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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF WWC LICENSE LLC ("WESTERN WIRELESS CORPORATION") FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND REDEFINITION OF RURAL TELEPHONE COMPANY SERVICE AREA	DOCKET NO. T-04248A-04-0239 **ALECA'S SUPPLEMENTAL COMMENTS TO SECOND SUPPLEMENTAL STAFF REPORT**

Pursuant to the March 7 and 16, 2007 Procedural Orders issued in this docket, on April 4, 2007, the Arizona Local Exchange Carriers Association ("ALECA"), through counsel undersigned, filed with the Arizona Corporation Commission ("Commission") its responsive comments to the January 26, 2007 Second Supplemental Staff Report and to WWC License LLC's ("WWC-Alltel") March 2, 2007 filing. On April 23, 2007, the Administrative Law Judge issued a Procedural Order requiring the Commission's Utilities Division ("Staff") to file by May 15, 2007 a Reply to WWWC-Alltel's March 2, 2007 Response to the Second Supplemental Staff Report, ALECA's April 4, 2007 Comments to the Second Supplemental Staff Report and WWC-Alltel's Reply Comments. The Procedural Order also ordered that a Procedural Conference be held on May 18, 2007. Pursuant to a Procedural Order dated May 4, 2007, the Procedural Conference has been continued until May 21, 2007.

Subsequent to the filing of ALECA's comments on April 4, 2007, there has been a recent significant regulatory development relating to competitive Eligible Telecommunications Carriers ("ETCs") that ALECA would like to bring to the Commission's attention that may impact Staff's May 15, 2007 Reply and the Procedural

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Conference that will be held on May 21, 2007. ALECA, therefore, submits these supplemental comments.

Proposed FCC Interim Emergency Funding Cap on High Cost Universal Service Fund Distributions for Competitive Eligible Telecommunications Carriers

On April 26, 2007, the Federal-State Joint Board on Universal Service ("Joint Board") issued a Recommended Decision (that was released on May 1, 2007) that recommends that the FCC impose an interim emergency cap on the amount of high-cost support that competitive ETCs may receive from the High Cost Universal Service Fund ("HCUSF") for each state based on the average level of competitive ETC support distributed in that state in 2006.[1] A copy of the Recommended Decision is attached hereto. If the FCC adopts the Recommended Decision and the emergency cap goes into effect, the Joint Board will issue a final recommendation within six months of the Recommended Decision and the FCC would then act on such final recommendation within one year.[2]

In discussing the need for immediate action, the Recommended Decision states:

> High-cost support has been rapidly increasing in recent years and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable.
>
> .....
>
> We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. We therefore recommend that the Commission immediately impose an interim cap on high-cost support provided to competitive ETCs until such measures can be adopted that will ensure that the fund will be sustainable for future years. We believe that taking this action will prevent increases in high-cost support due to the designation of additional

[1] *In the Matter of High Cost Universal Support Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, FCC 07J-1 (rel. May 1, 2007).

[2] The Joint Board also issued a companion Public Notice seeking comment on various proposals to reform the high-cost universal service support mechanisms. *See, Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Compressive High-Cost Universal Service Reform*, WC Docket 05-337, CC Docket No. 96-45, Public Notice, FCC 07J-2 (rel. May 1, 2007).

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> competitive ETCs or line growth among existing competitive ETCs.[3]

In discussing the operation of the cap, the Recommended Decision explains the Joint Board's belief that:

> ...a competitive ETC cap applied at a state level effectively curbs growth but allows states some flexibility to direct competitive ETC support to the areas in the state that are most in need of such support. An interim, state-based cap on competitive ETC support will also avoid creating an incentive for each state to designate as many new ETCs as possible. A state-based cap will require newly designated competitive ETCs to share funding with other competitive ETCs within the state.[4]

ALECA believes that in light of the Joint Board's recognition of the numerous problems with the current HCUSF program and the need for significant reform, the Commission should take this recent federal action into consideration before granting applications for new competitive ETCs, including WWC-Alltel. This may also include an assessment of the financial and business impact of the cap on existing Arizona-designated competitive ETCs as all competitive ETCs would be required to share the amount of money that was paid in 2006 to Arizona competitive ETCs. Finally, in light of the proposed cap, this may be an appropriate time for the Commission to evaluate its policies regarding the granting of additional ETCs in Arizona. In his Statement attached to the Recommended Decision, Commissioner Larry S. Landis states:

> *The states have an obligation and a growing partner role with the FCC as joint stewards in seeing to it that Universal Service funds are appropriately deployed*, that legitimate needs are met, but that accountability and performance are audited and demanded.[5] (Emphasis added.)

ALECA, therefore, additionally recommends that: 1) Staff evaluate this new development to determine whether it should revise any of the recommendations set forth in the Second Supplemental Staff Report; and 2) the Commission take this significant

[3] Recommended Decision at pages 2-3.
[4] Recommended Decision at page 5 (footnote omitted).
[5] Recommended Decision at 20.

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new development into consideration in determining whether to grant WWC-Alltel's application for ETC designation in Arizona.

RESPECTFULLY submitted this 8th day of May, 2007.

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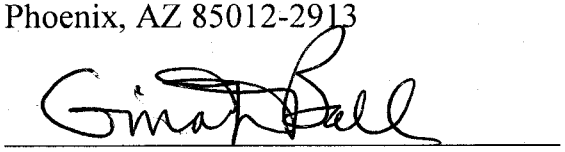

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Before the
Federal Communications Commission
Washington, D.C. 20554

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

RECOMMENDED DECISION

Adopted: April 26, 2007 **Released: May 1, 2007**

By the Federal-State Joint Board on Universal Service: Chairman Martin, Commissioner Tate, Chairman Edgar, Commissioner Landis, and Commissioner Burke issuing separate statements; Director Gregg concurring; Commissioner Baum concurring and issuing a statement; Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) recommends that the Commission take immediate action to rein in the explosive growth in high-cost universal service support disbursements. Specifically, we recommend that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.[1] We also recommend that the Joint Board and the Commission further explore comprehensive high-cost distribution reform. As part of that effort, today in a companion Public Notice we seek comment on various proposals to reform the high-cost universal service support mechanisms.[2] We also commit to making further recommendations regarding comprehensive high-cost universal service reform within six months of this Recommended Decision. Finally, we recommend that the Commission act on these further recommendations within one year from the date of our further recommended decision.

II. BACKGROUND

2. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms.[3] Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal

[1] The interim cap will apply to all of the existing high-cost support mechanisms: high-cost loop support (including safety net support and safety valve support), local switching support, high-cost model support, interstate common line support, and interstate access support.

[2] *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket 05-337, CC Docket No. 96-45, Public Notice, FCC 07J-2 (rel. May 1, 2007) (*May 2007 Public Notice*).

[3] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

service support in study areas in which a competitive ETC is providing service.[4] In response, the Joint Board made many recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (*i.e.*, the methodology used to calculate support) in study areas with multiple ETCs.[5] Instead, the Joint Board recommended that it and the Commission consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.[6]

3. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.[7] In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers.[8] The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.[9] Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board and the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs.[10]

III. RECOMMENDATION FOR AN IMMEDIATE INTERIM CAP ON SUPPORT FOR COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIERS

A. Need for Immediate Action

4. High-cost support has been rapidly increasing in recent years and, without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire

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[4] *Id.*

[5] *See* Federal-*State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004).

[6] *Id.* at 4294, para. 88.

[7] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11268-70 (2001) (*Rural Task Force Order*); *see also Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006) (extending Rural Task Force plan).

[8] *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004).

[9] *See id.* at 16094, paras. 36-37.

[10] *See Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, Public Notice, 21 FCC Rcd 9292 (2006). In February 2007, the Joint Board held an *en banc* hearing to discuss high cost universal service support in rural areas, including the use of reverse auctions and geographic information systems (GIS) to determine support for eligible telecommunications carriers. *See Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers,* WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (2007).

jeopardy of becoming unsustainable.[11] Today, the universal service fund provides approximately $4 billion per year in high-cost support.[12] Yet, in 2001 high-cost support totaled approximately $2.6 billion.[13] In recent years, this growth has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETC's own costs. While support to incumbent LECs has been flat or even declined since 2003,[14] by contrast, in the six years from 2001 through 2006, competitive ETC support grew from $15 million to almost $1 billion – an annual growth rate of over 100 percent. Based on current estimates, competitive ETC support in 2007 will reach at least $1.28 billion if the Commission takes no action to curtail this growth. Moreover, if the Commission were now to approve all competitive ETC petitions currently pending before the Commission, high-cost support for competitive ETCs could rise to as much as $1.56 billion in 2007.[15] High-cost support to competitive ETCs is estimated to grow to almost $2 billion in 2008 and $2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.[16]

5. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. We therefore recommend that the Commission immediately impose an interim cap on high-cost support provided to competitive ETCs until such measures can be adopted that will ensure that the fund will be sustainable for future years. We believe that taking this action will prevent increases in high-cost support due to the designation of additional competitive ETCs or line growth among existing competitive ETCs. While imposition of the interim cap will not address the current disproportionate

[11] The most recent contribution factor is 11.7%, which is the highest level since its inception. *See Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 5074 (2007).

[12] *See Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2 (2006) (*Universal Service Monitoring Report*).

[13] *Id.*

[14] In 2001, much of the growth in high-cost support was attributable to removing implicit subsidies from access charges and the inclusion of these amounts in explicit universal service mechanisms adopted in the *CALLS Order* and the *MAG Plan Order*. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, *Sixth Report and Order, Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (*CALLS Order*); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166*, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, and Report and Order, 16 FCC Rcd 19613 (2001) (*MAG Plan Order*), *recon. pending.*

[15] This estimate does not include the effect of states granting any of the more than 30 competitive ETC petitions that are pending in various state jurisdictions.

[16] Recently, several parties have submitted filings highlighting the need for the Commission and the Joint Board to take immediate action to bring the growth of the high-cost fund under control. *See e.g.*, Letter from Mary L. Henze, Senior Director Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC (dated March 22, 2007); Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Deborah Taylor Tate, Federal Chair and Ray Baum, State Chair, Federal-State Joint Board on Universal Service (dated Feb. 9, 2007); *see also* Appendix A (charts presented by Chairman Martin at the February 2007 En Banc Hearing of the Joint Board, demonstrating growth of competitive ETC support and its consequences).

distribution of competitive ETC support among the states,[17] the cap will stop growth in competitive ETC support while the Joint Board and the Commission consider fundamental reforms to address issues related to the distribution of support. At this time, we do not recommend additional caps on support provided to incumbent LECs, because the data show less growth pressure from incumbent LECs. Moreover, incumbent LEC high-cost loop support is already capped and incumbent interstate access support has a targeted limit.[18] Also, local switching support and interstate common line support provided to incumbent LECs have been stable in recent years.[19] Accordingly, we recommend that the Commission immediately impose an interim high-cost support cap, but one that is limited to high-cost support provided to competitive ETCs.

6. We believe that adopting an interim cap on high-cost support only for competitive ETCs would not violate the Commission's universal service principle of competitive neutrality for several reasons.[20] Fundamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs. For example, competitive ETCs, unlike incumbent LECs, have no equal access obligations. Competitive ETCs also are not subject to rate regulation. In addition, competitive ETCs may not have the same carrier of last resort obligations that incumbent LECs have. Furthermore, under the identical support rule, both incumbent rural LECs and competitive ETCs receive support based on the incumbent rural LECs' costs. Therefore, incumbent rural LECs' support is cost-based, while competitive ETCs' support is not. Due to this, as discussed below, we recommend that the Commission consider abandoning the identical support rule in any comprehensive and fundamental reform ultimately adopted.[21]

7. We decline to recommend that the Commission adopt General Communication Inc.'s (GCI) proposal that we exempt wireline competitive ETCs from the cap.[22] The growth of support to wireless competitive ETCs may indeed have been much greater than the growth of support to wireline competitive ETCs. However, we recommend a cap today largely because we conclude that the identical support rule has become dated and may no longer be the most appropriate approach to calculating support for competitive ETCs. Today wireline competitive ETCs (such as GCI) and wireless competitive ETCs both derive their universal service support from the identical support rule. Neither receives support based on its own costs. In addition, GCI would have us create an exemption based upon the ETC's chosen technology, rather than its legal status. We are not aware of anything in the Commission's current rules that provides a precedent for such a technology-based differentiation within universal service policy.

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[17] For example, four states and Puerto Rico receive forty percent of the total support distributed to competitive ETCs, and ten states receive almost sixty percent of competitive ETC support. As shown in the attached table, many states receive little or no competitive ETC support. *See* Appendix B.

[18] *See* 47 C.F.R. §§ 36.603 and 54.801(a).

[19] Local switching support for incumbent LECs ranged between $360 million and $384 million annually from 2003 through 2006. Interstate common line support (including its predecessor long-term support) for incumbent LECs, which ranged between $871 million and $953 million annually from 2003 through 2006, has remained stable at approximately $950 annually for the last two years. *See Universal Service Monitoring Report*, Table 3.2.

[20] In the *Universal Service First Report and Order*, the Commission adopted this principle as part of its effort to support more than one competitor in rural areas. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 8944-45 paras. 311-13 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[21] *See infra* para. 12.

[22] Letter from John T. Nakahata, Counsel to General Communication Inc., to Deborah Taylor Tate, Federal Chair, Federal-State Joint Board on Universal Service, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service (dated Apr. 13, 2007).

B. Length of Time

8. We emphasize that the cap on competitive ETC support that we recommend here should be an interim measure that is used to stem the growing crisis in high-cost support growth while the Commission and the Joint Board consider further reform. We remain committed to comprehensive reform of the high-cost universal service support mechanisms. Accordingly, we recommend that the Commission immediately adopt an interim cap on high-cost support to competitive ETCs, and that the cap expire one year from the date of any Joint Board recommended decision on comprehensive and fundamental universal service reform. As discussed below, we commit to adoption of a further recommended decision addressing fundamental high cost reforms within six months of today's Recommended Decision. We also anticipate that the Commission will act promptly on the Joint Board's subsequent recommended decision in light of the interim nature of the cap, notwithstanding the fact that the Communications Act of 1934, as amended (the Act) imposes a one-year time limit on such action.[23]

C. Operation of the Cap

9. We recommend that the Commission immediately impose a cap on competitive ETC support for each state. We believe that a competitive ETC cap applied at a state level effectively curbs growth but allows states some flexibility to direct competitive ETC support to the areas in the state that are most in need of such support.[24] An interim, state-based cap on competitive ETC support will also avoid creating an incentive for each state to designate as many new ETCs as possible. A state-based cap will require newly designated competitive ETCs to share funding with other competitive ETCs within the state.

10. Under the proposed state-based cap, support would be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) would calculate the support each competitive ETC would have received under the existing (uncapped) equal per-line support rule and would sum these amounts by state.[25] Second, USAC would calculate a state reduction factor to reduce this amount to the competitive ETC cap. Specifically, USAC would compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC would divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC would then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction would be required.

11. For example, if in State A, the capped amount is $90 million and the total uncapped support is $130 million, the reduction factor would be 69.2 percent ($90/$130). In State A, each competitive ETC's support would be multiplied by 69.2 percent to reduce support to the capped amount.

[23] *See* 47 U.S.C. § 254(a)(2).

[24] In addition to capping competitive ETC support by state, we considered, but declined to recommend, capping competitive ETC support nationwide or by study area. A nationwide cap amount would maintain incentives for states to designate additional competitive ETCs to increase their share of competitive ETC capped support and would result in competitive ETC support shifting to those states that aggressively designate competitive ETCs during the period of the interim cap. A cap by study area would foreclose the possibility of support for the duration of the cap for those study areas that currently have no competitive ETCs and would be administratively burdensome. We note that establishing the cap by any particular geographic area would not change the total amount of competitive ETC support available for all competitive ETCs in the nation, but the scope of the geographic territory for the cap affects the distribution of capped support and the administrative complexity of computing capped support.

[25] 47 C.F.R. § 54.307.

If in State B, however, the base period capped amount is $100 million and the total uncapped support is $95 million, there would be no reduction factor because the uncapped amount is less than the capped amount. Each quarter, for the duration of the cap, a new reduction factor would be calculated for each state. Finally, if in State C the base period capped amount is $0 (*i.e.*, there were no competitive ETCs receiving support in State C as of when the cap was established), then no competitive ETCs would be eligible to receive support in that state.

12. Although the competitive ETC cap retains the so-called identical support or portability rule in the first step of calculating capped support amounts, the Joint Board recommends that the Commission consider abandoning or modifying this rule in any comprehensive reform it ultimately adopts. The identical support rule seems to be one of the primary causes of the explosive growth in the fund. Most of the reform options that we seek comment on in today's companion Public Notice would replace this approach with approaches that better reflect the economic realities of different technologies.[26] Thus, we recommend that the Commission expressly place competitive ETCs on notice that identical support without cost justification may be an outdated approach to USF funding.

D. Base Period for the Cap

13. We recommend that the Commission cap competitive ETC support for each state at the level of competitive ETC support actually distributed in that state in 2006. Although this approach likely results in a lower cap in most jurisdictions than the level of support that is being distributed in 2007, we find that the need for adopting this emergency interim cap to stabilize support for competitive ETCs identified above justifies using 2006 support levels.[27] Moreover, using 2006 data allows the Commission to use actual support amounts, rather than relying on USAC projections to set the cap amounts. By using actual distributions over four quarters of 2006, the Commission will be able to smooth out any seasonal or one-time fluctuations that may be reflected in any single quarter.[28] Consistent with our recommendation to cap competitive ETC support on an interim basis, we find that there is no need to index the cap to a growth factor.

IV. FUNDAMENTAL HIGH-COST DISTRIBUTION REFORM

14. The imposition of an interim cap on competitive ETC high-cost support represents only a temporary solution to the problems that plague the high-cost support distribution mechanisms. As noted above, we are committed to making further recommendations regarding comprehensive high-cost universal service reform within six months. So that we may accomplish that goal, we seek comment, in a companion Public Notice, on several proposals that have been placed in the record since the close of the last comment cycle, as well as other possible reforms.[29] Specifically, we seek comment on proposals related to the use of reverse auctions, the use of geographic information systems (GIS) technology, the disaggregation of high-cost support, and support for broadband services.[30] As we state in the Public Notice, we expect parties to submit comprehensive reform proposals pursuant to the pleading cycle set forth in the Public Notice.[31]

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[26] *See infra* para. 14.

[27] See supra para. 4.

[28] For example, the annual true-up of interstate common line support (ICLS) occurs in the third and fourth quarters, but not in the first and second quarters.

[29] *May 2007 Public Notice.*

[30] *Id.*

[31] *See id.* at para. 1.

V. RECOMMENDING CLAUSE

15. For the reasons discussed herein, the Federal-State Joint Board on Universal Service, pursuant to sections 254(a)(1) and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254(a)(1), 410(c), recommends that the Commission adopt recommendations set forth herein concerning an interim cap on high-cost universal service support for competitive ETCs.

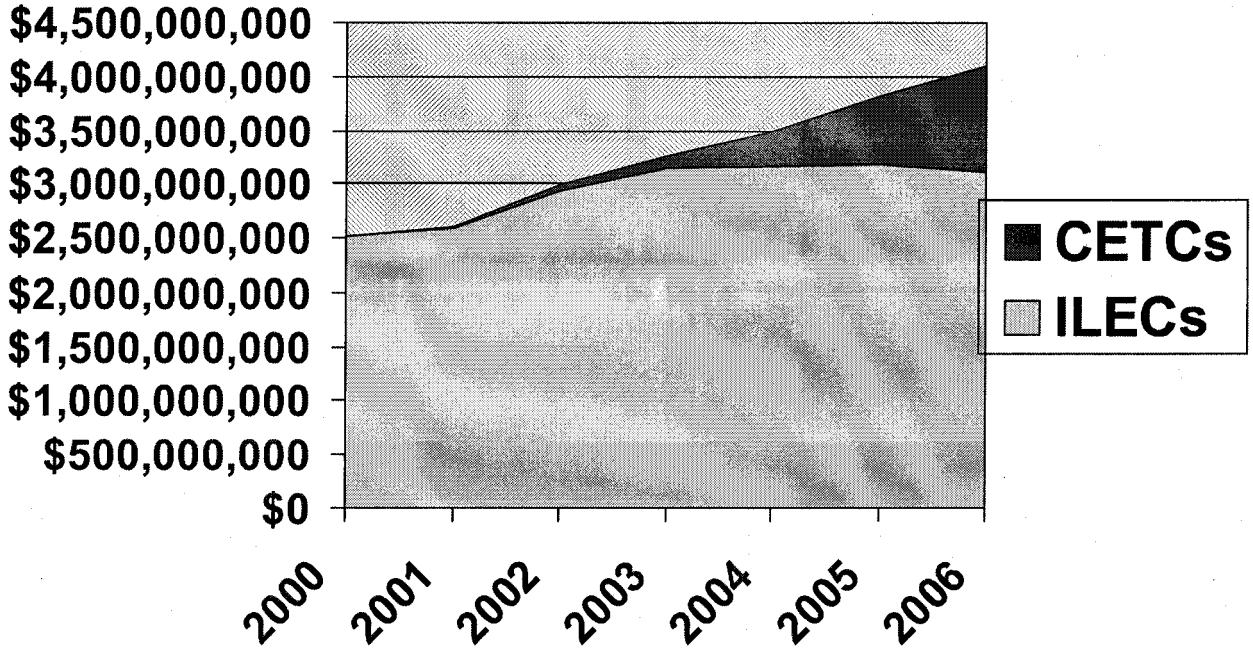
FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

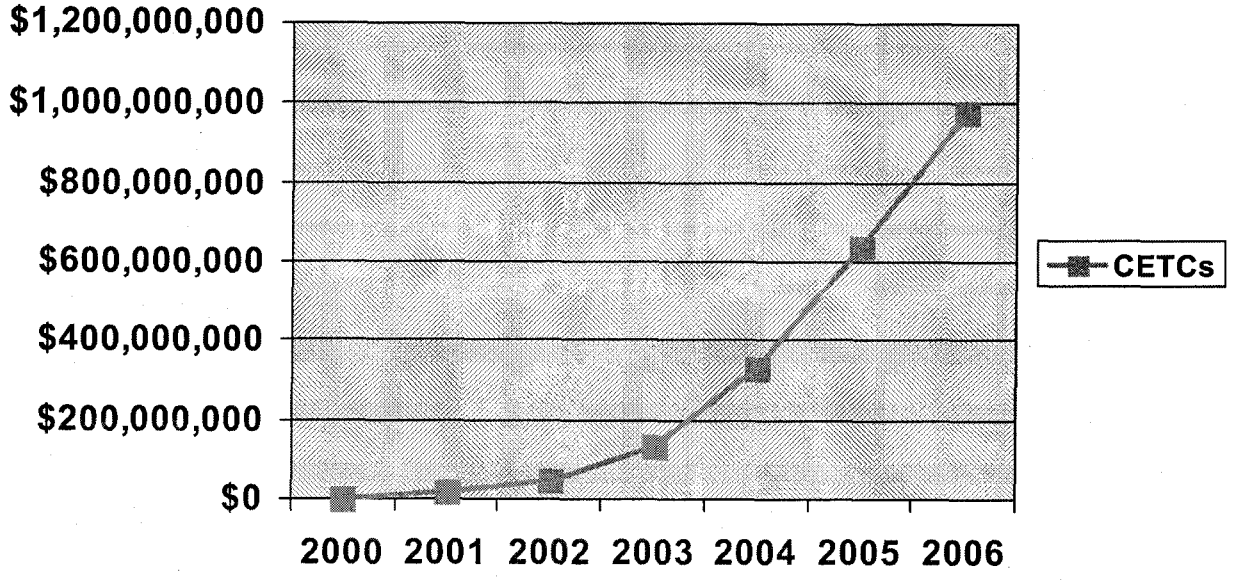
Charts Presented by Chairman Martin at February 2007 En Banc Hearing of the Federal-State Joint Board on Universal Service

Total High-Cost Support Fund Payments – ILECs and CETCs



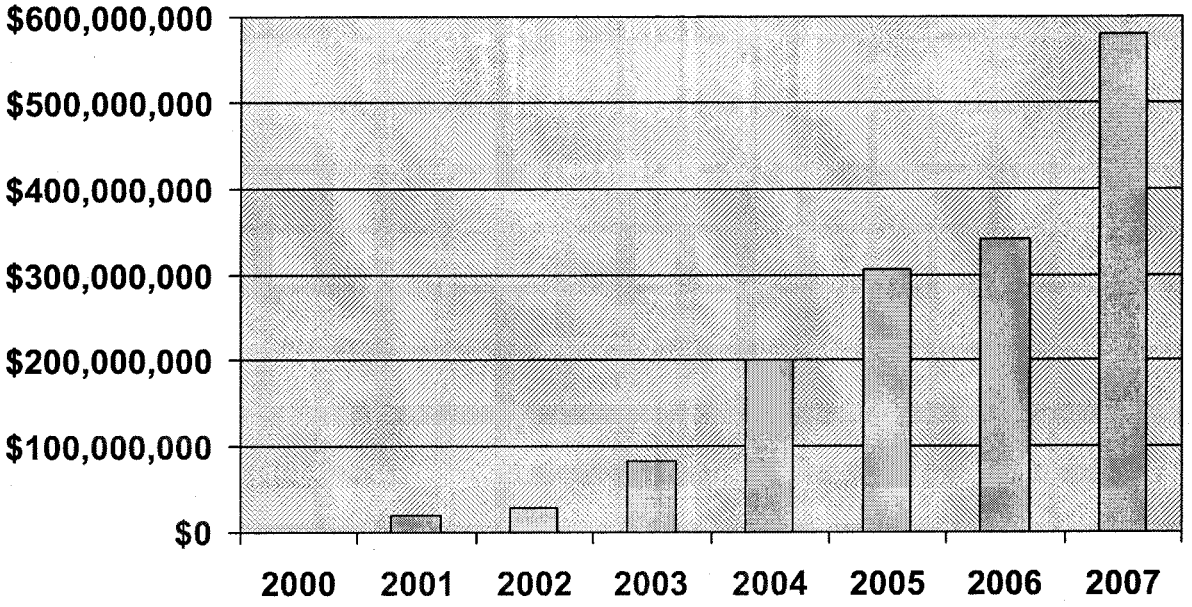
Source: USAC Data and Projections

Total High-Cost Support Fund Payments - CETCs

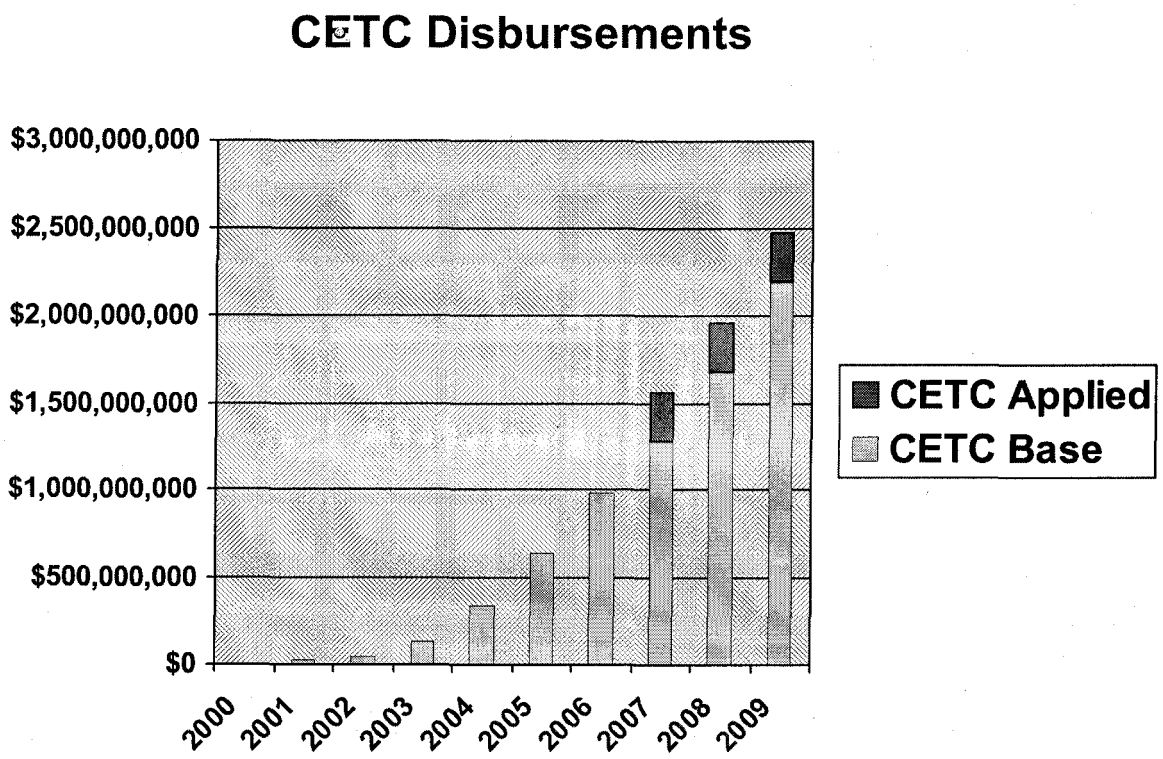


Source: USAC Data and Projections

CETC Dollar Growth



Source: USAC Data and Projections



Source: USAC Data and USAC and FCC

APPENDIX B

State High-Cost Universal Service Support, Ranked by 2006 Total Support and 2006 Competitive ETC Support

Ranked by 2006 Total Support		2006 Incumbent ETC Support	2006 Competitive ETC Support	2006 Total Support
	State	$ Millions		
1	Mississippi	$136.4	$139.6	$276.0
2	Texas	$206.1	$24.6	$230.7
3	Kansas	$135.4	$54.8	$190.2
4	Alaska	$98.1	$55.5	$153.6
5	Wisconsin	$83.0	$51.2	$134.2
6	Arkansas	$101.9	$30.6	$132.5
7	Louisiana	$85.1	$41.9	$127.0
8	Oklahoma	$107.0	$16.6	$123.6
9	Puerto Rico	$29.5	$93.9	$123.4
10	Minnesota	$79.6	$40.3	$119.9
11	Alabama	$99.6	$16.4	$116.0
12	Georgia	$99.1	$8.6	$107.7
13	California	$105.0	$1.0	$106.0
14	Iowa	$63.4	$42.2	$105.6
15	Washington	$58.9	$43.8	$102.7
16	Kentucky	$73.4	$25.9	$99.3
17	South Dakota	$60.1	$29.4	$89.5
18	Missouri	$86.0	$0.1	$86.1
19	Arizona	$67.1	$15.9	$83.0
20	South Carolina	$81.9	$0.0	$81.9
21	Nebraska	$58.3	$23.5	$81.8
22	Florida	$72.2	$9.4	$81.6
23	North Carolina	$74.0	$7.4	$81.4
24	North Dakota	$41.4	$39.5	$80.9
25	Colorado	$71.0	$8.5	$79.5
26	Virginia	$65.7	$13.8	$79.5
27	Montana	$66.6	$11.5	$78.1
28	Oregon	$62.3	$10.0	$72.3
29	West Virginia	$59.7	$10.7	$70.4
30	Illinois	$67.8	$0.0	$67.8
31	New Mexico	$50.3	$15.2	$65.5
32	Pennsylvania	$64.0	$1.5	$65.5
33	Indiana	$57.9	$5.6	$63.5
34	Michigan	$43.8	$15.1	$58.9
35	Wyoming	$39.7	$18.0	$57.7
36	Idaho	$52.1	$0.0	$52.1
37	Tennessee	$50.3	$1.5	$51.8
38	New York	$45.6	$3.3	$48.9

Ranked by 2006 Total Support (cont.)		2006 Incumbent ETC Support	2006 Competitive ETC Support	2006 Total Support
	State	$ Millions		
39	Ohio	$41.6	$0.0	$41.6
40	Hawaii	$22.6	$18.2	$40.8
41	Maine	$23.8	$13.2	$37.0
42	Nevada	$24.9	$6.3	$31.2
43	Vermont	$24.9	$5.9	$30.8
44	Virgin Islands	$25.3	$0.0	$25.3
45	Utah	$23.9	$0.3	$24.2
46	Guam	$9.4	$7.3	$16.7
47	New Hampshire	$7.8	$0.3	$8.1
48	Maryland	$4.5	$0.0	$4.5
49	Massachusetts	$2.8	$0.0	$2.8
50	American Samoa	$1.3	$1.4	$2.7
51	Connecticut	$2.1	$0.0	$2.1
52	New Jersey	$1.3	$0.0	$1.3
53	N. Mariana Is.	$0.6	$0.2	$0.8
54	Delaware	$0.3	$0.0	$0.3
55	D.C.	$0.0	$0.0	$0.0
56	Rhode Island	$0.0	$0.0	$0.0
	TOTAL	$3,116.4	$979.9	$4,096.3

Note: Numbers may not add due to rounding. Annual support amounts less than $50,000 show as $0 due to rounding.

Source: Universal Service Administrative Company

Ranked by 2006 CETC Support	State	2006 Competitive ETC Support $ Millions
1	Mississippi	$139.6
2	Puerto Rico	$93.9
3	Alaska	$55.5
4	Kansas	$54.8
5	Wisconsin	$51.2
6	Washington	$43.8
7	Iowa	$42.2
8	Louisiana	$41.9
9	Minnesota	$40.3
10	North Dakota	$39.5
11	Arkansas	$30.6
12	South Dakota	$29.4
13	Kentucky	$25.9
14	Texas	$24.6
15	Nebraska	$23.5
16	Hawaii	$18.2
17	Wyoming	$18.0
18	Oklahoma	$16.6
19	Alabama	$16.4
20	Arizona	$15.9
21	New Mexico	$15.2
22	Michigan	$15.1
23	Virginia	$13.8
24	Maine	$13.2
25	Montana	$11.5
26	West Virginia	$10.7
27	Oregon	$10.0
28	Florida	$9.4
29	Georgia	$8.6
30	Colorado	$8.5
31	North Carolina	$7.4
32	Guam	$7.3
33	Nevada	$6.3
34	Vermont	$5.9
35	Indiana	$5.6
36	New York	$3.3
37	Pennsylvania	$1.5
38	Tennessee	$1.5

Ranked by 2006 CETC Support (cont.)		2006 Competitive ETC Support
	State	$ Millions
39	American Samoa	$1.4
40	California	$1.0
41	New Hampshire	$0.3
42	Utah	$0.3
43	N. Mariana Is.	$0.2
44	Missouri	$0.1
45	Connecticut	$0.0
46	D.C.	$0.0
47	Delaware	$0.0
48	Idaho	$0.0
49	Illinois	$0.0
50	Maryland	$0.0
51	Massachusetts	$0.0
52	New Jersey	$0.0
53	Ohio	$0.0
54	Rhode Island	$0.0
55	South Carolina	$0.0
56	Virgin Islands	$0.0
	TOTAL	$979.9

Note: Numbers may not add due to rounding. Annual support amounts less than $50,000 show as $0 due to rounding.

Source: Universal Service Administrative Company

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

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

I am pleased that the Federal-State Joint Board on Universal Service recommends measures to the Commission to address the rapid growth in the high cost universal service program. It is essential that we take actions that preserve and advance the benefits of the universal service program.

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have similar opportunities for communications as other areas. I believe our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services.

Changes in technology and increases in the number of carriers that receive universal service support, however, have placed significant pressure on the stability of the Fund. A large and rapidly growing portion of the high cost support program is now devoted to supporting multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. These additional networks in high cost areas don't receive support based on their own costs, but rather on the costs of the incumbent provider, even if their cost of providing service is lower. The Recommended Decision emphasizes the problems of maintaining the equal support rule. The recommendation also caps competitive ETC funding to address the escalating impact of this problem. I would argue that if a competitive ETC can demonstrate that its costs meet the support threshold in the same manner as the rural provider, the competitive ETC should receive support, despite the cap. Thus, a preferable rule would be to cap those providers that do not receive support based on their own costs.

Today's recommendation is not an end in itself, but rather signals the need for comprehensive reform. Among the reform ideas the Joint Board continues to consider is the use of reverse auctions (competitive bidding for support in defined areas) to determine high-cost universal service funding for eligible telecommunications carriers. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling the current unsustainable growth in the fund and ensuring a move to most efficient technology over time. Although the use of reverse auctions is one way of limiting the growth of the fund, I will give any recommendation submitted by the Joint Board my full consideration and remain open to other ideas that could restrain fund growth and prioritize investment in rural and high cost areas of the country.

I look forward to working with my colleagues at the Commission to address the Joint Board recommendation in a timely manner. I also look forward to a continued dialogue with my Joint Board colleagues as the Joint Board continues to address comprehensive and fundamental reform.

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

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

Congress directed the Commission to institute the Federal-State Joint Board on Universal Service so that the Joint Board could recommend necessary changes to the Commission's regulations. As stewards of public funds, our obligation to preserve and advance universal service mandates that we recommend immediate changes to stem the explosive growth in high-cost universal service support disbursements. I am proud of the consensus achieved by this Joint Board in fulfillment of its duties.

This interim action is just that: interim. As the Recommended Decision and its companion Public Notice make clear, the Joint Board is committed to making further recommendations regarding comprehensive high-cost universal service reform within six months of this Recommended Decision. I am committed, as the federal Chair, to putting the Joint Board in a position to make those recommendations.

Every member of this Joint Board supports the principles of universal service: to promote the availability of quality services at just, reasonable, and affordable rates; to increase access to advanced telecommunications services throughout the Nation; and to advance the availability of such services to all consumers. Our recommendation today is a step towards more fully implementing those principles. I look forward to working with my federal and state colleagues and with all stakeholders as we continue to make progress.

CONCURRING STATEMENT OF CHAIRMAN LISA POLAK EDGAR

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

I support the Recommended Decision and the accompanying Public Notice.

Rapid growth in the Universal Service High-Cost Fund is placing unprecedented financial pressure on consumers of telecommunications services and the Federal-State Joint Board on Universal Service today takes a necessary step to address that unplanned and exceptional growth.

The cap detailed in today's Recommended Decision is an interim step, meant to create a pause in fund growth while a more equitable and comprehensive distribution mechanism can be crafted. The current support mechanisms must be reformed to reduce excessive support to multiple providers and better target financial support as envisioned by the Telecommunications Act of 1996. Funding redundant providers is particularly troubling for consumers in net-contributor states, who shoulder the burden of undue growth in the high-cost fund. Therefore, I share my colleagues urgency in addressing a comprehensive reform of the high-cost distribution mechanism that adheres to the goals of universal service.

STATEMENTOF
COMMISSIONER LARRY S. LANDIS

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

In recent weeks, the bulk of the attention by various parties offering ex parte comments in this proceeding has been devoted to certain anticipated aspects of the proposed interim emergency cap which is addressed in today's Recommended Decision. I can appreciate the concern of various parties with regard to how (without knowing the exact parameters of the proposed cap) it might impact them. Much has been said and written about the need for competitively and technologically neutral policies, disregarding the fact that in some respects the current regime is anything but.

The basic facts are inescapable, as set forth in the Recommended Decision. Growth in high cost support on the current trend line is unsustainable. A number of proposals were offered in ex parte filings as alternatives, with the intent of "sharing the pain" among various groups of providers. Those proposals fail to address the fact that for most segments, growth has been virtually flat or even modestly negative in the short run; there is only one group of providers which have seen dramatic and continued growth, and that group is wireless CETCs.

To use an analogy, if you are offering emergency medical treatment to a badly injured person who is bleeding profusely from the arm, you don't address the short-term problem by applying a tourniquet to the patient's leg. Having said that, a tourniquet is not a long-term or permanent solution, and neither is the interim emergency cap.

While the growth is attributable to CETCs, most of which are wireless carriers, they are simply operating under the current laws and rules, once they have received ETC designation. Over the course of the past several months, I have come to a greater appreciation of the extent to which there are wireless companies which operate on a business model targeted primarily to serving rural areas, and which contribute significantly to realizing the goal of providing truly universal service to areas where costs are such that no business case can be made for buildout, absent Universal Service support.

At the same time, there are many rural areas where multiple wireless providers are active. Where there is already competition, we need to make sure we don't inadvertently advantage one company over the others which entered that market based on a competitive, unsubsidized model. Indeed, it may be time to ask if the presence of some minimum number of competitors greater than one in a market is a prima facie indicator that the market is contestable and competitive, and that no universal service support should be rendered to the competing providers in that market.

The states have an obligation and a growing partner role with the FCC as joint stewards in seeing to it that Universal Service funds are appropriately deployed, that legitimate needs are met, but that accountability and performance are audited and demanded.

Now that the interim Recommended Decision has been approved by this body, it is my hope that we can move on to the far more significant and far-reaching issues and potential solutions addressed in the companion Request for Comment.

The Request for Comment raises the question of whether the Joint Board and the Commission should consider adding broadband to the list of supported services. It is my hope that the parties will examine not only the threshold questions (is penetration sufficient for broadband to qualify as a supported service?) but also, if they conclude that broadband should be a supported service, how that can best and most efficiently be implemented. What are the appropriate threshold funding obligations of providers?

Of the several states, including (but not limited to) state funds and other incentives? And of the high cost funds? These potential interrelationships require closer examination.

Finally, I appreciate the concerns of those who have suggested that the interim emergency cap will somehow morph into an intermediate or long-term default "patch" to the issues we propose to examine. By explicitly committing to making further recommendations regarding long term, comprehensive high-cost universal service reform within six months, and by proposing that the cap expire one year from the date when such recommendations are offered, I hope that we have convinced interested parties that the Joint Board is determined to address those long term issues in a meaningful, thoughtful and aggressive manner.

If we are to do so, we will need to build a record which is considerably more comprehensive and provides greater granularity than that which we have today. Interested parties simply need to move with dispatch. The clock is running for all parties with an interest in the outcome of this deliberation. As such, the record will be only as robust as the parties make it.

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STATEMENT OF COMMISSIONER JOHN BURKE

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

I agree with my colleagues on the USF Joint Board as to today's Recommended Decision. I would stress the need for a comprehensive solution to be finally adopted by the FCC at the earliest possible date.

Some inequities could result from any cap but inequities undoubtedly already exist at least in part because of the identical support rule as presently applied. I would hope then that the cap never be extended beyond the 18 month period contemplated as the outside margin of this recommendation for development and adoption of these more comprehensive reforms

CONCURRING STATEMENT OF COMMISSIONER RAY BAUM

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

In concurring with today's interim decision capping the CETC portion of the fund, I would like to emphasize the following:

1. I underscore that today's decision is interim. The Joint Board intends to recommend major reform of the USF to the FCC within six months of the date of this decision. Parties should file their comments in response to the accompanying Public Notice within the comment periods. Parties who wait to put forward their proposals in ex parte submissions will jeopardize their consideration. The Joint Board intends to move expeditiously, and takes seriously the six month deadline for recommending major reform.

2. My support for a cap of this nature is limited to the 18 months outlined in today's decision. In several states, there are high cost rural service areas that had no CETC drawing USF support during the interim cap's 2006 base period. As a result of the cap, consumers in these rural areas may not enjoy the same quality and reliability of service that is enjoyed by rural consumers in states with earlier CETC designations. The CETC portion of the fund is now disproportionately allocated among rural consumers and states. This cap does not remedy that inequity.

3. Broadband is critical to telecommunication/information services of the future, for both rural and urban Americans. Rural ILECs have generally done a good job of making broadband available to the rural consumers they serve; non-rural ILECs generally have not. The Joint Board and commenting parties should address whether this inequity can be remedied by properly focused incentives to ETCs, both wireline and wireless, to provide necessary broadband services to all rural consumers.

4. Due to unsustainable growth pressures on the fund all ETCs should anticipate changes to current USF distribution mechanisms. The identical support rule for CETCs may not survive. Rural ILECs may no longer receive support based on their embedded costs. All parties should use the forthcoming comment periods to put forth their best ideas, describing in detail how they are to be implemented.

The Joint Board faces difficult decisions in the next six months. The best efforts of all parties in filing comments to assist the Joint Board is essential and appreciated.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

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

Congress made clear what it expected of the Federal-State Joint Board on Universal Service in section 254 of the Communications Act: the Board shall recommend policies to preserve and advance universal service. Since I rejoined the Joint Board over two years ago, my colleagues and I have worked with this singular purpose in mind. As anyone who toils in the field of universal service knows, there are many worthy ideas on how to achieve the purposes set forth in the Act. Today the Joint Board recommends that the FCC impose a so-called "interim, emergency cap" on the high cost support available to competitive eligible telecommunications carriers. While I commend my colleagues for their good intentions – to curb the growth of the universal service fund – I have serious concerns that such a cap will be misinterpreted as a solution, even though it does not address – or pretend to address – the fundamental, comprehensive reforms needed to carry a viable and improved system of universal service forward in the twenty-first century.

The clear and compelling challenge to the Joint Board and the FCC is to bring basic and advanced telecommunications to all our citizens and to ensure that our universal service system, which has accomplished so much, can continue to sustain itself. Our job is to develop strategies and programs to bring the best, most accessible and cost-effective communications system in the world to all our people – and universal service does indeed mean "all" our people. Every citizen of this great country should have access to the wonders of communications – whether they live on farms or rural hamlets, on tribal lands or in the inner city; whether they have limited income or are challenged by disabilities; whether they are schoolchildren or rural health care providers.

Universal service has done great things for America. But its job is far – very far – from complete. Revolutionary changes are transforming the world of telecommunications, but not all of us will be able to benefit from them without significant universal service system reforms. We have studied these problems for a very long time. Hundreds of discussions have taken place. Ideas have been exchanged. Solutions have been proposed. The problem is that the solutions are not painless. Companies and government both get comfortable with business as usual, and when someone proposes to rock the boat we all get nervous. Game theory supersedes decision-making – and nothing gets done. Yet reality keeps knocking at the door: the system is stressed; down the present path it may not be sustainable; it still marches to the tune of 20th century telecom. And there is this: we may all be called on for shared sacrifice if universal service is going to fulfill its mission.

I believe we have it within our ability – and within our grasp – to resolve our current universal service fund problems and to deploy a system that can contribute mightily to economic opportunity for all our citizens and to truly expansive economic growth for our country. This modernized universal service system would ensure that every citizen in our country is connected to vital education, public health, public safety, employment and entrepreneurial opportunities.

But we don't have the luxury of time to get this right. That is why I believe today's recommendation misses the mark – it puts too many issues off to another day. It's risky business.

The Joint Board has two major referrals before it, one dating to 2002 and the other to 2004. These are complicated referrals, to be sure, but it is nevertheless entirely possible to come forward with recommendations on the outstanding issues with which we are all familiar. Instead the Joint Board proposes an interim, emergency cap that solves no enduring problem and that will be interpreted by many

as movement enough to justify putting the larger universal service reform imperative on the back-burner. I fear today's action diminishes rather than enhances the prospects for near or even mid-term reform.

In the best-case scenario under the proposed cap, even if the Joint Board acts within six months on fundamental reforms and the FCC then proceeds to adopt some version of those reforms in a year, it will be 18 months – autumn of 2008 – before we even have a strategic long-term plan from the FCC for universal service reform. If the past is prologue, coming to FCC consensus may take far longer than that, not to mention any legislative changes that may be suggested.

Frankly, I worry that an emergency, interim cap inflames discord and disagreement among industry sectors at a time when we should be bringing everyone to the table to develop as much consensus as we can. I don't see the need to poison the well when we could all be drinking from the same cup. Others have expressed concerns that this emergency action could lead to extended litigation and to putting into play concerns about the lack of technology neutrality that some see in this proposal.

It is not just the pressure on the universal service fund that compels action. It is even more the pressure from our country's grossly inadequate under-performance in getting advanced telecommunications out to all our citizens. Just last week, the OECD moved the United States down three more spots in its broadband rankings – now your country and mine is Number 15. Some are attempting to impugn the rankings or to say that, even if true, it is good news that other countries are moving forward so quickly! These comments and claims are lame attempts to mask a national embarrassment. Universal service has a huge role to play in correcting our course and moving us back toward the top where the United States always belongs.

This is why it is so incumbent upon us to get comprehensive Joint Board recommendations to the Commission expeditiously and then for the Commission to act. We need to act not just because informed action will move us up the rankings, but because of what our country's poor performance means in terms of a continuing, perhaps even worsening, rural-urban digital gap and in terms of economic opportunities foregone for individuals, communities and businesses all across America.

The Joint Board is filled with uncommon knowledge, expertise and good judgment. It has most of the information, data, and analysis that it needs, right now, to move ahead to propose needed repairs and modernization for universal service. I will be in the minority with my vote today. Still, I look forward to working with my colleagues and friends on the Joint Board and the Commission to move the ball forward on the new field we have designed. To them and to all the millions of stakeholders in this work, I pledge my full participation and cooperation to move ahead as speedily as possible to expedite and complete the Joint Board's work.