

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
)	
Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC)	

**COMMENTS OF
RURAL CELLULAR ASSOCIATION**

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Rural Cellular Association (“RCA”), by counsel, hereby submits these comments, pursuant to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ RCA strongly urges the Federal Communications Commission (“FCC” or “Commission”) not to amend the competitive eligible telecommunications carriers (“CETC”) interim cap rule to allow the Commission to reclaim high-cost support from CETCs who relinquish their ETC status, as proposed.² Such action will further reduce the amount of high-cost support flowing to rural areas and reduce the corresponding benefit that such support brings to rural citizens. Moreover, the record does not establish a policy emergency, as the Commission purported, for implementing the CETC interim cap rule in the first place. As described in more

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (“*Corr Wireless NPRM*” or “*NPRM*”), *recon. pending*.

² *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834, ¶ 1 (2008) (“*Interim Cap Order*”), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

detail below, in certain states, the proposed reclamation rule will likely result in the complete elimination of high-cost support to wireless CETCs.

Reclaiming “legacy” support from CETCs runs counter to the Commission’s objectives outlined in the National Broadband Plan³ to accelerate investment in broadband infrastructure and make affordable broadband services more accessible throughout the United States, particularly for people living in rural, insular, and high-cost areas. In light of the Commission’s recent conclusion that broadband deployment has not been reasonable and timely for all Americans,⁴ the Commission is obligated by statute to take “immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁵ Yet, the Commission’s proposed reclamation policy would actually reduce high-cost support available to carriers that, with efficiently targeted support, are actively building broadband infrastructure. As such, the Commission’s proposal would have the immediate effect of decelerating broadband deployment in rural and insular areas. Accordingly, the proposed rule should not be adopted.

³ See Federal Communications Commission, *Connecting America: The National Broadband Plan* at 215 (rel., Mar. 16, 2010) (“NBP” or “National Broadband Plan”).

⁴ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Report, FCC 10-129, ¶ 2 (rel., July 20, 2010) (“2010 Sixth Broadband Deployment Report”).

⁵ See *id.* at ¶ 3 (citing 47 U.S.C. § 1302(b)).

I. THE “INTERIM” CETC CAP RULE SHOULD NOT BE MODIFIED; RATHER, IT SHOULD BE ELIMINATED AS PART OF THE BROADER USF REFORM PROCEEDING

A. Shrinking the CETC Cap Further by Reclaiming Support Undermines Rural Broadband Investment and Could Drastically Reduce USF Support in Some States.

The Commission asserts that reclaiming support from relinquishing CETCs “will not reduce support flowing to any individual competitive ETC.”⁶ This is not correct. Reclaiming support from relinquishing CETCs will drastically reduce the total amount of high-cost support available to certain states and individual CETCs within those states. As a result, CETCs choosing to obtain or retain their ETC designation in these affected states will be compromised in their ability to expand coverage and deliver advanced services to the residents of the states in which they provide service.

While it is impossible to quantify the future impact of the Commission’s proposed reclamation rule, the potential impact can be measured by considering what would have happened had the Commission adopted the reclamation rule over two years ago. The impact is particularly severe in states where a substantial amount of CETC support is currently received by large carriers such as Verizon Wireless.

For example, in Oregon, RCC Minnesota, Inc., (“RCC”) acquired by Cellco Partnership dba Verizon Wireless, relinquished ETC status effective July 2009.⁷ During its final month of eligibility (June 2009), RCC received \$389,780 in Universal Service Fund (“USF”) High Cost

⁶ *Corr Wireless NPRM* at ¶ 24.

⁷ *See Oregon Public Utility Commission, Order No. 09-153 (2009).*

support representing more than \$4.6 million in annualized support.⁸ CETCs in Oregon received a total of \$24.2 million in High Cost support in 2008, with RCC's annualized support representing 19% of that total.

In Maine, Verizon Wireless relinquished RCC's ETC status effective April 2009 receiving \$275,360 in support during its final month of eligibility, representing annualized support of over \$3.3 million for that state. That equates to 29% of the \$11.2 million in High Cost support received by CETCs in Maine in 2008.⁹

In Vermont, Verizon Wireless terminated RCC Atlantic, Inc.'s ("RCC") ETC status effective December 2008.¹⁰ RCC Atlantic, Inc. received \$505,109 in support in its final month of eligibility, representing annualized support of over \$6 million for that state – 94% of the \$6.4 million in High Cost support received by CETCs in Vermont in 2008.

In New Hampshire, RCC relinquished ETC status in 2008, receiving approximately \$17,521 in support in its final month of eligibility, representing annualized support of over \$210,000. RCC was the only CETC receiving support in New Hampshire in 2008 and, therefore, this represents 100% of the CETC support in the State of New Hampshire. These examples

⁸ High Cost disbursement data derived from the disbursement tool maintained at the High Cost Program website by the Universal Service Administrative Company. See <http://www.usac.org/hc/tools/disbursements/default.aspx>.

⁹ See State of Maine Public Utilities Commission, 2009 Annual Report at 15 (noting U.S. Cellular remains the only remaining wireless ETC after acquisition of the RCC entity erroneously identified as "Unitel" rather than Unice).

¹⁰ See State of Vermont Public Service Board, *Petition of RCC Atlantic, Inc., for extension of designation as an Eligible Telecommunications Carrier throughout the State of Vermont*, Docket No. 7476 (2009) (relinquishment was due to acquisition by Verizon Wireless and was effective December 22, 2008).

demonstrate that the impact of the proposed reclamation rule could be incredibly severe in individual states.¹¹

As demonstrated above, the FCC's belief that its proposed rule would have minimal impact on individual ETCs is incorrect. When considered in the context of the effect the reclaimed support will have on a statewide basis, the negative impact is dramatic. RCA carrier members who are CETCs effectively utilize available USF support, as intended, to construct high-quality networks that provide vastly improved service that is reasonably comparable to services available in urban areas.¹² Yet, despite the best efforts of RCA members to build out in rural areas as quickly as possible, many consumers in states where RCA members operate, such as West Virginia and Maine, still experience dead zones or poor call quality while moving around the state. In West Virginia, 29% of the population lacks access to a wireless voice or data 3G network.¹³ This is a clear indication that work still needs to be done to make service ubiquitous. Unfortunately, withdrawal of CETC support on the scale noted above would slow

¹¹ Some other examples include Verizon Wireless in Arkansas, where it is expected to draw \$4.6 million a month out of the pool of \$4.7 million; Verizon Wireless in Kansas is expected to draw \$4.7 million a month out of the pool of \$7.3 million a month; and Verizon Wireless in Nebraska is expected to draw \$3.8 million a month out of the pool of \$4.9 million a month.

¹² See, e.g., *Ex Parte* Letter from David A. LaFuria, Counsel for United States Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337 (Aug. 30, 2010) (depicting the expansion of U.S. Cellular's network coverage in West Virginia); *Ex Parte* Letter from David A. LaFuria, Counsel for N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337 (Oct. 1, 2010); Attachment to *Ex Parte* Letter from Warren G. Lavey, Counsel for United States Cellular to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337, et al. at 4 (Oct. 23, 2009) (identifying towers deployed in 2009 in unserved areas in Iowa, Missouri, Oregon and Nebraska).

¹³ http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=fc757765-b147-4f14-9e01-754721a5cffd&Statement_id=d40d9349-d0fc-42fc-92ed-4efb7223bb25&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=6&YearDisplay=2010

the deployment of competitive wireless services in these areas – the areas most in need of this critical support.

B. Reducing the CETC Cap Further by Reclaiming Support Will Undermine Competition, Especially in Emerging Markets.

The Commission’s proposed reclamation policy will have an even greater impact in areas where reclamation could result in 100% of CETC support being lost. For example, in the U.S. Virgin Islands (“Virgin Islands”), AT&T is seeking to relinquish ETC status for Centennial USVI Operations Corporation (“Centennial”).¹⁴ Until the Virgin Islands Public Services Commission (“VI PSC”) recently designated Choice Communications, LLC (“Choice”) – a new entrant to the Virgin Islands telephone market – as an ETC, Centennial was the only CETC operating in the Virgin Islands. Under the FCC’s current USF rules, Choice would be allowed to gradually claim the support relinquished by another CETC in that territory. However, under the Commission’s proposed reclamation policy, Centennial’s high-cost support would be permanently lost and Choice would be unable to increase its support – even as it invests and gains customers. This will effectively foreclose the possibility of any new competitors emerging to serve in the Virgin Islands, or similarly situated rural jurisdictions such as New Hampshire.¹⁵

The Commission’s proposed reclamation policy will decrease competition and discourage market entry in rural areas, contravening long-standing Commission policies.¹⁶ The

¹⁴ In November 2009, AT&T acquired Centennial Communications.

¹⁵ See Section I.B, *supra*.

¹⁶ Congress has established twin objectives in the Act: Sufficient support mechanisms must be maintained to preserve and advance universal service, and competition must be promoted in the telecommunications marketplace. “Section[s] 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.” Rural Task Force, *White Paper 5: Competition and Universal Service* (2000) at 8 (accessed at <http://www.wutc.wa.gov/rtf>). The Commission has acknowledged these

1996 Act directed the Commission to promote competition for the benefit of all citizens, not just those living in urban areas. As the Commission recognized, universal service was no exception.¹⁷ The Commission diligently worked to ensure that universal service mechanisms promoted competition and opened up rural markets that were dominated by subsidized landline carriers.¹⁸

The proposed reclamation rule will reduce competition in rural America with crippling effects in select areas. This result should be avoided. Instead, the Commission should implement competitively-neutral, comprehensive USF reform measures consistent with the obligations imposed upon it by Congress.

C. The Purported Urgency that Justified Imposition of an “Interim” Rule is Absent.

When adopting the CETC Interim Cap, the Commission justified its imposition, in part, by invoking the prospect of “expeditious” action on overall high-cost universal service reform.¹⁹ Two and a half years later, the urgency the Commission invoked to justify an “interim” fix is wholly absent from the proposed rationale for the Commission’s current proposal to further reduce the CETC Interim Cap. Instead, the Commission cites a desire to shift “excess” universal

twin goals, and has followed the principle that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.” *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (¶ 47) (1997) (“*First Report and Order*”) (subsequent history omitted).

¹⁷ See *First Report and Order*, 12 FCC Rcd at 8801-02 (“[A]n explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote ‘a pro-competitive, de-regulatory national policy framework.’” (footnote omitted))

¹⁸ See, e.g., *id.* at 8787 (“Over time, it will be necessary to adjust the universal service support system to respond to competitive pressures and state decisions so that the support mechanisms are sustainable, efficient, explicit, **and promote competitive entry.**”) (*emphasis added*).

¹⁹ *Interim Cap Order* at ¶ 1.

service funds reclaimed from CETCs to support expansion of the E-Rate program and to ultimately fund reformed universal service programs that have not yet been created.²⁰ While these goals are laudable, they are clearly but two small elements of the Commission’s larger agenda for USF reform. They have no place in a proceeding to modify an interim rule, initially implemented due to a purported emergency.

Moreover, the Commission suggests no basis for characterizing the reclaimed support as “excess funds” nor for concluding the reclaimed support can “be used more effectively to advance universal service broadband programs.”²¹ In fact, as discussed below, evidence shows the support at issue is effectively and efficiently invested by RCA members to provide increased services in unserved and underserved areas.

It appears that the Commission’s proposal is being made for the sole purpose of buying the Commission time to address that larger agenda. This has been done once already – when the Commission adopted the CETC Interim Cap – at the expense of rural America and rural broadband investment by CETCs. Further delay in acting to eliminate the “interim” rule validates Commissioner Copps’ warning that the efforts to impose the CETC Interim Cap distracts and delays the Commission and stakeholders from the paramount goal of comprehensive reform USF.²² Modifying the “interim” rule only continues to distract and delay.

²⁰ See *Corr Wireless NPRM* at ¶ 24; see also *Corr Wireless NPRM, Statement of Chairman Julius Genachowski*. Whether the FCC would be exceeding its authority in establishing a “reserve” fund for these purposes is the subject of a pending Petition for Reconsideration of the *Corr Wireless Order*. See Southern Communications Services, Inc. d/b/a SouthernLINC Wireless and the Universal Service for America Coalition, Petition for Partial Reconsideration, filed Sept. 29, 2010.

²¹ See *Corr Wireless NPRM* at ¶ 24.

²² See *Interim Cap Order, Dissenting Statement of Commissioner Michael J. Copps* at 1:

In addition, the Commission’s proposal inhibits capital investment in rural areas because it forces current and prospective CETCs to modify their business plans knowing that this proposal may soon become reality.

Rather than focusing on incremental change, the FCC should carefully consider the complicated issues relating to comprehensive reforming USF. Indeed, in upholding the CETC Interim Cap, the D.C. Circuit accorded substantial deference to the Commission on account of the rule’s “interim” nature and the prospect of “expeditious” Commission action in the larger USF reform proceeding.²³

The Commission puts its credibility at risk – after pledging to the reviewing court that it would act expeditiously to replace the interim solution with a comprehensive set of reforms²⁴ – by attempting to make material alterations to the CETC Interim Cap. There was no emergency to justify the implementation of the CETC Interim Cap in the first instance, and the Commission does not even suggest in the *Corr Wireless NPRM* that there is an emergency now to justify its modification. Instead, the Commission is attempting an *ad hoc* rulemaking. The Commission

[T]oday’s piecemeal approach has the unfortunate consequence of pushing interested parties apart rather than bringing them all to the table to develop workable solutions. . . . Since [the Interim CETC Cap was first proposed,] Commission and stakeholder attention has been largely focused on the merits and demerits of such a cap. . . . Had all interested parties spent the same time and energy over the last year focused on comprehensive reform, we might “be there” already. . . .

The majority’s response today, while they will attempt to bill it as an “interim, emergency cap”, has no sunset period and commits only to completing comprehensive reform “as soon as feasible.” Remember that old song “The Twelfth of Never”?

²³ See *Rural Cellular Ass’n v. FCC*, 588 F.3d at 1105-06.

²⁴ See *id.* at 1106 (“The Commission stated specifically that ‘[t]he interim cap will remain in place only until the Commission adopts comprehensive, high-cost universal service reform,’ on which it promised to move forward ‘in an expeditious manner.’ We trust the Commission’s assurances today. However, should the Commission fail to fulfill its obligations, additional and more searching judicial review may be appropriate.”) (citations omitted).

should reject this approach and turn back to the difficult but essential task at hand:
comprehensive USF reform.

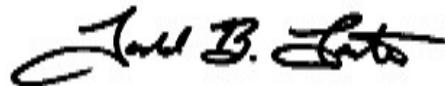
II. CONCLUSION

While the Commission understandably is seeking incremental ways to move forward in its plan to modernize the universal service programs, modifying an onerous interim rule that was justified based on an alleged emergency that has never existed, is not the way forward. Taking up this issue distracts the Commission and stakeholders from grappling with legitimate USF reform initiatives.

Not only is there no adequate justification for the proposed reclamation rule, it represents at best a half-measure that will shift further support away from rural America – where support is needed most.

Respectfully submitted,

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