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December 2, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45; High-Cost Universal Service Support, WC Docket No. 05-337 (also filed in WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36)

Dear Ms. Dortch:

The undersigned met with Amy Bender, Legal Advisor to Chairman Martin and Nicholas Alexander, Legal Advisor to Commissioner McDowell on December 1, 2008, and with Scott Deutchman, Legal Advisor to Commissioner Copps and Scott Bergmann, Legal Advisor to Commissioner Adelstein on December 2, 2008, to oppose a cap on universal service support that would limit each ETC and CETC to the gross dollar support they received in 2008 on a study area by study area basis.

Such a cap could perhaps serve the public interest in many instances, but not for new or growing ETCs. In those cases, such a cap would undermine the fundamental goals of universal service by effectively preventing existing ETCs or new CETCs from serving new or previously unserved homes in high-cost areas.

First, the door would be permanently shut to new CETCs if their support were capped at \$0. New companies may be more likely than existing ETCs to experiment with new technologies or business models to serve high-cost areas. I provided an example of a new start-up company that was formed at the behest of local community leaders who were frustrated with the unavailability of broadband in portions of their area. This company built fiber-to-the-home broadband to previously unserved homes using a Rural Utilities Service loan, and now is interested in becoming a CETC to receive support that would enable it to build to additional unserved homes. The proposed order would eliminate this possibility, because a new CETC that

did not receive support in 2008 could never receive any support going forward. The Commission's policies of promoting universal service and competition would both be undermined if it prevented new competitors from serving such high-cost areas.

Second, such a cap would arbitrarily and unfairly corner small ETCs serving existing study areas should they experience future growth and demand. ETCs have committed to serve all portions of their study area, but for many that commitment was made in reliance on the Act's promise of "sufficient" universal service support.¹ I provided an additional example of an existing small ETC serving a few thousand lines today that expected demand for new construction that would more than double its line count. It would be unreasonable and in violation of the "sufficient" support requirement to limit permanently such carriers to the support they received when they had half as many lines.

While it is theoretically possible that the examples described above could be addressed by waiver, in practice it would much more difficult for small carriers to obtain investment funding for new construction if they first had to successfully obtain a waiver.

The Commission and the Joint Board understandably have an interest in exploring caps as a possible means of bringing under control the recent explosive growth in the size of the fund. However, the Commission has already set in motion a major reform through its *CETC Cap Order* that will likely reduce the size of the fund and significantly constrain what had been its biggest growth driver, wireless CETCs receiving support identical to higher-cost wireline ILECs. The Commission should allow the impact of this cap to be measured and studied before adopting new caps that, as described above, would undermine core purposes of the program.

The Commission also understandably is interested in addressing the recent report of the Office of the Inspector General regarding an apparent large misallocation of high-cost support funds. However, a per study area support cap is not the answer to this distribution errors. Instead, capping each study area based on 2008 receipts would only lock into place the existing distribution shares that OIG has found to be flawed.

Finally, the Commission should make clear in any order that CETC would continue to have the option, as established by the *CETC Cap Order*, to receive high-cost support based upon their own cost studies. The "Option C" proposal as written would appear to lock CETCs for the next five years into only receiving a portion of identical support, rather than allow them to immediately shift to the cost-based formulas used by ILECs, and would thereafter eliminate CETC support altogether. This proposal completely fails to explain why it would be fair or serve the public interest to support ILEC ETCs but not other "C"ETCs even if the CETC is the primary or even exclusive telephone service provider in its area.

¹ Section 254 of the Act requires "sufficient Federal and State mechanisms to preserve and advance universal service."

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As illustrated above, a cap on the funding that can be provided to each individual study area regardless of such a new rule would have dramatic adverse impact on at least two types of carriers, would undermine the public's interest in promoting universal service, and would in some cases violate the Act's requirement of "sufficient" support. The Commission therefore should not cap the support that can be distributed on a study area by study area basis.

Respectfully submitted,



Paul B. Hudson

cc: Amy Bender
Nicholas Alexander
Greg Orlando
Scott Deutchman
Scott Bergmann