company, Illinois received approximately $1,000 in CETC support in 2006, not enough to cut the grass around a cell site. *See id*.

[69] *See Recommended Decision* at Appendix B.

> Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.[70]

In states with little or no support available to CETCs, the effect of the proposed cap would be extreme. Competition would be inhibited because support enables (and indeed eligibility for support requires) a carrier to offer and advertise its service throughout a service area. Support is used to construct new cell sites that provide high-quality service everywhere that consumers live, work, and play, upgrading underserved areas so that wireless can become a substitute service, as it is in urban areas. In many, if not most, rural areas, constructing and operating a high-quality wireless network without support is not feasible.[71] Thus, a cap imposed on carriers who are still in the process of building out their networks in many rural areas would limit the available quantity of services to consumers and restrict potential service providers from entering as viable substitute service providers. This contradicts the very principles the Commission articulated in the *First Report and Order*.

Finally, by citing "differences" in the "regulatory treatment" accorded to ILECs and ETCs, the Joint Board ignores the fact that Section 254(e) of the Act requires all ETCs to use support not for compliance with wireline regulatory mandates, but "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[72] ILECs have been in their respective markets for several decades and achieved near complete

[70] *First Report and Order*, 12 FCC Rcd at 8802, para. 48.

[71] Indeed, with at least eight commercial wireless licensees having been authorized throughout the country, if there were a business plan for providing high-quality service throughout rural America, surely it would have happened by 2007.

[72] 47 U.S.C. § 254(e).

build-out years ago, while CETCs tend to have much younger networks that are in need of significant capital investment to reach unserved and underserved areas. It would not be competitively neutral to deprive CETC of the means to build out their networks so that they can compete with ILECs that have already built out their networks with the benefit of implicit and explicit subsidies heretofore unavailable to competitors.

B. The Joint Board's Reliance on the Identical Support Requirement as a Justification for the Proposed Cap Is Misplaced.

In further attempting to support its claim that its proposed cap does not violate the Commission's competitive neutrality principle, the Joint Board observes that "under the identical support rule, both incumbent rural LECs and competitive ETCs receive support based on the incumbent LECs' costs. Therefore, incumbent rural LECs' support is cost-based, while competitive ETCs' support is not."[73] The Joint Board seems to imply, without any explanation, that the identical support rule is another "regulatory difference" that can serve as a basis for its claim that the cap does not violate the competitive neutrality principle.

The Joint Board provides no analysis to support its assertion that the identical support rule may be outdated, may no longer be appropriate,[74] and may not reflect "the economic realities of different technologies."[75] Instead, the Joint Board recommends that the Commission should consider whether to repeal or modify the rule. Thus, the Joint Board's claim that the cap would not violate the competitive neutrality principle seems to be based on its suppositions about the alleged inadequacies of the identical support rule.

The Joint Board's unsubstantiated and unexplained concerns about the identical support rule completely ignore that the Commission has failed to implement portability. When combined

[73] *Recommended Decision* at para. 6.

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

[75] *Id*. at para. 12 (footnote omitted).

with portability, the identical support rule serves as a well-crafted means of advancing the statutory policy of promoting a competitively neutral means of fostering competitive entry in rural and high-cost areas. The rule provides an incentive to competitive carriers to enter rural and high-cost markets if their costs are likely to be lower than, or equal to, the costs of the incumbent. Without the receipt of per-line support pegged to the incumbent's costs, it would be difficult for CETCs to compete against entrenched monopoly carriers operating in rural areas with a completely built-out, and heavily subsidized, network. Moreover, the high-cost support received by CETCs is used (as directed by Section 254(e) of the Act[76]) to invest in the build-out of facilities to deliver services to consumers in the rural and high-cost areas served by the CETCs.

The Commission has concluded that basing CETC support on ILECs' embedded costs does not amount to preferential treatment of competitors and therefore does not violate the Act or the principle of competitive neutrality:

> We are not persuaded by commenters that assert that providing support to CLECs based on the incumbents' embedded costs gives preferential treatment to competitors and is thus contrary to the Act and the principle of competitive neutrality. **While the CLEC may have costs different from the ILEC, the CLEC must also comply with Section 254(e), which provides that "[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Furthermore, because a competing eligible telecommunications carrier must provide service and advertise its service throughout the entire service area, consistent with section 254(e), the CLEC cannot profit by limiting service to low cost areas. If the CLEC can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC.** The presence of a more efficient competitor will require that ILEC to increase its efficiency or lose customers. State members of the Joint Board concur with our determinations regarding the portability of support.[77]
>
> **To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support**

[76] 47 U.S.C. § 254(e).

[77] *First Report and Order*, 12 FCC Rcd. at 8933.

> **that the incumbent would have received for the line, including any interim hold-harmless amount.** While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. **Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.**[78]

The Commission's finding is sound today, just as it was ten years ago, because the utility of the identical support rule as a driver for competitive entry will continue to have force until competition in rural and high-cost markets is more widespread, as measured by indicators such as the degree of build-out of competitive networks and the degree of shift in lines from ILECs to CETCs.

Shifting away from the ILECs' embedded costs will be necessary as wireless becomes a prominent or dominant provider of the supported services. Wireless carriers are not wedded to ILEC costs as a basis for support—what is critical is that all marketplace competitors receive the same level of support so that the marketplace is not distorted.[79]

The identical support rule, far from conflicting with the Commission's competitive neutrality principle, continues (as the Commission intended) to serve as a powerful vehicle promoting competitive entry and greater efficiency by incumbents, allowing consumers in rural and high-cost areas to choose the services and service provider that best suit their needs and providing an effective means of introducing efficient competition in rural and high-cost areas where ILEC costs are inflated by operational inefficiencies.[80]

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[78] *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd at 20432, 20480 (1999) (emphasis added).

[79] In urban areas, the absence of support means that all competitors operate on a level playing field without distortion. In rural areas, identical support replicates that level field, eliminating market distortions.

[80] For a discussion of the advantages of the identical support requirement, see *Wood Paper* at 12-15. *See also* Joint Comments at 12-21 (explaining that the identical support rule is the only way to distribute high-cost support on a competitively neutral basis).

C. Even If a Cap Were Needed, It Could Be Made Legally Sustainable by Making High-Cost Support Fully Portable.

In proposing the CETC cap, the Joint Board ignores *Alenco*, which affirmed competitive neutrality, the identical support rule, and properly focused universal service mechanisms on the consumer:

> *Finally*, the program must treat all market participants equally—for example, subsidies must be portable—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this principle is made necessary not only by the economic realities of competitive markets but also by statute. *See* 47 U.S.C. § 214(e)(1) (requiring that all "eligible telecommunications carrier[s] . . . shall be eligible to receive universal service support").[81]
>
> The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.[82]

Even assuming a cap is needed (and, as shown above, it is not), under *Alenco* it could be legally sustained if support were made fully portable.[83] That is, if ILECs lose support when they lose a customer, as do CETCs, then the fund would be capped in a competitively neutral fashion. The Commission has persuasively argued for full portability, stating that "if the incumbent retained the subsidy even though it no longer was providing high-cost service to a customer lost to competition, it necessarily would be using the subsidy for a purpose other than that intended by the statute."[84]

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[81] *Alenco*, 201 F.3d at 616 (emphasis in original); *see also* FCC Brief in *Alenco* at 48. (The court accepted the Commission's argument that portability is required by statute.)

[82] *Alenco*, 201 F.3d at 620 (emphasis in original).

[83] As demonstrated in *Alenco*, a cap on ILEC support similarly caps support available to CETCs, who only receive "per-line" support that is equal to ILECs, not more.

[84] FCC Brief in *Alenco* at 47-48.

That portability is needed is further demonstrated by substantial evidence that wireline carriers are "over-earning." That is, their rates of return sometimes greatly exceed the rate prescribed for monopoly wireline carriers. For example, the 2005 Annual Statistics for ILECs issued by the Oregon Public Utilities Commission contains an analysis of the rates of return for rural wireline carriers in the state. A number of carriers are significantly over-earning—some with rates of return approaching 30%.[85] Without an investigation of how much over-earning is going on across the country in the wireline industry, it is simply wrong to conclude that mandating portability, a short-term reform which is transparent and simple to implement, is not in *consumers*' best interest.

D. Even If the Joint Board's Concerns About Regulatory Parity and the Identical Support Rule Were Credible, These Concerns Cannot Justify Imposition of a Cap That Violates the Competitive Neutrality Principle.

We have shown in the previous sections that the Joint Board's apparent concerns about differences in regulatory treatment between ILECs and CETCs, and about the continuing appropriateness of the identical support rule, have no basis. The disparities in regulatory treatment reflect the fact that ILECs, unlike CETCs, have long had monopoly control of local exchange markets and have been the long-time beneficiaries of direct and indirect government subsidies to support their provision of service. Similarly, a central purpose of the identical support requirement is to induce and sustain competitive entry into these monopoly local exchange markets so that consumers may receive the benefits flowing from the availability of competitive service alternatives.

If we were to assume, however, that, contrary to all the evidence, the Joint Board has raised credible concerns about the advisability of continuing to maintain the identical support

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[85] Oregon Public Utilities Commission, *Small Telecommunications Utilities, Oregon and System Operations, Year Ending Dec. 31, 2005*, http://www.puc.state.or.us/PUC/telecom/stats05.pdf (accessed May 31, 2007).

requirement and about the regulatory disparities between ILECs and CETCs, these concerns still cannot be enlisted by the Joint Board in its effort to demonstrate that its proposed cap passes the competitive neutrality test.

In claiming that the proposed cap does not violate the competitive neutrality principle, the Joint Board implicitly acknowledges the importance of the principle and the fact that compliance with the principle is a *sine qua non* for establishing the lawfulness of the cap. But the Joint Board does not attempt to show that the cap itself is competitively neutral, for the simple reason that such a showing is impossible. As we have demonstrated, the *raison d'être* of the proposed cap is to stem the "explosive" growth of the fund by disbursing less support to CETCs, thus inexorably imposing a competitive disadvantage on CETCs.

This quandary faced by the Joint Board led to the attempted sleight of hand that plays out in the *Recommended Decision*. Instead of having us look at the terms of the proposed cap, and the obvious ways in which these terms violate competitive neutrality, the Joint Board tries to induce us to look at other issues, which are completely extraneous to the operation of the cap, and then states its belief that these other issues are the "reasons" why the proposed cap does not violate the competitive neutrality principle.

The problem with the Joint Board's logic is that it is completely at odds with the purpose and application of the competitive neutrality principle. The application of the principle is straightforward: Once it is established that a proposed mechanism or rule is *not* competitively neutral, then the mechanism or rule must be rejected. That is the end of the inquiry. The Commission did not establish or envision a second step to the analysis, in which, even though it has been determined that the proposed mechanism or rule is not competitively neutral, the mechanism or rule still may be permitted to take effect because of other considerations that have nothing to do with the terms or effect of the proposed mechanism or rule.

The Joint Board attempts to manufacture this second step, ignoring the fact that such an analysis has no basis in the Commission's formulation of the principle and in fact would eviscerate the principle. This is so because, under the Joint Board's approach, so long as the identical support rule or the regulatory disparities cited by the Joint Board continued to be in effect, the sky would be the limit on the types of anti-competitive universal service mechanisms and rules that could be devised and then "justified" by making reference to the identical support rule or the disparate regulatory treatment (or some other "[f]undamental differences"[86] conjured up by the Joint Board).

Nor can it be argued that a demonstrably unfair advantage imparted by a universal service mechanism or rule, such as the proposed cap, can be transformed into a "fair" advantage—and thus be made permissible under the principle[87]—because the advantage can be balanced against perceived disadvantages that are extraneous to the proposed mechanism or rule. The Commission's test is limited to and directly focused on whether the mechanism or rule—and only the mechanism or rule—treats providers differently in a way that is unfair. There is no escaping the conclusion that this proposed mechanism is inherently unfair because it would cap disbursements to only one class of carrier.

In sum, the Joint Board completely missed the mark in failing to propose portability as the solution to fund growth. A CETC-only cap fails the Commission's own core principle of competitive neutrality and, as such, must be rejected.

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[86] *Recommended Decision* at para. 6.

[87] The Commission held that "competitive neutrality means that universal service support mechanisms and rules neither *unfairly* advantage nor disadvantage one provider over another . . . ." *First Report and Order,* 12 FCC Rcd at 8801, para. 47 (emphasis added).

E. The Proposed Cap, By Shutting Off or Severely Restricting Fund Disbursements in Certain Cases, Fails to Adhere to Statutory Requirements and Commission Precedent.

The Joint Board's recommended cap, in addition to dismantling the competitive neutrality principle, would wreak further havoc in certain states as a result of the Joint Board's proposal that CETC support for each state should be capped at the level of CETC support actually distributed in that state in 2006.[88]

In states that currently receive little or no CETC support, the proposed cap would effectively bar competitive entry. In 2006, there were 16 states that received less than $1.5 million in CETC support, including eight states (Connecticut, Delaware, Idaho, Massachusetts, New Jersey, Ohio, Rhode Island, and South Carolina) that received no CETC support. Missouri received approximately $123,000 in CETC support in 2006, while Illinois received approximately $1,000 and Maryland received approximately $3,000.[89]

If a cap were to be imposed, CETCs would not be able to enter markets in those states with rural areas because the CETCs would be eligible to receive very little, if any, high-cost support. Without such support, it would be virtually impossible for the CETCs to deploy the infrastructure necessary to compete against ILECs in providing services to consumers in rural and high-cost areas.[90]

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[88] *Recommended Decision* at para. 13.

[89] *USAC 2006 Annual Report* at 41. The District of Columbia and the Virgin Islands also received no CETC high-cost support in 2006. *Id*.

[90] *South Dakota Preemption Order*, 15 FCC Rcd at 15173, para. 13 (footnote omitted):

> We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

The cap, by imposing this effective bar to competitive entry, would violate a statutory directive. The Commission is subject to a dual legislative mandate to promote universal service and to open up local markets to competition.[91] "The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other."[92] The Commission itself acknowledged these statutory obligations more than a decade ago, noting that "[w]e are directed to remove . . . impediments to competition in all telecommunications markets, while also preserving and advancing universal service *in a manner fully consistent with competition*."[93]

Moreover, in rejecting proposals to adopt a specific national per-line support benchmark for designating ETCs, the Commission accepted arguments that a per-line benchmark that denies entry to CETCs in high-cost areas could prevent consumers in these areas from receiving the benefit of competitive service offerings. The Commission concluded that "[a]lthough giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality."[94] In addition, the Commission has found that any:

> mechanism that provides support to ILECs while denying funds to eligible prospective competitors . . . may give customers a strong incentive to choose service from ILECs rather than competitors. . . . [S]uch a program may well have

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[91] *See* Sections 251-253 of the Act, 47 U.S.C. §§ 251-253; *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 406 (5th Cir. 1999) ("opening local telephone markets to competition is a principal objective of the Act"); *see id.* at 412 (referencing the dual statutory goals of "provid[ing] sufficient support for universal service" and "encouraging local competition").

[92] *Alenco*, 201 F.3d at 608 (emphasis in original).

[93] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15505-06, para. 3 (1996) (emphasis added) (subsequent history omitted).

[94] *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371, 6395-96, para. 56 (2005) (footnote omitted).

> the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a) [of the Act].[95]

The cap proposed by the Joint Board is just such a mechanism.

Some parties have argued that high-cost funds are not intended to fund competition in areas that otherwise would not support competition. Such an argument is nonsensical and must be rejected, as it presupposes a nonexistent principle favoring monopoly service. It ignores the twin goals of the Act to preserve and advance universal service while also promoting competition in local exchange markets. In short, if high-cost support is not to be used in areas that otherwise cannot support competition, then where should it be used?

The cap fails to balance concerns about increases in the size of the fund against the promotion of competitive entry, but instead (in a significant number of rural states) throws competitive entry out the window. Since the cap cannot be found to be "fully consistent with competition" it must be rejected.

VI. CONCLUSION

The Commission's rulemaking task often is to balance competing interests and claims, and thus to arrive at sound public policy. Here, the task is easy. On the one hand, the Joint Board's proposed cap violates competitive neutrality, and the Joint Board has failed to present any convincing evidence that the sustainability of the fund is in dire jeopardy, that CETCs are largely responsible for fund growth, that the fund will continue to grow at the rates projected by the Joint Board, or that consumers will be harmed if a cap is not imposed.

On the other hand, the cap would freeze the advance of competition in rural and high-cost areas, with serious consequences for consumers. Depriving CETCs of high-cost funds will

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[95] *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, *Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16231, para. 8 (2000).

deprive consumers of the benefits produced by competition. The cap would also undercut the availability of wireless services in emergency situations. High-cost fund support, by opening the door for competition, brings real and important benefits to consumers. The proposed cap would stall that engine.

Given this impact of the proposed cap on consumers, the Joint Board has a responsibility to make a convincing case that the cap is necessary and is consistent with statutory and regulatory requirements and policies. The Joint Board has not made this case. The Commission therefore should reject the Joint Board's recommendation.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

/s/ David L. Nace

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June 6, 2007

EXHIBIT 1

Causes of Increase in USF Contribution Factor
(First Quarter 2007 to Second Quarter 2007)

Causes of Increase in USF Contribution Factor (First Quarter 2007 to Second Quarter 2007)

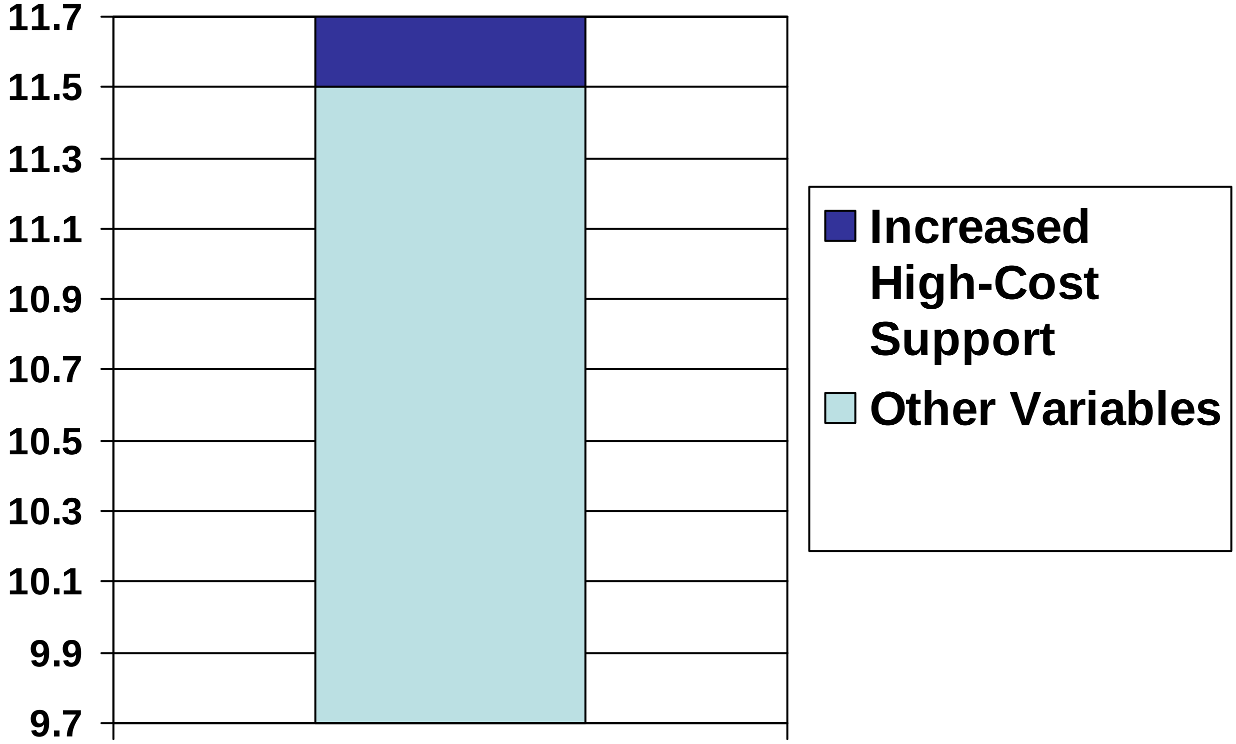

EXHIBIT 2

Average Wireline Residential Local and Long Distance Telephone Bills Plus USF Contribution Surcharge

Average Wireline Residential Local and Long Distance Telephone Bills Plus USF Contribution Surcharge

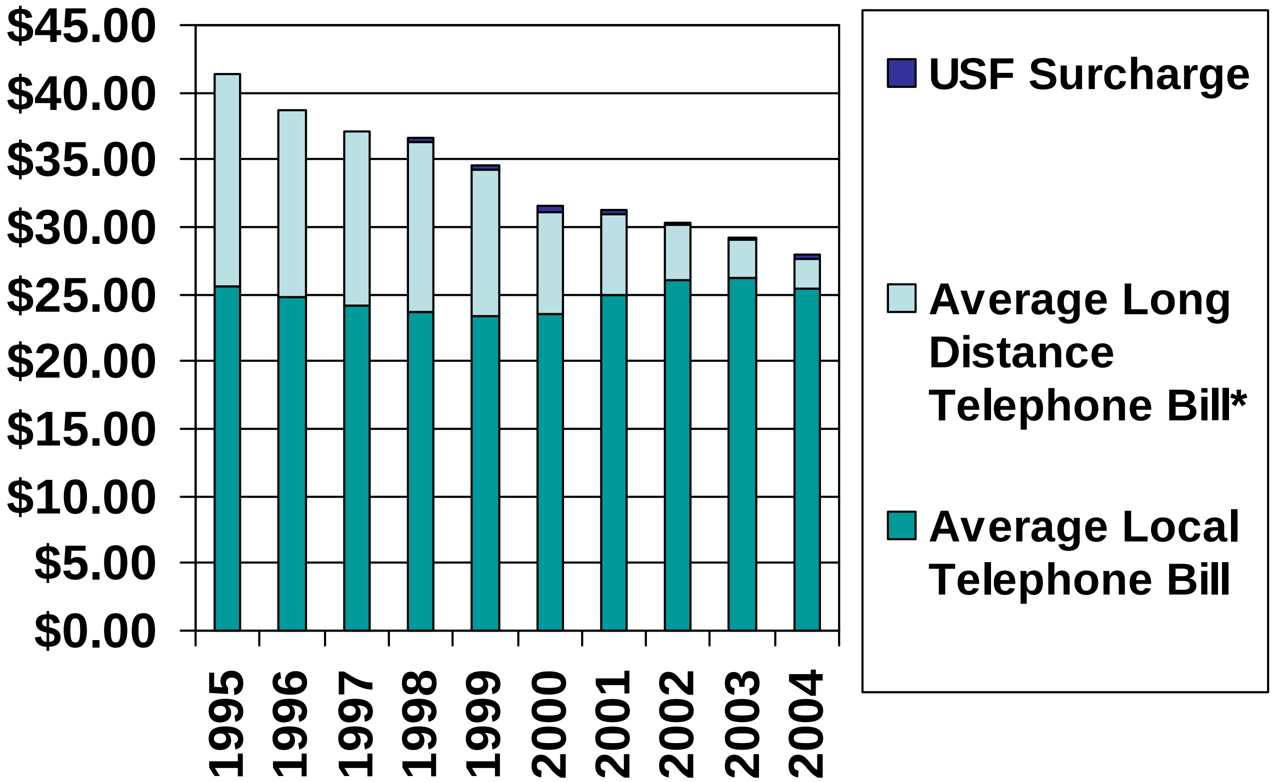

EXHIBIT 3

Per-Minute Cost of Wireless Service
(Including USF Contributions)

(1995-2006)

Per-Minute Cost of Wireless Service
(Including USF Contributions)

(1995-2006)

Sources: Source: FCC, *Trends in Telephone Service*, Table 19.17 (Feb. 2007); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 – Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17, *Eleventh Report*, 21 FCC Rcd 10947 (2006), App. A, Table 10

YEAR	(A) AVERAGE REVENUE PER MINUTE ($) 1/	(B) CONTRIBUTION FACTOR (%) 2/	(C) PER MINUTE COST OF CONTRIBUTION FACTOR ($) 3/	TOTAL COST PER MINUTE ($) (A) + (C)
1995	0.4300			
1996	0.3800			
1997	0.3700			
1998	0.2900	3.1625	0.0092	0.2992
1999	0.2200	3.0143	0.0066	0.2266
2000	0.1800	5.6980	0.0103	0.1903
2001	0.1200	6.8445	0.0082	0.1282
2002	0.1100	7.1625	0.0079	0.1179
2003	0.1000	8.7701	0.0088	0.1088
2004	0.0900	8.8000	0.0079	0.0979
2005	0.0700	10.5500	0.0074	0.0774
2006		10.1750		
2007 (1Q)		9.7000		
2007 (2Q)		11.7000		

1/ Data covers the last six months of each year.

2/ The listed number for years 1998-2006 is an average of the four quarterly contribution factors.

3/ Calculated by multiplying the average revenue per minute (A) by the contribution factor (B)

Per-Minute Cost ($) of Wireless Service (Including USF Contributions)

(1998-2005)

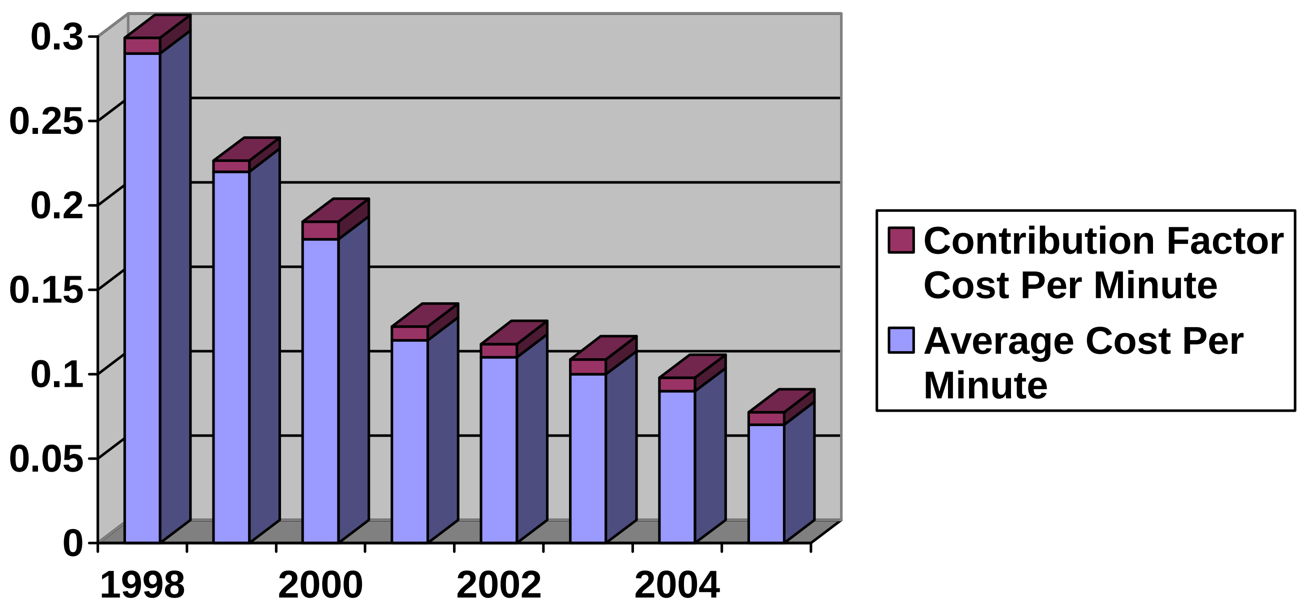

EXHIBIT 4

Total U.S. Payphones From 1999 to 2006

Total US Payphones from 1999 to 2006

Source: Trends in Telephone Service
(Feb. 2007), Table 7.6

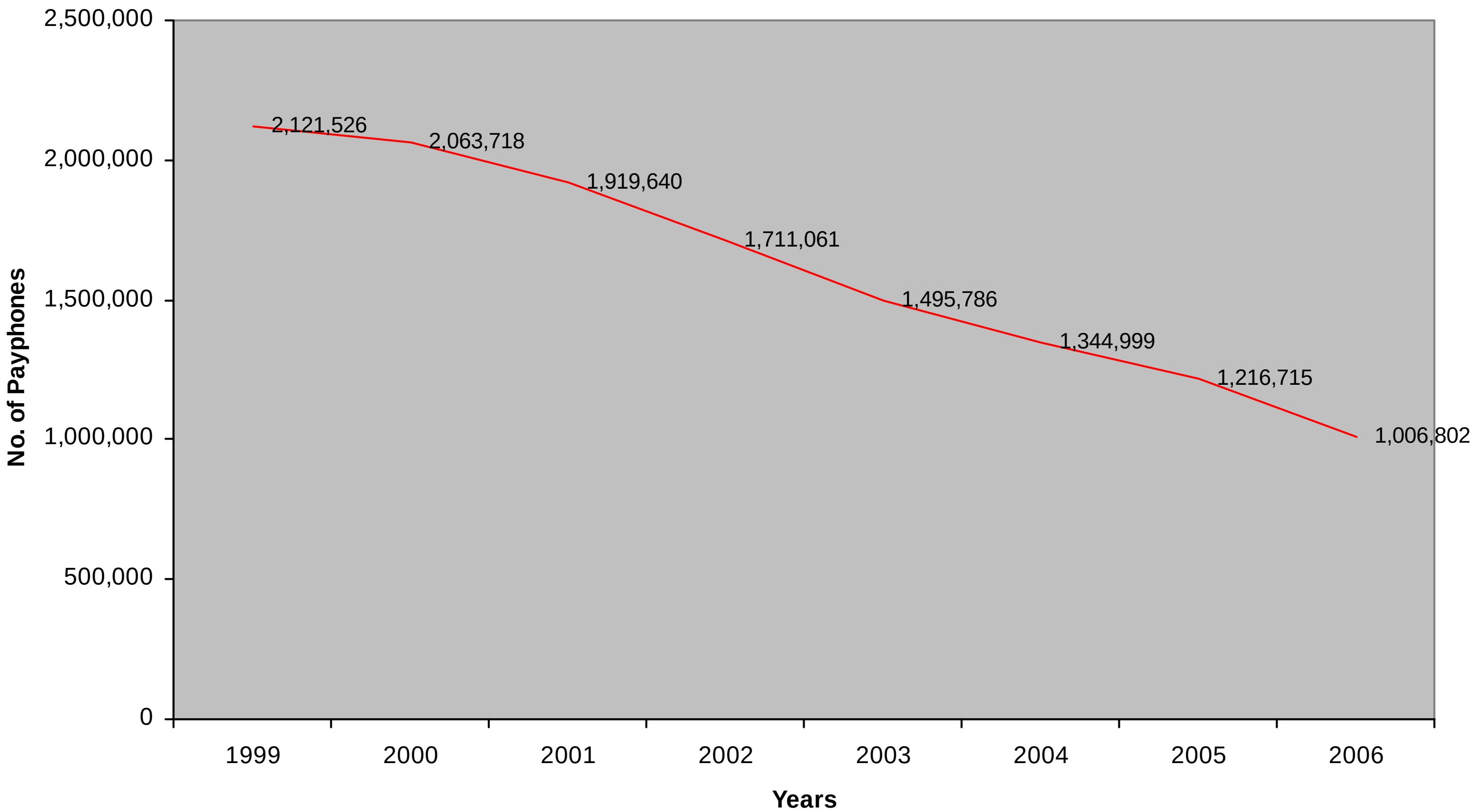

EXHIBIT 5

Testimony of Consumers
and Public Safety Officials
in the State of Maine

[Separate file attached]

EXHIBIT 6

Resolution of the Mississippi Legislature
Regarding Cellular South

[Separate file attached]