

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
FEDERAL-STATE JOINT BOARD FOR UNIVERSAL SERVICE)	WC DOCKET NO. 05-337 CC DOCKET NO. 96-45
)	
)	

**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE AND
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone and Telecommunications Alliance (ITTA) files these Reply Comments in response to the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).¹

I. INTRODUCTION

As described in ITTA Comments filed in this docket on June 6, 2007,² recent growth in the high-cost program of the Universal Service Fund (USF, or Fund) has generated Congressional and regulatory scrutiny. This attention is warranted in light of the increasing USF contribution factor and the attendant burden imposed upon carriers and consumers. The Joint Board’s proposal to place an interim cap on support provided to competitive eligible telecommunications carriers (CETCs) is a sensible temporary action that can provide stability while long-term solutions are developed.

¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1, at para. 4 (rel. May 1, 2007) (Recommended Decision).

² Referred to herein as “ITTA Interim Cap Comments.”

II. THE RECOMMENDED DECISION IS AN APPROPRIATE INTERIM MEASURE

The Recommended Decision has sparked a battle drawn on predictable, though not precise, lines. To a great extent, members of the mobile wireless community have decried the proposal, while wireline interests have cited the Recommended Decision and statements of various Federal and state commissioners to demonstrate the propriety of the recommended action. Notably, however, ATT and Verizon, the largest members of CTIA, each generally support the interim cap, while CTIA has argued strenuously against it. This discord leaves open the question of precisely which carriers CTIA represents in its comments; an answer to this inquiry would enable a more rational determination of the instant matter, because it would assist in evaluating more accurately the claimed effects of the proposed interim cap. Further, lost in much discussion emanating from mobile wireless interests is the fact that the interim cap would apply to *all* CETCs, both wireline and wireless. The fact that mobile providers may be affected most is simply a result of the manner in which the CETC market has developed and encouraged mobile providers to advantage themselves of support; wireless CETC funding in 2006 reached in excess of \$637 million, while funding to wireline CETCs was \$12.4 million.³ As stated in the ITTA's Interim Cap Comments and those filed in this docket on May 31, 2007 (the ITTA May 31 Comments), ITTA recognizes the value of mobility and the deployment of mobile networks. When that goal, however, is caught in the cross-fire of CETC processes that have caused unmanageable and rapid Fund growth without end, a cessation of the actions contributing to that growth must be imposed on those root causes in order

³ "The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds," Nicholas Vantzelfde, Criterion Economics, LLC, at 6 (2007) (Vantzelfde/Criterion).

to allow rational public policy to prevail. The Florida Public Service Commission recognized this principle when it recently deferred decision on a CETC application “with [the] understanding and directions that Staff continues rulemaking process and [the] Commission will continue to monitor the development and discussions at [the F]ederal level.”⁴ Future support for wider deployment of mobile services must be provided only pursuant to clearly articulated policy, in pursuit of a specific plan for implementation, and in accordance with measurable results.

The Joint Board recognized in its Recommended Decision that CETCs are identified by public and private parties as the largest source of USF growth in recent years.⁵ The Recommended Decision is a rational interim step that relieves the pressure on Fund disbursements while comprehensive USF modifications are developed. “Failure to cap the growth in CETC funding places the entire USF in jeopardy . . .”⁶

⁴ *Petition of Alltel Communications, Inc. for Designation as an Eligible Telecommunications Carrier in Certain Rural Telephone Company Study Areas Located Entirely in Alltel’s Licensed Area: Vote Sheet*, Florida Public Service Commission Docket No. 060582-TP (Jun. 19, 2007); *see, also*, Commission Memorandum in docket dated June 7, 2007, at 17 (“Alternative staff believes that the Commission should make the affirmative finding that given the current FCC policies that automatically fund multiple providers, at this time it is not in the public interest to designate Alltel as an ETC in the rural areas that are the subject of this petition. Alternative staff believes that funding multiple providers imposes an excessive burden on Florida consumers and thus is not in the public interest.”)

⁵ *See* Statement of FCC Chairman Kevin Martin Before the Federal-State Joint Board on Universal Service, (Feb. 20, 2007) (Martin *en banc* Statement); Letter from Kathleen Grillo, Verizon Communications, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007); Letter from Mary L. Henze, AT&T, to Hon. Deborah Taylor Tate, Federal Communications Commission, and Hon. Ray Baum, Oregon Public Service Commission, regarding the *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, at 2 (Mar. 22, 2007).

⁶ Blackfoot Telecommunications Group at 1.

Numerous parties identify CETCs as the root cause of recent growth, and as such action directed at that segment of the industry is appropriate.⁷ At least one party urged the Commission to extend the cap to two years;⁸ another urged the Commission to “keep the interim cap in place until the Commission adopts comprehensive universal service reform.”⁹ Yet another appeared to preempt claims that the proposed action is unfair, stating, “[r]ather than this being a Draconian action . . . [a] less charitable recommendation by the Joint Board may have been to require each CETC to provide a cost showing to justify its level of funding and return any USF receipts for which it could not provide such a showing.”¹⁰ ITTA submits that the Recommended Decision as outlined by the Joint Board is reasonable and rational interim measure while long-term solutions are developed.

CTIA appears to misidentify the intent of the proposed cap, which is to curb unmanageable growth, rather than the fund size, *per se*. CTIA argues that proposed cap “would fail to address . . . the principal cause of today’s oversized Fund.”¹¹ But, the *size* of the Fund is not the primary current concern. Rather, it is the threat of *uncontrollable growth* that has motivated lawmakers, regulators, and the industry to action. Indeed, ITTA, like others, have championed bringing broadband into the group of supported

⁷ National Association of State Utility Consumer Advocates at 5; TDS at 1, 2; Verizon and Verizon Wireless at 3; Windstream Communications, Inc. at 3; Wisconsin State Telecommunications Association at 3.

⁸ Wisconsin State Telecommunications Association at 4.

⁹ Verizon and Verizon Wireless at 5.

¹⁰ Alaska Telephone Association at 2.

¹¹ CTIA at 5.

services. While ITTA has identified elements of the Fund where efficiencies may enable redirected allocations, ITTA also stated in its May 31 Comments that broadband must be funded appropriately.¹² The Fund, as it is currently growing and supporting multiple redundant CETCs in single markets, demands modification. By contrast, a Fund at the current size that would support broadband or provided support to deserving areas not otherwise supported would be consistent with the principles of universal service and would not necessarily warrant corrective action. Growth and bloat in the absence of rational public policy is inefficient and unsustainable, but a healthy fund that supports proper initiatives fosters further-reaching benefits.

The New York State Department of Public Service argues that high-cost support to ILECs is “subject to modest increases,”¹³ yet the data provided by ITTA demonstrates that even with the addition of access replacement-based support, total support to ILECs is declining. Therefore, while ILEC support levels may be “subject” to increases, they have in fact been declining while support to CETCs has increased.¹⁴

CTIA is concerned that the interim cap will constrain broadband deployment in rural America.¹⁵ And, yet, trade associations representing vast numbers of rural carriers are in favor of the interim cap, and in fact rural carriers have been commended for their

¹² ITTA May 31 Comments at 54.

¹³ New York State Department of Public Service at 2.

¹⁴ *See, also*, Blackfoot Telecommunications Group at 4, 5; Fred Williams and Associates at 5; Telecommunications Association of Michigan at 1.

¹⁵ CTIA at 6-8.

broadband deployment achievements thus far.¹⁶ Arguments about whether “lower [CETC] support would be sufficient”¹⁷ fail to recognize that CETC support will be held at 2006 levels; support will remain substantially steady, notwithstanding the fact that state or other authorities may shift allocated funding differently than distributed today. In fact, misplaced claims that the Recommended Decision would harm consumers¹⁸ in any way must be evaluated against the current contribution rate, the effect of pending CETC applications (including of Cingular n/k/a ATT Wireless) on the Fund, and whether any benefits have accrued as a result of multiple CETCs in single markets. According to Criterion Economics, LLC, of the 103.2 million people with coverage from wireless CETCs, more than 52 percent have coverage from more than one supported CETC.¹⁹ And, of the 144 million people covered by unsupported carriers, 103 million have coverage from three or more different unsupported carriers.²⁰ And, of the 103.7 million pops covered by wireless CETCs, only 3.2 million people, or roughly 1.5 million households, receive coverage from supported carriers that is not duplicated by at least one unsupported carrier.²¹ In the case of Alltel, which receives 35 percent of all CETC

¹⁶ “Broadband is critical to telecommunication/information services of the future, for both rural and urban Americans. Rural ILECs have generally done a good job of making broadband available to the rural consumers they serve; non-rural ILECs generally have not.” Recommended Decision, Concurring Statement of Commissioner Ray Baum, at para. 3.

¹⁷ Comptel at 3.

¹⁸ Sprint Nextel at 10.

¹⁹ Vantzelfde/Criterion at 12.

²⁰ Vantzelfde/Criterion at 13.

²¹ Vantzelfde/Criterion at 15.

support,²² that carrier serves only one-million households that do not already have coverage from another unsupported carrier²³ (Alltel overall serves nearly 12 million customers).²⁴

Similarly, arguments that the cap should apply to all carriers²⁵ are deflated by the fact that high-cost support for ILECs has been capped since 1993.²⁶ This cap limits the maximum growth in the total amount of support available from the high-cost loop. The cap is indexed and permitted to increase by an index factor that is equal to the rate of growth in the total number of working loops nationwide for the calendar year preceding the annual data filing;²⁷ the cap was re-indexed in 2001.²⁸ As illustrated by Verizon and Verizon Wireless, “caps on universal service support are neither new nor novel. Funds for both the Schools and Libraries program as well as the Rural Health Care program are

²² Vantzelfde/Criterion at 8.

²³ Vantzelfde/Criterion at 18.

²⁴ See <http://www.alltel.com/corporate/media/news/07/april/n411april1907a.html> (last viewed June 18, 2007 17:25).

²⁵ Corr Wireless Communications, LLC at 2; State of New York Department of Public Service at 1.

²⁶ See *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993) (*Fund Cap Order*); see also *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 11 FCC Rcd 2538 (1996); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 11 FCC Rcd 7920 (1996) (*Fund Cap Extension Order*).

²⁷ *Id.* at para. 31.

²⁸ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers: Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 00-256, FCC 01-157, 16 FCC Rcd 11244 (2001); see, also, Windstream at 3.

capped.”²⁹ The proposed interim cap at least promises some measure of parity for competitive ETCs.

ITTA applauded the effect of the Recommended Decision, which should encourage more rigorous public interest analysis in the designation of CETCs by limiting the funding that can be distributed on a state-by-state basis. And, CTIA notes correctly that the Commission has “urged” states to require certain standards of CETCs.³⁰ Yet the Commission’s power in that regard extends only so far as the power of suggestion: under existing Federal regulations, the Commission does not *require* CETCs certified by the states to adhere to those standards.

Certain objections to the proposed cap do not distinguish between CETCs and mobile wireless; one party urges the Commission to “vote against the proposed cap on universal service support for wireless service.”³¹ This sort of broad misstatement is not unexpected, since there appears to have emanated from a part of the mobile industry a tremendous effort to rally support against the Recommended Decision (as noted above, ATT and Verizon, the Nation’s largest mobile providers, support generally the interim cap). The effect of those efforts, as noted above, appears to be a belief among the public that mobile services will grind to an ignoble halt after any such cap is imposed. By contrast, the Recommended Decision would continue the provision of nearly \$1 billion annually in support to mobile carriers, presumably funding network deployment in the

²⁹ Verizon and Verizon Wireless at 2.

³⁰ CTIA at 15.

³¹ Washington County, Arkansas at 2.

Nation. Claims that the proposal “discriminates unreasonably against CETCs”³² seem to ignore the fact that the Recommended Decision targets precisely the causes necessitating the instant proposed action. Moreover, as noted by the National Association of State Utility Consumer Advocates, “while it is likely that the receipt of universal service funds eases wireless carriers’ deployment of service in rural areas, many carriers were and have been deploying facilities **without** such support.”³³ This is consistent with ITTA’s May 31 Comments, which questioned the propriety of supporting carriers that have already proven profitability prior to receiving support.³⁴

Misplaced senses of inequitable treatment are woven in arguments that incumbent carriers garner more support than is contributed by their segment.³⁵ Yet, as ITTA noted in its May 31 Comments, nearly all telecommunications traffic traverses the landline network deployed and maintained by incumbent carriers.³⁶ Claims that incumbents are using support for “deployments completed and fully paid off years ago”³⁷ ignore the reality that networks are updated on rolling basis not only for maintenance-type purposes but also to implement more efficient and capable network elements. On the basis of those investments, CETC support growth can also be attributed to the “identical support

³² Sprint Nextel Corporation at 2.

³³ National Association of State Utility Commission Advocates at 6 (emphasis in original).

³⁴ ITTA May 31 Comments at 43.

³⁵ *See, i.e.*, Chinook Wireless at 3.

³⁶ ITTA May 31 Comments at 31.

³⁷ Chinook Wireless at 6.

rule,” recognized by several parties as a key component of fund growth.³⁸ A note that an incumbent LEC receives support as “an accident of fate”³⁹ ignores the historic reality that the incumbent truly was the “first to market” where no other carrier would serve. Indeed, the Commission itself has historically recognized the value of the “pioneer,” notably when it devised pioneer’s preference for leaders in the mobile industry.⁴⁰

The interim cap is the right action at the right time, addressing the root cause of unmanageable growth while rational long-term solutions are developed.

III. CONCLUSION

ITTA submits that the interim measure proposed in the Recommended Decision is a sensible modification beneath which action toward a long-term solution can advance to further the public policy goals envisioned by universal service policies and speed access to telecommunications and advanced services throughout all areas across the Nation.

Respectfully submitted,

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³⁸ Alaska Telephone Association at 3; National Exchange Carrier Association at 2; National Telecommunications Cooperative Association at 5-9; TCA at 2.

³⁹ Chinook Wireless at 6.

⁴⁰ The FCC's pioneer's preference program was established in 1991 in order to accord preferential treatment to parties that demonstrated their responsibility for developing new spectrum-using communications services and technologies. The program was eliminated in 1997 after Congress terminated the FCC's authority to continue the program. *See, generally*, <http://www.fcc.gov/oet/faqs/pioneerfaqs.html> (last viewed June 18, 2007 17:01).