

**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) CC Docket No. 96-45
Service.)

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES
SUPPORTING A CAP ON THE HIGH-COST UNIVERSAL SERVICE FUND**

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I. INTRODUCTION AND SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ files these reply comments in response to those who oppose the recommendation of the Federal-State Joint Board on Universal Service (“Joint Board”) that the Federal Communications Commission (“Commission” or “FCC”) impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (“CETCs”) may receive.² The CETCs and their representatives understandably

¹ NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (“Recommended Decision”).

oppose the cap, because it will limit the flow of federal dollars into their coffers.³ One state public utility commission -- the Montana Public Service Commission (“MTPSC”) -- opposes the cap.⁴ In addition, the South Carolina Office of Regulatory Staff (“SCORS”) opposes the cap, because the South Carolina Public Service Commission (“SCPSC”) “has yet to certify any competitive carrier as an ETC....”⁵ SCORS does not explain why this is (whether it is because no carriers have applied, or whether because the SCPSC has not acted on the request), but NASUCA submits that, at base, this is an insufficient reason not to adopt a temporary nationwide cap.

There were also a large number of brief text comments from consumers opposing the cap.⁶ And there were also a number of slightly longer boilerplate comments from persons and organizations who assume they will be affected by a cap.⁷ As discussed briefly here, these comments err in their estimation of the impact of a temporary cap.

A number of parties joined NASUCA in supporting the cap. Some are from regulators, including those in states that pay much more into the universal service fund

³ Centennial Communications Corp. (“Centennial”); Chinook Wireless (“Chinook”); ComspanUSA (“Comspan”); COMPTEL; Corr Wireless Communications, LLC (“Corr”); CTIA -- The Wireless Association® (“CTIA”); Dobson Cellular Systems, Inc. (“Dobson”); ETS Telephone Company (“ETS”); General Communications, Inc. (“GCI”); Midcontinent Communications (“Midcontinent”); Rural Cellular Association and the Alliance of Rural CMRS Carriers (“RCA/ARCC”); Rural Independent Competitive Alliance (“RICA”); SouthernLINC Wireless; Sprint Nextel Corporation (“Sprint”); United States Cellular Corporation and Rural Cellular Corporation (“USCC/RCC”). It appears that a single incumbent local exchange carrier (“ILEC”) – SureWest Communications (“SureWest”) – opposes the cap. Perhaps SureWest intends to seek CETC status outside its ILEC territory in the next 18 months.

⁴ As discussed below, the MTPSC seeks “exceptions to such a cap in states like Montana....” MTPSC Comments at 2.

⁵ SCORS Comments at 2.

⁶ Over 300 at last count. Interestingly, many of these one-page brief comments come from major cities, which have plenty of wireless service.

⁷ Many of these two-page comments come from cities along interstate routes, which presumably have wireless service.

(“USF”) than they receive.⁸ Others are from firms that compete with the CETCs, such as ILECs and their representatives.⁹ And two wireless carriers -- Unicom, Inc., a wireless carrier providing service in Alaska, and TracFone Wireless, Inc., a prepaid wireless provider -- support the cap. Amidst all this, given the extremely tight timeline for this proceeding,¹⁰ NASUCA will focus here on dispelling the concerns of those who oppose the cap, rather than on searching the supporters’ comments for additional reasons to support this action.

II. CAPPING THE CETC FUND AS AN INTERIM STEP IS NECESSARY.

As stated by NASUCA, the “Joint Board presents more-than-adequate justification for placing an emergency cap on the fund....”¹¹ Those who argue against this fundamentally miss the point.

CTIA states that “an interim CETC cap is the wrong approach to reform.”¹² But an interim CETC cap is just that: an interim step on the way to reform. It is designed to

⁸ Iowa Utilities Board; New York State Department of Public Service (“NYDPS”); Public Utilities Commission of Ohio. The Kansas Corporation Commission (“KCC”) says that the cap would be reasonable “if immediately stemming the growth in the high-cost portion of the USF is of greater public interest than assuring that markets operate without regulatory interference....” KCC Comments at 5. The KCC’s issues concerning “regulatory interference” are discussed in Section III., below.

⁹ AT&T Inc. (“AT&T”); Blackfoot Telecommunications Group; Embarq Corporation (“Embarq”); Fred Williamson and Associates; Iowa Telecommunications Association; Mid-Rivers Telephone Cooperative, Inc. (“Mid-Rivers”); National Telecommunications Cooperative Association (“NTCA”); Organization for the Protection and Advancement of Small Telecommunications Companies; State Independent Telephone Association of Kansas and Independent Telecommunications Group; TCA, Inc. - Telecom Consulting Associates; Telecommunications Association of Michigan; Valley Telephone Cooperative, Inc.; Windstream Communications, Inc.; Wisconsin State Telecommunications Association. Notably, AT&T also classifies itself as a CETC (AT&T Comments at 2), presumably due to wireless ETC approvals in some states, but that tail does not wag the much larger dog.

¹⁰ Notice of Propose Rulemaking, FCC 07-88 (rel. May 14, 2007) (“NPRM”), ¶ 6 (reply comments are due seven days after filing of initial comments). This is exacerbated by the fact that as of early in the day after the filing date, few of the initial comments had been posted to the Commission’s website.

¹¹ NASUCA Comments at 4.

¹² CTIA Comments at 1.

give the Commission time -- and to give the consumers who pay support a breather -- so that the reforms that will fix the problem for the long term can be made.

Among those who miss the point, Sprint states, “To focus only on the CETC segment -- in effect, to place the entire responsibility for jeopardizing the high-cost fund on the group of carriers that accounts for less than a quarter of 2006 disbursements -- makes no economic or policy sense.”¹³ Unfortunately for Sprint and the other CETCs, focusing on them makes eminent sense. As the Joint Board pointed out:

In recent years, this growth [in the high-cost fund] has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETC’s own costs. While support to incumbent LECs has been flat or even declined since 2003, by contrast, in the six years from 2001 through 2006, competitive ETC support grew from \$15 million to almost \$1 billion – an annual growth rate of over 100 percent. ... High-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 2009.¹⁴

If the problem is the growth in the fund, then focusing on the segment of the fund that is growing, rather than on the rest of the fund which is not growing, is rational and reasonable **as an interim measure**. This is especially true given the lack of harm that capping, as opposed to reducing, CETC payments will cause, as demonstrated below.

USCC/RCC argue that the Joint Board, in recommending this interim measure, was required to demonstrate “that the danger to the high-cost fund is so palpable,

¹³ Sprint Comments at 3; see also COMPTTEL Comments at 3, CTIA Comments at 2.

¹⁴ Recommended Decision, ¶ 4 (footnotes omitted). Based on the recent filings for the Universal Service Administrative Company for the third quarter of 2007, it appears that the USF contribution factor may decline to 11.3%. This 40 basis point decrease does not relieve the 200 basis point increase that occurred from the first quarter of 2007 to the second quarter of 2007. An 11.3% contribution factor would still be higher than any previous factor, other than, of course, that for the second quarter of 2007.

immediate and severe that the fund could not survive the status quo for 18 months....”¹⁵

No authority is given for this proposition. The authority is to the opposite.¹⁶

Imposing a cap is **not** concluding that “the federal high-cost USF is imperiled entirely due to the fact that CETCs are receiving more USF funds than they did a year, or two years, or five years ago.”¹⁷ But it **is** recognizing, as discussed above, that support to CETCs is principally responsible for the growth in the fund.¹⁸ Notably, SouthernLINC says that the Joint Board’s identification of the fact that CETCs have no carrier of last resort obligations is flawed, “since nobody has identified carrier of last resort obligations as a potential cause of fund growth.”¹⁹ This misses the point by a mile: The fact that ILECs have carrier of last resort obligations, while CETCs do not, means that limiting support to CETCs will not interfere with the carrier of resort in a given service territory.

Corr inaptly analogizes the current situation as follows:

It is as though an airplane ... first loaded it up with grossly obese people all carrying extra luggage. Then when the last few slim passengers carrying small carry-ons try to board, the airline announces that *they* are causing the plane to exceed the weight limit and they must therefore await the next flight.²⁰

The \$1 billion in current CETC funding is not that of a “few slim” carriers; neither would be the projected growth in CETC funding. As Joint Board member Billy Jack Gregg

¹⁵ USCC/RCC Comments at 5. The RCA/ARCC Comments are virtually identical to those of USCC/RCC. It should be assumed that there would be similar remarks from RCA/ARCC for all citations to USCC/RCC.

¹⁶ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000); *Vonage Holding Corp. v. FCC*, ___ F.3d ___, Case No. 06-1276 (D.C. Cir. 2007), slip op. (June 1, 2007) at 12.

¹⁷ Sprint Comments at 5.

¹⁸ See Recommended Decision, ¶ 4.

¹⁹ SouthernLINC Comments at 13, n.36. SouthernLINC’s reference to the fact that the Commission has encouraged states to require ETCs to assume those obligations if an ILEC withdraws is hardly compelling.

²⁰ Corr Comments at 2.

testified before the Communications Subcommittee of the Senate Commerce, Science and Transportation Committee Testimony:

One outrageous example of the current system is found in the AT&T (BellSouth) service territory in Mississippi. AT&T as the incumbent non-rural carrier receives \$101.2 million in High Cost Support annually. In addition, there are sixteen (16) other competitive ETCs receiving \$118.5 million in High Cost Support annually for providing service in the same study area. Most of this CETC support goes to wireless ETCs, including \$59.1 million to AT&T's wireless subsidiary, Cingular.²¹

The Joint Board's concern over the size and the growth of the high-cost fund is hardly, as Corr would have it, "a casuistic fallacy unworthy of a college sophomore."²²

Sprint says that the Joint Board, in proposing the cap, failed to consider the universal service principles in 47 U.S.C. § 254(b).²³ (Discussion of the Commission's added principle of competitive neutrality can be found in Section III., below.) To begin, all of Sprint's discussion of the principles is based on speculation; for example, Sprint says, with regard to the principle of availability of quality services at just, reasonable and affordable rates,²⁴ "arbitrarily capping support on a state level, and thereby restricting support available to CETCs, there is a significant risk that this principle will be undermined."²⁵ This assumes, first, that there are not already quality services available at just, reasonable and affordable rates in those areas; and second; that the CETCs already in those states do not have such rates; and third, that either not adding additional CETCs or reducing funding for the current CETCs resulting from adding more CETCs will

²¹ "The Challenge of Adapting Universal Service to a Competitive Environment" (March 1, 2007) at 10.

²² Corr Comments at 2.

²³ Sprint Comments at 12-16; see also Dobson Comments at 2-3.

²⁴ 47 U.S.C. § 254(b)(1).

²⁵ Sprint Comments at 13.

produce rates that do not meet the statutory principle. Those are **very** broad and contingent assumptions. In addition, as noted in *Alenco* -- cited by Sprint -- the Commission has considerable latitude in designing interim or transitional measures.²⁶

Dobson says that the cap “would cut wireless ETCs’ support by about *half a billion* dollars in 2007, and by about a *full billion* dollars in 2008.”²⁷ Dobson has it backwards: The cap will prevent wireless ETCs’ support from **growing** by that amount. And the cap will prevent the contribution factor from growing beyond its current levels: 11.7% in the second quarter of 2007 and, as noted above, a projected 11.3% in the third quarter of 2007. USCC/RCC assert that if the level of CETC support doubles, this will cost a supposedly-typical wireless consumer only 31 cents per month.²⁸ The comments do not explain this calculation, but if 31 cents is multiplied by millions of customers (including the vast majority of consumers who continue to subscribe to both wireless and wireline services), the dollars are substantial and growing.²⁹

USCC/RCC say that these increased costs to consumers must be balanced against the benefits that these payments to CETCs supposedly bring.³⁰ This misses the point that the costs are largely imposed on customers that do not benefit from the payments. And the benefits touted by USCC/RCC are those from competition among wireless carriers,³¹

²⁶ 201 F.3d at 616.

²⁷ Dobson Comments at 4 (emphasis in original). Interestingly, USCC/RCC challenge the numbers that Dobson accepts. USCC/RCC Comments at 6-7.

²⁸ Id. at 13.

²⁹ USCC/RCC’s reference to the lack of impact on Lifeline customers (id.) is unavailing, because the amounts not paid by Lifeline customers are picked up by other consumers.

³⁰ Id. at 15.

³¹ Id. at 16.

which would mean, as discussed in the next section, that the main interest of the USF would be to ensure that as many wireless ETCs are designated as possible.³²

III. CAPPING THE CETC FUND IS MOVING AWAY FROM SUBSIDIZING COMPETITION.

As expected, a main complaint of CETCs is that capping the CETC fund is anti-competitive.³³ But these complaints do not recognize that that the principle of competitive neutrality is not found in Section 254. It was derived by the Commission based on its ability to adopt “additional principles” pursuant to 47 U.S.C. 254(b)(7).³⁴ Competitive neutrality is not compelled by the statute itself.³⁵ And CTIA’s position that, having adopted the principle of competitive neutrality ten years ago, “the Commission is required to (‘shall’) base universal service policy on that principle....”³⁶ is unsupported.

Sprint asserts that “making ILEC-provided services relatively less expensive than CETC service ... provides an artificial incentive and incorrect economic signal to consumers....”³⁷ Under that argument, USF payments to carriers should be mandatory, whether a carrier applies for CETC status or not. The competition **among** CETCs has incited them to seek federal funding. The incentive operates one after the other, until

³² It is also not clear that the benefits of wireless competition cited by USCC/RCC do not flow over to rural areas almost automatically because of the carriers’ use of national pricing plans. See Criterion Economics, LLC ex parte (June 13, 2007) at 42.

³³ See, e.g., Sprint Comments at 6; CTIA Comments at 11; USCC/RCC Comments at 24-25, 33-34.

³⁴ See *In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order*, 12 FCC Rcd 8776 (1997), ¶¶ 48-49.

³⁵ Sprint attempts to argue to the contrary, saying that the Fifth Circuit in *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000) held that competitive neutrality is compelled by the statute. Sprint Comments at 7; see also CTIA Comments at 20; SouthernLINC Comments at 15. Sprint’s mis-citation of the page of *Alenco* hides the fact that, at that point, the Fifth Circuit was reciting the *Commission’s* reasoning. See 201 F.3d at 616.

³⁶ CTIA Comments at 18.

³⁷ Sprint Comments at 10-11.

there are numerous CETCs in some states, like Mississippi: A wireless carrier cannot tolerate the receipt of support by the wireless carriers with which it actually competes, without also seeking support.

On the other hand, Dobson, among others, argues that a cap for CETCs “would provide a significant competitive advantage to ILECs by providing less support to” CETCs.³⁸ This ignores the fact that the identical support rule, by awarding support to CETCs based on the ILECs’ costs, already gives a significant competitive advantage to the CETCs. CTIA decries challenges to the identical support rule as “simply perverse.”³⁹ CTIA’s apparent position -- that all carriers are entitled to equal support in order to ensure reasonably comparable services at reasonably comparable rates -- is one that the Joint Board has recommended be abandoned.⁴⁰

COMPTEL says that “the Commission must retain a policy that encourages -- not discourages -- competitive entry into these high cost markets, even though it may add additional burdens on the fund.”⁴¹ Allowing competitive entry, not subsidizing it, is the purpose of Section 254 of the Act.

That is clear from the comments of Comspan. Despite its acknowledgement that federal funding is “relatively modest, but not insignificant,”⁴² Comspan asserts that absent such funding it will be unable to complete its expansion plans in rural Oregon.⁴³ Yet

³⁸ Dobson Comments at 8.

³⁹ CTIA Comments at 16.

⁴⁰ Recommended Decision, ¶ 12.

⁴¹ COMPTEL Comments at 4.

⁴² Comspan Comments at 5.

⁴³ Id.

what do those plans entail? They involve building fiber-to-the-home networks⁴⁴ that provide voice, data and television services,⁴⁵ specifically including broadband,⁴⁶ and other “new technologies.”⁴⁷ These are not services that the federal high-cost fund supports. Neither did Congress call for universal service support to “encourage[] support in small towns and rural areas”⁴⁸ just because such services “compete head-to-head with and serve as complete substitutes for ILEC services.”⁴⁹ Likewise, CTIA notes that “[d]emand for distinctively wireless offerings such as text, picture and video messaging is growing. And wireless broadband offerings are becoming increasingly competitive....”⁵⁰ But those are not features that the USF was intended to support, at least not yet.

Chinook argues that it is appropriate for wireless carriers to receive unfettered high-cost funds, because their customers contribute to the fund.⁵¹ That confuses the entire mechanism of a support mechanism: Support will always flow from some customers of some carriers, who do not get support, to other carriers. Customers of carriers in low-cost areas contribute to carriers in high-cost areas; customers of long-distance service contribute, even though long-distance carriers receive no support; and now, customers of VoIP carriers contribute even though VoIP providers receive no support.

⁴⁴ Id. at 2, 10.

⁴⁵ Id. at 3.

⁴⁶ Id. at 4. GCI says that the cap will threaten its plans to deploy “rural wireless broadband-capable networks.” GCI Comments at 9. As discussed above, under the Commission’s current rules, high-cost support is not intended to support broadband networks, whether wireless **or** wireline.

⁴⁷ Comspan Comments at 6.

⁴⁸ Id.

⁴⁹ Id. at 7.

⁵⁰ CTIA Comments at 4; see also id. at 6-9.

⁵¹ Chinook Comments at 2-3.

Finally, USCC/RCC say that “[i]n states that currently receive little or no CETC support, the proposed cap would effectively bar competitive entry.”⁵² This assumes that there has been no competitive entry in those states **without** support. For example, Ohio - - cited by USCC/RCC -- receives no CETC support.⁵³ Yet Ohio has plenty of wireless carriers.⁵⁴ It is safe to assume that the same situation applies in other of the states cited by USCC/RCC.

IV. CONSUMERS WILL NOT BE HARMED BY THE CAP.

Sprint asserts that the cap is “unfair to consumers in the many states that had little or no CETC high-cost USF distribution in 2006....”⁵⁵ But Sprint does not show which, if any, of those states have ever had CETCs apply for support, requiring the Commission to believe that there is a flood of CETCs poised for entry *into the areas of those states where ILECs currently receive funding* that a cap will prevent.⁵⁶ Such does not appear to be the case in Ohio, Illinois and Tennessee,⁵⁷ which currently receive little or no CETC funding. Similarly, CTIA’s argument that “the proposed cap would guarantee that wireless and other CETCs would receive no support whatsoever for the life of the cap”⁵⁸ assumes that CETCs are poised to enter in those areas and that entry will be prevented by

⁵² USCC/RCC Comments at 36.

⁵³ Recommended Decision, Appendix A.

⁵⁴ We would note that none of those carriers guarantee that their service will work in a particular location, much less indoors at a particular location. See, e.g., Verizon Wireless Customer Agreement, available at: http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp.

⁵⁵ Sprint Comments at 11; see also CTIA Comments at 21; USCC/RCC Comments at 27.

⁵⁶ This likewise addresses Sprint’s allegation that support under the cap support will not be “sufficient” under 47 U.S.C. § 254(e). See Sprint Comments at 15.

⁵⁷ Based on communications from NASUCA members in those states.

⁵⁸ CTIA Comments at 21.

the cap. This is speculation. Attachment A, based on USAC data, lists the number of CETCs that receive funding in the non-rural and rural incumbent areas of each state. As can be seen, there are many states where multiple wireless CETCs operate (although none as “popular” as Iowa, with its 58 CETCs).

A careful review of the states that received the least CETC support in 2006 shows that Sprint’s concerns are not well-founded. Attachment B shows the jurisdictions that received less than \$1.5 million in CETC high-cost support in 2006. In none of those states do incumbent non-rural carriers receive high-cost model support, meaning that the non-rural carriers’ costs are relatively low. In most of those states the non-rural carriers continue to receive substantial amounts of Interstate Access Funding, which was designed as a revenue-replacement mechanism for carriers that were required to reduce their interstate access charges, and has little relationship to costs. Likewise the Interstate Common Line funding received by smaller carriers. Finally, it should be noted that of the twelve jurisdictions that received no CETC funding in 2006, eight are in the bottom thirteen jurisdictions for **overall** ETC funding.

Sprint also says that a cap has the effect, for those states receiving little CETC funding, of “forcing their residents to continue to be net contributors to the CETC high-cost fund, for as long as the proposed CETC cap remains in place.”⁵⁹ Even if there were a guarantee that the customers of CETCs saw a direct financial benefit from their carriers’ receipt of high-cost funds -- which there is not -- customers pay into the USF as a whole, not just to the CETC portion of the fund.

⁵⁹ Sprint Comments at 15.

Sprint says that “[e]ven an interim cap *could* discourage competitive entry and expansion, and undermine CETCs’ ability and willingness to invest aggressively in rural and other high-cost markets.”⁶⁰ In the first place, nowhere has it been made clear that receipt of universal service funds has in fact caused competitive entry and expansion or aggressive investment. Certainly Sprint does not make any such claim on its own behalf. It appears more likely that receipt of federal support has been a bonus for wireless carriers in areas where they are already providing service and investing in facilities.

The case against Sprint’s contention is well made by a June 13 ex parte filing by Criterion Economics, LLC (“Criterion”). Based on a detailed regression analysis, Criterion finds “no statistically significant relationship between subsidies and either the availability of wireless service or the number of carriers offering service.”⁶¹ Likewise, Criterion finds that the USF dollars that go to CETCs “do not promote lower prices in high costs areas [sic], and their effect on availability is at best indirect and highly attenuated.”⁶²

AT&T predicts “huge drops” in support under the proposed cap.⁶³ AT&T does not support this with examples from any state. Even if there were “huge” decreases in support, it is not at all clear that the impact on consumers would be substantial, especially over the limited term of the cap.

⁶⁰ Sprint Comments at 10 (emphasis added). One wonders what high-cost markets that are not rural Sprint was considering.

⁶¹ Criterion ex parte (June 13, 2007) at 3.

⁶² Id.

⁶³ AT&T Comments at 9.

GCI predicts that per-line support in Alaska will decline by 34 percent in 2010,⁶⁴ which assumes that the cap will last that long, contrary to the commitment of the Joint Board. Comspan does make a claim about the impact in one state, Oregon, asserting that if Oregon CETCs double their lines over the first three quarters of 2007, this will mean that per-line support will be half of what it is now.⁶⁵ This can be looked at in two different ways: First, if the CETCs can double their lines without the support, it is questionable whether the support is truly needed. On the other hand, it may be that the withdrawal of support will cause the Oregon CETCs to reevaluate their plans, in which case their lines will probably not double. In any event, then, the cap will not harm customers, especially given that most of these CETCs are not providing services that directly substitute for supported services.

Similarly speculative are USCC/RCC's dire threats about the impact on public safety of denying support to wireless carriers in rural areas,⁶⁶ given that the support that will be denied is incremental to current support. And states will retain the ability to channel funds through selective designation of CETCs.

CTIA asserts that a cap violates § 254(b)'s directive that support be sufficient for the Act's purposes.⁶⁷ Yet the Commission has never finally determined what "sufficiency" means; it is thus difficult to say that this interim measure defeats an undefined principle.

⁶⁴ GCI Comments at 8.

⁶⁵ Comspan Comments at 10.

⁶⁶ USCC/RCC Comments at 16-21.

⁶⁷ CTIA Comments at 22.

V. THE PROPOSED PERIOD FOR THE CAP IS REASONABLE.

It does not appear that any commenter that opposes a cap, other than SouthernLINC, addresses whether the cap they oppose should last 18 months.⁶⁸ SouthernLINC says the cap should last only 12 months from adoption.⁶⁹ The Joint Board has committed to issuing its recommendation on long-term reforms within six months of May 1, 2007; the Commission must rule on those recommendations within 12 months of the recommendations. It is possible that this will not be much longer than the year recommended by SouthernLINC. SouthernLINC and others share a concern that a cap will last longer than 18 months; NASUCA also shares that concern.

VI. THE CAP SHOULD APPLY ON A STATE-BY-STATE BASIS.

No opponent of a statewide cap proposes a national cap.⁷⁰ It also appears that no opponent of a statewide cap proposes a more granular -- wire center or other -- cap.

VII. THE CAP COULD BE AT THE LEVEL OF SUPPORT AWARDED IN 2006, BUT COULD BE UPDATED.

NASUCA noted possible problems with, balanced by good reasons for, limiting support to that in calendar year 2006.⁷¹ Some say that 2007 data should be used.⁷²

⁶⁸ Chinook does say that the cap should end “one year from release of the decision that is the subject of these comments.” Chinook Comments at 8. Chinook presumes that “that decision will ameliorate the very conditions that gave rise to the need for a cap, by imposing reforms that will become effective shortly after its release.” Id. at 8-9. Chinook confuses the order imposing a cap with the Joint Board recommendations on long-term comprehensive high-cost reform (from FCC 07J-2) and the Commission’s subsequent decision implementing all, some or none of those recommendations.

⁶⁹ SouthernLINC Comments at 24.

⁷⁰ SCORS’ proposal for a “regional” cap would allow each state to use the highest funding for any state in its region.

⁷¹ NASUCA Comments at 10.

⁷² RICA Comments at 3, Centennial Comments at 9, n. 21; Mid-Rivers Comments at 8, Chinook Comments at 9; Sprint Comments at 16.

Especially because actual data from all of 2007 is not available, a much better approach would be that proposed by Dobson and Corr, to use the most recent four quarters of actual data.⁷³ The Nebraska PSC recommends using the most current information.⁷⁴

CTIA “proposes use of support levels in the most recent full quarter preceding the cap’s effective date.”⁷⁵ This would ignore the quarterly fluctuations pointed out by the Joint Board, cured by using a full year of data.

AT&T adds a further qualification: that the Commission “also limit the CETCs eligible to receive such capped funding in each state in any given year to those designated as CETCs as of a particular date during the prior year.”⁷⁶ This is intended to prevent disruption of the previously-approved CETCs’ investment plans.⁷⁷ Although the Act requires universal service support to be “predictable,”⁷⁸ it seems that AT&T’s approach treats the USF as a corporate entitlement, rather than a “reasonable expectation[.]”⁷⁹ It does not appear to be necessary.⁸⁰

VIII. A CAP ON THE ENTIRE HIGH-COST FUND WOULD BE FEASIBLE.

NASUCA had proposed that if the competitive neutrality issues stymied the Commission’s determination here, a cap on the entire high-cost fund for CETCs and

⁷³ Dobson Comments at 14; Corr Comments at 6-7.

⁷⁴ Nebraska PSC Comments at 5.

⁷⁵ CTIA Comments at 29.

⁷⁶ AT&T Comments at 3.

⁷⁷ Id. at 5-7.

⁷⁸ 47 U.S.C. § 254(b)(5).

⁷⁹ AT&T Comments at 8.

⁸⁰ It does appear that AT&T has correctly recognized (id. at 6-7) the impact that a cap will have on various states’ requirements for CETC reporting and planning. CTIA correctly notes that a cap would mean that the ETCs covered by the cap would have to refile their service improvement plans. CTIA Comments at 29.

ILECs alike could be adopted.⁸¹ A number of commenters holding various positions on the CETC cap would find a total cap acceptable, including NYDPS, Chinook, Corr, Dobson, and SouthernLINC.⁸² Centennial proposes capping the contribution factor, which would seem to have the same effect.⁸³

CTIA states that “if the Commission were to adopt a cap notwithstanding the legal and policy concerns [that CTIA expresses], it would first need to remedy several serious problems relating to the cap’s implementation. Rather than a CETC-only cap, the Commission would better adopt a cap on all recipients of high-cost support.”⁸⁴ It should be clear that an all-carriers cap would remedy virtually all of CTIA’s “problems.”⁸⁵

USCC/RCC assert that it is unfair to cap only CETCs because there are ILECs that are “significantly over-earning.”⁸⁶ NASUCA does not disagree that, because of individual state ratemaking decisions, combined in some instances with the provision of federal universal service support, there are ILECs that earn high returns. But the CETCs are seldom required to report their earnings as ILECs are. If anything, this factor is justification for imposing a total cap on high-cost funding, not for excusing the CETCs from a cap.

⁸¹ NASUCA Comments at 11-12.

⁸² NYDPS at 2; Chinook Comments at 6; Corr at 2; Dobson at 12; SouthernLINC Comments at 22.

⁸³ Centennial Comments at 6.

⁸⁴ CTIA Comments at 26-27.

⁸⁵ See *id.* at 28.

⁸⁶ USCC/RCC Comments at 32-33.

IX. THE COMMISSION SHOULD NOT ADOPT ANY OF THE REQUESTED EXCEPTIONS TO THE CAP.

The MTPSC seeks “exceptions to such a cap in states like Montana...”⁸⁷

Unfortunately, the MTPSC does not really explain how such states can be distinguished, other than that they have “high-cost rural areas”⁸⁸ and that they have not to date designated many CETCs.⁸⁹ It appears that such exceptions -- like those proposed by others -- run the risk of swallowing the rule or of being so vague as to be impossible of resolution.

Along similarly broad lines, Mid-Rivers suggests that only non-rural wireless CETCs should be capped, while rural wireless CETCs and wireline CETCs should be exempt from a cap.⁹⁰ Likewise, Comspan -- a wireline CETC -- submits that wireline CETCs should not be included in a cap.⁹¹ Midcontinent proposes that “where incumbent LECs and new entrants are competing directly” CETCs should receive the same “per-customer disbursement as the ILEC.”⁹² By “competing directly,” Midcontinent means “where the competitor offers a “substitute” service, rather than a “complementary” service like wireless or voice over Internet protocol (“VoIP”).⁹³ Apparently then, Midcontinent would also exempt wireline CETCs from the cap (unless they offer “over-

⁸⁷ MTPSC Comments at 2.

⁸⁸ Id. at 4.

⁸⁹ Id. at 6.

⁹⁰ Mid-Rivers Comments at 1.

⁹¹ Comspan Comments at 2-3.

⁹² Midcontinent Comments at 1.

⁹³ Id. at 5. Interestingly, Midcontinent, despite being a provider of bundled services (id. at 2) sees the “goal of the high-cost fund [as] to spread the availability of traditional telephone service to all communities....” Id. at 5-6.

the-top” VoIP). These exceptions would probably eliminate any benefits of the cap.⁹⁴ GCI proposes a similar -- but equally pointless -- exception.⁹⁵

SCORS proposes adopting a regional cap.⁹⁶ Not only are the regions to be used undefined but, more fundamentally, SCORS confuses the need in one state within a region with the need in the state with the **highest** costs in the region, or at least the state with the most designated CETCs.

RICA and ETS, following on a suggestion in Chairman Martin’s Statement, propose that CETCs that demonstrate their costs should receive support despite the cap.⁹⁷ Not only is there not agreement on which CETC costs should be considered -- embedded like the rural ILECs, or forward-looking like the non-rural ILECs -- but it is likely that by the time that agreement was reached over which costs should be considered, the cap would have expired. In any event, it does not appear that much would be gained by this exercise: The MTPSC notes some probable differentials among national and rural wireline and wireless carriers, as presented by the CEO of Western Wireless: “(1) [N]ational wireline carriers’ cost is \$2,492; (2) national wireless carriers’ cost is \$920; (3) rural wireline carriers’ cost is \$7,195; and rural wireless carriers’ cost is \$1,734.”⁹⁸ Although presented as part of a discussion on eliminating the identical support rule,⁹⁹ this is nonetheless a good signal that allowing CETCs to demonstrate their own costs is not

⁹⁴ Mid-Rivers does not provide the relative sizes of the draws on the high-cost fund from these categories.

⁹⁵ GCI Comments at 16-20.

⁹⁶ SCORS Comments at 3.

⁹⁷ RICA Comments at 3-5; ETS Comments 2-3.

⁹⁸ MTPSC Comments at 3, n.2.

⁹⁹ Id. at 3.

likely to give the wireless CETCs much more support, or make much difference in the overall level of support.

GCI proposes an exception that would apply voluntarily only in Native lands, only for carriers willing to make a broadband commitment, and only for a single line per account.¹⁰⁰ It might be appropriate for the Commission to adopt this narrow exception, but only if carriers other than GCI indicated willingness to accept it.

X. RECOMMENDATIONS ON OTHER STEPS SHOULD BE REFERRED TO THE JOINT BOARD.

In the NPRM, the Commission explicitly “emphasize[d] that the purpose of this Notice is to seek comment on the interim cap recommended by the Joint Board and that proposals for or comments on comprehensive high-cost universal service reform should be filed in accordance with the Joint Board’s recent *Public Notice*.”¹⁰¹ Despite this, some commenters address such other areas of “comprehensive high-cost universal service reform.”¹⁰² NASUCA will not address most of those here, even though some of the proposals are reasonable for long-term reform. But that is not the immediate purpose of this proceeding.

There are two extraneous issues that must be addressed, because the parties’ discussions are so egregiously wrong. First is AT&T’s renewed insistence that Congress

¹⁰⁰ GCI Comments at 13-14.

¹⁰¹ NPRM, ¶ 5, citing *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, Public Notice, FCC 07J-2 (Fed.-State Jt. Bd., rel. May 1, 2007).

¹⁰² See, e.g., NTCA Comments at 2-15 (discussing NTCA’s various proposals); Sprint Comments at 3-4 (discussing revising the embedded cost methodology and limiting support to carriers that have low rates or high rates of return); Unicom Comments at 2 (basing support on each carrier’s costs).

directed the removal of implicit universal service support in intrastate rates.¹⁰³ AT&T overlooks, once again, the Tenth Circuit’s express determination that Congress did not so require.¹⁰⁴

The second is the suggestion by Dobson and others that “the Commission should grant all ETC petitions pending before it....”¹⁰⁵ This would make a mockery of the Commission’s process by assuming that all of those petitions **deserve** to be granted -- presumably in their entirety.¹⁰⁶ And, by the way, Dobson proposes that support for these newly-granted ETCs would be included under the cap.¹⁰⁷

XI. CONCLUSION

As stated in NASUCA’s original comments, it is unfortunate that the Commission’s inaction on the crucial albeit difficult issues has brought us to the point where a cap is necessary. NASUCA agrees with Commissioner Copps’ assessment, cited by many,¹⁰⁸ that a cap “inflames discord and disagreement among industry sectors....” Likewise, NASUCA agrees with Commissioner Copps about the risk that a cap “puts too many issues off to another day.”¹⁰⁹ The cap will only do its job if the Commission takes

¹⁰³ AT&T Comments at 1, n.1.

¹⁰⁴ *Qwest Communications v. FCC*, 398 F.3d 1222, 1232-1233 (10th Cir. 2005).

¹⁰⁵ Dobson Comments at 14; see also SouthernLINC Comments at 4. At least SouthernLINC admits the possibility that those applications could be denied. *Id.*

¹⁰⁶ And then there are the ETC petitions pending before the state commissions. Is Dobson proposing that the FCC should preemptively grant those petitions as well?

¹⁰⁷ Dobson Comments at 14.

¹⁰⁸ See, e.g., Rural Iowa Independent Telephone Association Comments at 4.

¹⁰⁹ Quoted *id.* at 4. See also SureWest Comments at 6-8.

its message seriously, and resolves to fix the long-range problems with the fund¹¹⁰ as expeditiously as the 18-month term of the cap requires.¹¹¹

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¹¹⁰ See NASUCA Comments in response to FCC 07J-2 (May 31, 2007).

¹¹¹ See CTIA Comments at 23.

ATTACHMENT A
Number of CETCs per State

	Number of CETCs*				Number of CETCs		
	Non-Rural	Rural	Both		Non-Rural	Rural	Both
Alabama	7		6	Montana	3	3	1
Alaska		2	3	Nebraska	5		4
Arizona	1	1	3	Nevada	1	1	1
Arkansas	2		2	New Hampshire			2
California	2			New Jersey			
Colorado		1	2	New Mexico	1		5
Connecticut				New York	4		3
Delaware				North Carolina	2		3
Florida	4		2	North Dakota	2	1	8
Georgia	2		3	Ohio			1
Hawaii			1	Oklahoma	2	4	4
Idaho		1	2	Oregon	2		4
Illinois	1	1	4	Pennsylvania	1	2	3
Indiana	2	6	2	Rhode Island			
Iowa	7	45	6	South Carolina	1		2
Kansas	3	1	6	South Dakota	2	1	4
Kentucky	5		6	Tennessee	3	1	4
Louisiana	2	5	3	Texas	4	9	6
Maine			2	Utah	1	1	
Maryland	1			Vermont			2
Massachusetts				Virginia	3	1	6
Michigan		3	3	Washington		2	4
Minnesota		1	5	West Virginia	4	1	5
Mississippi	11		5	Wisconsin		7	9
Missouri		3	3	Wyoming	1		3

Source: USAC 4Q2006 HC01.

* "Non-rural" is the number of CETCs qualifying only in non-rural carriers' territory; "rural" is the number qualifying only in rural carriers' territory; and "both" is the number qualified in both non-rural and rural carriers' territory.

**Attachment B
States with Little CETC High-Cost Support**

State	2006 Competitive ETC Support (a)	2006 Incumbent ETC Support (a)	2006 Incumbent ETC Support by Type (b)						
	\$ Millions	\$ Millions	High Cost Model	High Cost Loop	Safety Net Additive	Safety Valve	Interstate Access	Local Switching	Interstate CL
Pennsylvania	1.5	64.0	-	2.4	0.0 (c)	-	23.1	5.7	28.2
Tennessee	1.5	50.3	-	13.1	0.2	-	9.4	7.5	22.4
Am. Samoa (d)	1.4	1.3	?	?	?	?	?	?	?
California	1.0	105.0	-	41.6	0.3	-	39.3	5.2	20.2
New Hampshire	0.3	7.8	-	0.3	0.0 (c)	-	1.8	4.7	2.6
Utah	0.3	23.9	-	7.5	0.0 (c)	0.0 (c)	2.3	5.3	9.6
N. Mariana Is. (d)	0.2	0.6	?	?	?	?	?	?	?
Missouri	0.1	86.0	-	39.8	0.4	-	9.6	7.4	30.0
Connecticut	0.0	2.1	-	-	-	-	0.6	0.7	0.6
D.C.	0.0	0.0	-	-	-	-	-	-	-
Delaware	0.0	0.3	-	-	-	-	0.3	-	-
Idaho	0.0	52.1	-	20.1	0.19	-	15.9	7.5	9.3
Illinois	0.0	67.8	-	16.8	0.3	-	11.9	11.3	24.4
Maryland	0.0	4.5	-	0.3	0.0 (c)	-	2.6	0.7	0.8
Massachusetts	0.0	2.8	-	0.0 (c)	0.0 (c)	-	1.9	0.6	0.2
New Jersey	0.0	1.3	-	-	-	-	0.3	0.9	0.2
Ohio	0.0	41.6	-	8.7	0.5	-	13.9	4.6	10.1
Rhode Island	0.0	0.0 (c)	-	-	-	-	0.0 (c)	-	-
South Carolina	0.0	81.9	-	26.3	1.8	-	12.5	6.1	34.5
Virgin Islands	0.0	25.3	-	10.8	-	-	-	-	14.2

(a) FCC 07J-1, Appendix B; WC Docket No. 05-337; CC Docket No. 96-45.

(b) USAC HC01, 4Q 2006, annualized.

(c) Shows as zero due to rounding.

(d) Do not appear in HC01.