

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**JOINT REPLY COMMENTS OF THE
STATE INDEPENDENT TELEPHONE ASSOCIATION
OF KANSAS AND THE
INDEPENDENT TELECOMMUNICATIONS GROUP**

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I. Introduction

SITA and ITG are groups of Kansas rural incumbent local exchange carriers, together comprising the great majority of such carriers in the state. The individual carriers comprising these entities are specified by Attachment to their initial joint comments herein. Collectively these carriers provide affordable, high quality basic and advanced telecommunications services as carriers of last resort in over half the area of the State of Kansas; these more sparsely populated areas contain less than ten percent of the state's citizens. Throughout the history of universal service support these carriers have advanced the program's objectives responsibly and reliably. SITA and ITG, having submitted joint initial comments in this proceeding, now submit their joint reply comments.

The Commission has received voluminous initial comments addressing the imposition of a temporary emergency cap on universal service support to wireless competitive eligible telecommunications carriers ("CETCs"). Comments in opposition to a cap generally raise two principal assertions: that a cap would contravene competitive neutrality, and that a cap would impede investment in pursuit of universal service objectives. As discussed in this reply, neither concern is valid. In fact, the opposite is true: current universal service support policy is competitively biased in favor of wireless carriers, and continued explosive growth in universal service support to wireless carriers jeopardizes the sustainability of support mechanisms necessary for the advancement of universal service. A temporary cap is necessary to allow consideration of comprehensive universal service reform, to the end that competitive neutrality of support may be restored

The self-serving and unsubstantiated claims of wireless CETCs provide no basis to refrain from affirmative action on the Joint Board's recommendation for a temporary cap on

support to wireless carriers. Neither competitive neutrality nor the overall objectives of universal service will be affected adversely by a cap; in fact, the cap will reduce existing competitive bias in favor of wireless carriers as it advances universal service objectives. At the same time, a cap will provide a measure of needed stability to the universal service support mechanism, in turn allowing continuation of service affordability and expanded customer-responsive investment by those carriers necessarily and appropriately reliant on the mechanism.

II. A Temporary Cap Will Increase Competitive Neutrality

Imposition of a cap on wireless CETCs will result in greater, not less, competitive neutrality in universal service support. The longstanding existence of a cap on wireline high cost support has hampered but not prevented wireline ETCs from pursuing universal service objectives; there is no objective showing that a comparable cap, temporarily imposed on eligible wireless carriers that are not subject to comparable burdens and obligations, would contravene those objectives. To the contrary, a cap is necessary to assure sustainable universal service support and to assure continued provision of comparable services at comparable rates in all areas.

As a general observation, the comments of wireless CETCs opposed to a cap adopt a curious view of competitive neutrality. They see only the revenue benefits to carriers, and not regulatory constraints or the obligations of service to consumers, as requiring even-handedness. Universal service is and must remain a program for the benefit of the public, not an opportunity for mere enhanced profit for wireless carriers. While generally wireline carriers must prove a need for and proper application of ratepayer-originated universal service support, wireless carriers are free from comparable burdens. There is, in most cases, no requirement that a wireless carrier prove a single public benefit directly and verifiably attributable to the ratepayer-generated

support revenues it receives. The lack of such evidence, in fact, results in an inability of the wireless carriers to support factually their broad claims of adverse or selective public impact from a cap on support.

Wireless CETC beneficiaries of universal service support selectively invoke neutrality even as to payment of support. Their objections on grounds of “neutrality” intentionally disregard the existing cap on wireline carriers’ support, to such an extent that the cap opponents’ claimed “neutrality” concerns become meaningless. The cap proposed by the Joint Board, even if not precisely identical to the wireline cap and even if temporary, would result in treatment of support payments far closer to neutrality than is the *status quo*. The “special treatment” of which wireless carriers complain is the delayed applicability of limitations already applied to other carriers, necessary to approach true neutrality. In fact it would be inaction that would constitute special treatment, permitting increasing disparity in favor of wireless support recipients.

III. A Temporary Cap will Advance the Public Interest

Wireless CETCs, who would experience limitation on the explosive growth of their universal service receipts, claim that a cap would create adverse public consequences. Such assertions are both factually unsupported and contrary to experience. The initial absence of universal service support did not impede the extensive investment represented by the initial deployment of multiple and overlapping wireless communications networks. The continuing profitability of wireless carriers both with and without universal service support belies any relationship between that support and the carriers’ interests in affordability or continuing investment.

Some commenters in opposition assert a cap would interfere with desire for increased mobility of telecommunications services. Mobility *per se*, however, is not a universal service. If

there is broad interest in expansion of wireless service in general, as distinguished from universal availability and affordability of telecommunications services, the specific supportive customers should be the source of necessary additional revenue. Providers of mobile communications services need not and should not rely on a continued drastic increase in demands imposed on all consumers – many of whom neither desire nor derive benefit from expanded mobility.

Moreover, if affordability of mobile service were a legitimate issue, true competitive neutrality would require a relationship between universal service support and rates charged to customers, as is the case with wireline universal service support recipients. Neither experience nor the comments of cap opponents have established any relationship whatever between receipt of support and affordability of wireless service. Wireless carriers in fact make strenuous continuing efforts in every jurisdiction to prevent any such linkage.

Present enforcement of requirements for the use of universal service support by wireless CETCs is already sporadic and ineffective. There is no clear and uniform requirement that support paid to such carriers *for* a given service area is spent *in* that area. Coupled with a lack of an established baseline of pre-support costs and investments, there is no way to verify a relationship between universal service support and qualifying use of that support. Revenues are fungible, and nothing in present policy prevents a wireless CETC from substituting new universal service revenues for existing rate revenues in satisfaction of universal service costs, thereby diverting the rate revenues to increased net profit. The result is unavoidably that universal service support to wireless CETCs is an unrestrained (albeit indirect) opportunity for transfer of resources from consumers to shareholders.

The absence of verifiable use of support in the public interest renders any claims regarding future changes in investment meaningless. There is no objectively verifiable basis for

comparison of pre- and post-support investment, therefore there is no way to prove wireless commenters' dire predictions of decreased investment in the event a cap is adopted. The greater likelihood, based on past practice, is that wireless carriers will continue to invest where profit opportunity, not public benefit, is probable.

The Joint Board and the Commission have recognized the threat to universal service support created directly by the unparalleled increase in wireless CETCs' support. Annual support growth in excess of 100% per year cannot be ignored, and a restraint on such growth cannot be delayed if public support for universal service is to be sustained. Customers as a rule see only the ongoing increases in their total contributions, with little analysis of individual causes. The likely result is public resistance to the entire program rather than to the specific causes of higher demands.

Legitimate concerns for the sustainability of universal service mechanisms are of little or no matter to wireless support recipients. It is an inconvenient truth that such carriers have been and continue to be profitable with or without such support. If that support becomes unsustainable, only wireline recipients would become unable to offer affordable service. In many markets, the result (to the benefit of wireless carriers) would be the disappearance of the primary competing technology. As a further benefit, disappearance of universal service support would free wireless CETCs from even the minimal and nominal demands imposed in exchange for that support. The necessary outcome would be degradation of service availability, affordability or both.

If the universal service mechanism cannot be reformed and sustained, the necessary result would be either the unavoidable abandonment of rural consumers by existing locally based carriers or the creation of a targeted replacement cost recovery mechanism necessary to preserve

affordability in high cost areas. The former alternative would replace regulated carriers with unregulated entities, in some cases unregulated monopolies, having little incentive to continue rural investment or preserve rural affordability. The latter alternative – a substitute support mechanism – would be a zero-sum result achieved only through substantial delay and increases in administrative expense. In either event the uncertainty of cost recovery would cause the existing and projected substantial investment by rural wireline carriers to come to a screeching halt, either permanently or until a cost recovery alternative is made available. Comparable services at comparable rates would soon exist only in memory.

Wireless CETCs have only themselves to blame for any administrative action restraining the explosive growth in their support revenues. Gaming of the current system through receipt of support for multiple handsets, together with continuing strenuous opposition to equal obligations and regulatory responsibilities, has resulted in universal support practices increasingly contrary to the public interest. Review and remediation are a critical necessity, and the Joint Board's recommended cap is necessary to limit the growing support hemorrhage so longer-term diagnosis and cure can be achieved.

IV. Specific Comments in Opposition to a Cap Are Unsubstantiated

Comments in opposition to the cap submitted by certain parties with connections to Kansas are particularly troubling. The opposition of the Kansas Corporation Commission, on the grounds of competitive neutrality, inexplicably disregards both the existing cap on wireline carrier support and that Commission's own history of refusing to make wireless ETCs subject to service and regulatory obligations imposed on wireline carriers. The assertion by Sprint Nextel that wireline carriers are subjected to minimal regulatory oversight cannot have been submitted with a straight face – such a claim is directly and specifically contradicted by Sprint's recent

history of rigorous local wireline rate and cost review by the Kansas Corporation Commission. In spite of Sprint's recent divestiture of its wireline interests it cannot realistically assert that regulatory oversight of those operations was (or is) minimal. It would appear that to both of these commenters neutrality is a superficial concept, requiring a simplistic approach without regard to consequences. Even though those consequences adversely affect the public, these commenters fail to offer prudent or effective approaches to the ever-growing strain on ratepayers through doubling and redoubling of unwarranted support to wireless carriers.

A variety of comments suggest variations on the proposed uniform cap. The common thread of all such suggestions is the effort to poke holes in the cap. To the extent any of these proposals were adopted, the effective result would be twofold: discrimination as among wireless CETCs, and erosion of the consumer benefit from the cap. The time for consideration of variations in the treatment of carriers is in the course of addressing comprehensive long-term reform, not at the beginning of that process. The Commission should reject all recommendations to erode the even-handedness and salutary effect of a uniform cap.

V. Conclusion

The continuing near-viral growth of universal service support originating with all consumers and paid to wireless CETCs is not necessary for the advancement of public policy objectives; in fact, the overall effects of such unrestrained growth are increased competitive bias and a growing threat to the public objectives intended to be fostered. Universal service remains a vital public policy, but a policy in need of immediate and comprehensive reform.

The phenomenal rate of growth in universal service support due to wireless CETCs' demands must be addressed immediately, since growing generalized public hostility to continuing escalation of charges is inevitable. Comprehensive universal service reform,

necessary to achieve sustained salutary public policy, will not be achieved easily or quickly; accordingly, regulatory first aid in the form of the recommended cap is necessary. Those opposed to the proposed cap have provided the Commission no objective or verifiable showing of adverse public effects, and the opponents' generalized claims are contradicted by experience.

An immediate temporary cap on universal service support to wireless carriers is a necessary prerequisite to comprehensive universal service reform. Both the cap and prompt reform are necessary to restore competitive neutrality, consumer fairness and the general public benefit intended in preservation of universal service principles.

Respectfully submitted,

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