

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service)	

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

Ronald K. Chen, Esq.
Public Advocate of New Jersey

Kimberly K. Homes, Esq.
Acting Rate Counsel
31 Clinton Street, 11th Floor
Newark, NJ 07102
(973) 648-2690 - Phone
(973) 648-2193 - Fax
www.rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate

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I. INTRODUCTION

On May 14, 2007, the Federal Communications Commission (“FCC”) issued a Notice of Proposed Rulemaking (“NPRM”) (FCC 07-88) on the Joint Board’s recommendation that the FCC impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunication carriers may receive.¹ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.² Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel’s continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster

¹ / *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337 and CC Docket No. 96-45, Recommended Decision*, released May 1, 2007 (FCC 07J1).

² / Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman’s Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to “represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest,” N.J.S.A. 52:27EE-57, i.e., an “interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens.” N.J.S.A.52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

productivity and innovation” and “produce a wider selection of services at competitive market-based prices.” The resolution of the complex economic and policy issues that this proceeding embraces directly affects the structure of telecommunications markets, and the prices that consumers pay for basic telecommunications service.

Rate Counsel submits that the proposed cap fails to offer the public a long-lasting solution to the Universal Service issues now before the FCC and the FCC should reject a short term solution in favor of a comprehensive solution. Rate Counsel’s specific recommendations are as follows.

II. DISCUSSION OF THE ISSUES

The Proposed Cap Fails to Offer the Telecommunications Industry, Consumers and the American Public a Long-Lasting Solution for a Universal Service Mechanism.

The Federal-State Joint Board on Universal Service (“Joint Board”) recommends imposing an interim cap on high-cost support for competitive eligible telecommunications carriers. Rate Counsel agrees that closing the digital divide is a laudable goal. The Joint-Board’s current proposal, however, fails to confront the multitude of issues that plague and imperil the goal of universal service.

The impulse to a temporary fix, one that seemingly encourages the Joint Board and the FCC to take a hard look at what ails the scheme for universal service is at first glance perfectly logical. In reality, the only effect the interim cap will have is to cap how much consumers can be assessed for Universal Service through the USF component paid on their bills without affording relief to consumers in the long term. The proposed cap fails to aid the Joint Board and the FCC in their efforts to fix universal service. Most commenters in this proceeding-- whether they oppose the cap or not-- agree that the

issues underlying unfettered growth and ineffectiveness of the fund must be addressed. The only purpose the cap will serve is to put a band-aid on a bigger problem.³

Rate Counsel, in this and other proceedings, has repeatedly demonstrated that the growth of the fund is but one issue that the Joint Board and the FCC need to examine and reform. Rate Counsel has argued for numerous changes in multiple areas.⁴ Over a year ago, Rate Counsel urged the FCC to consider reforming and creating a sunset for the non-rural high cost fund.⁵ Similarly, Rate Counsel has argued in merger proceedings that the merged entities post merger should not receive non-rural high cost support.⁶ In the context of universal service, the substantial merger synergies provide a valid basis to remove participation by the merged entities from receiving high cost support.⁷

The fundamental concerns with Universal Service should be resolved and the funding issues with Universal Service resolved with all deliberate speed, for consumers are ultimately paying for it. Universal Service is essentially as a pass-through where consumers fund the system to provide a revenue stream to service providers. Several commentators have noted in this proceeding how this fund causes inefficient results. For example, a number of comments discuss how the current method of allocating funds over-compensates the CETCs by paying them for customers they already have, and gives

³/ See Comments.

⁴/ See *In the Matter of Federal-State Joint Board on Universal Service High-Cost Universal Service Support*, FCC WC Docket No. 05-337, Comments of the New Jersey Division of Rate Counsel, May 31, 2007.

⁵/ See *In the matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Reply Comments of the New Jersey Ratepayer Advocate, May 26, 2006.

⁶/ See *In the Matter of AT&T Inc. and BellSouth Corporation Applicants for Approval of Transfer of Control*, WC Docket No. 06-74, Comments on Behalf of the New Jersey Division of the Ratepayer Advocate, June 5, 2006, at 22; *In the Matter of AT&T Inc. and BellSouth Corporation Applicants for Approval of Transfer of Control*, WC Docket No. 06-74, Declaration of Susan M. Baldwin and Sarah M. Bosley and Timothy E. Howington, October 4, 2006, at 73.

⁷/ *In the Matter of AT&T Inc. and BellSouth Corporation Applicants for Approval of Transfer of Control*, WC Docket No. 06-74, Declaration of Susan M. Baldwin and Sarah M. Bosley, June 5, 2006, at 103.

them over recovery of their actual costs.⁸ Not only does this present an inappropriate windfall for the CETCs, it maintains an irrational system at consumer expense. The interim measure would only delay the resolution of these problems, by arbitrarily locking in the *status quo*. In other words, the cap merely prolongs making real and meaningful changes.

Instead of waiting to see if an interim cap will be of any use in stemming the growth of the USF, the Joint Board and the FCC should forego any quick-fix or wait-and-see strategies and fix this regime with a thorough, long term solution that is equitable to consumers in both rural and non-rural areas. Rate Counsel agrees that the public has an interest in Universal Service. There is also, however, a great public interest in cost efficient and robust universal service programs that satisfy the goals of Section 254 of the Act. Rate Counsel asks the FCC to address and remedy in a comprehensive manner all the components that effect universal service. Comprehensive reform is necessary to secure and foster the public interest.

The FCC Should Fix the Systemic Problems of High Cost USF in Lieu of a Temporary Fix.

Section 254(b)(1) requires as the first principle of Universal Service that rates be “available at just, reasonable, and affordable rates.”⁹ Under the current system of high cost support, Universal Service remains an incomplete goal. New Jersey, for example, contributes to the fund, yet receives no high-cost loop support,¹⁰ and a total of \$1,289,640

⁸/ See e.g., *In the matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of the Organization for the Promotion and Advancement of Small telecommunications Companies, June 6, 2007 (arguing the identical support rule causes over-payment to CETCs).

⁹ 47 U.S.C. § 254(b)(1) (2007).

¹⁰ *Universal Service Monitoring Report CC Docket No. 98-202*, CC Docket No. 96-45, at 3-18 (2006).

in 2006 for Lifeline Support.¹¹ Furthermore, New Jersey ranks fifty-second out of 56 states and territories receiving high cost universal service support.¹² In addition, Rate Counsel has previously noted another inequity in the system: customers who do not subscribe to a particular service subsidize subscriptions to that service for customers in other states.¹³ These crucial facts demonstrate a basic flaw in the current Universal Service scheme. The most obvious problem is that the fund has not succeeded in the goals of Section 254.

In addition, the continuation of high-cost support to non-rural carriers to fund their operations in rural territories causes unjust and unreasonable rates. Rate Counsel has previously noted that the telecommunications industry was different when the high-cost regime began over ten years ago:

These factors include: the substantial stream of revenues that ILECs generate as a direct result of customers' near-monopoly reliance on ILECs for a basic link to the public switched network (e.g. revenues from switched access, toll, vertical features, bundled offerings, etc.); billions of dollars of synergies resulting from multiple major mergers in the telecommunications industry; ILECs' supra-competitive earnings from special access services; and the virtual absence of local competition. Together these factors provide compelling evidence that the erosion of non-rural ILECs' implicit support has not occurred, and, therefore, the original rationale for explicit non-rural high cost support does not apply to today's telecommunications.¹⁴

There is no longer a need to support the incumbent non-rural carriers.

III. CONCLUSION

For the foregoing reasons, the Joint Board and the FCC should enact comprehensive reforms to the universal service fund. One of these reforms should be

¹¹/ *Id.* at 3-26

¹²/ *See supra* note 4.

¹³/ *See* Comments of May 31, 2007, *supra* note 4.

¹⁴/ *Supra* note 5.

eliminating universal funding to the RBOC's that have merged. If the FCC imposes a cap, in lieu of comprehensive reform, all disbursements of high cost support to all participants should be capped.

Respectfully submitted,

Ronald K. Chen, Esq.
Public Advocate of New Jersey

Kimberly K. Holmes, Esq.
Acting Rate Counsel

By: *Christopher J. White*
Christopher J. White, Esq.
Deputy Public Advocate
Division of Rate Counsel

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