NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES NASUCA

June 19, 2009

Acting Chairman Michael J. Copps
Federal Communications Commission
Room 8-B115
445 12th Street, S.W.
Washington, D.C. 20554

RE: WC Docket No. 05-337, CC Docket No. 96-45, Interim Cap on High-Cost Funding for Wireless Carriers EX PARTE COMMUNICATION

Dear Acting Chairman Copps:

On May 1, 2009, the Rural Cellular Association ("RCA") sent you an ex parte communication in the above dockets, consisting of a six-page cover letter and a 27-page "position paper" entitled "Cut the Cap: The Commission Should Repeal the Interim Cap on High-Cost Universal Service Support Received by Wireless Carriers" ("*Cut the Cap*"). RCA says the cap should be repealed

> because the cap was unnecessary and unjustified at the time it was imposed, it has harmed and continues to harm consumers in rural and high-cost areas by unduly interfering with the ability of wireless ETCs to deploy infrastructure and deliver service, and its harmful effects are being exacerbated by the worsening national economic climate.[1]

The National Association of State Utility Consumer Advocates ("NASUCA") supported the imposition of the cap, and supports continuing the cap. We write now to emphasize two points:

First, the vast majority of the RCA cover letter and *Cut the Cap* consists of reargument of points RCA and other wireless eligible telecommunications carriers ("ETCs")[2] made before the Commission and have made in the pending appeal of the Commission Order

---

[1] *Cut the Cap* at 1.

[2] The cap technically impacts all competitive ETCs ("CETCs"), but since the vast majority of CETCs are wireless carriers, it is reasonable to identify this issue as a wireless ETC issue.

that imposed the cap.[3]

Second, and more importantly, the little material that purports to show harm from the cap -- consisting at best of four pages of the 27-page *Cut the Cap* -- really shows nothing of the sort.[4]

The earliest assertion of the occurrence of actual harm comes at page 20, where it is claimed that "USAC's interpretation of the interim cap and related Commission actions has resulted in further unwarranted reductions in the amount of high-cost funding available to wireless carriers."[5] The USAC "interpretation" in question is, as RCA acknowledges,[6] on appeal to the Commission. Thus whether the reductions are unwarranted has not been decided; RCA's assertion does not make it so.

On page 21, RCA presents a table purporting to show how much support has been "lost" in 26 states, comparing the amount of funding that would have been received absent the cap to the support that was received under the cap.[7] It should be clear that no state is receiving less wireless ETC high-cost than it did before the cap; the "harm" that RCA alleges is that a state is not receiving as much high-cost USF support as it would have if there were no cap.[8]

RCA notes that "seven states are precluded from receiving any high-cost support at all," those being Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Ohio and Rhode Island.[9] Of course, the support that is precluded is CETC high-cost support, but the high-cost support received in those states by incumbent carriers is minimal,[10] making it unlikely that wireless ETCs would target those states. Indeed, the fact that no competitive carriers have received ETC designation in those states in the 13 years since the 1996 Act went into effect suggests that the odds were not good for any future action.

---

[3] The Order can be found at 23 FCC Rcd 8834 (2008); the appeal is *Rural Cellular Association, et al., v. FCC*, D.C. Cir. Case No. 08-1284, et al. (briefing completed; oral argument not yet scheduled); see *Cut the Cap* at 1, 2.

[4] The section entitled "The Cap Is Harming Consumers and Is Out of Step with Policies Needed To Stimulate the National Economy" begins at page 17, but the first pages of that section consist (again) of reasserting the arguments made prior to the Commission's Order.

[5] *Cut the Cap* at 20.

[6] Id., n.98.

[7] Id. at 21, n.107.

[8] Similarly, the example given from Montana of "a 36 percent reduction in MTPCS's high-cost support" (id. at 23) is a reduction in the support that MTPCS would otherwise have expected, not in the support it actually received. As RCA acknowledges, MTPCS's situation was part of the argument for a stay presented to the D.C. Circuit (id., n.110), which decided not to impose a stay.

[9] Id. at 23.

[10] See USAC 2008 Annual Report at 47. Indeed, other than Ohio, the six named states receive the least high-cost support of the 50 states, ranging from all of $31,000 per year to $4.072 million per year.

In the end, what we are left with is RCA's generalization that the lack of support has limited wireless investment in those states, and that that limitation of investment has harmed consumers.[11] RCA cites no specific examples of wireless carriers that have actually curtailed investment, and gives no concrete examples of areas where wireless service is not available because of such curtailments. This is scarcely a basis to eliminate the cap – particularly in light of the study in the record of this proceeding, never mentioned in *Cut the Cap* or otherwise, as far as NASUCA is aware, refuted by RCA or any wireless carrier, that there is no correlation between wireless deployment in rural areas and the receipt of high-cost support by the wireless carriers.[12]

RCA concludes *Cut the Cap* by appealing to the state of the economy to show that the wireless carriers need the USF funding as "stimulus money."[13] But consumers, already likely to be battered by the highest USF contribution factor on record,[14] hardly need the additional burden of supporting wireless carriers to the tune of an additional almost $300 million (in just the 26 states in RCA's table).[15]

RCA has not shown any concrete harm from the cap on high-cost USF payments. The Commission should continue the cap until comprehensive USF reform has been accomplished.[16]

Respectfully submitted,

/s/ David C. Bergmann
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
614.466.8574; Fax 614.466.9475
bergmann@occ.state.oh.us
Chair, NASUCA
Telecommunications Committee

---

[11] See, e.g., *Cut the Cap* at 23, 25.

[12] See Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers.

[13] *Cut the Cap* at 26.

[14] See Request of the National Association of State Utility Consumer Advocates for Interim Emergency Relief to Reduce the Universal Service Fund Contribution Factor NASUCA Request for Emergency Relief (filed June 9, 2009).

[15] *Cut the Cap* at 22.

[16] This should include the adoption of a separate mobility fund for wireless carriers, as recommended by the Federal-State Joint Board on Universal Service and supported by NASUCA.

CC: Commissioners Adelstein and McDowell; Nicholas Alexander, Thomas Buckley, Renee Crittendon, Scott Deutchman, Angela Giancarlo, Jennifer McKee, James Schlichting, Mark Stone