

**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
)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – THE WIRELESS ASSOCIATION®
1400 16th Street, NW Suite 600
Washington, D.C. 20036
(202) 785-0081

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Paul W. Garnett
Assistant Vice President, Regulatory Affairs

Its Attorneys

Submitted: June 21, 2007

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY..... 2

II. COMMENTERS EXPRESS NEARLY UNANIMOUS SKEPTICISM REGARDING THE RECOMMENDED DECISION’S PROPOSED CETC-ONLY CAP 3

III. LAWMAKERS FROM BOTH POLITICAL PARTIES HAVE EXPRESSED VIGOROUS OPPOSITION TO THE PROPOSED CAP 8

IV. INCUMBENT LECS’ SELF-SERVING SUPPORT FOR THE RECOMMENDED DECISION SHOULD BE DISMISSED 9

V. IF ADOPTED, ANY CAP MUST BE COMPETITIVELY- AND TECHNOLOGICALLY-NEUTRAL..... 11

VI. CONCLUSION 13

**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
)	

To: The Commission

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ submits these reply comments in connection with the Commission’s Notice of Proposed Rulemaking seeking comment on the Federal-State Joint Board on Universal Service’s (the “Joint Board’s”) Recommended Decision issued in the above-referenced dockets on May 1, 2007 (the “Recommended Decision”).² CTIA joins a growing list of consumers, state commissioners, public safety officials, competitive providers, lawmakers, and others who oppose the proposed cap on high-cost universal service support available to competitive eligible telecommunications carriers (“CETCs”). As it has throughout the Joint Board’s three year referral, CTIA again urges the Federal Communications Commission (“Commission”) to pursue competitively- and technologically-neutral short- and long-term high-cost universal service reforms.

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, and AWS, as well as providers and manufacturers of wireless data services and products.

² *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007) (“*NPRM*”).

I. INTRODUCTION AND SUMMARY

The initial comments submitted in this docket confirm the points made in CTIA's own submission: the Recommended Decision's proposed cap on high-cost universal service fund distributions to CETCs would be unsound as a matter of both policy and law. This position is shared not only by the wireless carriers that are the proposed cap's principal targets, but also among state public utility commissions ("PUCs"),³ state and local E911 coordinators,⁴ competitive providers using all manner of technological platforms,⁵ and a large number of rural consumers.⁶ The proposed CETC-only cap also has been the subject of broad and bipartisan critique from Members of Congress, as evidenced during the June 12, 2007, hearing before the Senate Commerce, Science, and Transportation Committee ("Senate Commerce Committee"). Indeed, virtually the only parties *supporting* the proposed CETC-only cap are the incumbent local exchange carriers ("LECs") that would obtain an additional competitive advantage as a result of its adoption.

Broad and passionate opposition to a competitor-only cap on high-cost universal service support demonstrates how important mobile wireless voice, data, and video services are to consumers – regardless of age, income, race, gender, or any other demographic. Mobile wireless technologies also are increasingly important to our nation's first responders. In light of this

³ See, e.g., Comments of Montana Public Service Commission, WC Docket No. 05-337; Comments of New Jersey Board of Public Utilities, WC Docket No. 05-337.

⁴ See Comments of Deuel County (SD) Emergency Management, WC Docket No. 05-337; Comments of Ashdown, AK 9-1-1 Coordinator, WC Docket No. 05-337.

⁵ See Comments of DialToneServices, L.P., WC Docket No. 05-337; Comments of ETS Telephone Company, Inc., WC Docket No. 05-337; Comments of Midcontinent Communications, WC Docket No. 05-337.

⁶ See Donna Greenwell Brief Comment, WC Docket No. 05-337; Stan Martin Brief Comment, WC Docket No. 05-337; Charlese Uribe Brief Comment, WC Docket No. 05-337; Bruce and Penny Triplett Brief Comment, WC Docket No. 05-337.

record, the Commission should direct the Joint Board to implement competitively- and technologically-neutral long-term universal service reforms that can – consistent with the Act – accommodate consumer demand as it evolves over time. As the telecommunications industry and technologies evolve, carriers will no longer think of themselves as wireless or wireline providers but will present themselves as multimedia service providers. To accommodate that transition, the FCC should develop mechanisms that ensure consumers in high-cost rural areas have access to the same high-quality, innovative, and affordable mobile wireless and broadband services that are available to consumers located in the rest of country. The Commission, therefore, should reject the proposed cap, and instead move immediately to implement technologically-neutral, long-term universal service reform.

If a cap is adopted nonetheless, it must be implemented in a competitively- and technologically-neutral manner. Most crucially, the Commission must ensure that any cap applies equally and under the same terms to *all* high-cost support recipients, must rely on a “base period” reflecting support in the quarter preceding the cap’s implementation, and must permit capped carriers to revise any pertinent service improvement plans to reflect the cap. In order to ensure that long-term reform remains on track, any cap should sunset no later than one year from adoption.

II. COMMENTERS EXPRESS NEARLY UNANIMOUS SKEPTICISM REGARDING THE RECOMMENDED DECISION’S PROPOSED CETC-ONLY CAP

Commenters from nearly all quarters cast doubt on the legality and the wisdom of the Joint Board’s proposed CETC-only cap. As an initial matter, CTIA notes that wireless providers have completely refuted the Recommended Decision’s arguments. Alltel explains why the

rationales set forth by the Joint Board do not, in fact, justify its proposed solution.⁷ Dobson Cellular demonstrates that the Recommended Decision would violate section 254(b)'s universal service principles and would be inimical to the goals of the support regime.⁸ Centennial Communications shows that “[n]o one element in the universal service equation is causing [Fund] growth,” and that the real culprits include “the rule that says landline ILECs are entitled to receive payments from the fund based on their (largely unaudited and unreviewed) claims about how much it ‘costs’ them to provide service” and “the rule that allows landline ILECs to treat their recoverable costs as undiminished even as they lose more and more lines over time.”⁹ U.S. Cellular shows that the proposed cap would violate the Act,¹⁰ and explains the “real and severe consequences” a cap would have “for the availability of emergency communications services for people living in rural and high-cost areas,” as well as “the competitive harm that the cap would impose.”¹¹ SouthernLINC highlights the cap’s incompatibility with the principle of competitive neutrality, and explains why the Recommended Decision’s proposal bears no rational relationship to the harms it is purportedly meant to remedy.¹²

Wireless providers are hardly alone, however, in criticizing the proposed cap. Indeed, aside from the incumbent LECs who stand most to gain from the competitive disparities a cap would bring, almost every commenter participating in this docket expresses grave concern about the lawfulness of the Recommended Decision’s proposal and the potential effects of the CETC-only cap as proposed.

⁷ Alltel Comments, WC Docket No. 05-337, at 9-15.

⁸ Dobson Comments, WC Docket No. 05-337, at 2-10.

⁹ Centennial Communications Comments, WC Docket No. 05-337, at 2-3.

¹⁰ U.S. Cellular Comments, WC Docket No. 05-337, at 24-38.

¹¹ *Id.* at 18-23.

¹² SouthernLINC Comments, WC Docket No. 05-337, at 6-18.

State PUCs. State PUCs representing urban and rural areas alike almost uniformly oppose the cap as currently structured. First, these PUCs consistently criticize the Recommended Decision’s abandonment of competitive and technological neutrality. The New York Public Service Commission, for example, recommends that “as a matter of fairness ... all components of high-cost support (rural, non-rural, and competitive) be subject to firm interim caps.”¹³ The New Jersey Board of Public Utilities also urges that any cap adopted apply to all ETCs, rather than adopting CETC-only limits.¹⁴ The Montana Public Service Commission observes that blaming CETCs for fund growth represents a “one-sided view,”¹⁵ and “advises the FCC to carefully consider the discriminatory impact that a cap will have on high-cost rural areas in states like Montana, relative to the impact in populous states with low-cost urban areas.”¹⁶ Similarly, the Navajo Nation Telecommunications Regulatory Authority argues that the proposed cap “would unfairly deny rural Americans access to many of the same telecommunications services that urban residents enjoy.”¹⁷

State PUCs express particular concern with respect to the use of a 2006 “base period” for purposes of setting the level of support permissible under the cap. The Montana PSC states that “a 2006 basis will provide convenient protection for those CETCs that were designated in other states and by the FCC for more urban areas of the country,” and “will penalize Montana’s CETCs and their customers.” Thus, the Montana PSC urges the Commission, if it must adopt a cap, to adopt state-specific base periods, or, short of that, a generally applicable 2010 base

¹³ NY PSC Comments, WC Docket No. 05-337, at 2.

¹⁴ New Jersey BPU Comments, WC Docket No. 05-337, at 4.

¹⁵ Montana PSC Comments, WC Docket No. 05-337, at 7.

¹⁶ *Id.* at 4.

¹⁷ Navajo Nation TRA Comments, WC Docket No. 05-337, at 2.

period.¹⁸ The Nebraska PSC similarly notes that use of the 2006 base period would penalize those states that have been more cautious in designating ETCs, and therefore urges use of a 2007 base period to mitigate unfairness.¹⁹

Public Safety Officials. Numerous public safety officials have also weighed in against the cap, confirming CTIA’s contention that the Recommended Decision would hamper the mission of our nation’s first responders. In the words of officials charged with implementing E911 systems across the nation, “[w]ireless technology ... is a critical instrument in emergency situations, but if the recommended cap is implemented, many communities may never realize these benefits.”²⁰ As these officials observe, “[r]ural consumers want and need expanded and improved wireless services in rural areas for public safety, economic development, business and personal needs that are equally important to them as they are to urban consumers.”²¹

Other Competitive Providers. Like the PUCs, new entrants underscore the “uniquely anticompetitive” effects of the proposed CETC-only cap.²² Echoing the Fifth Circuit’s admonition in *Alenco Communications Inc. v. FCC*,²³ Comspan notes that universal service “was never intended to be furthered at the cost of competition,”²⁴ and that a CETC-only cap cannot

¹⁸ Montana PSC Comments at 10.

¹⁹ Nebraska PSC Comments at 1, 6.

²⁰ See Comments of South Carolina State E911 Project Manager (WC Docket No. 05-337); Comments of Darrel Oglisby, 911 Coordinator, Courthouse Annex (WC Docket No. 05-337); Comments of Melissa Turner, Coordinator, Grant County 911 (WC Docket No. 05-337); Comments of Allen C. Holder, Director, Lincoln County 911 Communications (WC Docket No. 05-337); Comments of Wes Ashley, Director, Martinsville-Henry County 911 Center (WC Docket No. 05-337); Comments of Cottonwood Police Department 911 Administrator (WC Docket No. 05-337).

²¹ *Id.*

²² Surewest Comments, WC Docket No. 05-337, at 4.

²³ 201 F.3d 608 (5th Cir. 2000).

²⁴ Comspan Comments, WC Docket No. 05-337, at 7.

help but to undermine competitive entry. “[C]aps may halt the growth of the fund, but they are also likely to inflict severe damage on CETCs.... And, in doing so, they will subvert the Act’s pro-competitive goals.”²⁵ Thus, as CompTel notes, the Recommended Decision shows “obvious favoritism toward incumbency.”²⁶

Competitive providers also agree that the proposed cap would “blatantly violate[] [the] principle” of competitive neutrality.²⁷ Comcast notes that “the proposed approach would place all of the responsibility for reducing the fund’s growth in the short run on one segment of the industry – competitive wireline and wireless providers.” And as Surewest explains, “[t]he CETC funding cap proposed in the current Notice clearly fails to meet the requirement of competitive neutrality in two ways: 1) directly, by limiting increases in federal support to only CETCs, and 2) indirectly, by creating a mechanism designed to discourage provision of support to new CETCs that have not previously received support, even as the incumbent ETCs against whom they compete continue to receive it.”²⁸

Rural Consumers. Consumers from all corners of rural America submitted over a thousand comments expressing opposition to a cap on wireless ETCs’ support. As Elmer Martis of Diamond, Illinois stated, “Capping the fund will shut the door on rural America. Less USF support for rural wireless networks will leave us with poor coverage, dropped calls and dangerous dead zones. The urban/rural technology gap will only widen.”²⁹ Countless other

²⁵ *Id.*

²⁶ CompTel Comments, WC Docket No. 05-337, at 3.

²⁷ *Id.*

²⁸ Surewest Comments at 3.

²⁹ Elmer Martis Brief Comment, WC Docket No. 05-337.

consumers expressed similar concerns about the negative impact of the proposed cap on the further expansion of wireless service in rural areas.

III. LAWMAKERS FROM BOTH POLITICAL PARTIES HAVE EXPRESSED VIGOROUS OPPOSITION TO THE PROPOSED CAP

Broad-based opposition to the Recommended Decision's proposed cap extends beyond the record compiled in this docket into the halls of Congress. At the Senate Commerce Committee's June 12, 2007 hearing on universal service reform, a bipartisan coalition of Senators roundly criticized the soundness of a CETC-only cap. Senator Stevens described the Recommended Decision as "an ostrich approach," explaining that "[s]omebody is putting their head in the ground."³⁰ Senator Sununu labeled the proposed cap "arbitrary."³¹ Senator Snowe emphasized the Recommended Decision would "handicap[] rural America," resulting in "fewer [wireless service] towers built" and therefore denying rural Americans "the very technology that can make the difference between life and death" during emergencies.³²

Criticism was no less severe on the other side of the aisle. Committee Chairman Inouye's statement observed that by "relying on short-term proposals instead of taking the time to address long-term changes," the Recommended Decision could "jeopardize universal service itself."³³ Senator Pryor recognized that the proposed cap would depress broadband deployment, and that the purportedly interim nature of the proposed cap would "make it hard for a company to know

³⁰ Ted Gotsch, *Senators Pummel USF Joint Board's Interim CETC Cap Recommendation*, TR DAILY (June 12, 2007).

³¹ *Id.*

³² *Id.*

³³ Anne Veigle, *Senate Panel Grills Tate on USF, Calls Cap Shortsighted*, COMMUNICATIONS DAILY (June 12, 2007).

what to do” with respect to investment decisions.³⁴ Senator McCaskill similarly criticized the Joint Board for proposing an interim step rather than considering comprehensive reform and asking tough questions about whether providers maintaining existing networks have the same support needs as providers deploying new and expanded networks.

These voices, of course, only supplemented those of the ten or more Senators and members of Congress who had already expressed public opposition to a CETC-only cap. As described in CTIA’s initial comments, Senators Rockefeller, Pryor, Dorgan, Klobuchar, and Gordon Smith have opposed any cap, “especially one imposed only on certain carriers.”³⁵ Congressman Markey termed the CETC cap as proposed “anticompetitive” and criticized the cap for “den[ying] rural consumers the choices they deserve.”³⁶ Senators Sununu, McCain, DeMint, and Ensign, moreover, have made clear that they “do not support any plan that would cap only one select group of providers but not others,” as they believe “such a fix would unfairly skew the marketplace.”³⁷

IV. INCUMBENT LECS’ SELF-SERVING SUPPORT FOR THE RECOMMENDED DECISION SHOULD BE DISMISSED

Virtually the only entities to support the Recommended Decision’s cap as currently envisioned are the incumbent LECs. This support, of course, is entirely self-interested, as the proposed cap will reduce support to the wireless providers that are the most potent

³⁴ Gotsch, *supra* note 30.

³⁵ Letter from Sens. Rockefeller, Pryor, Dorgan, Klobuchar, and Gordon Smith to Comr. Deborah Taylor Tate and Chmn. Ray Baum (dated March 21, 2007).

³⁶ Statement of Rep. Markey (May 2, 2007).

³⁷ Letter from Sens. Sununu, McCain, DeMint, and Ensign to Comr. Deborah Taylor Tate (dated April 13, 2007).

telecommunications competitors to incumbent LECs, while maintaining the incumbents' bloated support levels. The Commission should disregard the incumbents' anticompetitive interests.

Even absent a cap, the incumbents enjoy substantial funding advantages compared to CETCs. Incumbent LECs receive the overwhelming majority of high-cost support, at levels (about \$3 billion per year) that remain consistent even as they lose lines to competitors. Moreover, the current regime provides no incentive for rural incumbents to cut costs, because those providers are assured of recovering their claimed expenses – in addition to a guaranteed rate of return. Wireless CETCs, of course, enjoy none of these benefits. And unlike wireline carriers, wireless carriers have not had the benefit of the long-term support of the universal service fund – \$24 billion since 1997. Moreover, wireless CETCs only receive support when they actually provide service and win customers; unlike incumbent LECs, wireless CETCs lose support when they lose customers. Finally, wireless CETCs can expect no guaranteed rate of return. If they cannot provide service economically under a given level of support, their businesses will fail.

Despite these many advantages, the incumbents would benefit even more from the framework envisioned by the Recommended Decision. The proposed cap would hamper competitors, ensuring that they receive less per-line support and less overall than incumbents. It is no mystery, then, that the incumbent LECs support the cap. As commenter Midcontinent succinctly explains, the current “competitive balance would be destroyed by the approach advocated in the Recommended Decision, which would maintain incumbent LEC funding levels while capping the amount of funds available to competitors ... regardless of how many lines or

customers they capture from incumbents.”³⁸ This sort of disparity would create a two-track telecommunications market, in which urban consumers enjoy the lower prices and better service that result from competition, while those in rural and other high-cost areas are left with less. This is not the future envisioned by Congress in drafting the 1996 Act in general, or section 254 in particular.

V. IF ADOPTED, ANY CAP MUST BE COMPETITIVELY- AND TECHNOLOGICALLY-NEUTRAL

As CTIA pointed out in its initial comments, if the Commission nonetheless decides to pursue an interim cap, three elements are necessary in order to ensure that long-term universal service reform stays on track. First, the cap should apply equally to both incumbent and competitive ETCs – with per-line support made portable based on consumer demand.³⁹ Second, the “base period” used for the cap should be the most recent calendar quarter prior to adoption of the cap.⁴⁰ Finally, the cap should sunset no later than one year from adoption.⁴¹

Economic literature demonstrates the problems of capping support for competitive ETCs without also addressing how the vast majority of support is determined for and distributed to

³⁸ Midcontinent Comments, WC Docket No. 05-337, at 3-4.

³⁹ CTIA comments at 27-28. If adopted, the nondiscriminatory cap would be set at the total amount of high-cost support (*e.g.*, high-cost loop support, safety net and safety valve support, local switching support, interstate common line support, model-based support, and interstate access support) currently provided to *all* ETCs (including incumbent LECs and competitive ETCs alike) in the state. Support would be apportioned within each state quarterly based on total lines served within the state. An overall cap would serve the same purposes as the proposed CETC cap – it would stop further growth in the fund, to the extent that is necessary, and provide time for the Joint Board to formulate a recommendation for further reform. Furthermore, it would do so in a competitively and technologically neutral manner. Given that such an alternative exists, it would be difficult for the Commission to adopt a CETC-only cap, given the considerable problems with such a proposal.

⁴⁰ CTIA Comments at 28-29.

⁴¹ CTIA Comments at 30.

incumbent wireline carriers.⁴² For example, an economic study recently commissioned by Verizon Corp. documents the extent of intermodal facilities-based competition throughout the United States.⁴³ Although the Verizon study overlooks numerous examples of rural areas which have received mobile wireless services purely because of the availability of universal service funding to competitive ETCs,⁴⁴ the Verizon study leads one to question the utility of directing high-cost universal service support to incumbent LECs in areas with extensive facilities-based competition. Given the extent to which mobile wireless, cable, competitive LEC, and traditional wireline incumbents now compete against one another, it makes little sense to cap support for competitive ETCs without extending that cap to support available to incumbent LECs competing in the same markets. A cap on funding to some, but not all, competitors will only further exacerbate competitive inequities – distorting consumption in favor of the most inefficient incumbent wireline carriers. A non-discriminatory cap also will create incentives for all parties to achieve lasting market-oriented reforms to the high-cost universal service mechanisms.

If the Commission imposes a separate cap on CETC support, it should in fairness impose caps on those elements of the ILECs' support that are not capped – Interstate Common Line Support (“ICLS”) and Local Switching Support (“LSS”). This year, ICLS will amount to almost \$1.3 billion, while LSS reaches close to half a billion. These two mechanism, which remain uncapped for ILECs, amount to about 42% of total high cost support in 2007. Similarly, if no

⁴² See Thomas W. Hazlett, "Universal Service" Telephone Subsidies: What Does \$7 Billion Buy?, June 2006 *available at* <http://www.senior.org/Documents/USF.Master.6.13.06.pdf>.

⁴³ Nicholas Vantzelfde, The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds, at 9-14 (Jun. 13, 2007) *available at* <http://www.criterioneconomics.com/docs/Criterion%20CETC%20Service%20Availability%20Paper%20Final.pdf>.

⁴⁴ See, e.g., Comments of Alltel; Comments of SouthernLINC; Comments of Dobson Communications.

inflation adjustment is provided for the CETC cap, the inflation-related adjustment factors for incumbent LECs' support caps should also be eliminated.⁴⁵

VI. CONCLUSION

For the reasons described above, the Commission should reject the Joint Board's Recommended Decision, and move immediately toward long-term, technologically and competitively neutral reform of the high-cost distribution mechanism.

Respectfully submitted,

By: /s/ Paul Garnett

Paul W. Garnett
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President & General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

CTIA – The Wireless Association®
1400 16th Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

Its Attorneys

June 21, 2007

⁴⁵ *See, e.g.*, 47 C.F.R. § 36.604.