

Presentation on August 2010 CETC Cap Adjustments

December 2, 2010

WC Docket No. 05-337

CC Docket No. 96-45

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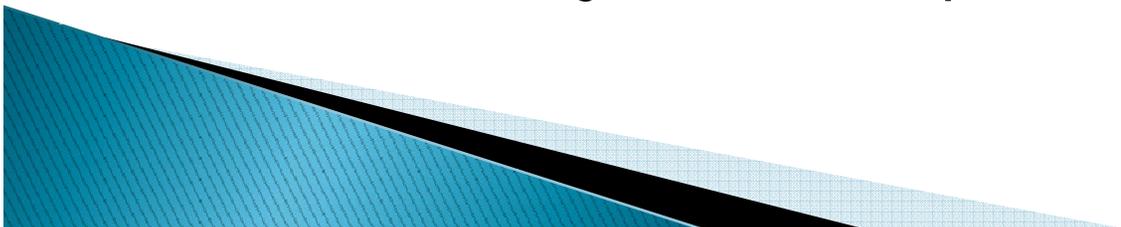
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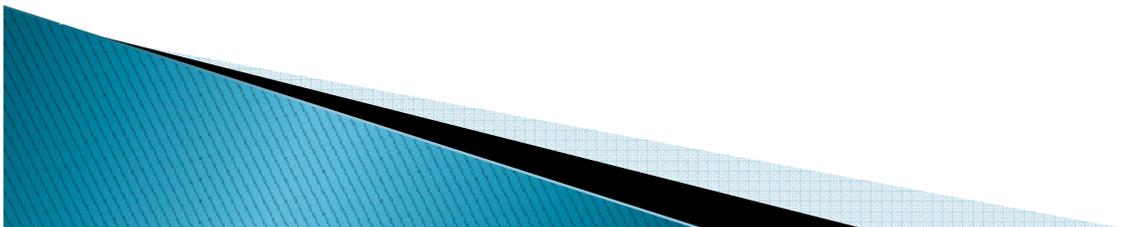
Executive Summary

- ▶ On August 31, 2010, USAC announced its plans to adjust the CETC Cap downward by a total of \$4.6 million per month, and to claw back all “overpaid” support going back more than two years.
- ▶ The FCC should direct USAC to suspend its planned implementation of the adjustments, the bulk of which are based on ILEC data filed after the deadline for revisions affecting the cap, and solicit public comments.
- ▶ USAC must provide underlying calculations so carriers can verify the adjustments and challenge if necessary.
- ▶ USAC must give each carrier at least 3 months’ advance notice and allow an extended recovery period for any retroactive adjustments it plans to make.



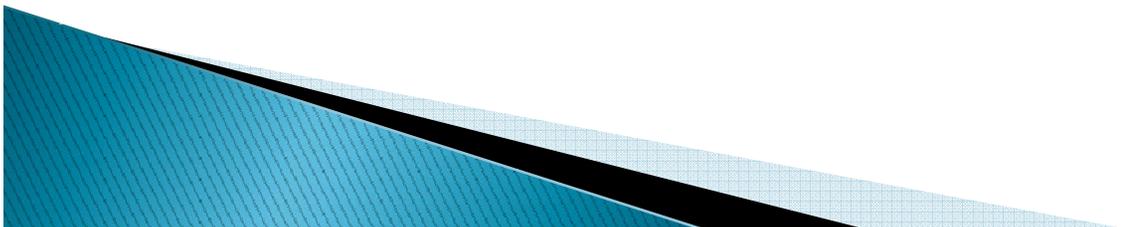
Background

- ▶ On May 1, 2008, the FCC adopted the Interim CETC Cap order, capping CETC support statewide at the amount all CETCs were eligible to receive in March 2008, annualized.
- ▶ On December 10, 2008, the FCC released a Public Notice (“December 10 PN”) with a company-specific breakdown of the cap within each state. The FCC gave CETCs until December 31, 2008, to file any revisions affecting the cap.
- ▶ The FCC later ruled that it would consider “on a case-by-case basis whether adjustments should be made to the interim cap in the event of any significant changes to the March 2008 data caused by waivers or revisions accepted in compliance with the Commission’s rules.” *Centennial Communications Corp.*, DA 09–2150 (rel. Oct. 2, 2009) at para. 10.



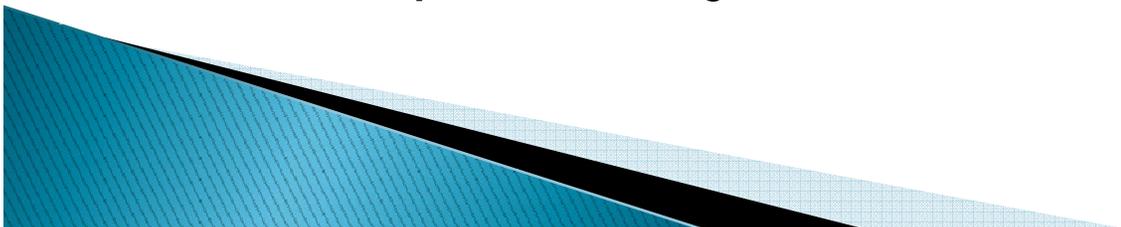
Background (cont'd)

- ▶ On August 31, 2010, USAC published a state-by-state schedule of adjustments to the Interim CETC Cap. The schedule did not appear in any published FCC item.
- ▶ Although CETCs were given a deadline of December 31, 2008, to submit revised data affecting cap levels, the new schedule contains major adjustments that are based on ILEC data filed well after the December 2008 deadline for CETC filings.
- ▶ The adjustments have a combined effect of reducing the CETC Cap by \$4.6 million per month, or \$55.7 million per year. No detailed calculations were provided by USAC.
- ▶ The FCC directed USAC (in a letter sent by the Wireline Competition Bureau on August 24, 2010) to implement the adjustments retroactively “as soon as it is administratively feasible to do so.”



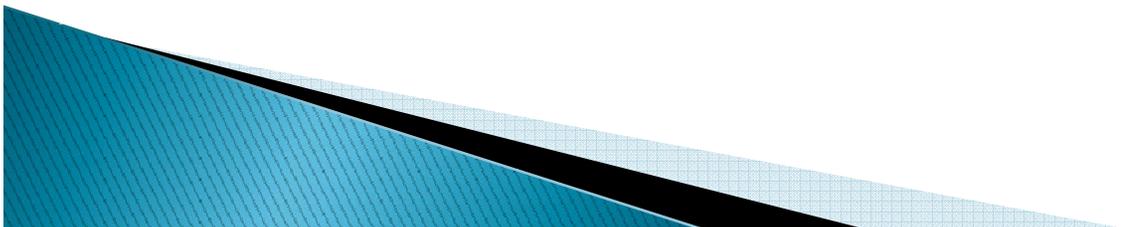
More Transparency Is Needed

- ▶ The only information provided to date is the one–page spreadsheet attached to the WCB Letter, with the “Aggregate Dollar Estimate” for each of several categories of adjustments.
- ▶ No adjustments should be made until affected carriers are given a chance to review the nature and amount of each adjustment and submit corrections or questions to USAC as needed.
- ▶ Material errors in USAC’s planned adjustments have been identified already.
- ▶ A detailed breakdown will permit carriers to know what the overall adjustments consist of, and to verify the accuracy of the adjustments.



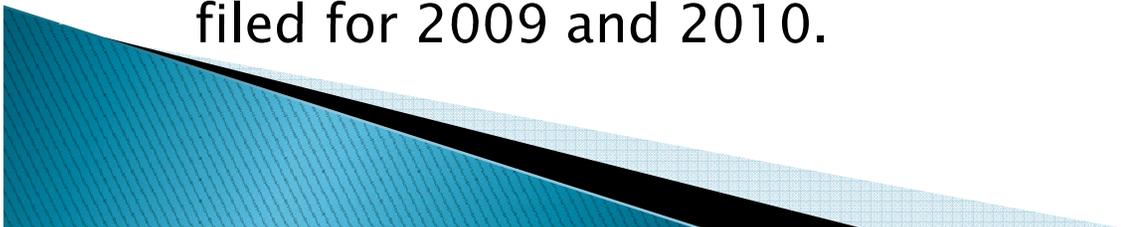
Most of the Adjustments Are Based on Untimely Filed Revisions

- ▶ The majority of the negative adjustments arose from “actual data” filings submitted by ILECs on December 31, 2009.
- ▶ This was one year after the CETC cap revision deadline announced in the December 10 PN, which was set “[t]o provide certainty regarding the amount of high-cost support available to competitive ETCs in each state under the cap[.]”
- ▶ Consistent with the FCC’s ruling in *Centennial*, any adjustments based on data filed after December 31, 2008, must be addressed on a case-by-case basis, not carried out automatically.
- ▶ Because numerous CETCs are affected, this process must be made public with an opportunity to comment.



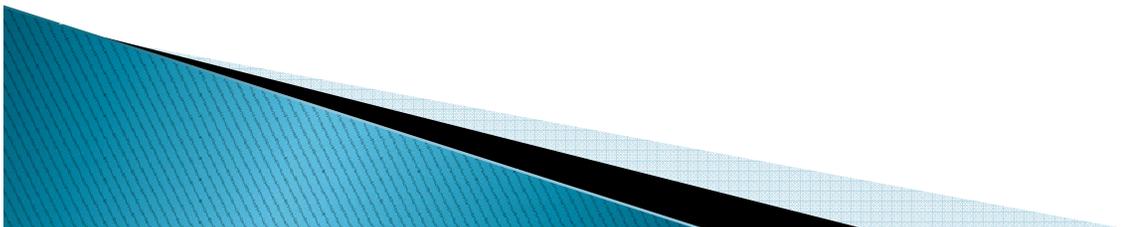
It Is Not Yet Administratively Feasible to Make Most of the Adjustments

- ▶ Most of the adjustments arose from LSS and ICLS data filings in which ILECs corrected cost over-projections for 2008.
- ▶ These corrections mostly lowered the per-line support available to CETCs and thus reduced the cap baseline.
- ▶ However, ILECs won't submit LSS or ICLS data filings for 2009 and 2010 until the last day of 2010 and 2011, respectively. Those will likely correct over-projections as well.
- ▶ Thus, for 2009 and 2010, USAC is planning to apply a cap that has been adjusted downward to uncapped support that has not been adjusted downward.
- ▶ To avoid these unfair cap reductions, any LSS or ICLS adjustments should be delayed until the ILEC data filings are filed for 2009 and 2010.



USAC's Planned "True Up" Is Punitive and Devoid of Due Process

- ▶ USAC has informed carriers that it will conduct a one-time "true-up" to implement all of the adjustments retroactively to August 2008.
- ▶ Negative adjustments will be offset against current disbursements; if a carrier's monthly support is less than the "true-up" amount, it will receive zero support until the recovery is complete.
- ▶ This draconian application of the "true-up" would impair the ability of many carriers to fulfill ETC build-out commitments.



The Commission Must Put the Brakes on the Planned Cap Adjustments

- ▶ It is critical that USAC publish detailed data about the nature and amount of each adjustment so that individual carriers have an opportunity to verify them.
- ▶ For adjustments based on data filed after 2008, the Commission should release an item setting forth the methodology and calculations, and open up the process to public comment in a “refresh the record” cycle.
- ▶ The Commission should require USAC to perform any retroactive recoveries over an extended time period, and to inform each carrier regarding the amount of recovery at least three months in advance.

