

**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)	WC Docket No. 96-45
)	
_____)	

**MOTION OF THE ARIZONA CORPORATION
COMMISSION TO FILE
LATE-FILED REPLY COMMENTS**

On May 14, 2007, the Federal Communications Commission (“FCC” or “Commission”) issued a Notice of Proposed Rulemaking (“NPRM”) seeking comment on the Joint Board’s recommendation to impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (“CETCs”) receive in each State.

The Commission set an abbreviated comment cycle with initial comments due 2 weeks after publication in the Federal Register and reply comments due 21 days after publication in the Federal Register. The Commission extended the reply comment deadline to June 21, 2007.

The Arizona Corporation Commission (“Arizona Commission”) respectfully requests that the Commission accept the attached late-filed reply comments for inclusion in the docket and consideration when the FCC makes its determination in this matter. In the event the Arizona Commission’s request is denied, we respectfully request that the Commission treat the attached comments as ex parte comments pursuant to the Commission’s rules.

RESPECTFULLY submitted this 28th day of June, 2007.

/s/ Maureen A. Scott

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**REPLY COMMENTS OF
THE ARIZONA CORPORATION COMMISSION**

I. Introduction

On May 1, 2007, the Federal-State Joint Board on Universal Service (“Joint Board”) recommended that the FCC impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (“CETCs”) can receive in each State based upon the average level of competitive ETC support distributed in that State in 2006. On May 14, 2007, the FCC issued a Notice of Proposed Rulemaking (“NPRM”) seeking comment on the Joint Board’s recommendation. The Commission sought comment on the following broad issues: 1) whether the cap should be limited to just CETCs; 2) whether the cap should be applied on a State-by-State basis; 3) whether the cap as proposed by the Joint Board should be modified in any manner; and 4) the duration of any cap.¹

The Arizona Corporation Commission (“Arizona Commission”) offers the following brief comments in response to the Joint Board’s recommendations on these issues and the comments filed by other parties. While the Arizona Commission disagrees in this instance with the Joint Board’s recommendation, the Arizona Commission appreciates all of the Board’s hard work and efforts on federal universal service issues.

¹ NPRM at p. 3.

II. Discussion

A. The Arizona Commission opposes the Interim Cap Proposed by the Joint Board

The Joint Board's desire to contain further growth of the high-cost fund is understandable. But the Arizona Commission disagrees with the cap as it is proposed and believes that it would produce an unfair result as between States and study areas. The Arizona Commission also believes that the cap as proposed is not competitively neutral. Finally, Arizona is concerned that once the fund is capped in this manner, work on a long-term solution may not progress as rapidly. The high-cost fund is in dire need of an overhaul; and rather than impose a cap which is not neutral or fair in its application, the Arizona Commission would rather see work continue on the long overdue modifications to the fund. Above all, an interim cap, particularly the type of cap proposed by the Joint Board, should not be viewed as a stop gap measure which could delay or postpone the need for a true "fix" of the high-cost fund. Until the rules are modified in several fundamental ways, problems with the fund and funding levels will continue.

B. Regardless of the Type of Cap Adopted by the Commission, Carriers Serving Native American Lands Should be Exempted from its Operation.

Arizona has designated only two CETCs which are receiving support from the federal high-cost fund. One of those carriers is Smith Bagley. In fact, approximately 82% of CETC support in Arizona is going to Smith Bagley, a wireless CETC that is providing service to many underserved or unserved areas of the Navajo Nation, Hopi Nation and the Apache Nation of the White Mountains in Arizona.²

As the Commission is aware, penetration rates in Native American regions of the country have historically been far below those of other parts of the country. According to

² Smith Bagley receives over \$10 M for providing service on Native American lands and another \$2 M for service providing service in adjacent areas.

data contained in a Benton Foundation April 1999 study entitled “Native Networking: Telecommunications and Information Technology in Indian Country” cited by Smith Bagley in its original application for ETC status filed with the ACC, 81% of individuals residing on the Navajo Reservation and Trust lands in Utah, Arizona and New Mexico were at that time without a telephone in their home.³ Recognizing this, the FCC adopted measures several years ago designed to encourage the provision of service on Native American lands.⁴

Those programs have been very successful in Arizona, and account for much of the CETC support that Arizona receives. American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country.⁵ The Joint Board’s recommendation, through the overly simplistic measure it proposes, may adversely impact these important FCC objectives and programs which given their importance, would be unfortunate. Attached to these comments is a copy of a resolution adopted by the Navajo Nation regarding the adverse impact the cap proposed by the Joint Board would have on their efforts to bring telecommunications services to their citizens.

The Arizona Commission urges the Commission to exempt CETCs serving Native American lands from any cap, because of their historically low penetration rates and the need to bring service to their residents.

C. CETCs that Provide Needed Infrastructure to Rural or Remote Areas, and Unserved and Underserved Areas should be Exempt from the Cap To the Extent They Make A Showing to the State Commission

Second, there are significant impediments for many carriers to providing service in rural areas. Indeed, even wireless coverage in more remote rural areas is lacking at

³ ACC Decision No. 65054, at para. 41.

⁴ See Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No.96-45, FCC 00-208 (Rel. June 30, 2000).

⁵ Id. at para. 5.

times. Any cap that is adopted by the Commission should not cover CETCs that provide needed infrastructure to rural or remote areas in an effort to provide needed infrastructure or uniform coverage, or to extend service to unserved or underserved areas of a State. In these instances, the Commission should allow CETCs full support so that rural build-out is not adversely affected. Arizona would propose that such carriers be required to make a showing to the State Commission that they fall into this category in order to obtain an exemption of this nature.

This could possibly address concerns raised by other State commissions regarding the proposed cap's disparate impact upon States and its unfair results.⁶ The chart attached to the Joint Board's recommendation shows the amount of ETC support by State for both incumbent LECs and CLECs, on an aggregate basis. CETC support in the various States ranges from \$139 million all the way down to zero. CETCs in approximately 17 States received \$1 million or less in federal high-cost support in 2006. Twelve States received no CETC support in 2006. Arizona, with 2 CETCs at this time, received slightly over \$15 million in 2006.

The Joint Board proposal would inappropriately penalize States that have not designated as many CETCs as their sister States to-date. This would produce an arbitrary and undesirable result. The exemption proposed by Arizona would counter some of the undesirable effect which the Joint Board's recommendation would have upon States which have not designated many ETCs to-date.

D. The Commission Should Consider Applying the Cap on Study Area Basis Where There is More than One CETC Operating; Rather than on a State Basis.

One of the primary reasons the Joint Board appears to have selected an indexed individual State cap is its simplicity and overall ease of administration. While these are

⁶ See Comments of the Montana Public Service Commission at 4; and the Maine Public Utilities Commission at 2.

certainly very important factors, there are other more important factors, which the FCC should consider in structuring any interim cap.

The cap will apply to all States and all study areas the same even though there are very different circumstances between States and between study areas. A particular study area may have 4 CETCs while another study area may have only 1 CETC, yet both would be impacted the same – their funding levels would be reduced. One CETC may be serving an urban area, while another may be serving a high-cost rural area – yet both would be impacted the same by the cap – their support levels would be reduced. Another CETC may be providing service to unserved or underserved population groups, yet its support would be reduced the same extent as any other ETC.

From the numbers in Appendix B to the Joint Board’s Recommendation, one cannot tell how many CETCs are operating in each State, which study areas they are serving, and the amount of support each is receiving. However, the arbitrariness of the proposed State cap leads one to question whether **caps on a study area basis**, would be a fairer option as between States and as between study areas. Study areas with multiple CETCs may be better targets for caps than study areas in which one CETC currently operates, particularly when that CETC is the only real choice available to many customers.

While Arizona is a case in point, other State comments indicate why a State cap may not be appropriate in certain cases, because it does not recognize the differences between States and study areas.⁷

Instituting indexed caps on a study area basis would not appear to be overly difficult or burdensome, even though Arizona recognizes that applying a cap on a study area basis would certainly entail more work than applying it on a State basis. The cap

⁷ See Comments of the Montana Public Service Commission and the Maine Public Utilities Commission.

should be indexed to support levels for the 12 month period prior to adoption of the cap. The cap should be applied when there is more than 1 CETC in a study area.

E. The Cap Should Be Competitively Neutral

The cap proposed by the Joint Board is not competitively neutral. The cap proposed by the Joint Board would apply only to CETCs. The cap proposed by the Joint Board would thus require CETCs to bear the full brunt of fund “containment” until new rules are adopted. Any cap should apply to all fund recipients. No one group of carriers is to blame or should be held accountable for the fund’s size. On its face, a cap which applies to one group of carriers, but not another group, is not structured in a competitively neutral manner.

None of the reasons given in the Joint Board’s Recommendation or in the parties’ comments supports applying the cap to CETCs only. Funding levels to all carriers needs to be reexamined when the Commission modifies its rules. The Commission should consider a “needs based” requirement administered by State commissions.

Second, both ETCs and CETCs have the same obligations under Section 214 of the Act. In addition, in Arizona for example, Smith Bagley is providing service to many customers on native American lands who were unable to obtain service from the ILEC for one reason or another. Thus, in this instance, certainly Smith Bagley should not be penalized because it does not have the Carrier of Last Resort “COLR” obligation under State law.

In sum, any cap should apply to all providers equally.

F. The Cap Should be of a Specific, Limited Duration.

The cap should have a specific length or duration so that the long needed modifications to the federal high-cost fund are not put off indefinitely. While the Joint Board appears to suggest that the cap will be for an extremely limited duration, i.e., however, several commenters point out that the last interim cap was in place for many years.

The FCC should identify a date when the cap will expire or sunset or a date when the cap will be subject to reexamination. The duration of the cap should be absolutely no longer than 2 years.

III. Conclusion

The Arizona Corporation Commission opposes the Joint Board's recommendation to impose an interim indexed cap by State on federal high-cost support received by CETCs. Any cap should exempt carriers that provide service to Native American lands from its operation. The Commission should also allow an exemption for the placement of infrastructure in remote areas where there is a need and there is currently no infrastructure or coverage and for service to unserved or underserved populations where a showing is made to the State commission. The Commission should also consider applying the cap on a study area basis. Finally, all carriers should be subject to the cap, to ensure that it is competitively neutral in its application.

RESPECTFULLY submitted this 28th day of June, 2007.

/s/ Maureen A. Scott

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**THE NAVAJO NATION TELECOMMUNICATION
REGULATORY COMMISSION (NNTRC)**

**RESOLUTION #NNTRC-07-002
CAPPING OF THE HIGH COST PORTION OF THE UNIVERSAL
SERVICES FUND**

**TITLE: RELATING TO TELECOMMUNICATIONS REGULATORY AUTHORITY;
OPPOSING THE PROPOSED CAP ON THE UNIVERSAL SERVICES FUNDS
DISTRIBUTION FOR THE EXPANSION AND IMPROVEMENT OF WIRELESS
SERVICES IN RURAL AREAS OF THE UNITED STATES.**

WHEREAS, we, the Commissioners of the Navajo Nation Telecommunication Regulatory Commission, invoking the blessings of the Navajo Nation Council upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of the Navajo Nation, rights secured under Indian treaties, Executive Orders, and other government-to-government agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Navajo people and their way of life, to preserve Navajo cultural values, and otherwise promote the health, safety and welfare of the Navajo people, do hereby establish and submit the following resolution; and

WHEREAS, the Navajo Nation Telecommunication Regulatory Commission (NNTRC) was established in 1984 for the purpose of facilitating, promoting, and expanding the rapid provision within the Navajo Nation (NN) of reasonably priced telecommunications services; and

WHEREAS, The Navajo Nation is currently severely lacking in telecommunication infrastructure and services to the Navajo People; and

WHEREAS, This cap would unfairly deny rural Americans access to many of the same telecommunication services that urban residents enjoy; and

WHEREAS, The Universal Service Fund was created to ensure that all Americans have equal access to telecommunications services, regardless of their location; and

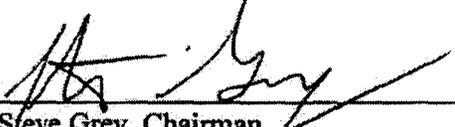
WHEREAS, Our schools need wireless distance learning capabilities, our hospitals need tele-health capabilities, the safety of our communities requires E911 capabilities, the sustainability of our economic and community developments need integrated information systems, and we need to maintain an E-government environment to consistently keep up with the growth of our people ; now

THEREFORE BE IT RESOLVED, that Navajo Nation Telecommunication Regulatory Commission hereby urges the Federal Communication Commission to reconsider the need to implement an interim cap and to explore other ways of controlling fund growth without impeding the source of investment in our rural infrastructure that the Navajo Nation so desperately need.

BE IT FURTHER RESOLVED, that this resolution shall be the position of Navajo Nation Telecommunication Regulatory Commission until it is explicitly withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted at a duly called meeting of the Navajo Nation Telecommunication Regulatory Commission held in Chinle, Arizona with a quorum present, by a vote of 5 in favor, 0 opposed, and 0 abstained, this 31 day of May, 2007.


Steve Grey, Chairman

Motion by: Steve Nez

Second by: Bob Begay