

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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

**COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF THE US VIRGIN ISLANDS**

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The Public Service Commission of the US Virgin Islands (VI PSC) respectfully submits its comments in the above referenced proceeding. As permitted under the FCC's Public Notice dated March 4, 2008, our comments are a consolidated response to the issues raised in the three Notices of Proposed Rulemaking (NPRMs) released on January 29, 2008.<sup>1</sup>

**Summary of Comments**

While we fully understand the Commission's desire to control the growth of funding requirements for the federal universal service program, such controls pose significant issues for jurisdictions such as the United States Virgin Islands, which are only now beginning to see competitive telecommunications services. We agree with the principle that the funds should be targeted to accomplish the public policy goals established by Congress. Nevertheless, in the

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<sup>1</sup> The three NPRMs are:

- *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-4 (Released January 29, 2008), (Identical Support Rule NPRM);*
- *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-5 (Released January 29, 2008), (Reverse Auctions NPRM); and*
- *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-22 (Released January 29, 2008), (Joint Board Comprehensive Reform NPRM)*

Virgin Islands implementation of the rules proposed by the Joint Board could effectively halt or seriously impair the investment in infrastructure in unserved and underserved areas by ETCs other than the incumbent local exchange carrier (ILEC). In our comments, we propose that the US Virgin Islands be exempted from caps on the funding available to competitive eligible telecommunications carriers (ETCs) for a period long enough to allow the Virgin Islands to catch up to the average level of infrastructure development on the US mainland. We agree that funds should be targeted toward infrastructure growth, particularly for broadband services and wireless access. However, the goals of the federal Telecommunications Act and of the FCC can only be met if an adequate level of funding is available.

## **Background**

Unlike most states, local competition has only recently emerged in the Virgin Islands. We have one ILEC and there are currently no competing local exchange carriers (CLECs). By contrast, most states are served by numerous CLECs, many of which have been in operation for at least several years.<sup>2</sup> The wireless market in the Virgin Islands is served by only four cellular or PCS carriers and service in many areas is marginal or non-existent. Most states are served by at least six wireless carriers.<sup>3</sup> Until recently, only the incumbent wireline carrier, Innovative Communications Corp., had been designated as an eligible telecommunications carrier (ETC). In February, 2008, the VI PSC designated one wireless carrier, Centennial USVI Operations, as

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<sup>2</sup> The most recent FCC report on local competition showed that only 18% of all zip codes are not served by CLECs. 34% are served by 10 or more CLECs. *Local Telephone Competition: Status as of December 31, 2006*, Table 17

<sup>3</sup> *12<sup>th</sup> Annual CMRS Competition Report*, Released February 2, 2008, Table A-2

an ETC.<sup>4,5</sup> Most states are served by numerous ETCs, the majority of which were designated prior to 2006. The bottom line is that any reform based on a nationwide “average” view of the market and of “average” funding under the federal universal service program will gloss over the specific needs of the telecommunication industry in the Virgin Islands; and will ultimately subvert the intended underlying policies of the Telecommunications Act which are to encourage competition and provide universal service.

#### **Funding Caps and Allocation of Funds Amongst The States**

Our greatest concern with the reform of the federal universal service program is that sufficient funding must be provided to cover our needs. All three NPRMs imply that there would be an overall cap on high cost universal services funding. The Joint Board recommended a final overall cap at the 2007 level.<sup>6</sup> This proposal would leave the amount received by ILECs essentially unchanged. On the other hand, the amount of USF support provided to competitive ETCs would be reduced over time to provide funding for the new mobility and broadband funds. Previously, the Joint Board recommended an interim cap at the amount received by competitive ETCs in each state in 2006.<sup>7,8</sup>

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<sup>4</sup> The designation of Centennial USVI Operations was made effective as of the December 2, 2006.

<sup>5</sup> We have been expecting an application from VITELCOM, as well as Sprint and AT&T, but suspect that this particular set of NPRMs may have placed them in a cautious position until the results of this and Centennial’s request for retroactivity is addressed

<sup>6</sup> *Ibid.*, para. 26

<sup>7</sup> *Federal- State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (released May 1, 2007), para. 9

These proposals may be appropriate in states where there are multiple ETCs and where universal service funding for competitive ETCs has been in place for several years. However, as noted earlier, the only ETC receiving universal service funds in the Virgin Islands in 2006 or 2007 was the ILEC VITELCO. Therefore, if funding were capped by state at either the 2006 or 2007 level, and ILEC high cost support remained virtually unchanged, no funds would be available to the Virgin Islands for the mobility and broadband funds or for any recently designated ETCs.

We strongly believe that the amount of funding provided to each state or territory should be based on the needs of the state or territory. Local regulatory agencies are in the best position to determine those needs, a fact recognized by Congress in Section 214(e)(2). It would be very difficult for the FCC to assess which local projects will have the greatest benefit to local residents or the amount of funding needed for each project. Therefore, these issues should be left to the local public utilities commission. The FCC should ensure that sufficient funds are provided to cover these needs.

In our public interest analysis of Centennial USVI Operations' ETC petition, we relied heavily on infrastructure investment commitments made by Centennial in its five-year plan. Since the commitments in Centennial's ETC's five-year plan were made contingent on receiving support

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<sup>8</sup> The Chairman of the VI PSC wrote a letter to Chairman Martin on February 12, 2008, expressing concern about the effect of the interim cap on the US Virgin Islands and requesting an exemption from the cap.

from the federal universal service program, we fear they will be undermined by the proposed reforms.

Infrastructure growth in unserved and underserved areas is especially important in the Virgin Islands. As the Telecom Act of 1996 makes clear, residents of rural and insular areas should have the same level of access to telecommunications services available elsewhere on the US mainland; that is particularly important in the Virgin Islands where we are not only physically far removed from the mainland, but our telecommunications needs have been underserved. Our future economic well being is, to a great degree, dependent on our having reliable, accessible and ubiquitous communications networks. Economic literature has long established the relationship between the growth potential for local commerce and the availability of telecommunications services, particularly broadband services. This translates to better paying jobs for our residents. Further, visiting tourists, who are the single most important factor in the local economy, expect to be able to obtain the same quality of service here in our islands that is offered in the rest of the United States.

It is imperative that the Commission make special provisions for states and territories like the Virgin Islands with few or no competitive ETCs in 2007 in order to promote both competition and universal service. Traditionally, the Commission has made special provisions in rulemaking proceedings, and such an exemption would not be out of step with the Commission's prior actions. For example, the amount of USF support for rural carriers is determined using historic ILEC loop costs rather than using the economic models that determine support for non-rural

carriers. Congress has also made special provisions for rural and insular carriers. Additionally, the Telecommunications Act itself grants rural carriers were specific exemptions from the more stringent requirements of Section 251(c) until they received bona fide requests for interconnection and the state commission determined that compliance would not be unduly economically burdensome. This was done in recognition and accommodation of its limited economic resources and insular geography.

The best solution for the Virgin Islands is to exempt us from the cap and to leave the identical support rule intact for a minimum the next five years or until at least two wireline and two wireless ETCs have been designated, whichever is longer. This proposed exemption will facilitate the infrastructure growth we need to bring our telecommunications sector into alignment with the states on the mainland and will encourage several new carriers to seek ETC designation.

If the Commission decides to eliminate the identical support rule across the board, we suggest that the formula for allocating funds among the states for competitive ETCs be modified. According to the Joint Board, the total fund size was \$4 billion across the nation in 2006. Of this amount, ILEC ETCs received \$3 billion while competitive ETCs received approximately \$1 billion, roughly one third as much as the ILEC ETCs.<sup>9</sup> Therefore, we suggest that the initial

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<sup>9</sup> *Federal- State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (released May 1, 2007), para. 4

funding level for competitive ETCs be set at one third of the amount to be paid to ILEC ETCs in the affected states and territories in 2008.

### **Comprehensive Reform of the Federal Universal Service Program**

If the Commission does not grant an exemption as proposed above, we urge the Commission to phase in any changes over a period of at least five years in order to provide enough time and funding to accomplish the goals we established in the Centennial proceeding. We also urge the Commission to phase-in the proposed reforms slowly in the initial years with the bulk of the change becoming effective toward the end of the period.

The Virgin Islands Public Services Commission supports the principle that the federal universal service program should focus on the three areas most important to the Virgin Islands. Our economic well being depends on access to ubiquitous, robust and economical wireline, wireless and broadband network services. Without these services, our residents would be unable to participate effectively in the global economy. Tourism will suffer because visitors would not be able to communicate with their businesses and families. Without high cost support, local telephone rates could increase and local wireline competition could be blocked. The three fund approach will address these needs. If the Commission leaves the identical support rule intact, we intend to continue to emphasize these three areas when we consider designation of new ETCs.

*Broadband and Mobility Funds*

We agree that the states are in the best position to decide how the broadband and mobility funds should be used. Like other public utilities regulatory agencies, we have a more in-depth understanding of local needs than is possible if the program were administered centrally by the FCC. We agree that awards of funds for the construction of facilities should follow federal guidelines regarding standards and accountability. We also support the Joint Board's recommendation that these funds should be used to build infrastructure in unserved and underserved areas, particularly where there are public safety concerns or where the facilities would be used by travelers. However, we urge the Commission not to adopt rules that differentiate between "unserved" and "underserved" areas. Such rules could limit the flexibility of the states to determine where the funds could best be used. As the Joint Board pointed out, the availability of the supported services varies street by street and neighborhood by neighborhood. That is particularly so here, where the geography plays a critical role in the availability of services. Population density alone is an insufficient indicator of whether an area is adequately served. For example, because of our mountainous terrain, more wireless towers are needed than would be the case in areas with more even terrain. Consequently, it may be difficult to determine with particularity which areas are "unserved" versus "underserved."

While we recognize the fact that the states are in the best position to decide how the broadband and mobility funds should be used, we are concerned about the costs of administration. As the Joint Board pointed out, administering federal grants is an unusual role for state utility

commissions.<sup>10</sup> The VI PSC, like other small regulatory agencies, has very limited resources. However, we do not believe any other local government agency would be better equipped to oversee the construction of telecommunications networks.<sup>11</sup> We will need to hire experienced staff or expert consultants to ensure that the projects are properly managed and comply with the federal guidelines. Therefore, we suggest that the grants be structured to include a mechanism for the recovery of administrative costs incurred in connection with the federal grants. We believe this approach will be more cost efficient than would be possible if the construction and upgrade projects were managed at the federal level.

#### *State Matching Funds*

The Joint Board recommended that the Commission adopt policies that encourage the states to provide matching funds for the Broadband and Mobility Funds. It suggested that every state receive some baseline of support and, beyond that level the federal fund would match state contributions. A 20% match was suggested.<sup>12</sup> According to the Joint Board, these state matching funds could come from state or local government funds, private sector contributions, carrier contributions, surcharges on customers or state and local taxes. However, rural and insular areas do not normally have access to the same sources of discretionary revenues as more economically developed areas.

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<sup>10</sup> *Recommended Decision*, para. 48

<sup>11</sup> The Joint Board suggested that states may wish to have grants administered by an agency other than the state utility commission. *Ibid.*, footnote 46

<sup>12</sup> *Ibid.*, para 50.

We are troubled by the idea that wealthier states that could afford state matching funds should get more support per subscriber than poorer states that cannot raise these funds. If followed to its logical conclusion, such an approach would only widen the gap between richer and poorer states. Clearly, that outcome is contrary to the policy of Congress when it enacted the Telecommunications Act of 1996. According to Section 254(b)(3), "Consumers in all regions of the Nation, including low income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." The Commission should not condition this access on the ability of the state to raise matching funds.

We do not believe the Joint Board's suggestions for the source of state matching funds is realistic, particularly in the poorer, insular and rural states and territories that are already struggling with a weak economy. The Government of the Virgin Islands has repeatedly said it did not have enough funding to close its budget deficit. Additionally, the relatively low per capita income of VI residents compared to the disproportionately high cost of living would make raising these funds through taxation a virtual impossibility. Raising taxes to support the universal service programs would likely face very strong taxpayer resistance in the face of a general inability to sustain the higher level of costs to ratepayers. Further, contributions from the private sector are unlikely. Surcharges on carriers providing intrastate services would be passed on to consumers and could cause some to drop their service. The same is true for direct

surcharges on the consumers themselves. This would undermine the basic concept that universal service should be achieved through affordable rates. Further, surcharges on carriers or consumers would likely be exorbitant in the Virgin Islands. Because of our geography and the large proportion of tourists who use out telephone networks, telephone traffic is disproportionately interstate compared to the mainland. This means we have a smaller base of intrastate and local usage upon which the surcharges would be assessed. As a result of these factors, we believe it is unrealistic to anticipate or mandate state matching funds for the Territory.

#### **Elimination of the Identical Support Rule**

The Virgin Islands PSC supports the limited retention of the identical support rule for the purpose of allocating universal service support funds to rural and insular areas. Once an allocation is made, we favor using the competitive ETC's own cost data to determine the amount of support received by each ETC. We believe a detailed accounting of costs is essential to prevent abuse. This may require a breakdown of costs into broad categories based on network components. At the very least, costs should be disaggregated to the service area level. However, we urge the Commission to avoid imposing a Part 32 system of accounts on competitive ETCs. Such a requirement is likely to impose very substantial and significant costs on the competitive ETC and could be a barrier to any new carrier seeking ETC designation.

We agree that the Commission should propose a general set of rules to govern the cost data submitted by competitive ETCs. These rules should include a requirement to use GAAP

accounting and, to the extent possible, should require the use of the same methodologies, processes and systems used for external financial reporting. We recommend that the Commission continue to follow a light-handed approach in order to facilitate competitor acceptance of ETC obligations.

### **Reverse Auctions**

In its 1997 *Universal Service First Report and Order*, the FCC concluded that competitive bidding mechanisms would not be useful in the near term in rural, insular and high cost areas because those areas were considered unlikely to attract significant competition.<sup>13</sup> During the ensuing years, competitors did enter many of these markets in other states. However, in the Virgin Islands, very little has changed. As the Commission correctly noted, Section 254(e) limits USF support to ETCs.<sup>14</sup> Only two carriers have been designated as ETCs in the Virgin Islands: the pre-existing ILEC and one wireless carrier. Consequently, only one bidder would be eligible to respond to a solicitation to bid on construction of wireline or wireless infrastructure. Under these circumstances, a requirement for competitive bidding would be meaningless.

The market in the Virgin Islands is relatively small. Our total population is about 108,000. The ILEC serves approximately 68,000 loops. There are currently about 80,000 wireless customers. Most of our terrain is rugged and mountainous, making construction of telecommunications

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<sup>13</sup> *Universal Service First Report and Order*, CC Docket No. 96-45, FCC97-157,(Released May 8, 1997 para. 324

<sup>14</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket 05-337, CC Docket 96-45, Notice of Proposed Rulemaking, FCC 08-5 (Released January 29, 2008), (*Reverse Auctions NPRM*), para. 12

infrastructure very difficult and costly. Even if it were permissible under the federal Telecommunications Act to award USF contracts to carriers other than ETCs, we do not believe that a reverse auction would generate sufficient real competition to satisfy our needs for infrastructure upgrades. Clearly, if the Commission granted an exemption from its plans for comprehensive reform to the Virgin Islands and similarly situated insular and rural areas, there would be no need for reverse auctions.

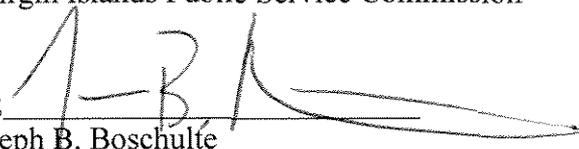
### **Conclusion**

The Virgin Islands Public Service Commission strongly supports the overarching goal of providing sufficient universal service funding to achieve the goals envisioned in the federal Telecommunications Act. In particular, we applaud the Joint Board's emphasis on broadband and wireless infrastructure growth while still providing assistance for high cost wireline services. We endorse a balanced and focused approach that is based on the principles of efficiency and accountability. However, the Commission must recognize that "one size fits all" approaches will almost always work to the detriment of rural and insular areas and areas where the emergence of competitive carriers has been slower than the average state. We strongly oppose a funding cap based on historic levels of support to competitive ETCs. However, if the Commission decides on a funding cap, care must be taken to ensure that rural and insular areas get a fair share of

funding. Furthermore, changes to the federal USF programs should administratively workable. They should not require a significant increase in the administrative costs born by either the ETCs or local regulatory agencies.

Respectfully submitted,

The Virgin Islands Public Service Commission

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