

**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

Advantage Cellular Systems, Inc. Request for
Cost-Based Universal Service Support

Reply Comments of the USA Coalition

The Universal Service for America Coalition (“USA Coalition”),¹ by its counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) request for comment on Advantage Cellular Systems, Inc.’s (“Advantage”) request for cost-based universal service support (“Request”).² The USA Coalition respectfully urges the Commission to reject calls from commenters to withhold support from Advantage pending further notice and comment or to require additional disclosures from Advantage. Under the plain terms of the *Interim Cap Order*, Advantage is entitled to cost-based support to the extent that it demonstrates its costs meet the support threshold in the same manner as the incumbent LECs, and the Commission should act expeditiously to comply with the terms of that order.³

¹ The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Mobi PCS, SouthernLINC Wireless and Thumb Cellular LLC.

² Comment Sought on Advantage Cellular Systems Inc., Request for Cost-based High-cost Universal Service Support, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA 09-1563 (rel. Jul. 21, 2009).

³ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, ¶ 31 (2008) (*Interim Cap Order*).

I. THE COMMISSION SHOULD GRANT ADVANTAGE’S REQUEST WITHOUT DELAY.

Advantage’s request for USF support based on the cost-study it submitted to the Commission complies with the clear terms of the *Interim Cap Order* and should be granted as soon as practicable. The Commission sensibly included a “safety-valve” release from the interim cap that, as the FCC explained to the D.C. Circuit, “offers competitive ETCs an exception from the interim cap if their capped support truly is insufficient.”⁴ Advantage’s Request properly seeks to make use of this exception.

The USA Coalition agrees with other participants in these dockets that have noted that “comment on the particulars of [Advantage’s] cost study is not possible at this time because the entire study was redacted.”⁵ However, the USA Coalition opposes calls by USTA and ITTA to make more information from Advantage’s cost study available for public review.⁶ Rather, as the USA Coalition made clear in its initial round of comments, public comment on Advantage’s request is both unnecessary and inappropriate as Advantage is not seeking a waiver of, or a change in, the existing rules. Rather, this proceeding is more in the nature of adjudication. Protection of the carrier’s financial information from the eyes of carriers that might gain competitive advantage from such knowledge remains proper. Advantage is relying on an unambiguous exception to the interim cap that the Commission clearly included in the text of the *Interim Cap Order* and that the FCC has relied upon in its brief defending the order before the D.C. Circuit.⁷ Nothing in Advantage’s filing suggests that public comment on its cost study would be helpful or appropriate. Indeed, a public discussion of Advantage’s filings would be no

⁴ Brief for Respondents, *RCA v. FCC*, No. 08-1284, No. 08-1285 (D.C. Cir., filed Mar. 25, 2009) (*Brief for Respondents*).

⁵ USTA Comments at 4; ITTA Comments at 3.

⁶ USTA Comments at 4.

⁷ *Brief for Respondents* at 48.

more helpful or appropriate than a public discussion of an incumbent LEC's cost study.⁸ Instead, the Commission should review Advantage's cost study filing, address any questions by seeking clarification from Advantage, and then grant or deny the requests, as appropriate.

II. THE COMMISSION SHOULD REJECT CALLS TO ENGAGE IN A RULEMAKING.

Despite calls from USTA and ITTA for greater public scrutiny of Advantage's filings, the Commission should reject such a process as inapplicable to the current situation.⁹ First, as an initial matter, the delay caused by a rulemaking is contrary "to ensur[ing] equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers."¹⁰ Under the *Interim Cap Order*, Advantage is entitled to receive its costs in the same manner as an incumbent LEC "to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC."¹¹ This parity includes access to USF support within a reasonable amount of time – which precludes an extensive comment procedure.

Second, if the Commission intends to abide by its commitment to the D.C. Circuit to engage in "comprehensive reform of the intercarrier compensation and universal service systems in an expedited fashion," then the precedential value of a notice and comment proceeding on Advantage's cost-reporting methodology is minimal.¹² In its filings with the D.C.

⁸ Although the USA Coalition takes no position as to the accuracy of Advantage's cost-study methodology, it is worth noting that even USTA (which raises numerous objections to Advantage's petition) acknowledges that Advantage's cost study was completed "by a firm well known in the rural ILEC community." USTA Comments at 4.

⁹ See USTA Comments at 4.

¹⁰ *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, ¶ 87 (1999); see also Home Town Cable TV Comments at 2.

¹¹ *Interim Cap Order* ¶ 31.

¹² *Brief for Respondents* at 22.

Circuit, the Commission noted that the formal comment cycle on the Commission's most recent Further Notice of Proposed Rulemaking on universal service reform closed in December 2008 and that there was "a tentative but growing measure of consensus on key issues."¹³ Now, nine months after the closing of the comment period, the Commission would better serve the public by considering significant telecommunications marketplace issues rather than revising or clarifying accounting procedures for an interim cap that has already been extended beyond its intended life.¹⁴ If the Commission is planning to continue the interim cap indefinitely, the Commission should publicly state that such is the case, initiate proper notice and comment proceedings, and inform the D.C. Circuit accordingly.

Finally, the Commission should reject calls for a public examination of Advantage's filings because issues impacting the public interest in this manner are better served by addressing the matters in broader proceedings of general applicability.¹⁵ To the extent that some commenters support using Advantage's submission as "the template for all future wireless CETC studies," Advantage's Request is not the appropriate venue for such an endeavor; rather such an effort would have to involve a full notice and comment cycle. Instead, the Commission should continue its consideration of all possible avenues of USF reform (including returning to the uncapped identical support rule) in a public proceeding of general applicability rather than

¹³ *Id.* at 21-22.

¹⁴ See *Interim Cap Order* ¶ 4 (explaining that the Joint Board intended the interim cap apply until one year after the Joint Board made its recommendation regarding high-cost universal service reform – the Joint Board made its recommendation in November 2007.)

¹⁵ See *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, 22 FCC Rcd 5662, 5758 (2007) ("The Commission previously has declined to address in merger proceedings matters in which the public interest would be better served through consideration and resolution in broader proceedings of general applicability.").

turning Advantage's Request under the exception to the cap included in the *Interim Cap Order* into a broader discussion of USF reform policy.

III. ADVANTAGE'S REQUEST FOR LESS SUPPORT THAN IT IS ENTITLED TO SHOULD NOT PREJUDICE FUTURE REQUESTS BY OTHER ETCs

Like Home Town Cable, the USA Coalition has no objection to Advantage's request to forgo some of the support to which it would otherwise be entitled under Advantage's cost study. The USA Coalition further joins with Home Town Cable in believing that in taking any action to approve Advantage's request, "the Commission should make clear that it is not establishing a general rule limiting cost-based CETCs to such level of support."¹⁶ The Commission should further reject USTA's pronouncement that supporting Advantage's operations based on the full amount included in its cost-study would "yield a bizarre result ... [of Advantage receiving] more than twice the amount [of support Advantage] received prior to the cap."¹⁷ This outcome is not a "bizarre result" but rather is evidence that, contrary to assumptions made by many parties and based upon little to no data, the identical support rule does not result in wireless ETCs receiving more support than that which they would be entitled to based on their own costs. Rather, in some cases, the identical support rule results in significantly *less support* to wireless ETCs than their costs would justify. As a result of the cap, some wireless ETCs are not adequately reimbursed for their rural network construction and operation. These ETCs cannot run at a loss forever, and as a result, rural telecommunications will suffer. The USA Coalition urges the Commission to fulfill Congressional intent, evident in the Telecommunications Act, by re-enabling provision of rural telecommunications by more than a single incumbent ETC. The costs of serving remote areas, particularly those with rocky,

¹⁶ Home Town Cable Comments at 2.

¹⁷ USTA Comments at 2.

mountainous terrain, frequent wind or snow storms, or high backhaul costs, can be extraordinary, as can the costs of serving sparsely populated areas with less challenging terrain; yet, the law evidences an intent to permit all American citizens to receive the benefits of a competitive communications market that includes a wide choice of both wireless and wireline technologies. USTA's characterization of Advantage receiving an appropriate amount to reimburse its actual costs of providing service as "bizarre" is inconsistent with the fact that reimbursement based upon reported costs is the exact system that currently reimburses USTA's members. Here, it is USTA's assumptions that are wrong, and not the outcome of Advantage's cost-study.

IV. CONCLUSION

For the reasons set forth above, the USA Coalition submits that it was unnecessary for the Commission to solicit public comment on the Request. Furthermore, the USA Coalition respectfully urges the Commission to review Advantage's cost filing as quickly as possible and, unless the Commission finds any specific material deficiencies that Advantage is unable to address, grant the Request as soon as possible.

Respectfully submitted,



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