LUKAS, NACE,
GUTIERREZ & SACHS, LLP

1650 TYSONS BOULEVARD, SUITE 1500
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
DAVID A. LAFURIA
PAMELA L. GIST
TODD SLAMOWITZ*
TODD B. LANTOR*
STEVEN M. CHERNOFF*
KATHERINE PATSAS NEVITT*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ

OF COUNSEL
GEORGE L. LYON, JR.
LEONARD S. KOLSKY*
JOHN CIMKO*
J. K. HAGE III*
JOHN J. MCAVOY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS BROWN*

*NOT ADMITTED IN VA

July 23, 2009

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, S.W.
Eighth Floor
Washington, D.C. 20554

Re: RCA Letter Response to NASUCA *Ex Parte* Communication
CC Docket 96-45; WT Docket 05-337

Dear Chairman Genachowski:

On behalf of the Rural Cellular Association ("RCA"), we write to respond to the recent *ex parte* presentation made by the National Association of State Consumer Advocates ("NASUCA") in the above-captioned proceeding.[1] NASUCA opposes lifting the interim cap. As we understand it, NASUCA is more concerned about how much consumers pay into the fund rather than ensuring that rural consumers receive the benefits that the fund was intended to deliver. We think the latter, especially in the current economy, should be of paramount importance to the Commission and that the interim cap is frustrating Congressional objectives set forth in Section 254 of the Act.

RCA presented the Commission with concrete evidence demonstrating how the cap is constraining funding to many rural states. RCA members who receive high-cost support will vary their business plans according to the level of support flowing from the federal program. For example, in Virginia, the cap amount is just over $15 million. The uncapped amount is just over $26 million. Accordingly, Virginia loses $11 million in funding this year that would be entitled to in an uncapped environment. As a result, competitive carriers, in the aggregate, are not going to invest $11 million in Virginia this year as a result of the cap.

[1] *See* Letter from David C. Bergmann, Chair, NASUCA Telecommunications Subcommittee, to Acting Chairman Michael J. Copps, WC Docket No. 05-337, CC Docket No. 96-45 (dated June 19, 2009).

A similar situation is occurring in North Carolina. With the interim cap in place, North Carolina is estimated to lose more than $23 million annually. As a result, wireless carriers serving the state are being forced to cancel or delay plans for new cell site construction. By way of example, Carolina West Wireless ("Carolina West"), an RCA member, has canceled plans to build eight new cell sites in its licensed service area. As a result, 20 communities in western North Carolina served by Carolina West will continue to have limited or no cellular service. The harm that the CETC "interim" cap is causing to rural America is real and is getting worse as long as it remains in place.

As NASUCA surely knows, since its members participate in ETC designation and annual certification proceedings, a CETC is required by law to invest the support it receives into its facilities and services. States and the FCC now require CETCs to file annual reports demonstrating how support will be lawfully invested. Using the Virginia example, the 2009 annual reports from CETCs in Virginia for the coming year will demonstrate how a total of $15 million is invested in the Commonwealth. In the absence of a cap, CETCs would be required to submit annual reports that demonstrate how a total of $26 million would be invested.[2]

Accordingly, RCA rejects any characterization that Virginia, North Carolina and a number of other states are not harmed by the cap. Anyone who travels to central and southwestern Virginia or western North Carolina surely understands the challenges facing that region when it comes to achieving seamless wireless service in areas where people live, work and travel. As carriers serving these rural areas, U.S. Cellular and Carolina West understand full well the need to build more cell towers in order to improve coverage beyond the major towns and highways.

Since U.S. Cellular and Carolina West have a significant amount of work to do to bring high-quality service throughout their licensed service areas, the increase or decrease in support determines whether deployment of new and modern telecommunications infrastructure is accelerated, or put off. Depriving the rural areas served by these two carriers of tens of millions of dollars each harms the very consumers who pay into the fund and who Congress intended to receive the benefits of new investment.

NASUCA's claim that increasing contributions is a harm greater than the lack of high-quality service in rural areas was unaccompanied by any factual support, so we'll provide it. By our calculation, if a 13% contribution factor raises roughly $7 billion per year, then every 1% on the contribution factor raises roughly $583 million per year. In 2009, the amount of support that is being denied to rural areas as a result of the cap is approximately $300 million. That amount equals approximately 0.5% on the contribution factor.

Looking at this from the consumer's standpoint, an increase of 0.5% on an interstate telephone bill of $10.00 equates to five cents per month. For someone who can afford $100 of

[2] We note that CETC annual reports for Virginia are filed at the FCC.

monthly interstate charges, the increase amounts to 50 cents per month. Our point here is simple, the cost of removing the cap is pennies to low volume users of telephone services and negligible to high volume users.

The Commission should be much more concerned about the effects of poor wireless service on rural North Carolina and Virginia consumers than the incremental cost incurred by all consumers nationwide who pay into the fund. Moreover, our analysis above does not take into account the substantial benefits that rural consumers receive when high-quality wireless service can be used to avoid steep intra-LATA toll charges. This issue is one that NASUCA is surely sensitive to, as it has over the years advocated for lowering access and transport/termination charges. Moreover, in the past ten years, the cost of a wireless minute, from 29 cents to approximately 6 cents, resulted largely from moving access charge support into an explicit universal service fund. The benefit of lower prices is made available only to those rural consumers who actually have access to wireless service.

Our position does not ignore the decline in revenues as a result of the current economic crisis. We recognize that as people reduce expenditures on interstate telecommunications, it will increase the percentage of interstate revenues that must be contributed. That said, Congress has never stated what level of contribution factor is unacceptable, and it is the province of Congress, not the FCC, to make such a determination.

As we have noted in papers filed with the Commission and in federal court, Congress ordered that the fund be sufficient to provide the supported services; it did not direct the Commission to limit funding in a manner that would constrain support in areas that obviously need it to provide consumers with reasonably comparable services, as required by Section 254(b)(3) of the Act. We think the current economic environment, as well as the need to ensure that support is distributed in a competitively neutral basis, compel the Commission to reexamine its decision to cap support to competitive carriers.

Sincerely,

David A. LaFuria
Todd B. Lantor
Counsel for Rural Cellular Association

cc: Commissioner Michael J. Copps (via e-mail)
Commissioner Robert M. McDowell (via e-mail)
Bruce Liang Gottlieb, Office of Chairman Genachowski (via e-mail)
Priya Aiyar, Office of Chairman Genachowski (via e-mail)
Jennifer Schneider, Office of Commissioner Copps (via e-mail)
Nick Alexander, Office of Commissioner McDowell (via e-mail)
Julie A. Veach, Wireline Competition Bureau (via e-mail)
Jennifer McKee, Wireline Competition Bureau (via e-mail)
Thomas Buckley, Wireline Competition Bureau (via e-mail)
Ruth Milkman, Wireless Telecommunications Bureau (via e-mail)
Jim Schlichting, Wireless Telecommunications Bureau (via e-mail)