

**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)	CC Docket No. 96-45
Universal Service)	

REPLY COMMENTS OF AT&T INC.

Last month, the Commission released an order announcing its methodology for implementing the 2008 Verizon Wireless and Sprint Nextel merger commitments, which require both carriers to surrender their competitive eligible telecommunications carrier (CETC) support in equal increments over a five-year period.¹ In this decision, the Commission directed the Universal Service Administrative Company (USAC) to implement these carriers' commitments effective at the end of 2008 or at the beginning of 2009² and to "reserve" these "reclaimed funds" as a "down payment on proposed broadband universal service reforms."³ In order to create this reserve, the Commission waived section 54.709(b) of its rules for an 18-month period.⁴ As the Commission explained in its *Order*, section 54.709(b) of the Commission's rules requires USAC to "account for any difference between its projected revenue requirements and its

¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) (*Verizon Wireless and Sprint Phase-Down Implementation Order and NPRM*). In some instances, we refer separately to the order as the "*Order*" and the NPRM as the "*NPRM*."

² *Id.* at ¶ 16 & n.38.

³ *Id.* at ¶ 20.

⁴ *Id.* at ¶ 22.

actual revenue requirements as a prior period adjustment in the next quarterly demand filing.”⁵ If, however, either Verizon Wireless or Sprint relinquishes its ETC designation(s) prior to the end of the five-year period, the amount of support it had been receiving at the time of relinquishment would be made available to other CETCs operating in that particular state or states unless the Commission modifies its *Interim CETC Cap Order*,⁶ as it proposes to do in the accompanying *NPRM*.⁷ In this *NPRM*, the Commission also proposes to permanently modify section 54.709(b) of its rules so that any CETC’s relinquished support would be held in reserve by USAC for future use.⁸

As an initial matter, we support the Commission’s efforts to transition funding awarded through its legacy high-cost support mechanisms, which support plain old telephone service (POTS), to a broadband-focused high-cost support mechanism or mechanisms. For several years, we have advocated that the Commission take this action.⁹ Thus, despite being one of the largest recipients of CETC high-cost support, we nonetheless agree with the Commission that the

⁵ *Id.* In other words, if USAC projected that it would require more revenue for universal service support mechanisms than it ultimately needed in a particular quarter, it would apply the excess revenue that it had collected in that quarter toward its next quarterly demand filing, which would have the effect of lowering the next quarter’s contribution factor.

⁶ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd 8834 (2008) (*Interim CETC Cap Order*).

⁷ In its *Interim CETC Cap Order*, the Commission imposed a state-specific cap on the amount of high-cost support available to all CETCs operating in that state based on March 2008 data. This capped amount does not increase if the number of CETCs in that state increases or the number of CETC-reported lines increases. Under the cap, USAC continues to calculate CETC support based on the Commission’s identical support rule. If the total CETC support in that state would exceed the capped amount, USAC proportionally reduces the support for every CETC in that state. The *Interim CETC Cap Order* is silent on what should happen to the state-specific cap if a CETC relinquishes its designation in that state.

⁸ *Verizon Wireless and Sprint Phase-Down Implementation Order and NPRM* at ¶ 23.

⁹ See, e.g., AT&T Comments, WC Docket No. 05-337, CC Docket No. 96-45 (filed April 17, 2008). See also Ohio Public Utilities Commission Comments at 5 (supporting a five-year transition).

public interest is better served by *not* making available a relinquishing CETC’s high-cost support amounts, calculated based on the widely discredited identical support rule, to other CETCs operating in those particular states. As the Commission noted, such payments would merely support “potentially duplicative legacy voice services.”¹⁰ Instead, we agree as a policy matter that when a CETC relinquishes its designation in a given state, the Commission should remove from that state’s CETC cap “the amount of support that the [CETC] was eligible to receive in its final month of eligibility, annualized”¹¹ and transition that support to a new broadband high-cost fund.

Most commenters opposed the Commission’s proposal to amend section 54.709(b) on a permanent basis so that the Commission could create a reserve for broadband universal service initiatives.¹² We think this proposal is unnecessary. Instead, we support the Commission’s decision to place an 18-month expiration date on its interim waiver of section 54.709(b). If the Commission has not issued rules for its proposed Mobility Fund or Connect America Fund (CAF) at the end of this 18-month period, then any “reclaimed” CETC support should be applied to lower the subsequent quarter’s contribution factor, as required by the existing rule.

Much of the commenters’ opposition to the Commission’s reserve proposal seems centered around the Commission’s vagueness as to how it would use the reclaimed support

¹⁰ *Verizon Wireless and Sprint Phase-Down Implementation Order and NPRM* at ¶ 1.

¹¹ *Id.* at ¶ 23.

¹² *See, e.g.*, CenturyLink Comments at 1-2; MTPCS d/b/a Cellular One (Cellular One) Comments at 3-4; Rural Independent Competitive Alliance (RICA) Comments at 3; Sprint Comments at 3; U.S. Virgin Islands Public Service Commission Comments at 5.

payments.¹³ Instead of providing necessary specificity, the Commission noted that the reclaimed support could be used to “index the E-rate funding cap,” “support a Mobility Fund,” and “improve utilization of the Rural Health Care program,” as recommended in the National Broadband Plan.¹⁴ In its order adopting final rules, the Commission should remedy this problem by committing to use reclaimed CETC support first to fund a sufficiently sized Mobility Fund. This Mobility Fund should provide project-based, competitively awarded support to mobile wireless broadband providers and should prioritize those areas that lack any mobile wireless service. In the event that any reclaimed support remains available after the Commission has established a robustly-sized Mobility Fund, the Commission should clarify that those dollars will be earmarked to support broadband infrastructure objectives in high-cost areas. In other words, the Commission should commit to award this reclaimed funding via new mechanisms designed to satisfy high-cost related universal service principles just like the mechanisms for which the dollars were collected and through which the dollars would have been disbursed but for the CETC’s relinquishment of its ETC designation.¹⁵ Such Commission assurances seem likely to address several parties’ concern that removing relinquished CETC support from states will effectively guarantee that the areas in those states that are currently unserved by mobile wireless service will remain unserved in the future.¹⁶ Similarly, express Commission recognition that

¹³ See, e.g., CenturyLink Comments at 1-2; Rural Cellular Association (RCA) Comments at 7-8; Rural Telecommunications Group (RTG) Comments at 3-5; USTelecom Comments at 4; Verizon Comments at 5-6.

¹⁴ *Verizon Wireless and Sprint Phase-Down Implementation Order and NPRM* at ¶ 20.

¹⁵ See 47 U.S.C. §254(b)(1), (2), (3), (5).

¹⁶ See, e.g., New Mexico Public Regulation Commission Comments at 5; U.S. Virgin Islands Public Service Commission Comments at 2, 6; RCA Comments at 5. Moreover, to give parties some predictability about timing, the Commission should make its proposed rule change to the *CETC Interim Cap Order* effective on some date certain, such as July 1, 2011.

there are some areas that are uneconomic for any mobile wireless provider to serve absent continued high-cost universal service support (albeit support that will be provided under a new broadband-focused mechanism) may assuage some commenters' concerns about a rollback of wireless coverage in rural areas and stranded investment if the Commission adopts its proposed rules.¹⁷

A number of parties questioned the Commission's authority to collect contributions based on a calculation that CETCs were continuing to receive high-cost support as if they had never relinquished their ETC designations and/or committed to a 20 percent/year phase down in their high-cost support and to reserve that reclaimed money for some future use.¹⁸ While the Commission will have to address these concerns in its final order, we note that, if the Commission adopts its proposal, this will not be the first time that it has directed USAC to collect more in contributions than what the Commission knows will be disbursed in a given quarter. When the Commission created its E-rate program in 1997, it directed USAC to collect hundreds of millions of dollars before a single dime was ever disbursed to a school or a library.¹⁹ In one year alone, USAC had collected almost a billion dollars in "unused funds."²⁰ It is true that the Commission had established E-rate rules prior to directing USAC to collect hundreds of

¹⁷ See, e.g., Cellular One Comments at 6, 15.

¹⁸ RCA Comments at n.20; RICA Comments at 3, 5; RTG Comments at 3-5; SouthernLINC Comments; Verizon Comments at 5-6.

¹⁹ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 529-32 (1997).

²⁰ Schools and Libraries Fund Program Size Projections for First Quarter 1999 and Expenses for Second Quarter 1998, CC Docket Nos. 96-45, 97-21, at 4 (filed Nov. 2, 1998). It is unlikely that the size of the Commission's reserve will come close to approaching the almost one billion dollar E-rate reserve that USAC had built up by the end of 1998. Other than possible ETC relinquishments by Verizon Wireless and Sprint, there is no reason to believe that other CETCs will relinquish their designations prior to the enactment of a Mobility Fund or the CAF, at which time, the Commission will likely impose an orderly transition of support disbursed through legacy high-cost mechanisms to support disbursed through Mobility Fund and the CAF.

millions of dollars for future E-rate use, however, those rules were the subject of several legal challenges and schools and libraries were in no position to request support at the beginning of 1998, when USAC began collecting support for this program.²¹ The Commission has addressed these timing issues before and it could successfully do so here if it gives its reserve a short shelf life (i.e., no longer than 18 months) as a necessary incentive to issue rules that create a Mobility Fund and/or CAF and it details how it will earmark and prioritize the reclaimed monies, as we recommend above.

If the Commission ultimately decides not to establish a reserve for reclaimed CETC support, AT&T recommends that the Commission follow section 54.709(b) of its rules and use that reclaimed support to lower subsequent contribution factors. It makes little sense to cycle that money back through high-cost support mechanisms that the current Commission has recognized must be overhauled and repurposed to support broadband.²² And, contrary to the assertions of some commenters, it would be a particularly bad decision to amend the interim CETC cap, which was, of course, upheld by the D.C. Circuit,²³ to “restore [CETCs] to the support levels they were at on the effective date of the Cap Order.”²⁴ As the Commission

²¹ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Third Order on Reconsideration, 12 FCC Rcd 22801, ¶ 4 & n.14 (1997) (explaining that it was lowering the amount that it directed USAC to collect for the E-rate program because, as of December 1997, “schools and libraries are conducting technology assessments and preparing technology plans . . . [and] are educating themselves on what services are eligible for universal service support, and the procedures for applying for support. In addition, substantial capital projects such as internal connections typically take place in the summer months, when students are not present in the instructional buildings.”).

²² *Joint Statement on Broadband*, GN Docket No. 10-66, 24 FCC Rcd 3420 (2010) (“The nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”).

²³ *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

²⁴ RICA Comments at 6-7. See also RTG Comments at 6; Cellular One Comments at 12-13 (urging the Commission to calculate the state-specific CETC cap based on August 2008 data, not March 2008 data).

explained in its *Interim CETC Cap Order*, a “primary consequence of the existing competitive ETC support rules has been to promote the sale of multiple supported wireless handsets in given households”²⁵ and, because CETCs receive high-cost support based on the identical support rule, CETCs have “little incentive to invest in, or expand, [their] own facilities in areas with low population densities Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network.”²⁶ This is why there are areas in which half a dozen or more CETCs provide service. The Commission was right to put a halt to this and, instead, propose to redirect CETC support awarded through legacy high-cost mechanisms to a Mobility Fund and a CAF, which will target support to areas unserved by mobile wireless service.

²⁵ *Interim CETC Cap Order* at ¶ 9.

²⁶ *Id.* at ¶ 21.

For the reasons provided above, we do not believe that the Commission should permanently amend section 54.709(b) of its rules. Its 18-month interim waiver of this rule affords the Commission adequate time to issue rules creating the Mobility Fund and the CAF. Additionally, we support the Commission's proposal to modify its *CETC Interim Cap Order* so that any that support associated with a CETC that relinquishes its designation will be removed from that state's cap and earmarked for the Mobility Fund and, possibly, the CAF.

Respectfully Submitted,

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