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THE UNIVERSAL SERVICE FUND: ASSESSING THE RECOMMENDATIONS OF THE FEDERAL-STATE JOINT BOARD

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 12, 2007

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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THE UNIVERSAL SERVICE FUND: ASSESSING THE RECOMMENDATIONS OF THE FEDERAL-STATE JOINT BOARD

TUESDAY, JUNE 12, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Good morning. The Chairman will be along, we hope, in a little while. For those of you who are interns, you can come up and use some of these chairs up here.

Today, the Committee revisits—this is the Chairman's statement—today, the Committee revisits a familiar topic, Universal Service. More than a decade ago, in the Telecommunications Act of 1996, as a Congress, we made clear that we are committed to the principle of Universal Service. We stated that, in all regions of the Nation—rural, urban, and everywhere in between—consumers are entitled to comparable services at comparable rates. The Federal Communications Commission was charged with translating this lofty principle into concrete action. To do so, they set up the Universal Service Fund.

Today, that Fund faces some difficult challenges. If the Fund continues to expand at current pace, some say we may jeopardize Universal Service itself. Incumbent carriers urge us to place limits on the ability of other carriers to access these funds. "How is it feasible," they ask, "for the Universal Service Fund to support so many different carriers serving so few customers in rural areas?" Still other carriers, many of them, wireless providers, ask if it's fair to reduce support that may be necessary to serve large swaths of rural America. "In order to provide comparable services at comparable rates," they say, "we need to access these funds."

Last month, the Federal-State Joint Board on Universal Service weighed in on this matter. It recommended the Commission cap the amount of funds available to competitive providers as an interim measure, pending broader Universal Service reform. In the end, we cannot let short-term proposals free us from the need to address long-term reform. If comprehensive reform requires a more vigorous review of the identical support rule or any other aspect of

existing policy, we should proceed down that road. After all, ensuring the long-term sufficiency and stability of Universal Service funds means ensuring all of our citizens have communications capabilities they need to compete in the global economy.

I'll place my statement in the record, following the remarks of the Chairman.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

I thank the Chairman for scheduling this hearing. Senator Inouye is my great friend who has become a leader with respect to Universal Service ever since we worked together to assure Alaska and Hawaii had the same phone rates as in the rest of our country.

This Committee has heard much about problems with Universal Service which need to be addressed:

- contributions only come from long distance service.
- broadband is not explicitly supported.
- and critics continue to raise accountability concerns.

For me the importance of a unified and national communications infrastructure remains paramount and Universal Service is needed to ensure the availability of communications services throughout the country. I hope this hearing today will move the Committee forward to engage Universal Service reform in a comprehensive fashion.

The Committee will hear today about the proposed cap on wireless Universal Service support. My hope is the panel will explain if and how an interim cap would advance the fundamental reform Universal Service needs.

To put off such reform the more risk there is that there will be a communications divide in this country, a shameful outcome which would hurt jobs and small businesses throughout rural America, including my home state Alaska.

Thank you.

Senator STEVENS. Senator, do you have an opening statement?

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Just very briefly, Senator Stevens.

I'm not going to be able to stay for the entire hearing, because of other committees, but I do want to say—it's been obvious, for some long while, I think, to many of us on this Committee, that the Universal Service Fund issue needs attention, and needs serious attention.

I think those of us that come from rural states understand the urgency of fixing this problem. The "comparable services at comparable prices," represents the language that we included in 1996. Those of us who were on the Committee then were deliberate, in terms of what we wanted to do and what we intended to accomplish. We included, by the way, "advanced services." At that point, we didn't know much about broadband, but we included "advanced services" in that requirement.

I acknowledge that the Joint Board has done its work. It's now very important that we proceeds, and see that the FCC proceed, in untangling these problems, resolving them, and having a Universal Service Fund that does what it's intended to do so that we are not left, a year or 2 or 5 years from now wondering how on Earth this gets fixed.

Senator Stevens, you and I, and others on this Committee, have introduced legislation on these issues. And my hope is that at last—at long, long last—we will be able to see these resolved.

Senator STEVENS. Thank you very much.

Senator Sununu?

STATEMENT OF HON. JOHN E. SUNUNU, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Thank you, Mr. Chairman.

I simply want to offer a few comments about the recent decision by the Joint Board.

As Senator Dorgan indicated, this is an issue we've been going around for some time. We tried to deal with it in the comprehensive telecommunications bill we marked up last year. And, unfortunately, that didn't move forward. We had a proposal in Committee for an overall cap on the Fund, which I think is extremely important, because there is so much going on within the Fund for which it was not intended. It provides subsidies to companies instead of consumers. It provides subsidies to consumers in areas that aren't necessarily deserving of subsidies, because they're not areas that are underserved, they're not at an economic disadvantage, or they're not true rural high-cost areas. That should be the focus of the Fund.

What the Joint Board has done is recommend a relatively arbitrary cap for one segment of Universal Service, the CETCs. I had, with other members of this Committee, written a letter specifically suggesting they not take this approach, that they look at a more comprehensive approach for capping funds.

And, Mr. Chairman, I would ask that that letter be made part of the record.

Senator STEVENS. Without objection.

[The information previously referred to follows:]

UNITED STATES SENATE
Washington, DC, April 13, 2007

Hon. DEBORAH TATE,
Chairman,
Federal-State Joint Board on Universal Service,
Federal Communications Commission,
Washington, DC.

Dear Joint Board Chairman Tate,

The Federal-State Joint Board on Universal Service (Board) was established, in part, to provide recommendations on how best to preserve and advance the Federal Universal Service (USF) program. We arc writing today to provide the Board with our views on the USF program, which we believe must be substantially reformed to if it is to continue, and to share our serious concerns over reports of recent and future increases in the contribution factor, which has pushed the entire program closer to a boiling point. The Board has the opportunity and, in our judgment, the obligation, to suggest reforms and structural changes to the USF program that could result in long-term solvency, and ensure that only consumers who truly need the program's support receive it. Failure of the Board to make the difficult decisions necessary at this critical juncture will reduce political support and sustainability of the program. We urge the Board to make the tough decisions and proposals necessary to place the program on a new course. In other words, it is time to be bold.

We strongly request that the Board recommend an *overall* cap on the entire USF program. Last year, the four of us and others supported an amendment to a telecommunications reform bill during consideration in the Senate Commerce Committee that would have capped the overall USF program. We believe a cap would ensure that the administrators of the USF program spend the money more effec-

tively and efficiently, and would work to reduce this limitless and recurring tax on consumers.

We do not support any plan that would cap only one select group of providers but not others, as we believe such a fix would unfairly skew the marketplace. Instead, we reiterate the need for capping the overall program and doing so in a manner that does not pick winners and losers or favor one technology over another. We also urge you not to use interim measures, such as a temporary cap, to address the pressing issues facing the USF program. Many interim measures enacted by the Federal Communications Commission in the past have lived far longer than intended when proposed.

While a cap on *all* USF program funding is truly needed, a cap is only as valuable as the corresponding changes made to the USF distribution mechanism. Funding multiple providers without a reduction in the level of support for existing providers losing customers has put the Fund on an uncontrollable growth pattern that will only result in higher telephone bills for all Americans. If this is not addressed, the USF program will over subsidize some markets at the expense of those markets most in need.

In addition, we strongly recommend the Board give significant weight to a reverse auction mechanism for distributing USF support. This can be done in a number of ways, including establishing the support level for a study area, state, or otherwise (*i.e.,* maximum price support point), or establishing a *sole* provider eligible for support in a respective market. However accomplished, allowing all providers to take part of one unified auction in a market—not just a platform-specific proposal—to bid down support needed to serve particular consumers will reduce the total cost of the USF high-cost program. It will also bring much needed efficiency to the system, facilitate regulatory parity, allow for the emergence of new technologies to many markets, eliminate the distinction between rural and non-rural incumbent carriers, and instill necessary market-oriented solutions.

In sum, the USF program has not kept pace with the remarkable innovation that has occurred in the communications industry over the last few years. It must be dramatically reformed to operate in a way that best serves the American people. The Board must transform this program into one that takes in and distributes USF funds in a responsible manner that ensures Americans are not subjected to limitless increases on their phone bills. We respectfully request that you take the steps necessary to fully reform the USF program and reject short-term solvency solutions.

We ask that this letter be handled in strict accordance with existing agency rules, regulations, and ethical guidelines.

Sincerely,

JOHN E. SUNUNU
JOHN MCCAIN
JIM DEMINT
JOHN ENSIGN

Senator SUNUNU. I think that a piecemeal approach like this one, it's not necessarily fair, it has the potential to skew the markets; but, two, it's just passing these significant problems within the system down the road. And, in many ways, I think it's going to make it harder for Congress to act in a comprehensive way. I think it's going to create additional inequities in the system. And I find it somewhat disappointing. The Joint Board has said, "We're going to recommend a more comprehensive approach in 6 months." That brings us really to the heart of a 2008 campaign season, and, frankly, I think that is highly unlikely. I hope we hear, today, not just from Commissioner Tate, but from other stakeholders and participants, some very specific ideas about how to enact additional reforms, what really needs to be done to make sure this program works effectively for those it was intended, and how and why we should have confidence that the costs of the program aren't going to simply continue to accelerate and continue to be passed on to consumers. A 10 percent or 12 percent or 15 percent surcharge on interstate calls is pretty significant, and that's levied on every consumer in America. And when you're assessing surcharges that high, you ought to be delivering something that's measurable,

that's tangible, and something that's going to those people that need it most.

Thank you, Mr. Chairman.

Senator STEVENS. Senator Pryor, did you have a statement you wished to make?

Senator PRYOR. I don't. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much.

Our first witness is the Honorable Deborah Taylor Tate, Commissioner of the FCC. We're pleased to have your statement.

STATEMENT OF HON. DEBORAH TAYLOR TATE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND CHAIR, FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

Ms. TATE. Thank you, Vice Chairman Stevens and distinguished Members of the Committee.

I do welcome the opportunity to be here to testify today and to talk with you all as the Federal Chair of the Joint Board on Universal Service regarding our recent consensus recommendation of the Joint Board, that the FCC take immediate action to rein in the explosive growth in the high-cost Universal Service support disbursements. Like many of you all, I'm from a rural state, and I've seen and experienced, firsthand, opportunities that are provided by Universal Service in those rural areas. I've told you all before that I remember the day the telephone wire was rolled up a gravel road to my grandmother's house in rural Tennessee, an event that likely would not have occurred without Universal Service.

I now have the distinct honor and responsibility and privilege to help design and implement policies that will preserve and advance Universal Service for all Americans.

I think we all agree a modern and high-quality communications infrastructure is essential to ensure all Americans, especially those living in rural communities, have access to the full array of educational, economic, and other opportunities that are delivered via advanced services. Indeed, Congress—you all—have directed consumers in all regions of the Nation have access to reasonably comparable telecommunications services, including advanced services, at comparable rates.

As we look to achieve the long-term goals of the Universal Service program, as you all have mentioned, including deployment of those advanced services, we must recognize how technological changes are putting strains on the mechanics of both the contribution and distribution systems. The high-cost support mechanism alone has grown from about $2.6 billion in the year 2000 to approximately $4 billion in 2006, placing significant pressure on the stability of the Fund.

This growth was largely due to increased support provided to multiple competitive eligible telecommunications carriers, CETCs, as illustrated in this series of charts. As you can see from Chart 1, since 2003, incumbent LEC payments have been relatively flat, the dark blue—you can see how flat that line is—and actually have even begun to start downward. On the other hand, Chart 1 also shows that almost all of the recent growth in the high-cost support is largely as a result of distributions to CETCs.

As Chart 2 shows, the CETC high-cost distributions have been growing at a rate trend of 101 percent per year since 2002. Specifically, in 2000 CETCs received a million dollars, and, according to USAC, now receive almost a billion, in 2006.

Chart 3 shows the rapid year-over-year dollar growth of CETC payments. This chart highlights another problem with the current system, CETCs presently receive high-cost support based on the incumbent LEC's embedded cost, or per-line support amount that the LEC receives, rather than on their own costs.

Overall, these charts illustrate our current high-cost mechanism is in need of repair and revision. As stewards of public funds, our obligation is to preserve and advance Universal Service. It mandates immediate action to stem this explosive growth in the high-cost support, while doing all we can to move quickly toward fundamental reform to ensure that quality services are, indeed, available to all of our citizens.

I would have preferred, and hoped, the Joint Board act more immediately to fundamentally reform the high-cost distribution mechanism. Unfortunately, I was not able to move us to a consensus on that point. The Joint Board was, however, able to reach a consensus on an interim step. Seven out of eight members of the Joint Board agreed an interim emergency cap on the amount of high-cost support that CETCs receive for each state, based on 2006 support levels, was required to stabilize the high-cost fund while the Board and the FCC further explore comprehensive high-cost distribution reform.

The Recommended Decision and its companion Public Notice made clear the Joint Board is totally committed to making further recommendations, as the Senator noted, by November 1st, within 6 months of our decision. Whether through reverse auctions or some other cost-effective mechanism, a fundamental reform plan will ensure that Universal Service promotes the availability of services at reasonably comparable rates throughout the country; hopefully, in a technologically and competitively neutral manner.

Comprehensive reform also must take into account areas of our country that are uniquely situated. For example, any comprehensive reform plan, by necessity, must continue the Commission's traditional recognition that there are underserved lands. Tribal lands in the Lower 48, in Alaska Native Regions, are uniquely situated and deserving of individual treatment to ensure that they are not left behind.

I hope to continue to facilitate these discussions between you, this Committee, Congress, the Commission, and, of course, members of the Joint Board, while doing all we can to preserve the Fund and ensure these services are available to consumers no matter where they choose to live.

Thank you, again, for the opportunity to discuss these important issues, and, of course, I'm pleased to answer questions.

[The prepared statement of Ms. Tate follows:]

PREPARED STATEMENT OF HON. DEBORAH TAYLOR TATE, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND CHAIR, FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

Good morning, Chairman Inouye, Vice Chairman Stevens, and distinguished Members of the Committee. I welcome the opportunity to testify today on the recent recommendation of the Federal-State Joint Board on Universal Service (Joint Board) to the Federal Communications Commission (FCC or Commission). Like many of you, I have seen and experienced firsthand the opportunities provided by Universal Service in very rural areas. I remember the day the telephone wire was rolled up a gravel road to my grandmother's house in rural Tennessee—an event that likely would not have occurred without a Universal Service program. As a Commissioner and the Federal Chair of the Joint Board, I now have the honor and responsibility to help design and implement policies that will preserve and advance Universal Service to all Americans.

All of the Joint Board members—FCC Chairman Kevin Martin, FCC Commissioner Michael Copps, Commissioner and Joint Board State Chair Ray Baum of Oregon, Chairman Lisa Edgar of Florida, Commissioner Larry Landis of Indiana, Commissioner John Burke of Vermont, and Director Billy Jack Gregg of the Consumer Advocate Division of West Virginia—deserve praise for their commitment to addressing these complex issues in addition to their full time jobs as Federal or state government officials. I should also thank the members of the state and Federal staff whose dedication and professionalism reflect the highest ideal of government service.

Congress directed the FCC to institute the Joint Board "to recommend changes to any of [the FCC's] regulations in order to implement sections 214(e) and [254]" of the Act. The Commission has referred a number of issues to the Joint Board and relied heavily on its recommendations. Most relevant to the subject of today's hearing, the Commission in 2002 asked the Joint Board to review Commission rules related to the high-cost Universal Service support mechanisms.[1] Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost Universal Service support in study areas in which a competitive eligible telecommunications carrier (CETC) is providing service.[2] In response, the Joint Board recommended, *inter alia,* that the Commission implement a "primary line" restriction limiting the scope of high-cost support for each household to a single connection that provides access to the public telephone network. The Joint Board also made a number of recommendations concerning the designation of eligible telecommunications carrier (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.[3] Instead, the Joint Board recommended that it and the Commission consider possible modifications to the basis of support for CETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.[4]

In 2004, the Commission asked the Joint Board to review, *inter alia,* 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.[5] 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.[6] The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.[7] 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.[8]

Since I was named the Chair of the Joint Board in 2006, the Joint Board has continued its work to review the Universal Service policies and respond to the FCC's referrals. I have been committed to keeping our work on a timetable paced to fulfill our statutory role in a thoughtful and deliberative manner. The Joint Board has held a number of face-to-face meetings, countless conference calls, issued notices and referrals, and reviewed hundreds of comments from interested parties. The Joint Board staff held a retreat for 3 days in June 2006 to review outstanding and new proposals, and the Joint Board met in August 2006 during the NARUC summer meeting. On August 11, 2006, the Joint Board issued a Public Notice and sought comment on primary questions, such as the overall appropriateness and legality of implementing reverse auctions, as well as questions about the mechanics of implementing reverse auctions, such as the role of Federal and state jurisdictional roles, defining quality of service obligations, and the unique questions regarding the treat-

ment of incumbent local exchange carriers (LECs). The Joint Board received numerous comments and reply comments last fall, and also received additional submissions in the record.

In September 2006, because there were several newer members of the Joint Board, including myself, the Joint Board hosted a two-day meeting at the FCC focusing on training. We heard from the Universal Service Administrative Company (USAC), the National Exchange Carrier Association (NECA), and FCC staff experts about the mechanics of the Universal Service programs. The state members of the Joint Board and staff met again in November 2006 during the NARUC winter meetings. Further, on February 20, 2007, as a part of its *en banc* hearing in Washington, D.C., the Joint Board heard from a number of experts, including witnesses from the National Telecommunications Cooperative Association, Verizon, and CTIA—The Wireless Association, discussing specific proposals, benefits, and concerns regarding reverse auctions. The Joint Board also heard from experts on geo-spatial mapping and approaches to more effectively targeting the distribution of support, including witnesses from the Polis Center in Indianapolis, CostQuest Associates, and Embarq. We were pleased that members of your staffs attended as well.

It became clear to the Joint Board during the course of its deliberations that high-cost support has been rapidly increasing in recent years, largely due to increased support provided to CETCs. According to FCC and USAC data, in the 6 years from 2001 through 2006, CETC support grew from $15 million to almost $1 billion—an annual growth rate of over 100 percent. Over the same time period the USF support to the incumbent local exchange carriers serving high-cost rural areas under the Fund has leveled out.

Based on current estimates, CETC support in 2007 will reach at least $1.28 billion absent Commission action. Moreover, if the Commission were now to approve all 33 CETC petitions currently pending before the Commission, high-cost support for CETCs could rise to as much as $1.56 billion in 2007. This does not include the financial impact of the approximately 35 additional CETC applications that are pending or have been approved by the states since the beginning of 2007. High-cost support to CETCs is estimated to grow to almost $2 billion in 2008 and $2.5 billion in 2009 even without additional CETC designations in 2008 and 2009.

This growth is not only due to multiple providers receiving high-cost support in many study areas, but also because CETCs receive Universal Service support based on the incumbent LEC's embedded costs or the per line support amount that the incumbent LEC receives. But as we heard at the *en banc,* a CETC's actual costs are likely to be very different, and perhaps lower, than the incumbent telephone carrier's costs on a per line basis.

In light of those facts, the Joint Board reached a consensus that immediate action was required to stabilize the high-cost fund. On May 1, 2007, the Joint Board issued a Recommended Decision advocating that the Commission adopt an interim emergency cap on the amount of high-cost support that CETCs may receive for each state based on 2006 support levels.[9] The Commission issued a Public Notice seeking comment on the Joint Board's recommendation on May 14, 2007. The Commission received over 60 comments on June 6, 2007, and reply comments are due June 13, 2007.

The Joint Board also recommended that both it and the Commission further explore comprehensive high-cost distribution reform, and sought comment on various reform proposals in a Public Notice released on the same day as the Recommended Decision.[10]

The Recommended Decision and its companion Public Notice make clear that the Joint Board is committed to making further recommendations regarding comprehensive high-cost Universal Service reform by November 1, 2007. I am committed, as the Federal Chair, to putting the Joint Board in a position to make those recommendations.

As we look to achieve the long-term goals of the Universal Service program, we must balance the goal of encouraging competitive entry with the other challenges, such as the further deployment of advanced services. It is essential that we recognize how technological changes are putting strains on the mechanics of our contribution and distribution systems. As stewards of public funds, our obligation to preserve and advance Universal Service mandates that we recommend immediate action to stem the explosive growth in high-cost Universal Service support disbursements, while doing all we can to achieve fundamental reform to ensure that affordable, quality services are available to consumers all across the country.

As Chair of the Joint Board, my goal has been to encourage discussion among my colleagues and facilitate consensus that will ensure that American consumers throughout the Nation continue to have access to an evolving level of services. 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 is a step toward 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.

Again, I appreciate your invitation to be here with you today. I am pleased to answer any questions you may have.

APPENDIX A

FEDERAL-STATE JOINT BOARD OF UNIVERSAL SERVICE RECOMMENDED DECISION

Before the Federal Communications Commission

Washington, DC

In the Matter of High-Cost Universal Service Support
Federal-State Joint Board on Universal Service
WC Docket No. 05–337
CC Docket No. 96–45 Service

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.[11] 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.[12] We also commit to making further recommendations regarding comprehensive high-cost Universal Service reform within 6 months of this Recommended Decision. Finally, we recommend that the Commission act on these further recommendations within 1 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.[13] Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost Universal Service support in study areas in which a competitive ETC is providing service.[14] 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.[15] 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.[16]

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.*[17] 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.[18] The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.[19] Since that time, the Joint Board has sought comment on a variety of spe-

cific 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.[20]

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 jeopardy of becoming unsustainable.[21] Today, the Universal Service Fund provides approximately $4 billion per year in high-cost support.[22] Yet, in 2001 high-cost support totaled approximately $2.6 billion.[23] 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,[24] by contrast, in the 6 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.[25] 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.[26]

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 distribution of competitive ETC support among the states,[27] 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.[28] Also, local switching support and interstate common line support provided to incumbent LECs have been stable in recent years.[29] 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.[30] 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.[31]

7. We decline to recommend that the Commission adopt General Communication Inc.'s (GCI) proposal that we exempt wireline competitive ETCs from the cap.[32] 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.

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 1 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 6 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.[33]

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.[34] 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.[35] 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. 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.[36] 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.[37] 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.[38] 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 6 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.[39] 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.[40] 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.[41]

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

Chart 1

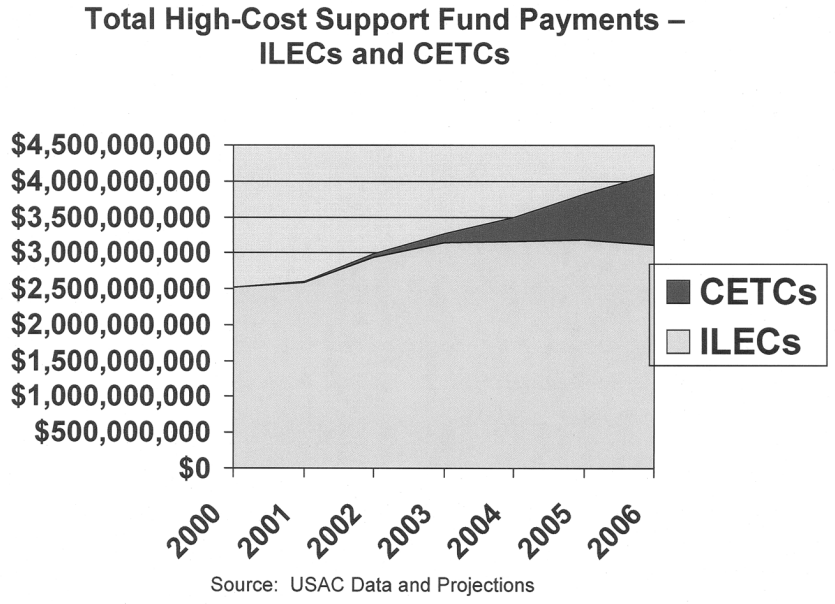


Chart 2

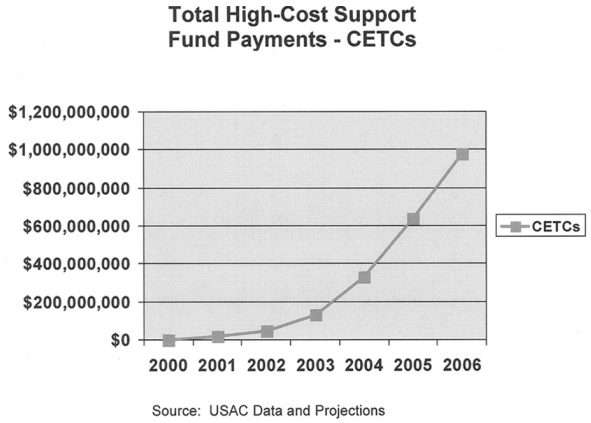


Chart 3

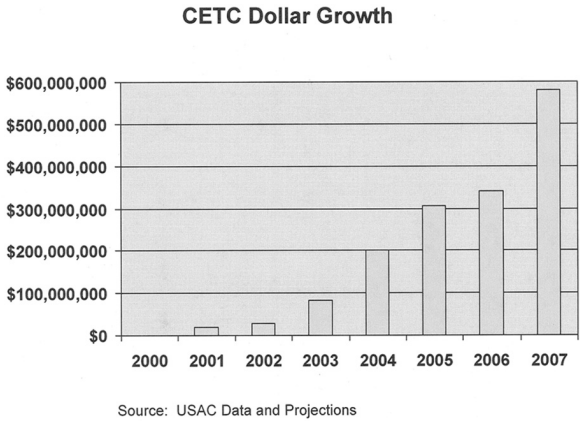
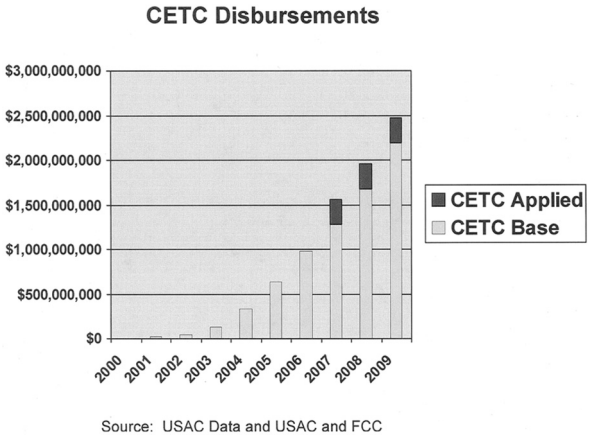


Chart 4



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
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
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 6 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 toward 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.

STATEMENT OF 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 build-out, 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 pene-

tration 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 6 months, and by proposing that the cap expire 1 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.

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 6 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 6 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 telecommunications/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 6 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 2 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 healthcare 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 6 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.

Endnotes

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

[2] *Id.*

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

[4] *Id.* At 4294, para. 88.

[5] *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).

[6] *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).

[7] *See id.* At 16094, paras. 36–37.

[8] *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).

[9] *Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, FCC 07J–1 (Fed.-State Jt. Bd., rel. May 1, 2007) (Recommended Decision) (attached as Appendix A).

[10] Specifically, the Joint Board sought comment on proposals, including the use of reverse auctions to determine high-cost Universal Service support; the use of geographic information systems technology and network cost modeling to better calculate and target support at more granular levels; disaggregation of support below the study area or wire center level; the methodology for calculating support for CETCs; and whether Universal Service funding should be used to promote broadband deployment directly. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform,*

WC Docket No. 05–337, CC Docket No. 96–45, Public Notice, FCC 07J–2 (Fed.-State Jt. Bd., rel. May 1, 2007).

[11] 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.

[12] *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*).

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

[14] *Id.*

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

[16] *Id.* At 4294, para. 88.

[17] *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).

[18] *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).

[19] *See id.* At 16094, paras. 36–37.

[20] *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).

[21] The most recent contribution factor is 11.7 percent, 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).

[22] *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*).

[23] *Id.*

[24] 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.*

[25] 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.

[26] 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).

[27] 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.

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

[29] 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 million annually for the last 2 years. *See Universal Service Monitoring Report,* Table 3.2.

[30] 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).

[31] *See infra* para. 12.

[32] 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).

[33] *See* 47 U.S.C. § 254(a)(2).

[34] 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.

[35] 47 C.F.R. § 54.307.

[36] *See infra* para. 14.

[37] *See supra* para. 4.

[38] 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.

[39] *May 2007 Public Notice.*

[40] *Id.*

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

Senator STEVENS. Thank you very much.

Senator McCaskill, did you have an opening statement?

Senator MCCASKILL. No.

Senator STEVENS. Senator Klobuchar?

Senator MCCASKILL. No, Mr. Chairman, thank you, though.

Senator STEVENS. Senator?

Senator KLOBUCHAR. Yes, I do.

Senator STEVENS. Thank you.

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you, Mr. Chairman.

I'm pleased to be here today to address the Joint Board's recommendation regarding high-cost universal support and to consider, more generally, ways to reform Universal Service.

I don't think that anyone questions the important policy goals inherent in the Universal Service system. And nobody in 1934, or even 1996, could have predicted the importance of wireless service in modern life.

I've talked, in previous hearings, about the importance of high-speed Internet connections in rural America, the importance of having telephone service and cell phone service all over our state. I can tell you having just recently driven in the far corners of our state, that it's still a major issue.

And, in light of this, I'm concerned that any cap on high-cost Universal Service support for competitive eligible telecommunications carriers, even the temporary cap proposed by the Joint Board, may at first delay and then hamper current efforts to build-out wireless service in rural America. At the same time, I'll say that I recognize that the Universal Service system screams out for reform. As Commissioner Copps wrote in his dissent to the May 1 Joint Board recommendation, we should be bringing everyone to the table to develop as much consensus as we can.

I look forward to the testimony today, and questioning you, Commissioner Tate, and to learning about the ways we can achieve fundamental comprehensive reform.

Thank you.

Senator STEVENS. Thank you, Senator.

Ms. Tate, these first questions are the Chairman's questions.

The Joint Board's recommendation for a cap is designed to be a short-term fix for the growth in Universal Service demand. In order to ensure the long-term stability of Universal Service, what specific further reforms would you favor?

Ms. TATE. I'm glad the Chairman noted that this was definitely an interim decision, and a consensus decision, on what action to take.

My vision, obviously, in terms of being a Commissioner, I have an open mind on many of the proposals that have been submitted to the record. We have numerous comments, and reply comments, and I'm looking forward to the close of that comment period, to review all of those.

My vision, as I said in my statement, was for us to move to a technologically and competitively neutral plan that would be based on the provider's cost, and hopefully that would also have mechanisms that would control this continued growth over time so that, indeed, we can sustain the Fund to be used precisely as you all have recognized, for what it should be.

There are a number of proposals, obviously, that you all have discussed. Chairman Martin and many others in the record have suggested reverse auctions that, indeed, would be technologically and competitively neutral. The Joint Board suggested in our Recommended Decision, that the FCC review the primary line restriction, which Congress has disallowed in the past; and the possibility of revisiting the portability rule. There are also some proposals about trying to utilize more granular data for the purpose of also better targeting the funds to the need.

Senator STEVENS. The Chairman would have asked, "In the long term, do you believe that Universal Service funding should be available to more than one carrier in a geographic area?"

Ms. TATE. We did not reach a decision about that. And I think that is one of those decisions that, as a Commissioner, I will be faced with in trying to determine what fundamental reform will look like. Certainly, that's going to be an important part of this, and that is whether we fund multiple carriers in areas that are determined to be high-cost areas.

Senator STEVENS. Well, the Joint Board recommends Universal Service funds for competitive carriers be capped on a state-by-state basis. The recommendation omits any mention of tribal lands. In the light of the special jurisdictional concerns involving Indian country, how should the FCC apply that cap to tribal lands? That's still a question of the Chairman's.

Ms. TATE. Yes, sir, I understand. I think that, as I said in my statement, certainly the FCC and the Joint Board realizes there are many unique circumstances for tribal lands, and we would need to take those unique circumstances into account as we move forward with the implementation of a cap.

Senator STEVENS. In order to preserve sovereignty of these tribes, would it be best to address support for competitive carriers serving tribal lands on a case-by-case basis?

Ms. TATE. Senator, I haven't had an opportunity to think about looking at that. I assume that as we look at tribal lands through the lens of the unique circumstances that they pose, I assume that's what that does mean.

Senator STEVENS. All right. Senator Sununu preceded me, and I would call on him first.

Senator SUNUNU. No, that's all right. Please continue.

Senator STEVENS. All right. I just have one question. Did the Joint Board consider the problem of paying the second carrier, the competitive carrier, on the basis of the primary carrier's costs? As I understand it, if carrier A has been serving, and carrier B comes in to compete and seeks Universal Service, the reimbursement to carrier B is based upon the cost to carrier A, not carrier B. And, by definition, in almost every circumstance, carrier B has a substantially lower cost. Why the windfall?

Ms. TATE. Yes, sir. Well, I think that that goes back to fundamental reform of the entire program.

Senator STEVENS. It's not in the law. The Commission did that.

Ms. TATE. Once again, I think that that is precisely the reason that we need to move forward absolutely as quickly as possible toward fundamental reform.

Senator STEVENS. Well, I agree. I just cannot believe that we would have the situation continue, when the Commission has the authority to change this without the Joint Board. We do have the bill Senators Dorgan and Smith have introduced, and I have a bill on Universal Service reforms, and Senator Inouye's staff and mine are working on a way to put them all together.

But it's going to take time to do that. The Commission could solve this now. That chart you showed us of the increased cost is based upon a cost basis that is based primarily upon fixed cost. The new carriers are involved in wireless and other basic costs that are

substantially lower. I just don't understand why the Commission persists in allowing that to continue. Have you reviewed it at all?

Ms. TATE. That was not what the Joint Board particularly focused on. The Joint Board came to a consensus that we should cap the CETC side on the Fund only as an interim basis so we could move forward as quickly as possible toward fundamental reform. I agree with you, Senator, that the present system is fraught with many inequities.

Senator STEVENS. This will be my last question. It is my understanding, what is happening now, under the Joint Board's recommendation, is you cap the newcomers, you cap the competitors that are coming in, and keep that cap on for at least 18 months, when the problem is recognizing those newcomers come in at a lower cost. I'm frustrated dealing with this issue, because we're getting a bill passed when FCC has the power to deal with it. You're relying on this Joint Board as though it's something we mandated you to follow. We have not mandated that you follow them. Do you agree?

Ms. TATE. I can understand your frustration, Senator. And I think we're all frustrated. I think that's why the Joint Board came to a consensus decision that we needed to do something to curb the Fund.

I do want to speak for a moment, though, about the new carriers that could be designated. The cap is at the State level, so new carriers may be designated, and they would share in—underneath whatever that State cap is.

Senator STEVENS. Yes, I'm afraid of that. With a state one-fifth the size of the United States, we have the new carriers come in with new technology, and you're going to put a cap on what's happened in the past, when we still have areas that don't have any service at all. So, I don't understand what's going on. It's just like someone's putting their head in the ground. This is an ostrich approach, as far as I'm concerned.

Senator Sununu?

Senator SUNUNU. Thank you, Mr. Chairman.

Commissioner Tate, you indicated that the Commission—or the Board wasn't able to reach consensus on more comprehensive measures. And that's frustrating to hear, especially in an environment, and on a Committee, where everyone says they're for reform, and they're for change, and they're for the future, and they're for the children. Can you be specific as to what the obstacles are, and what the reasons are, that have prevented consensus from being developed at the Joint Board?

Ms. TATE. Well, let me start out with saying that there was consensus. Seven of eight of us determined that we needed to take this first step. So, in——

Senator SUNUNU. No, no, but consensus on——

Ms. TATE. I understand.

Senator SUNUNU.—broader reform. No, but you wouldn't be here—you wouldn't have made the recommendation on the CETCs if there weren't consensus, I understand that. But——

Ms. TATE. And——

Senator SUNUNU. But you were talking about more competitive reform——

Ms. TATE. Absolutely.

Senator SUNUNU.—and an——

Ms. TATE. And——

Senator SUNUNU.—obstacle there.

Ms. TATE. And I can assure you, I wish that I could have moved us, faster, forward to more comprehensive reform. We discussed many of the recommendations that are already in the record. I think the good news is, I've never seen this much attention focused on these issues. People are frustrated. The Fund is growing at an unsustainable rate. So, I do think we are beginning to get good, cost-effective, cost-based—as Senator Stevens said—proposals on the table, and we will move forward. We are meeting in July. We continue to meet extremely often to try to move forward on this. The reply comment period, I think, closed today or tomorrow. We will immediately get all of those comments summarized and begin to work through each one of those concepts.

Senator SUNUNU. But, in the absence of any description of what the specific obstacles to consensus for broader reform, it's hard to believe, then, that you'll be able to meet the goal of putting forward a more comprehensive plan in 6 months. And, in your statement, you talk about being able to advance some more comprehensive proposals in the near future. One, why should we feel good about that commitment—or why should we feel comfortable that that goal will be met? And, two, what deadline should Congress set to help ensure that that action is forthcoming?

Ms. TATE. Well, thank you for recognizing it's a really tough job trying to get people to come to consensus, especially on these issues. So, I thank you for recognizing that. It would be wonderful if you all asked the next panel some of these questions.

Senator STEVENS. We will.

[Laughter.]

Ms. TATE. Ask them to come together so that we can get to fundamental reform.

Senator SUNUNU. But why are you confident it will happen in 6 months? And should Congress set a deadline for action?

Ms. TATE. The Joint Board, in a consensus decision, chose 6 months. We wanted to keep ourselves on a very tight timeframe. If you all would like to choose a timeframe, I'm sure that we will try to accommodate that.

Senator SUNUNU. In the meantime, we have an interim cap on CETCs. Some of them have requests pending, or decisions pending, at the FCC. What happens to them? And I'm sure there are some in many states; I'm quite sure there are some in New Hampshire—and they've had requests and decisions pending in front of the FCC, not for a couple of months, but, in some cases, for a few years. What happens to those pending requests? And are they going to be just shut off from the access that would have been available if this decision either hadn't been made so soon or if their petitions had been acted on in a more timely way?

Ms. TATE. The state cap would provide that the amount of funding is capped at the 2006 level, which is a real amount, that we knew would be a firm amount. If new ETC designations are made—and, as you know, most of those are through Section 214 at

the State level—they will take a *pro rata* share of the state-capped amount.

Senator SUNUNU. So, they're out of luck. You know, if they made a request 2 years ago, or 3 years ago, the FCC hasn't acted, you impose this cap, so it's too late, because their petition wasn't acted on in a timely way.

Ms. TATE. No——

Senator SUNUNU. They can take from some other CETC, because they're taking out of a capped pool at the State level. I understand the point you made with regard to the *pro rata* share. But, you know——

Ms. TATE. That's——

Senator SUNUNU.—there's obviously a very different economic picture and a very different economic value in that. So, they're out of luck.

Ms. TATE. They will receive funding. It will just be capped at the State level of 2006.

Senator SUNUNU. But the incumbents won't be capped.

Ms. TATE. Yes.

Senator SUNUNU. But there's no cap on any other part of the program.

Ms. TATE. Oh, the incumbent providers. Actually—well, Senator Sununu, you know, there are caps over on the wireline side, on the high-loop cost and on the interstate access rate. And then you know that we also have a cap on both the E-Rate fund and the rural healthcare fund. So, I mean, there are some caps in place.

Senator SUNUNU. Right, but there's no overall cap in the high-cost support, which is what benefits most of the——

Ms. TATE. There isn't a cap——

Senator SUNUNU.—most of the ILECs.

Ms. TATE.—that—there is not a cap now on the overall fund.

Senator SUNUNU. Understood. Thank you.

Senator STEVENS. Senator Snowe, did you have an opening statement?

Senator SNOWE. I did, Mr. Chairman, but I could do it later.

Senator STEVENS. You may do it later, yes.

Senator SNOWE. Thank you.

Senator STEVENS. Senator Pryor?

STATEMENT OF HON. MARK PRYOR, U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

I would like to ask about the Joint Board's recommendation being interim in nature. Do you think "interim" means interim? I mean, is that a short-term, long-term—how——

[Laughter.]

Senator PRYOR. What does that mean, in your world?

Ms. TATE. Obviously, I haven't been in D.C. as long as all the people behind me, but——

[Laughter.]

Ms. TATE. You know, we chose—again, as a consensus decision—to make this an interim cap. We set very strict guidelines to act in the most timely way that we, as the Joint Board, felt would be possible. In the decision, we even used the word "emergency." So,

I am hoping—I pledge to you all that I will work as hard as I can to facilitate the continued discussions between the Joint Board members so it is, indeed, an interim cap.

Senator PRYOR. The concern I have about the use of the term "interim" is that the Commission adopted an interim freeze on separations factors in 1982, and an interim cap on high-cost loop support in 1993, and, basically, those are still in effect today. So, I think there have been very slight modifications to both of those, and there are probably other examples, too, that people in the audience are aware of. When you talk about "interim," and you talk about "consensus"—now, I wasn't part of any of those discussions, but I would like to know your impressions on the consensus. It sounds to me like it was very, very difficult to reach a consensus, and, basically, you just did the best you could under the circumstances. But maybe a true consensus still needs to be reached. Is that fair to say?

Ms. TATE. Absolutely, Senator. We must move toward fundamental reform.

Senator PRYOR. Well, what——

Ms. TATE. And——

Senator PRYOR.—what is it that will get you to consensus, where we can move to fundamental reform? What are the major sticking points?

Ms. TATE. Someone has already quoted my colleague Commissioner Copps, and he said, "Well, everyone may have to sacrifice a little." And, again, not to be trite, but you are going to have a panel in front of you that represents all the major industries that are going to be affected by whatever—whether it's a cap or another recommendation—that the FCC may accept. So, I would ask you all, as we are doing, to encourage the industry to come together around some consensus proposal.

Senator PRYOR. OK. There's a lot of investment right now in rural broadband by the wireless industry. Do you think that this recommendation of the Joint Board will help or hurt deployment of rural broadband?

Ms. TATE. You know, obviously, like you, I live right next door, and I am constantly amazed and thrilled by all the services that the wireless industry is providing. We want to do all we can to encourage that. I believe that rural Americans should have an evolving level of services. So, I hope the interim nature of this will be seen as that, and that companies will continue to invest. And, as you know, there are many companies that don't seek ETC status——

Senator PRYOR. Right.

Ms. TATE.—wireless companies, that do provide services.

Senator PRYOR. Right. There again, the "interim" issue there, to me, would make it difficult for a company to know what to do, in terms of how much to invest, based on what the future might look like. They would like some certainty.

Ms. TATE. Senator, what do you think—I mean, I'm—I'm very interested in moving toward a more competitively neutral cost-based system, so that's one of the concepts, for instance, when you say, "What's standing in your way?"—you know, perhaps that's some-

thing that the wireless industry would want to come forward with——

Senator PRYOR. Uh-huh.

Ms. TATE.—some kind of cost-based analysis, their own cost, cost to serve a very specific area. Alltel has a really creative suggestion in the record right now about providing broadband to underserved areas. So, you know, maybe those are some suggestions that you could encourage.

Senator PRYOR. OK. Well, thank you, and I'll try to do that.

One last question, on the Fifth Circuit Court of Appeals. They stated that the Commission, "Must see to it that both Universal Service and local competition are realized," and that you, "cannot flatly ignore or contravene a goal set forth in the Act." Do you feel like this recommendation of the Joint Board—are you accomplishing what the Fifth Circuit has laid out, or do you think there's still work to be done?

Ms. TATE. Well, once again, yes, there is much work to be done. We have got to move toward fundamental reform. And I think that this cap was just in order to move us forward one step to stem what we see as just unsustainable growth on that side.

Senator PRYOR. Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

Senator McCaskill?

STATEMENT OF HON. CLAIRE MCCASKILL, U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman.

I got to tell you that I know broad-based reform is hard, but if there was ever an area that needs broad-based reform, obviously it's this. And I'm a little depressed, because you keep asking us to ask the next panel. And that's kind of a public acknowledgment that, you know, the cart is driving the horse here.

The next panel is full of people who have financial interests. This is about money, and they have financial interests. And what you're basically saying to us is, "The FCC is incapable of moving forward on reform unless all the people who are making money say it's OK." And that's hard for me to get my arms around.

It seems to me that the FCC is supposed to be the body that is given the statutory authority, and it's given the ability to look at this broad program and see whether or not it's accomplishing its purpose, and see whether people are being enriched, and act, not waiting for the people who are making money to all join hands and sing "Kumbaya."

And so, I'm interested in why we have gotten to the point that, before the FCC can do its job, you've got to get all the people making money to agree with you.

Ms. TATE. I certainly understand your frustration, and we are acting. I'm here today because we took a step, and there are a lot of people who obviously are not pleased with the consensus recommendation that the Joint Board came forward with. But we are moving ahead. We've set a tight timetable, the Joint Board has asked the FCC to work on a very tight timetable. I think the Chairman will be placing something before the full Commission in very short order for us to look at. So, we are moving forward.

Senator MCCASKILL. It's my understanding that the cap will not cap the amount of money that taxpayers are paying into this Fund. Correct? In other words, the amount that consumers continue to pay is going to remain.

Ms. TATE. Well, consumers will continue to pay in, but the rate will be capped at what the 2006 rate was.

Senator MCCASKILL. Well, my question is simple. Will the Fund continue to grow, overall?

Ms. TATE. Well, we have only capped the CETC portion, so I can't answer, right now, whether the Fund—the entire Fund will continue to grow or not. If we did not cap this side of the Fund, then this side of the Fund would continue to have grown at a rate that's unsustainable.

Senator MCCASKILL. But there's nothing in this recommendation that will make sure that consumers are not continuing to pay for this in the future.

Ms. TATE. Consumers are continuing to pay, today, Senator.

Senator MCCASKILL. It's my understanding that this Fund cannot be used for broadband, but it can, kind of—wink, wink, nod, nod—be used for everything but DSLAM. And so, is it the knowledge of the FCC that a lot of these monies are being used for what you would call ancillary or connected costs of deploying broadband without actually spending it on the DSLAM?

Ms. TATE. Well, I think that investment in infrastructure that supports broadband—certainly, some of this money is being used to encourage more investment in infrastructure, especially in rural areas. There——

Senator MCCASKILL. All right.

Ms. TATE.—are also—as you know, we also are encouraging broadband through E-Rate, through our rural telemedicine, so we are encouraging broadband at the FCC.

Senator MCCASKILL. I want to ask you, is the FCC familiar with what is and isn't happening with the Rural Utilities Service Broadband Grants at USDA? Do you all look at that, that program, and what is and isn't happening with that program, as you all consider the Universal Service Fund and the impact that it is or isn't having in rural America?

Ms. TATE. I don't have any personal knowledge about having met with them. I'm sure that, at some level, our bureaus probably do work together. I remember that when I was a Commissioner in the State of Tennessee, actually there was a joint RUS, ARC, and FCC pilot project up in Appalachia. So, I know that, at least in the past, our staffs have worked together.

Senator MCCASKILL. Well, you know, it's another example of where, there's money being spent on the same thing from two different pots of money, and the person who knows how to access the pots of money, and who's got the inside track, they're all anxious for everything that is currently the way it is to not change. And, as has kind of been referenced in previous questions, the goal needs to be that we continue to keep the field open for future competitors, and I'm frustrated that the Rural Utilities Service Broadband Grants, even though we'd authorized with leverage, you know, billions of dollars, and appropriated billions of dollars, it is not being deployed in a way that is making the kind of progress,

I think, that was anticipated by the legislation, to impact rural broadband.

Let me ask you this question. Do you all feel that the initial reason this Fund was put in place, in terms of making sure that there were landlines available in rural America—do you feel that the need is the same now, for maintenance as it was for establishment?

Ms. TATE. Well, certainly I believe that all Americans should have the opportunity to have an evolving level of services. And, in order to have those new technologies, there has to be a new investment in infrastructure for companies to keep up with the new technologies and to provide those to all Americans.

Senator MCCASKILL. Should we open up this fund for broadband, then, for Internet phone?

Ms. TATE. Well, that is certainly one of the recommendations that we have been asked, on numerous times. And, in fact, I believe some people on this Committee probably would like for us to do that. The Joint Board did include that question in our Public Notice that accompanied the Recommended Decision. So, we will be taking that into account as we move forward.

Senator MCCASKILL. And is there any fear—if we're frozen, without consensus, by the people who are stakeholders, from a profit perspective in this system, is there any fear that if we lock in a cap, that what we're doing is locking in the *status quo*?

Ms. TATE. I hope not. This is, indeed, a change. And what we hope is that—once again, this is the first step—we're in a process, this is not a solution—that this is the first step, so we can get, and move toward, fundamental reform.

Senator MCCASKILL. Well, Mr. Chairman, I know that you're working on broadbased reform in this area, and I hope that we can all come together and try to, as quickly as possible, within the way the U.S. Senate works, get the comprehensive reform. And I hope we include the Rural Utilities Service Broadband Grants. With the farm bill coming up, I think that has to be contemplated, too.

It seems to me that we've got a bunch of silos here, and that the people that have the mechanism to move around those silos and figure out how to access the money are ones that are, kind of, driving this train, as opposed to the sound public policy that ought to be ruling the roost at this juncture.

But, I thank you, Commissioner Tate, for being here today, and I will try to, along with my colleagues, ask some of the questions you want asked. But I want to encourage you, that it doesn't matter what the next panel says, if the FCC is willing to act.

Thank you, Mr. Chairman.

Senator STEVENS. Well, thank you, Senator.

The Senator—you're right, because that is a pot of taxpayers' money. Our normal Universal Service is dealing with ratepayers' money. And we've had little access, through this Committee, to that other pot of money. And the reform bill, we ought to find ways to mandate that cooperation so that the subsidy fund is used, and used appropriately, to advance rural communications. And I thank you for the comments.

Senator MCCASKILL. Thank you, Mr. Chairman.

Senator STEVENS. Senator Klobuchar?

Senator KLOBUCHAR. Thank you, Mr. Chairman.

To follow up on some of the focus of Senator McCaskill's comments, Commissioner Tate, I mentioned that when I traveled through my State, I see, repeatedly, the need for more access to cell phones, broadband. And, in light of the proposed cap—I know, again, you've talked about listening to these other panelists, but I'd like to know what you propose, to reform Universal Service.

Ms. TATE. Well, I think that my overall vision is trying to move forward to technologically and competitively neutral mechanisms that are based on providers' cost, not an embedded cost of someone else, and that we will try to incent efficient technologies, and that we will try to incorporate some type of mechanism that will control the Fund growth over time so that, once again, the Fund can do what it was intended to do.

I'm in a little bit of an odd position, because not only am I the head of the Joint Board, I'll be voting on many of these recommendations and issues. And so, I have an open mind. I'm looking forward to even more concepts that may come forward on both the distribution side—like reverse auctions, for instance, which would be competitively neutral—as well as over on the contribution side—for instance, the numbers-based approach that the Chairman and others have suggested.

So, I think that we can do a better job using more granular data. I think, now there's incredible technology, this GPS technology that we haven't had in the past, so that we can target it to places that you're describing and that are in my State, as well.

Senator KLOBUCHAR. You know, there are many places where multiple carriers receive the Universal Service Fund support for the same geographic area, and that's especially in town centers. And, at the same time, as you mentioned, there's rural areas where there's no support at all. And how can we ensure—and, again, I want to follow up on this, the end of your comments there—that the USF targets these underserved areas.

Ms. TATE. Absolutely. Well, I mean, it is the very purpose and essence of what Universal Service is, to target those areas. And so, that's precisely what we are trying to do by getting to fundamental reform, so that, indeed, we can ensure——

Senator KLOBUCHAR. I'm just looking for your ideas on how we do it, because I just haven't seen it happening in the way that we want to see it happening. So——

Ms. TATE. Well, you know, I think that, once again, if we moved toward something, such as reverse auctions, then we are ensuring that there is a carrier serving an area that is based on cost.

Senator KLOBUCHAR. You know, we talked, before, about getting things under control. And, I know, in the past few years, both the Commission and the Joint Board have sought to limit the number of competitive eligible carriers that were eligible for the USF funds. And why didn't this reduce the dollar amount of the competitive carrier support? I think it grew from—correct me if I'm wrong—something like $15 million in 2001 to almost 1 billion in 2006.

Ms. TATE. Yes, those numbers are right, unfortunately. And——

Senator KLOBUCHAR. And so——

Ms. TATE.—you know, this——

Senator KLOBUCHAR.—what went wrong?

Ms. TATE. Well, Section 214 of the Act provides that the states shall designate ETCs. And so, while the Commission has tried to encourage more stringent—for instance, criteria, eligibility criteria—that was merely voluntary—it could be voluntarily accepted by the States. Some States, I think, have slowed down on their ETC designations. Some states have, now, more stringent requirements. But there are also others that have not chosen that path.

Senator KLOBUCHAR. Did the Joint Board consider other interim measures besides a temporary cap on the amount of high-cost support that the competitive eligible carriers could receive?

Ms. TATE. Well, of course we held an *en banc*. We had numerous comments already in the record. We reviewed all of those. But, as I said, I wasn't able to pull the Joint Board together to move any farther toward consensus at this particular time. We all recognized we had to do something to stem the growth.

Senator KLOBUCHAR. And what do you think's going to change in the next few months that will get you to get the kind of consensus you think you need to move?

Ms. TATE. For one thing, because there are even more comments and ideas and innovative projects, such as the one that I mentioned that Alltel had suggested. I think that there continue to be people coming forward, saying, "What about this? What if we did this?" And that's precisely what we hoped would happen. So, we are continuing to, as I said, review all that's in the record now. I think the record—the reply comments may close tomorrow. And, of course, we'll share all of that with you all, as well, and, you know, welcome your input.

Senator KLOBUCHAR. I'd just like to reiterate what you're hearing from the other Senators, just our frustration that we haven't been able to hear more from the FCC, in terms of reform, and get those ideas moving and going. We hear more and more from people throughout our states that we're in this amazing technological age, but some of them are still left standing with just plain old telephones, and they're not able to access this technology that other people in this country are sharing in.

Ms. TATE. I understand.

Senator KLOBUCHAR. Thank you.

Senator STEVENS. Thank you very much.

Maybe, Senator, we'll—the Joint Board will have given Congress itself an incentive to act.

Senator KLOBUCHAR. Very good idea, Mr. Chairman.

Senator STEVENS. Senator Snowe?

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Yes, thank you, Mr. Chairman. And I thank you and Chairman Inouye for your efforts in this regard. And I know your efforts, consistently, as previous Chair of this Committee, in reform legislation, with which I've joined on the Universal Service Fund, which is instrumental, undeniably. But, regrettably, we're at a point today where I think that it handicaps rural America with the proposal that is being put forward by both the Joint State Board, Commissioner Tate, as well the FCC. I think it has ominous implications.

And you'll, in the second panel, hear from one of my constituents, who is a Chief Deputy of the Kennebec Sheriff's Office in Maine, and is lead spokesman for the Maine Sheriffs' Association. And he'll be very vocal, as he has in raising, I think, awareness of this issue throughout our state, about the implications and the consequences of the inability of rural America to have access to wireless service. And that's essentially what it's all about here today.

There's no denying we need reform. And, we should certainly do our part here in Congress. But it doesn't mean that we have to accept a recommendation that disadvantages rural America. And that's certainly true in Maine. And I think of the numbers, it's staggering, from where we are today, in terms of wireless. People having, more than 600,000—my 1.3 million population of the State of Maine, from less than 300,000—had wireless, back in 2000–2001. But, as a result of this cap on the high-cost fund, what is going to happen is that they're going to be fewer towers built. In fact, we'll lose five towers from one carrier. Another carrier is planning to build 32 towers over the next few years, and six of which, last year that were built, were based on using funds from the high-cost fund. So, what that means is, the rural parts of my State, as across America, as indicated by the comments here today of—with my colleagues, are going to be denied the very technology that can make the difference between life and death. And that's what Sheriff Flannery will be talking about. And that's true. It's one thing to say, "Well, I'm sorry, we can't afford this service," but, at the end of the day, the consequences are that people in rural America aren't going to get the benefits, of this service, when over half the calls to 9-1-1 come from wireless service. So, that's what we're talking about. These are life-threatening situations; in addition, obviously the economic implications when rural areas are denied the state-of-the-art technology.

And so, I think the inherent unfairness, the disproportionate burden that it places, on my rural State of Maine and rural regions around the country, I think should lead the FCC to think about putting this on hold. I just think that, frankly, just because we haven't been able to reach a comprehensive solution, whether it's in Congress, or whether it's within the FCC, that we shouldn't place that burden on rural America at this point in time. The world's revolving around wireless. And if—that being the case, we can no longer say, "Well, we're just going to continue to have them exist on 1920s technology, with wirelines," because we're in a different world today, and I don't think that rural areas should face that disproportionally.

Finally, the point I want to make is, is that wireless carriers—and I'd like to have you speak to this question—pay more than a third of the contributions to the high-cost fund, so, therefore, they should reap the benefits, of being able to build-out this infrastructure in rural regions of our country, as in two of our major carriers in the State plan to do, but will have to postpone those plans—building, for example, five towers next year—because they depend on support from the high-cost fund.

So, let's start with that. We have a third of wireless carriers—the wireless carriers are paying a third into the high-cost funds.

Why shouldn't they be able to continue to get the additional funds that they deserve, and that they have contributed to?

Ms. TATE. Senator, I just have to say, the safety and welfare of citizens everywhere has been one of my highest priorities. I was a State official, and now I'm a Federal official. And I want you to know that. I am concerned.

At the same time, I think that the premise of your question is based on the system being fair right now. There are so many inequities in the present system. Some of them we've already talked about, and that is the fact that the wireless carriers receive funding, not based on their own costs, which, in most cases, are much, much less than the ILEC cost, but they actually receive cost based on the embedded cost.

The other thing is that, when we look at that cap—when we looked at the cap in the CETC side, that's where the growth was. So, we looked for, where is the problem, and how do we try and provide a solution to that particular problem?

And I guess the other thing is that, on the ILEC side, there are caps. There's the cap on the high-cost fund, there's a cap on interstate access. And we have other caps throughout the system, whether it's E-Rate, that you know about, or the rural healthcare fund. So, this provided, actually, some parity as we made these decisions.

They are difficult decisions, I agree with you. I'm from a very, very rural State. I'm concerned about these decisions, as well.

Senator SNOWE. But this is a very piecemeal approach. And so, you're asking one sector, and certain parts of America to bear the disproportionate burden of this decision because of the inability of the FCC to reach a consensus, or this Joint State Board, and even the U.S. Congress. But rural America should not be put at risk because within the FCC or the Joint State Board you have not been able to reach a consensus. An interim measure, at the minimum, is going to be 18 months. That's not interim, in my view, number one. Second, by imposing a cap, I think, frankly, it's going to be a disincentive to reaching a consensus within the FCC, because you've made your decision to control the costs until you have the ability to make that decision, but it's within the FCC. The Joint State Board, you don't have to accept their recommendations, frankly. The FCC has a responsibility, as well. It's not because they're saying, "Well, we'll wait for the industry to reach a consensus." It's all well and good, they should try to reach a consensus on the question you raised about, "What are the true costs?" and so on, and we all agree with that. But that doesn't mean to say that you have to accept a piecemeal approach that unfairly affects, one sector or one part of America. And that's what's happening now. And I think you have to look at the implications of this decision, which I think are enormous and is going to place rural America at a tremendous disadvantage. So, do you agree?

Ms. TATE. Obviously. As I've said, I'm from a very rural State, too. I want——

Senator SNOWE. Well——

Ms. TATE.—rural areas to have evolving levels of services. The Joint Board——

Senator SNOWE. So——

Ms. TATE. Once again, Senator, you know, the Joint Board has representatives on it from very rural areas, from Oregon to Vermont, to very rural areas. And this was, once again, seven reasonable people who came to the decision that the problem was on the CETC side, and that's the step that we decided to make in order to sustain the Fund at this time.

Senator SNOWE. Well, I think it's ignoring and overlooking the magnitude of the impact of that decision, frankly. I mean, just in my State, when you're talking about postponing five towers, this year, as a result of that cap, I mean, that's just the beginning of this process. And so, I think that, obviously, it's going to have enormous implications. And I don't think that the FCC is being responsible by accepting that decision, based on what the implications are, frankly. And it may well be that you're all sensitive to rural America, but you're not looking at the ultimate consequences. That's why I submitted a letter to the Commission. The Maine State Legislature has passed a resolution, you know, unanimously opposing, this recommendation, because it's going to have enormous implications, and it's going to set back rural America by years by the time you get around to making that decision. So, I don't think it's fair to put them in that position, because a comprehensive solution cannot be agreed to.

And, finally, when you're talking about the charges, I am curious about the nature of the charges. From the second quarter of 2005 to the third quarter of 2006, the USF surcharge hovered between 10.2 percent and 10.5 percent; fourth quarter 2006, the FCC dropped it to 9.1 percent, and then, in the second quarter of 2007, increased it to 11.7 percent. It hasn't been that high since early 2005. I mean, so what contributes to the erratic nature, of these increases?

Ms. TATE. I believe the——

Senator SNOWE. And——

Ms. TATE.—particular instance that you're noting was from one-time payments that were underpayments that came in from the interexchange carriers, possibly in the range of $500,000. I mean, I can find that and provide you the specific information.

Once again, that was one of the reasons that the Joint Board came up with a recommendation regarding a State cap rather than caps that might be based on quarterly fluctuations because of some payment into the Fund.

Senator SNOWE. Well, obviously we're not going to reach an agreement here today, regrettably, but I just want to reiterate my opposition, my deepest opposition to this proposal, because I don't think it's fair to rural parts of America. And, as Sheriff Flannery will tell this Committee, what, he and others in the law enforcement community today go through to get a signal—and remember, half of the 9-1-1 calls come from wireless service. So people depend on it, they expect it. And so, the fact that we're going to be denying them these additional towers over the next few years, because that's what it means, because companies have to make their long-term decisions and investments, and if they don't have the predictability and the certainty of the support from the high-cost fund, they're going to postpone and defer those decisions, at obviously, the expense of the rural parts of my State and across this country.

I would hope that the FCC would reconsider this decision because of the enormity of the impact it's going to have.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you. No Senator has any further questions of Ms. Tate, I hope.

Thank you very much. You've been——

Ms. TATE. Thank you.

Senator STEVENS.—very patient. And I think you've represented the FCC very well. I'm not saying I agree with the FCC, but thank you for your participation.

Ms. TATE. Thank you, Mr. Chairman.

Senator STEVENS. We'll now call panel 2. You want to recess for just a couple of minutes?

Our next panel is John Rooney, President and Chief Executive Officer of U.S. Cellular; Mr. Roger Nishi, Chairman of the Organization for Promotion and Advancement of Small Telecommunications Companies; Mr. Jonathan Foxman, President and Chief Executive Officer of Chinook Wireless; Mr. Joel Lubin, Vice President of Regulatory Planning and Policy for AT&T; and Mr. Everett B. Flannery, Jr., the Chief Deputy of Kennebec County Sheriff's Office, Augusta, Maine.

Gentlemen, the Chairman has adopted the benign policy of urging witnesses to keep their statements short, and it seems to be working better than my policy of limiting them precisely to time limits. So, please proceed, with the idea that others are following you, and we would hope we'd have a chance to ask you questions.

Our first witness would be John Rooney.

Mr. Rooney?

STATEMENT OF JOHN E. ROONEY, PRESIDENT AND CEO, UNITED STATES CELLULAR CORPORATION

Mr. ROONEY. Good morning, Mr. Vice Chairman and members of the Committee. My name is Jack Rooney, and I'm the President and Chief Executive Officer of United States Cellular Corporation. I want to thank you for the opportunity to appear before you today.

U.S. Cellular provides wireless service in nearly 200 markets across the country, including many of the states represented in this Committee, including California, Maine, Minnesota, Missouri, New Hampshire, Oregon, South Carolina, Texas, Washington, and West Virginia. The overwhelming majority of the geography we serve is rural in character. We currently receive Universal Service support in seven States, including Washington, Oregon, and Maine.

I am here to advocate reform of the Universal Service program in a comprehensive and constructive manner. U.S. Cellular strongly opposes capping support to wireless carriers. Today we are using that support to provide rural consumers with access to essential services in ways that would not otherwise be possible. For example, in Maine we are using support to construct 21 sites in small towns, such as Grand Isle, Union, and Peru. In Oregon, we are using funds to build 11 new sites in places like Emigrant Lake, Wallowa, and Butte Falls. Every cell site we build provides critical public safety benefits. At a time when the public is increasingly concerned about having E–911 service, it scarcely bears mention that, without a cell site, E–911 is useless.

I believe that there are five factors to consider when reviewing the current situation.

First, freezing support to wireless carriers harms rural customers by denying them the improved service that we're ready to deliver. According to the FCC's own data, between 1995 and 2005 the average cost of wireless service dropped from 43 cents per minute to 7 cents per minute, while usage increased from 119 minutes to 740 minutes over that same period. This is great news for people living in areas where network service quality is high. They see tremendous savings in their phone bills, sometimes $50 or more per month. However, these benefits are not available to rural Americans who live in areas with poor signal quality.

Second, since 1996, more than $22 billion of consumer contributions to the Fund have gone to landline carriers, while less than $2 billion have gone to wireless carriers. Consumers have a right to know why they're being asked to continue to provide $3 billion a year to a service that they are abandoning in droves.

Third, U.S. Cellular's efforts to serve customers in the States of Illinois and Missouri are examples of why the cap is a bad idea. Under a cap, these states would not draw enough funds collectively to put up one cell site. In Missouri, we're poised to build 39 new sites in the next 2 years to accelerate our network construction. In Illinois, we have committed to building 121 new sites over the next 5 years. If a cap is imposed, these investments will not happen anytime soon. Rural citizens are demanding wireless service, and if the Committee has any doubt about this, I'm told that there are over 2,700 comments on file at the FCC from consumers opposing the cap, and that the only comments favoring a cap come from our friends in the wireline industry who fear the emergence of high-quality wireless services in their territories.

Fourth, wireline carriers in rural areas have lost 10 percent of their access lines over the last 3 years. However, they continue to draw $3 billion annually. When we lose customers, we lost support. And that's the way it ought to be.

Fifth, the idea of a wireless-only cap is wildly unfair. I understand that all the FCC's Universal Service rules must be competitively neutral in their effect, and there is no way that this discriminatory proposal passes muster.

I would like to rebut a common misconception, that the wireless industry is not accountable. In most States, we file detailed reports demonstrating our accountability for what we do with these funds, and I assure you that this company uses Federal funds very responsibly.

The Joint Board's rationale for a cap is that the Fund will become unsustainable, but they don't explain what that means. If the Senators believe the Board's assessments, then why not ask the wireline industry to share the burden?

Mr. Chairman and members of the Committee, I greatly appreciate the opportunity to discuss this issue with you today, and appreciate your interest.

[The prepared statement of Mr. Rooney follows:]

PREPARED STATEMENT OF JOHN E. ROONEY, PRESIDENT AND CEO, UNITED STATES CELLULAR CORPORATION

Good morning, Mr. Chairman, Mr. Vice Chairman, members of the Committee, my name is Jack Rooney and I am President and Chief Executive Officer of United States Cellular Corporation—known to our customers as U.S. Cellular. Thank you for the opportunity to appear before you today to share with you the many benefits our company has been able to bring to rural America as a result of the Universal Service Fund, and the very harmful effects that will result if the current proposal regarding a cap on this Fund is adopted.

U.S. Cellular provides wireless service in nearly 200 markets located in regional clusters across the country, including many of the states represented on this Committee such as California, Maine, Minnesota, Missouri, New Hampshire, Oregon, South Carolina, Texas, Washington and West Virginia. The overwhelming majority of the geography we serve is rural in character.

You should also know that our opinions and perspectives on the Universal Service Fund are based on our experience in receiving Universal Service support in seven states that include Washington, Oregon, and Maine.

I am here to bring you good news about what wireless carriers like U.S. Cellular are accomplishing in rural America with Universal Service funding. In addition, I am here to advocate reform of the Universal Service program in a comprehensive, constructive manner that promotes both the Universal Service and competition mandates of the Telecommunications Act of 1996; and, at the same time, holds the entire industry accountable for the funds it receives. Specifically, U.S. Cellular strongly opposes capping funding only to wireless carriers while continuing to fund wireline carriers without reforming the rules.

Today, we at U.S. Cellular are using Universal Service support to provide consumers and communities with access to essential services they deserve in ways that would not otherwise be possible. For example, in Maine, we are constructing 21 cell sites in small towns such as Grand Isle, Union and Peru. USF funds are allowing us to provide consumers and communities with access to essential services they deserve and pay for—for the first time. In Oregon, we are using the funds to build 11 new sites in places such as Emigrant Lake, Wallowa and Butte Falls, among others. In every state where we receive assistance, we are deploying networks in sparsely populated communities where there is no logical business case that can justify the cost.

Let's also remember that every cell site we build provides critical public safety benefits. In every place where we build a new cellular site, consumers receive as much as 144 square miles of improved coverage, including all the emergency service benefits of wireless, such as the ability to make a 911 call, and to access the locating features of E–911. At a time when the public is increasingly concerned about having E–911 functionality, it scarcely bears mention that without a cell site, E–911 is useless.

I should also highlight the outstanding performance of wireless systems during the recent flooding in Missouri, wind storms in Washington and Oregon, and many other natural disasters. In each instance, our networks either continued to operate without interruption throughout the crisis, or were restored quickly with back-up battery power or generators so that service disruptions were confined to minutes or hours, not days or weeks. In fact, it's worth noting that this reliability and ubiquity makes wireless the preferred service for displaced people and first responders. Again and again, our wireless networks have proven to be much more robust and reliable than wireline networks.

The key issue before us today, however, is what the Joint Board has overlooked in its rush to throw a cap on just the wireless portion of the fund. I would suggest we look backward, and reflect thoughtfully on Congress' intent in enacting the Telecommunications Act of 1996 and the successes of Universal Service funding to date, before we talk about what should be done going forward.

Continued growth in Universal Service Fund payments has raised the question of whether the program is sustainable given the current methodology it uses to collect and distribute funds. What must be remembered is that Congress, in its enactment of the 1996 Telecom Act, intended for rural consumers to have the same access to advanced services and competitive prices as their urban counterparts. This access should come from providers in a competitive market, governed by technology-neutral rules. In short, the growth of the Fund is not some unintended aberration; it is the direct result of a conscious and enlightened public policy.

I believe that there are five factors to consider when reviewing the current situation:

1. The Vast Majority of Americans Prefer Wireless Service, and Rural Consumers Want Their Cell Phones To Work Just as Much as Those Living in Urban America

Freezing support to wireless carriers diminishes our ability to invest in rural America and harms rural consumers by denying them the improved service that we're ready to deliver.

Let me explain. According to the FCC's own data, between 1995 and 2005, the average cost for wireless service dropped from 43 cents per minute to 7 cents per minute, while monthly usage has increased from 119 minutes to 740 minutes over the same period.[1]

This is great news for people living in areas where network service quality is high. They see tremendous savings in their telephone bills, sometimes $50 or more per month over wireline calling plans. However, these benefits are not available to rural Americans who live in areas with poor signal quality. The use of support to drive these consumer savings is exactly what Congress intended and the proposal to cap support only insulates wireline carriers from competition.

2. Wireline Networks That Were Built and Paid for Decades Ago Have Received 90 Percent of Consumer USF Contributions Since 1996

Since 1996, more than $22 billion of consumer contributions to the Fund has gone to rural landline carriers, while less than $2 billion has gone to rural wireless carriers. Consumers have a right to know where that $22 billion went and why they are being asked to continue to provide $3 billion per year to a service that they are abandoning in droves. Support should go to the service that consumers choose—not the service that regulators force them to choose.

3. A Freeze Will Disproportionately Harm Consumers in Some States

U.S. Cellular's efforts to serve customers in the States of Missouri and Illinois are examples of why this is a bad idea. A freeze on funds to these states means that rural consumers have to pay in, but get nothing—or next to nothing—in return. I understand that Illinois citizens contribute roughly $265 million per year, while Missouri's citizens contribute roughly $126 million.[2] Yet, Illinois draws out less than $2,000 per year for wireless, and Missouri draws out roughly $125,000 per year for wireless. Collectively, these states would not draw enough funds to put up one new cell site.

Assuming a cap is not instituted in Missouri, we are now poised to use support to build 39 new cell sites in the next 2 years to accelerate our network construction in underserved rural areas where our network requires significant additional investment. In Illinois, we have committed to building 121 new sites over 5 years if we are designated later this year as expected. This investment will improve service to over 2 million rural consumers. And that's just the beginning, as we'll continue to invest all available support each subsequent year.

For consumers, this is no small matter. There are substantial underserved rural areas in both of these states where people are demanding wireless service, and without support they aren't going to see that investment. If the Committee has any doubt about this, I am told that there are roughly 2,500 comments on file at the FCC from consumers opposing the cap, and that the only comments favoring a cap come from our friends in the wireline industry who fear the emergence of high-quality wireless service in their territories.

4. Support Must Go to the Carrier That the Customer Chooses

Why should wireline carriers get subsidized even when they lose customers? Wireline carriers in rural areas have lost 10 percent of their access lines over the past 3 years; however, they continue to draw $3 billion annually. When we lose customers, we lose support, and that's the way it should be. As consumers increasingly choose wireless for their voice needs, we should be receiving an increasing share of the Fund so we can provide rural consumers with the high-quality service they deserve. If any one sector deserves heightened scrutiny, I would argue it's the landline providers that continue to benefit from the program while being insulated from financial and market realities.

5. The Cap as Proposed by the Joint Board Is Not Competitively Neutral

Finally, the idea of a wireless-only cap is wildly unfair in that wireless contributes the biggest share to the Universal Service Fund, yet we draw out the smallest amount. All of the FCC's Universal Service rules must be competitively neutral in

[1] See Exhibit 1.
[2] Source: FCC Joint Board Monitoring Report.

their effect, and there is no way that this discriminatory proposal passes muster. Nor does the unofficial freeze by the FCC on new ETC petitions.

To be completely frank, while disappointing, the Joint Board's decision wasn't all that surprising to us. The FCC has been treating our petitions for ETC status as if the cap has already been in place for some time. The FCC has not acted on any of our petitions for ETC status, despite our obvious qualifications to be designated. Some have been sitting there for 3 years. So we cannot deliver the benefits described above to rural consumers in New Hampshire, North Carolina, Virginia, Tennessee, and New York.

I would also like to rebut a common misconception I hear repeatedly about the wireless industry: that we are not accountable. In most states, U.S. Cellular files detailed reports demonstrating our accountability for what we do with these public funds. I can assure you that this company is using Federal support in the manner that Congress originally intended: to provide rural consumers with high-quality service that is comparable to what is available in urban areas. Make no mistake, we are delivering on our promise and will continue to do so in the coming years with support from the USF. Wireline carriers do not have the same level of accountability, and we believe the Universal Service system is significantly over-subsidizing their networks because the system provides support on a "the more you spend, the more you get" basis.

The Joint Board's rationale for a cap is that the Fund will become unsustainable. It doesn't, however, explain what that means.

Nor do the Board's numbers add up. We calculate that even if you accept the Board's unsupported projection that the Fund could increase by another $1 billion in the next year, this would add only 31 cents to the monthly Federal Universal Service charge to consumers. Can someone please tell me, how does this represent a crisis—especially when wireline carriers continue to lose lines but are allowed to draw $3 billion per year?

If the Senators believe that such an increase is too much for consumers to bear, then why not ask the wireline industry to share the burden? After all, wireline carriers draw three times what we do.

A much more responsible and competitively neutral fix is for the system to only provide support to the carrier that serves the customer. The FCC is fully capable of figuring out how much USF support is needed in a given area to provide consumers with the ability to choose the service that best suits their needs. I am told that's what Congress promised. Until that happens, Fund growth is not going to be controlled and consumers are not going to see the benefits described above.

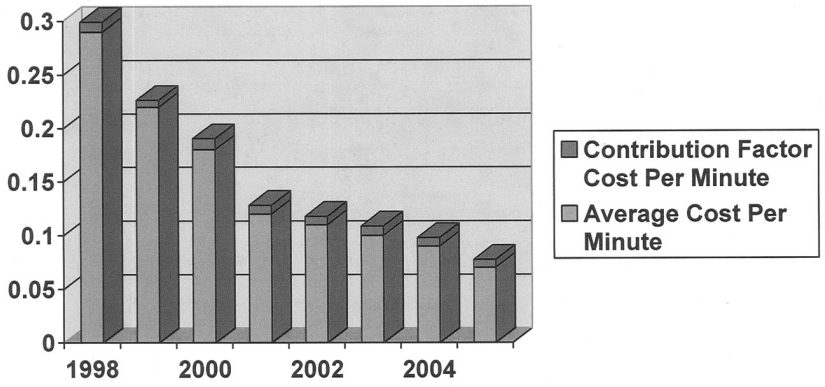
Mr. Chairman and members of the Committee, I greatly appreciate the opportunity to discuss this issue with you today and appreciate your interest. I believe that the Joint Board's ultimate recommendation, and the FCC's subsequent decision, will have a profound impact on rural Americans in your states, and on the host of competitive service-providers that are excited about offering the best telecommunications services possible. On behalf of U.S. Cellular, we hope that you can help ensure that those services are deployed as quickly and efficiently as possible without resorting to draconian and ill-conceived solutions.

Exhibit 1

Per-Minute Cost ($) of Wireless Service

(Including USF Contributions)

(1998–2005) [3]



Senator STEVENS. Thank you, Mr. Rooney.

Our next witness is Mr. Roger Nishi.

Mr. Nishi?

STATEMENT OF ROGER NISHI, CHAIRMAN, ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (OPASTCO); VICE PRESIDENT OF INDUSTRY RELATIONS, WAITSFIELD AND CHAMPLAIN VALLEY TELECOM; ON BEHALF OF NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; WESTERN TELECOMMUNICATIONS ALLIANCE AND THE INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE

Mr. NISHI. Good morning, Mr. Chairman and distinguished members of the Committee. I'm Roger Nishi, from Waitsfield and Champlain Valley Telecom, in Vermont, and I'm the current Chairman of OPASTCO, the Organization for the Promotion and Advancement of Small Telecommunications Companies. Our company is also a member of NTCA, the National Telecommunications Cooperative Association. Today, I will speak on their behalf, as well as WTA, the Western Telecommunications Alliance, and ITTA, the Independent Telephone and Telecommunications Alliance.

Thank you for inviting me here today to testify on behalf of these fine organizations who are the founding members of the Coalition to Keep America Connected.

Let me start by emphasizing that all four organizations applaud what the Joint Board has done, and in recognizing that the pro-

[3] Sources: FCC, Trends in Telephone Service, Table 19.17 (Feb. 2007); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993—Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 06–17, Eleventh Report, 21 FCC Rcd 10947 (2006), App. A, Table 10

gram is in serious jeopardy of becoming unsustainable if immediate action is not taken.

The four organizations strongly support the recommendation to immediately impose an interim cap in the high-cost support received by competitive eligible telecommunications carriers. We urge Congress to also support the recommendation.

We believe the recommendation is the most logical and equitable way in which to rein in the rapid growth of the high-cost Universal Service program while the FCC and Congress contemplate long-term reforms to sustain the viability of the whole Universal Service program, which includes schools and libraries, rural healthcare, and the low-income programs. So, the whole universe, we believe, needs to be looked at, in terms of making sure it's sustainable.

We believe that any entity or person who proclaims support for strong and viable Universal Service in the future should, and must, support the Joint Board's recommended interim plan.

The adoption by the FCC of an interim cap on high-cost support provided to CETCs is equitable. Since 1993, caps have limited the amount of support available to rural incumbent local exchange carriers from the high-cost loop support mechanism. Since July 2001, when caps were re-based by the FCC, rural ILECs have foregone $2.5 billion in Federal high-cost support. Waitsfield and Champlain Valley Telecom has lost a significant amount of high-cost loop support.

I will share that this uncertainty in funding levels has made it more difficult to budget and also to plan for the long term. But our company, like hundreds of rural companies throughout the United States, has always had a community-first approach to doing business, and this means building to all, and serving all of our customers, rather than looking to only serve the lucrative and easy-to-serve customers.

In their recommendation, the Joint Board states that the identical support rule is dated, and may not be the appropriate approach to calculating support for CETCs. The four associations couldn't agree more with this. The identical support rule bases the support received by CETCs on the unrelated costs of the rural ILECs providing ubiquitous service throughout their territories. For years, CETCs—primarily wireless carriers—have reaped windfalls of support through the illogical identical support rule. Moreover, the rules have allowed CETCs, upon designation, to immediately begin receiving the rural ILEC's cost-based per-line support amount for all of their existing customers in the designated territory whom they were more than likely serving successfully without any such support. We advocate the elimination of the identical support rule, and believe that CETCs should be required to demonstrate their own costs in order to potentially qualify for support.

At the same time, we need to keep in mind that this recommendation is only interim. This is only an interim cap. Dollars will continue to flow to the CETCs. And, most importantly, an interim cap on CETCs will not harm the availability of the Universal Service throughout the country, since virtually all Americans have access to service from at least one eligible telecommunications carrier, and, in most cases, more than one.

The organizations feel that it's important for the FCC to adopt the recommendations without modification. The Joint Board has done an excellent job, and thought this out in a very reasonable manner.

And, in the long term, Congress and the FCC should expand the base of contributors to Universal Service, and, as previously stated, the identical support rule should be eliminated, and CETCs' support should be based on their own costs.

To conclude, short-term action is required for long-term stability. And, therefore, Congress should advocate for the FCC's immediate adoption of the Joint Board's recommendation to impose an interim cap on high-cost support provided to CETCs without modification.

The recommended cap would effectively and fairly stem the rapid growth in support to CETCs caused in large part by the identical support rule while Congress, the FCC, and all the parties in this room work together to come up with comprehensive reforms that will address the issues for the long term.

The Joint Board's recommendation is an interim step to protect the Universal Service Fund from exploding even further, and will benefit all eligible telecommunications providers, both wireline and wireless, in the long term.

Once again, the organizations believe that anyone who claims to be a supporter of Universal Service and the Fund and its goal should be a strong advocate for this recommendation.

Thank you for your time today.

[The prepared statement of Mr. Nishi follows:]

PREPARED STATEMENT OF ROGER NISHI, CHAIRMAN, ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (OPASTCO); VICE PRESIDENT OF INDUSTRY RELATIONS, WAITSFIELD AND CHAMPLAIN VALLEY TELECOM; ON BEHALF OF NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; WESTERN TELECOMMUNICATIONS ALLIANCE; AND INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE

Mr. Chairman and members of the Committee, I am Roger Nishi, Vice President of Industry Relations for Waitsfield and Champlain Valley Telecom headquartered in Waitsfield, Vermont. Also, I serve as Chairman of the Board of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and am a member of the National Telecommunications Cooperative Association (NTCA). I am also speaking for the Western Telecommunications Alliance (WTA) and the Independent Telephone and Telecommunications Alliance (ITTA). Thank you for inviting me to testify today on behalf of all of these organizations who are the founding members of the Coalition to Keep America Connected.

Waitsfield and Champlain Valley Telecom is a privately owned, independent company now in its third generation of ownership by the Haskins family. We provide local and long distance telephone service, high-speed Internet service to the Mad River and central Champlain Valley regions and cable television to our customers in the Mad River Valley. The company is proud that it has recently achieved one hundred percent coverage of broadband service to our telephone customers.

All four organizations strongly support the Federal-State Joint Board on Universal Service's (Joint Board) recommendation to immediately impose an interim cap on the high-cost support received by competitive eligible telecommunications carriers (CETCs) and we urge Congress to also support the recommendation. It is important that the Federal Communications Commission (FCC) adopt the recommendation without modification. The recommendation is the most logical and equitable way in which to rein in the rapid growth of the High-Cost Universal Service program while the FCC and Congress contemplate long-term reforms to sustain the Universal Service Fund (USF).

The adoption by the FCC of an interim cap on only the high-cost support provided to CETCs is equitable. Since 1993, caps have limited the amount of support available to rural incumbent local exchange carriers (ILECs) from the high-cost loop sup-

port (HCLS) mechanism, which is the largest of the support mechanisms through which these carriers receive funding. Since July 2001, when these caps were "re-based" by the FCC, rural ILECs have forgone over $2.5 billion in Federal high-cost support. My company, Waitsfield and Champlain Valley Telecom, has lost $6.23 million in high-cost loop support in the last 6 years. The capping mechanism on HCLS has created significant unpredictability for rural ILECs from year to year. This has constrained our ability to make further improvements to our local network. Yet, we have persevered because of our commitment to our community. Our company, like hundreds of rural companies throughout the United States, has always had a "community first" approach to doing business. And this means serving all of our customers rather than looking to serve only the lucrative and easy to serve customers as so many of our competitors do. We must recognize that since CETCs have come into existence, the high-cost loop support they receive has been permitted to grow unfettered as the number of CETCs has grown and as their line counts have grown. It is baseless to assert that an interim cap applied only to support received by CETCs would not be competitively neutral.

In their recommendation, the Joint Board states that the identical support rule is dated and may not be the appropriate approach to calculating support for CETCs. The identical support rule bases the support received by CETCs on the unrelated costs of the rural ILEC providing ubiquitous service throughout the area. For years CETCs—primarily wireless carriers—have reaped windfalls of support through the illogical identical support rule. Moreover, the rules have allowed CETCs, upon designation, to immediately begin receiving the rural ILEC's cost-based per-line support amount for all of their existing customers in the designated territory, whom they were successfully serving without any support. Imposing an interim cap on CETC support is a necessary measure to contain the rapid growth in unjustified distributions to these carriers while Congress and the FCC address long-term policy changes to the USF. We advocate the elimination of the identical support rule and believe that CETCs should be required to demonstrate their own costs in order to potentially qualify for support.

AT&T, the largest wireless carrier in the United States, has submitted a plan for stabilizing the High-Cost program in the short term that proposes much bolder steps for addressing the growth in CETC support than the Joint Board's Recommended Decision. Specifically, AT&T's plan would immediately halt the approval of new CETCs and impose a freeze on the number of lines for which wireless CETCs receive high-cost support. Also, it would reduce by 25 percent the support that wireless CETCs receive through the support mechanisms designed to replace access charges. If the Nation's largest wireless carrier is willing to acknowledge the source of the runaway growth in the High-Cost program, and recommend a strong, targeted interim plan to address it, the FCC should be willing to adopt the more modest recommendations of the Joint Board. And this Committee should encourage the FCC to support the Joint Board recommendation.

The Joint Board points out that as a result of the rapid and excessive growth in support received by CETCs, the High-Cost program is in serious jeopardy of becoming unsustainable if immediate action is not taken. Support for CETCs has grown from $15 million in 2001 to almost $1 billion in 2006 and based on current estimates, the support received by these carriers will reach at least $1.28 billion in 2007, almost $2 billion in 2008, and $2.5 billion in 2009 if action is not taken to contain it. In addition, the USF contribution factor for second quarter 2007 is 11.7 percent which is the highest it has ever been. The chart attached at the end of this testimony illustrates these points. The Joint Board's recommendation to impose an emergency, interim cap on the support received by CETCs is essential to stabilize the size of the High-Cost program until measures can be adopted that will sustain the program for the long term. Any entity or person who proclaims support for a strong and viable USF in the future should support the Joint Board's recommended interim plan.

The recommended interim cap obviously would not stop funding from continuing to flow to CETCs, nor would it adversely affect wireless service in rural areas. Most importantly, an interim cap on CETCs support would not harm the availability of Universal Service throughout the country since virtually all Americans have access to service from at least one eligible telecommunications carrier (the ILEC) and, in most cases, more than one.

The organizations that I am speaking for today agree with the Joint Board's recommendation for the duration of the interim cap to be 1 year from the date of any Joint Board recommended decision on comprehensive high-cost Universal Service reform. The Telecommunications Act of 1996 requires the FCC to act on a Joint Board recommendation within 1 year after receiving it. Therefore, by 1 year from the date of a Joint Board recommendation on comprehensive Universal Service reform, the

FCC will adopt an Order that provides a long term approach to addressing the excessive and unjustified growth in CETC funding.

We are also in agreement with the Joint Board's recommendation to impose a cap on CETC support for each state. This approach would encourage state commissions to be very judicious in their decisions regarding applications for eligible telecommunications carrier designation, because the designation of any additional eligible telecommunications carriers would not draw additional Federal dollars into the state; it would simply require a fixed amount of funding to be reallocated among all of the CETCs in the state. At the same time, a state-based cap would still allow state commissions the flexibility to designate additional eligible telecommunications carriers if they believe that it will serve the public interest.

In the long term, Congress and the FCC should expand the base of contributors to the USF. And, as previously stated, the identical support rule should be eliminated and CETC support should be based on their own costs.

As I stated previously, Congress should urge the FCC to quickly adopt the Joint Board's recommendation. The recommended cap will not harm rural consumers and will not take support away from rural America. As I have pointed out, ILECs are not responsible for escalating the size of the program. Consumers are paying more so that a narrow class of carriers can receive support that is not based on their costs. The Joint Board's recommendation is a vital step toward fixing this problem.

In conclusion, Congress should advocate for the FCC's immediate adoption of the Joint Board's recommendation to impose an interim cap on high-cost support provided to CETCs, without modification. The recommended cap would effectively and fairly stem the rapid growth in support to CETCs—caused in large part by the identical support rule—while Congress and the FCC consider comprehensive reforms to the High-Cost program that will address the issue for the long term. The Joint Board's recommendation is an interim step to protect the USF from exploding even further and would benefit all eligible telecommunications carriers, including wireline, wireless and broadband services. Once again, anyone who claims to be a supporter of the Universal Service Fund and its goals should be a strong advocate for this recommendation. Thank you.

Rural High-Cost Support Program	3rd Quarter 2005 Support	3rd Quarter 2006 Support	3rd Quarter 2007 Support	% Change 3Q 2005–3Q 2007	Dollar Change 3Q 2005–3Q 2007	% of Total Two-Year Support Increase
	($ Millions)					
Rural ILEC	$630.9	$623.8	$634.0	0.49%	$3.1	3.4%
CETC	$136.2	$165.8	$225.1	65.3%	$88.9	96.6%
Total	*$767.1*	*$789.6*	*$859.1*	*12.0%*	*$92.0*	*100.0%*

Source: Universal Service Administrative Company

Senator STEVENS. Thank you, Mr. Nishi.

Our next witness is Mr. Jonathan Foxman.

Mr. Foxman?

STATEMENT OF JONATHAN D. FOXMAN, PRESIDENT AND CEO, CHINOOK WIRELESS

Mr. FOXMAN. Mr. Vice Chairman and members of the Committee, thank you for the opportunity to be here and testify before you. I appreciate your focus on this matter.

Chinook Wireless is a small to mid-sized company providing wireless services to customers throughout Montana and northern Wyoming. We also recently acquired licenses to provide these services throughout the rest of Wyoming and the western Dakotas.

We own and operate our own network of cell sites and switching core, call center, and retail stores all in Montana and Wyoming, connecting us intimately with our portion of rural America. We believe we are answering the urgent need for better telecommunications services and public safety in rural America. To date, we

have done so without any support from the Universal Service program or any other public program; however, with that support, we could do so much more to answer what is truly an urgent need.

As a privately funded business, we have to build and operate as efficiently as possible. Our lenders and investors set very finite limits, and they won't fund infrastructure without a business case to support it. In many of the rural areas where wireless is most urgently needed, particularly for public safety, we wouldn't earn enough revenue to justify the necessary investment, yet those citizens deserve and demand the benefits of wireless service, too. The fundamental problem is that the high cost of deploying cell sites in these areas, while so important for public safety, economic development, and other reasons, would not generate the necessary revenue. We recognize the need, but we simply cannot meet it with private funding alone.

Chinook has applied for State certification to receive Universal Service funds precisely so we can answer the unmet needs of rural America. For us, and for other CETCs like us, the Joint Board's recommended cap would limit, or even eliminate, our ability to meet those needs. At the same time, though, it would continue to fund incumbent carriers in those areas. This is simply not equitable. What best serves the public interest is fair competition. Competition brings prices down, and service quality up, and increases the choices available to consumers. We, therefore, urge Congress to insist that any action taken by the Commission be fair and competitively neutral.

We also urge Congress to reconsider whether an interim measure is necessary at all. Instead, greater efforts could be made to rapidly and diligently fix the Universal Service system. The FCC has worked on this issue for 11 years, and has more than enough information now to make a fair determination. It could easily adopt reforms within 1 year without using a cap. It only took a year for the Commission to implement spectrum auctions, and the agency implemented local competition under the 1996 Act in a single year. This is no different, just another complex undertaking that the agency certainly does have the staff expertise and resources to accomplish.

Finally, we would urge Congress to consider that the issues relevant for fixing the system, in fact, highlight that what is wrong with it today is not the distributions that enable wireless to bring the benefits called for in the 1996 Act to underserved regions of rural America. Most significant among these are duplicative funding and distributions based on a cost-plus methodology.

Regarding duplicative funding, the drafters of the 1996 Act knew the size of the Fund would increase for disbursements to competitors. They were trying to encourage competition in order to lower prices and increase service quality for consumers. What they did not anticipate was that existing carriers would not lose funding for lines they no longer had to maintain, lines for customers that decide to use a competitor's services. Duplicate funding was actually slated for elimination by the FCC years ago. Acting on it today could save the Fund $300 million per year or more.

Regarding cost-plus, it is inherently problematic to reward inefficiency by providing support on the basis that the more you spend,

the more you get. If we were serious about reforming USF, then this reward for inefficiency must be eliminated.

In conclusion, I believe there's so much to be lost by implementing the Joint Board's recommended cap. As a tangible result, rural Americans would not gain the public safety, economic development, and other benefits of wireless service that they need, deserve, and demand. As an intangible result, the Commission would have failed to meet the competitive neutrality standard of the 1996 Act. We view this as a very important matter. We ask of our government to level the playing field rather than picking winners and losers in a free marketplace. Only fair competition will bring the best services at the lowest prices to the most consumers.

Mr. Vice Chairman and Members of the Committee, I greatly appreciate your time and attention to this matter.

Thank you.

[The prepared statement of Mr. Foxman follows:]

PREPARED STATEMENT OF JONATHAN D. FOXMAN, PRESIDENT AND CEO, CHINOOK WIRELESS

Chairman Inouye, Ranking Member Stevens, and Members of the Committee, my name is Jonathan Foxman and I am the President and CEO of Chinook Wireless. I thank you for this opportunity to be here to discuss the Universal Service system.

Chinook Wireless opposes the cap recommended by the Joint Board, and in this testimony provides specific proposals for rapid and actual reform of the Universal Service system.

I. Chinook Wireless—Background

Our company provides wireless services to customers throughout Montana and northern Wyoming, and recently acquired licenses to also provide these services in central and southern Wyoming and western North Dakota and South Dakota.

We are a fully capable wireless communications company with our own network of cell sites and switching core, call center, and retail stores, all in Montana and Wyoming, representing a variety of high quality jobs in the markets we serve. Over the last 2 years, we have made a significant investment to upgrade and greatly expand our network and systems to bring state-of-the-art wireless voice and data communications to much of Montana. We now provide broadband wireless voice and data, including access to the Internet. We believe we are answering the urgent need for better telecommunications services and public safety in rural America. With Universal Service support, we could do so much more to answer what is truly a desperate need.

The fundamental limitation to addressing this need is that the high cost of deploying cell sites in these areas, while so important for public safety and other reasons, cannot be paid back by merely a handful of customers.

II. Universal Service Funds Are Critical for Extending Wireless Service to Rural Areas

To date, unlike any wireline carrier we know, we have built our business in rural America without subsidies of any kind. We have built our business entirely with private investment and loans. We do not have a guaranteed rate of return, we have not received government funding, and we do not have an embedded subscriber base. As a result, we are what I would term, "business case limited". We have to build and operate as efficiently as possible. Our lenders and investors set very finite limits, and they will not fund infrastructure without a business case to support it. This constrains how much coverage we can provide in rural and remote areas where the need is greatest. Yet, citizens who live in and travel through these areas both deserve and demand wireless service, particularly for public safety purposes. We have had people beg us to build cell sites on their farms so they can have decent phone service. We have also had people tell us that they cannot understand why there is no wireless service on some of the highways they frequently travel. We want to serve these customers. We recognize the need, but we simply cannot meet it with private funding alone. Therefore, we have asked the Montana Public Utility Commission for authority to be eligible for Universal Service Fund (USF) support. This support would greatly expand our company's ability to build systems to serve areas

that we otherwise could not reach. We urge Congress and continue to urge the FCC to recognize that there is a critical need in rural America for improved telecommunications services, particularly the public safety benefits that only wireless service can provide.

III. The Recommended Cap Would Inhibit Competition, Contravene the Intent of Drafters of the 1996 Act, And Would Not Repair Actual Flaws in the Universal Service System

A. Capping Funds Only to Competitive Providers Impairs the Competitive Benefits For Consumers Envisioned By Drafters of the 1996 Act

We strongly oppose the Universal Service cap recommended by the Joint Board. This proposal would limit funding for "competitive carriers" (CETCs), a group that includes all wireless providers in the Universal Service system, but not incumbent landline carriers in the same rural areas. Any action taken should be balanced and applied equitably to all carriers, the older incumbents as well as their newer competitors.

Among "the four critical goals set forth for the new Universal Service program" the FCC identified in implementing the Telecommunications Act of 1996, was the goal "that the benefits of competition be brought to as many consumers as possible."[1] The cap proposed by the Joint Board in the *Recommended Decision* would directly conflict with this goal of bringing the benefits of competition to consumers. That would be irresponsible. Where competition exists, it has dramatically driven down service prices and increased quality of service.[2] Universal service funding to competitors *as well as* incumbent carriers *allows* that beneficial competition to take place.

B. The 1996 Act Was Intended To Increase Funding to Competitive Carriers—But it Was Also Expected To Result in Reduced Funding to Carriers That Were Less Efficient and Lost Customers, Whether They Proved To Be Incumbents Or Newer Carriers

We understand the alarm over increases in the Fund, but those increases are caused by permitting surpluses and inefficiencies to remain in the program. Increased payouts to competitors were foreseen by the drafters of the 1996 legislation.[3] Growth in the Fund was viewed as necessary in order to bring new technologies into rural America without materially harming rural ILECs in the short-term.[4] What legislators did not anticipate[5] was that after competitors entered rural markets, there would be a failure of will by policymakers to concomitantly reduce funding to carriers who lost customers or used funds inefficiently.[6] We understand that regulatory decisions in these matters cannot be universally popular with all industry participants, regardless of the choices made—*but consumers, not carriers, are the intended beneficiaries of Universal Service.*

For the short term at least, we think decreasing phone service rates[7] will ensure customer bills do not increase overall, despite increases in the Fund.[8] But we are concerned that imposition of the cap might permit the Commission to again avoid actual reform of the Universal Service system. So-called temporary measures often stretch into years of prolonged renewals.[9]

Rather than risk infinite reduction of rural wireless services, we urge Congress to strongly suggest that the Commission rapidly and finally repair the Universal Service system, keeping in mind the goals of reducing inefficiencies and facilitating true competition, as mandated by the 1996 Act. It is crucial to level the playing field, which will improve prices, service quality and choice for consumers, rather than permitting cuts in funding only for newer market entrants.

The FCC has scrutinized Universal Service reform for years, repeatedly requesting comments. The proposed cap would only permit maintenance of this cycle. Instead, it is time to fix the system. The Commission could adopt meaningful reforms within a year, without using a cap that would injure rural citizens' access to wireless service. The FCC implemented spectrum auctions within a year, and drafted and released its Local Competition Orders under the 1996 Act within a single year as well. This is no different—just another complex undertaking that the agency certainly *does* have the institutional expertise and resources to accomplish.

IV. Actual Flaws Should Be Repaired, In Order To Reduce Fund Size More Equitably

A. Solve the "Cost-Plus" Problem

Today, some carriers receive support on a "the more you spend, the more you get" basis, termed "cost plus." There is no scrutiny of whether expenditures are efficient or appropriate. In addition, the current system guarantees a comfortable rate of return. These factors are incentives to *in*efficiency, motivating more spending on over-

head and marketing, rather than finding the most efficient method of delivering service to a customer.

If the FCC would modify or eliminate "cost plus" support, that will reduce the Fund's size and free up resources that instead can be invested in broadband or other technologies—because competition will help discourage inefficiencies that regulators cannot effectively excise. States including Montana do not allow CETCs to serve only low-cost areas. Therefore, we must be efficient in building and operating our network. Support for all carriers should be based on the cost of providing an efficient network, in order that any carrier that wants to make additional expenditures will do so only out of its own pocket, not the public purse.

B. Make Support Fully Portable

Portable support means support funds that travel with a customer: the carrier that retains a customer, receives the support for serving that customer's line. And logically, when a carrier loses a customer, the support should stop arriving. This approach was upheld by the Fifth Circuit Court of Appeals in the case of *Alenco Communications, Inc.* v. *FCC:*

> . . . [T]he [FCC's Universal Service] order provides that the Universal Service subsidy be portable so that it moves with the customer, rather than stay with the incumbent LEC . . . The purpose of Universal Service is to benefit the customer, not the carrier. "Sufficient" funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.[10]

Yet, inexplicably, this course was reversed and now, the cost of USF subsidies that are still being paid to wireline carriers for customers those carriers have lost (lines that were built long ago and paid for many times over) is over $300 million per year. Wireless carriers, in contrast, lose support when we lose customers. The Commission can reduce waste in the system by requiring that a carrier no longer serving a customer give up its claim to funds initially relating to that connection.

V. Conclusion: Competition Is Encouraging a Beneficial Paradigm Shift

In the broader perspective, a nationwide paradigm shift is taking place—a shift toward consumer desire for the benefits of competition: lower prices, higher quality service, and more options. Some markets are already supporting multiple, often complimentary, communications technologies. To the extent government chooses to aid extension of these technologies to the "last mile," all services should be placed on an equal footing, and all market participants should receive equal support per customer, based on the costs of building an efficient network in a particular area. The FCC reached these conclusions between 1996 and 2001, and they remain valid today.

Universal Service improvements should be consistent with the core principles of the 1996 Act: that all Americans deserve the benefits of competition, and support should work with competition, rather than hamper the success of a free market. Support should be distributed efficiently, freeing up funds for investments in broadband.

Government's role is not choosing winners in the world of business. Instead, a level playing field can support competition for the benefit of consumers. The current focus on new entrants simply distracts attention from true issues threatening the future of USF.

I urge Congress to oppose this inequitable cap on funds for competitive carriers. Instead, Chinook Wireless supports rapid and diligent reform of the underlying system, in order that the goals Congress enacted in 1996 may finally be realized. Competition can coexist with a policy of supporting service to underserved areas. By encouraging a level playing field and efficiencies in the use of funding, regulators can curb Fund growth while providing consumers with the benefits of Universal Service *and* competition.

Endnotes

[1] *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration,* 13 FCC Rcd 5318, 5321–22, para. 2 (1997) ("*Fourth Reconsideration Order*").

[2] As an example of consumer benefits from competition: consider the wireless industry, which became highly competitive after the introduction of spectrum auctions in 1996. From 1995—2005, the average cost per minute for wireless service dropped from 43 cents/minute to 7 cents/minute. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993—Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report,* 21 FCC Rcd 10947 (2006), App. A, Table 10. Factoring in the current 11.7 percent contribution factor, the cost of a wireless call for 1995 is calculated at

7.8 cents/minute, as compared to the 43 cents of 10 years earlier. In other words, even including customers' contributions to the Universal Service Fund, competitive forces have driven down the total amounts they pay for wireless service, even as those customers make more and longer calls, increasing 119 to 740 average wireless minutes per month over the same 10-year period. *Id.*

[3] If concern over Fund size relates to carrier receipts, consider the fact that wireline carriers still receive an enormous share of Universal Service funding. In the State of Montana, in 2006, according to the Joint Board, incumbent wireline carriers received $69.7 million in funding, and competitive carriers such as wireless received $7.2 million in funding. See Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report,* Table 7.2 (2006), attached hereto ("Monitoring Report Attachment"). Incumbent wireline carriers still receive more than three times as much funding as their wireless and wireline competitors, and in some states, they receive 100 percent of Universal Service funding.

[4] In fact, the FCC adopted a five-year transition period during which rural ILECs would not lose support when CETCs entered. *See Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244, 11294–95 (2001).

[5] Joint Board Member Billy Jack Gregg, in testimony before the Communications Subcommittee of this Committee, described legislative intent and expectations in 1996 as follows:

> It should not be surprising that funding for competitive ETCs has increased. After all, before the advent of competition incumbents received 100 percent of high-cost funding. It was expected that as competitors gained ETC status and won customers in high-cost areas, their high-cost funding would rise. What is surprising is that incumbent support has not dropped by an amount proportionate to the increase in competitive ETC funding. . . .
>
> Not only was the introduction of competition expected to lower prices of telecommunications services, it was supposed to lower the cost of Universal Service as providers competed for the Universal Service subsidy.

Testimony of Billy Jack Gregg before Communications Subcommittee, Senate Commerce, Science and Transportation Committee, at 6–7 (March 1, 2007), *referencing* House Report No. 104–204 (I) (1995), Arnold & Porter Legislative History Pub. L. 104–104 (*A&P*) at 60; Senate Report No. 104–23, *A&P* at 254 (1995).

[6] In 2006, the FCC extended *indefinitely* the transition period during which rural ILECs would not lose support, without enacting any reforms. *Federal-State Joint Board on Universal Service, Order,* 21 FCC Red 5514 (2006).

[7] Consumer Price Index data shows that telephone service costs are decreasing compared to other services, From 1995 through 2005, the annual rate of change in the Consumer Price Index ("CPI") for all goods and services was 2.5 percent, while the annual rate of change for all telephone services was −0.2 percent. In 2005, CPI for all goods and services rose 3.4 percent, while the increase for all telephone services was only 0.4 percent. *See* Monitoring Report Attachment.

[8] The Joint Board decision did not cite any evidence that consumers would be harmed absent a cap. And we believe any increase in customer bills from increasing contributions will be offset by declining rates. According to FCC analysis, average monthly rates for wireline and wireless services have decreased, for wireless as much as 20 percent to 30 percent *per year,* even when the Universal Service charge is taken into account. Average monthly combined charges for local and interstate/international long distance telephone service, approximately $42 in 1995, declined to approximately $28 in 2004 (the most recent year for which average bills can be calculated). FCC, *Trends in Telephone Service,* Table 3.3 (Feb. 2007) ("*Trends Report*"). Average monthly charges for residential local service taken from *Trends Report* at Table 13.3. Average monthly charges for residential interstate/international long distance service calculated by multiplying average revenue per minute by average monthly interstate and international long distance minutes for the same year. *See Trends Report* at Tables 13.4, 14.2. Wireless prices (reflected by average cost per minute) have dropped as much as 20 percent to 30 percent per year between 1998 and 2005. The overall decline in revenues per minute for wireless services from 1993 through 2005 was 84.1 percent. Average wireless service monthly bills fell by 18.7 percent from 1993–2005. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993—Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report,* 21 FCC Rcd 10947 (2006), App. A, Table 10.

[9] *See, e.g.,* nn. 4 and 6, *supra.*

[10] *Alenco Communications, Inc.* v. *FCC,* 201 F.3d 608, 615 & 621 (5th Cir. 2000).

Table 3.15—Total High-Cost Support Payments By State or Jurisdiction—ILECs and CETCs

[Dollars]

State or Jurisdiction	1999		2000		2001		2002	
	ILECs	CETCs	ILECs	CETCs	ILECs	CETCs	ILECs	CETCs
Alabama	36,318,951	0	88,214,302	0	93,882,843	0	99,840,657	21,647
Alaska	67,816,605	0	70,315,653	0	74,543,499	0	79,633,434	124,846
American Samoa	124,410	0	473,151	0	458,928	0	875,238	0
Arizona	31,174,674	0	35,577,804	0	48,845,290	1,060,306	56,758,691	4,632,839
Arkansas	73,247,163	0	71,691,402	0	75,398,793	0	101,091,641	0
California	49,657,305	0	64,070,553	0	82,347,999	0	86,503,022	24,999
Colorado	43,789,464	0	53,761,542	0	62,003,540	0	66,143,448	688,329
Connecticut	958,953	0	952,617	0	1,192,074	0	1,506,436	0
Delaware	0	0	199,512	0	385,947	0	373,665	0
District of Columbia	0	0	0	0	0	0	0	0
Florida	18,547,026	0	49,781,316	0	84,627,004	0	85,609,445	0
Georgia	71,765,064	0	79,228,268	0	91,334,696	0	110,244,701	0
Guam	2,321,256	0	3,169,872	0	2,318,838	0	1,969,968	356,718
Hawaii	1,472,913	0	2,403,015	0	5,348,833	0	7,010,380	0
Idaho	29,219,598	0	35,787,777	0	44,531,158	0	49,013,604	0
Illinois	38,898,339	0	31,342,473	0	39,137,373	0	48,479,657	5,241
Indiana	17,058,453	0	30,488,022	0	42,060,071	0	47,141,468	0
Iowa	25,802,260	0	30,643,488	0	35,233,563	66,101	43,224,375	652,816
Kansas	64,603,071	0	67,053,729	0	81,019,830	5,967	94,268,913	147,749
Kentucky	19,501,563	0	29,807,009	0	36,026,757	0	57,147,036	0
Louisiana	63,648,414	0	72,467,664	0	80,748,606	0	87,583,016	0
Maine	18,968,121	0	32,099,073	0	30,927,750	0	29,496,861	0
Maryland	596,790	0	2,580,717	0	4,657,430	0	4,704,481	0
Massachusetts	641,841	0	1,285,080	0	1,657,924	0	1,340,972	0
Michigan	34,738,875	0	39,393,036	0	40,431,984	10,688	44,477,695	800,750
Minnesota	41,442,858	0	48,130,605	0	49,698,983	94,060	65,788,105	104,776
Mississippi	26,773,044	0	132,785,751	0	141,139,843	0	149,589,072	20,997,855
Missouri	50,654,082	0	65,568,381	0	73,621,807	59,280	84,225,880	90,201
Montana	43,346,418	0	45,254,916	0	51,504,570	189,660	62,361,590	470,874
Nebraska	21,377,097	0	23,729,919	0	26,378,585	0	31,464,331	0
Nevada	10,994,325	0	15,066,537	0	22,846,950	63	22,973,633	289,777
New Hampshire	8,506,026	0	8,489,304	0	9,433,625	0	11,898,687	0
New Jersey	993,234	0	3,688,155	0	6,020,140	0	3,491,193	0

New Mexico	34,527,114	0	37,100,202	0	41,421,404	0	46,221,145	210,478
New York	37,395,060	0	51,532,557	0	59,460,149	482,043	55,659,061	523,518
North Carolina	31,719,741	0	33,997,699	0	38,944,285	0	55,742,932	0
North Dakota	21,703,062	0	25,437,877	0	28,584,627	0	31,654,811	89,341
Northern Mariana Islands	5,529,978	0	3,257,226	0	3,594,740	0	3,526,267	0
Ohio	15,056,667	0	19,503,900	0	29,246,406	0	33,911,495	0
Oklahoma	58,345,860	0	67,401,390	0	76,622,223	0	85,800,208	27,921
Oregon	36,809,835	0	47,354,850	0	60,851,409	0	67,392,263	0
Pennsylvania	21,611,712	0	28,472,919	0	35,438,459	0	42,712,402	0
Puerto Rico	132,925,644	534,012	139,946,898	1,494,642	111,508,014	6,440,727	86,185,212	10,363,326
Rhode Island	0	0	25,686	0	96,477	0	60,198	0
South Carolina	40,003,113	0	46,068,145	0	55,646,667	0	71,350,010	0
South Dakota	19,478,967	0	22,225,041	0	23,913,594	0	32,003,665	347,297
Tennessee	28,449,801	0	34,482,177	0	40,665,639	69,516	46,063,270	292,623
Texas	118,600,308	0	138,101,139	0	167,610,051	99,339	188,031,058	1,152,675
Utah	10,178,430	0	12,535,251	0	14,109,453	0	18,079,066	0
Vermont	11,248,704	0	26,244,471	0	22,593,331	0	25,804,315	0
Virgin Islands	22,973,160	0	23,786,676	0	25,253,094	0	27,525,044	0
Virginia	12,837,387	0	38,477,018	0	64,489,462	0	69,908,969	0
Washington	43,165,287	0	53,885,595	0	68,815,275	8,232,717	75,016,670	3,030,131
West Virginia	22,991,175	0	63,450,822	0	72,163,053	0	80,382,176	83,529
Wisconsin	50,982,323	0	54,591,597	0	58,828,654	90	68,344,845	203,841
Wyoming	25,954,848	0	29,896,680	0	35,057,650	137,400	41,262,316	348,567
Industry	1,717,446,369	534,012	2,233,276,459	1,494,642	2,574,679,349	16,947,957	2,888,868,695	46,082,664

Table 3.15—Total High-Cost Support Payments By State or Jurisdiction—ILECs and CETCs—(Continued)

[Dollars]

State or Jurisdiction	2003		2004		2005		2006	
	ILECs	CETCs	ILECs	CETCs	ILECs	CETCs	ILECs	CETCs
Alabama	89,293,506	2,988,331	94,588,334	6,250,779	97,678,778	11,663,899	102,251,011	14,647,370
Alaska	88,850,054	1,403,390	95,096,980	4,973,083	100,627,607	19,646,224	98,674,638	39,994,917
American Samoa	1,230,722	0	1,860,943	0	2,317,903	0	1,496,616	0
Arizona	62,265,191	5,816,508	66,572,006	13,627,513	61,804,813	12,745,645	68,565,687	15,811,998
Arkansas	112,277,219	816,659	104,291,859	30,012,436	103,476,130	37,521,103	106,173,927	29,826,012
California	92,059,403	123,276	95,186,762	52,770	98,674,387	191,115	106,390,695	131,412
Colorado	73,651,142	2,876,978	74,987,264	8,311,404	72,049,895	7,226,901	71,123,691	8,381,643
Connecticut	2,242,663	0	2,445,617	0	2,248,744	0	2,032,395	0
Delaware	320,397	0	266,283	0	259,146	0	254,508	0
District of Columbia	0	0	0	0	0	0	0	0
Florida	80,109,504	0	81,841,610	1,939,141	81,140,368	10,309,805	76,734,600	7,593,162
Georgia	110,373,162	0	105,771,772	1,656,436	102,637,923	9,055,385	99,096,693	5,551,857
Guam	4,572,924	1,382,807	7,434,786	2,143,229	11,427,375	7,737,989	7,884,885	7,349,487
Hawaii	9,967,573	0	13,889,383	249,173	17,568,456	11,956,190	22,606,476	18,579,186
Idaho	51,909,601	0	53,012,454	0	55,055,167	0	53,095,818	0
Illinois	55,080,459	2,406	57,479,277	45	63,505,452	981	65,663,013	1,971
Indiana	53,149,059	12,474	55,299,595	173,552	54,481,006	2,151,459	57,492,699	3,325,992
Iowa	54,547,156	15,891,086	55,841,707	26,729,545	55,618,671	34,717,359	60,925,257	40,373,526
Kansas	108,785,249	2,692,475	121,727,826	7,838,024	132,251,224	46,433,044	132,055,755	53,349,474
Kentucky	59,757,468	15,999	71,749,739	276,334	75,144,011	8,456,057	75,210,951	21,800,331
Louisiana	91,029,193	0	88,157,077	14,094,355	85,913,185	25,327,599	86,366,865	40,404,837
Maine	29,725,830	832,312	27,779,495	2,241,525	24,533,155	4,278,734	25,349,043	4,860,493
Maryland	3,451,702	0	2,936,899	0	4,326,582	0	4,361,691	1,098
Massachusetts	2,120,262	0	2,493,872	0	3,634,062	0	2,707,494	0
Michigan	44,379,093	1,553,320	43,022,294	6,163,546	43,744,197	9,830,363	44,631,927	14,154,780
Minnesota	78,599,334	2,039,645	75,428,194	18,903,254	81,420,327	31,931,697	82,321,251	38,474,865
Mississippi	145,961,305	24,339,170	146,413,078	41,255,118	147,106,117	62,144,436	140,588,648	109,744,027
Missouri	92,095,987	75,773	90,894,928	168,316	85,025,623	119,889	88,435,827	122,451
Montana	65,692,180	622,224	70,960,584	1,192,629	72,677,550	4,053,156	69,709,249	7,245,084
Nebraska	44,359,887	0	49,107,561	62,706	54,422,214	1,467,516	54,668,200	2,112,482
Nevada	26,224,437	3,907,911	24,211,672	3,540,695	24,451,060	5,187,803	25,630,626	6,445,818
New Hampshire	11,384,021	0	9,372,836	0	8,731,668	0	9,568,887	103,782
New Jersey	1,533,302	0	1,442,797	0	1,332,013	0	1,289,640	0

New Mexico	46,776,559	3,770,150	47,227,016	3,538,855	49,491,285	9,019,927	48,698,361	12,158,745
New York	51,104,130	729,603	49,633,569	180,316	47,160,351	4,672,277	49,473,066	4,193,142
North Carolina	71,561,647	0	79,089,350	1,180,132	72,920,918	7,258,337	76,169,451	5,181,300
North Dakota	39,959,801	11,056,151	38,869,743	14,946,255	36,413,361	26,304,977	42,433,701	37,368,354
Northern Mariana Islands	1,652,912	0	709,640	64,674	436,572	231,156	810,480	255,954
Ohio	38,248,134	0	40,738,649	0	37,754,247	0	38,602,698	0
Oklahoma	106,262,224	(18,225)	102,410,238	538,541	108,602,175	11,585,872	107,356,983	14,789,604
Oregon	70,843,149	0	66,199,436	3,973,730	64,914,449	3,554,296	64,870,959	10,060,758
Pennsylvania	55,174,266	0	58,321,676	327,750	63,459,742	2,043,871	64,707,909	1,754,400
Puerto Rico	85,955,805	13,672,345	58,567,786	22,843,398	66,047,054	67,738,447	47,407,680	75,966,315
Rhode Island	46,491	0	56,457	0	44,472	0	37,287	0
South Carolina	79,517,759	0	78,116,203	0	76,322,172	0	82,243,845	0
South Dakota	40,952,744	7,612,395	47,824,157	13,937,378	54,108,387	23,679,409	55,972,318	27,797,012
Tennessee	52,740,553	139,741	54,408,927	337,048	53,510,220	1,174,125	52,456,962	1,547,229
Texas	211,301,637	2,278,421	229,221,439	1,111,597	226,230,724	3,786,279	205,497,036	10,678,173
Utah	23,912,518	0	22,675,062	0	23,301,638	277,767	23,719,365	240,558
Vermont	27,501,079	638,436	27,158,041	3,032,809	28,418,389	6,825,562	26,045,892	5,958,141
Virgin Islands	26,869,011	0	25,972,598	0	22,617,908	0	25,185,111	0
Virginia	76,629,469	261	75,789,178	2,887,069	72,048,998	15,263,371	67,111,638	12,167,124
Washington	72,354,489	7,939,390	68,107,492	19,806,072	65,989,527	28,397,734	64,046,469	34,724,406
West Virginia	76,909,660	1,539,760	64,041,014	4,420,527	58,577,740	7,739,910	60,104,661	9,190,040
Wisconsin	83,112,053	7,835,222	82,756,156	15,664,820	90,078,586	40,146,445	87,712,566	49,767,426
Wyoming	43,036,041	5,034,146	43,156,564	15,090,302	41,935,807	14,662,256	38,708,744	16,259,942
Industry	3,129,421,116	129,620,540	3,152,615,875	315,736,881	3,185,669,531	638,516,367	3,172,731,845	820,446,678

Senator STEVENS. Thank you, Mr. Foxman.

Our next witness is Mr. Joel Lubin.

Mr. Lubin?

STATEMENT OF JOEL E. LUBIN, VICE PRESIDENT, REGULATORY PLANNING AND POLICY, AT&T SERVICES, INC.

Mr. LUBIN. Thank you. Good morning. Thank you, Mr. Chairman and Members of the Committee, for inviting us this morning to speak on this panel.

AT&T is a long-term supporter of national Universal Service policy. We thank you for your leadership.

AT&T is the single largest provider of telephone service in rural America. We serve more than 7 million lines in rural America, approximately one-third of the Nation's rural lines. Other carriers have divested their high-cost lines or declined to serve rural areas. We, however, have committed to serve all customers, wherever they live. With proper support, this commitment could and should include the deployment of next-generation services. But, as AT&T and other carriers across America have experienced firsthand, insufficient and unstable Universal Service funding not only threatens the continued quality of today's legacy services, it also is a major deterrent to investment in advanced broadband facilities and services.

The current Universal Service high-cost system is broken and badly needs reform. For this reason, we support both the short-term recommendations and the long-term goals contained in the Federal-State Joint Board Recommended Decision. High-cost funding has reached an annual high water mark of $4 billion, and is already racing to exceed that level. As the high-cost fund has careened out of control, it has become increasingly impossible to consider, much less implement, long overdue reform measures. The Joint Board proposes to rein in the explosive growth by imposing an interim emergency cap on support of competitive eligible telecommunication carriers, CETCs. The Board's interim solution provides a temporary and tailored reform measure that should bring needed discipline to the Fund. Today, competitive ETCs received almost $1 billion in 2006. Five years ago, it was $15 million. And at this point, the funding is not targeted to underserved areas. I'm going to repeat that point. The targeting today is not targeted to undeserved areas. Consumers are, in many cases, footing the bills to subsidize multiple competitive ETCs vying for the same customers in the same neighborhoods, and often as many as three or four wireless ETC lines in the same household. Because high-cost support to competitive ETCs is expected to increase to $2 billion next year, $2.5 billion in 2009, an interim cap is important to prevent further increases due to current rules.

We support this measure, even though there will be some adverse impacts. Many carriers, including AT&T, our wireless enterprise, will be required to shoulder at least a short-term reduction in otherwise certain funds. In light of this, we have provided specific comments to the FCC on ways to minimize disruptions to existing carrier investment plans. Let's not forget, there will be money, still, the following year, that still could be used for cell sites.

In the end, however, the short-term challenge is a small price to pay for immediate Fund stabilization and headroom to engage in reasoned exploration of comprehensive reform, including the right way to promote broadband deployment and wireless coverage in rural, underserved areas without overburdening an already overburdened system. AT&T would like to share with you its vision of Universal Service reform, for if we don't move to a long-term solution, we've not really accomplished much.

The second aspect of the Joint Board's recommendation is looking at long-term solutions. In addition to the interim cap on competitive ETC funding, comprehensive reform must embrace the following three elements:

Number one, replacement of the existing revenue-based contribution mechanism with a telephone-numbers connections-based solution.

Number two, reform intercarrier compensation to preserve Universal Service during the transition to a fully deployed broadband environment. Let me be very clear on this point. When broadband gets fully deployed, the current access charges vaporize. They go away. This needs to be addressed.

Number three, reform of existing Federal high-cost funding mechanism to promote deployment of next-generation broadband and expanded and improved wireless service in rural areas. Let's focus on the third element. We specifically propose that the FCC make available funding in a pilot program designed to support deployment of lower-cost higher-speed broadband alternatives in underserved rural areas. Similarly, the FCC should identify areas that currently lack reliable mobile wireless service. Each pilot program that we suggested should be addressed by and created by the Commission, a single provider would be eligible to obtain funding within a specific geographic area in order to provide service to the underserved areas. Such pilot programs would provide the FCC much-needed experience and information about funding levels and other issues that will enable the Commission to craft the right incentives to support deployment to underserved areas.

Thank you. And I look forward to your questions.

[The prepared statement of Mr. Lubin follows:]

PREPARED STATEMENT OF JOEL E. LUBIN, VICE PRESIDENT, REGULATORY PLANNING AND POLICY, AT&T SERVICES, INC.

Good morning. Thank you, Chairman Inouye, Vice Chairman Stevens, and members of the Committee for inviting me here today. AT&T is a long-time supporter of our national policy of Universal Service and of recent efforts to sustain that policy through meaningful reform. In this regard, we salute the leadership of Chairman Inouye, Vice Chairman Stevens, and the work of the entire Committee.

AT&T is the single largest provider of telephone service to rural America. We serve more than seven million rural access lines, nearly one-third of the rural lines in the Nation. At the same time, AT&T receives a disproportionately lower share of high-cost funding to provide this service. Under similar conditions, other carriers have divested their high-cost lines, or declined to serve rural areas. AT&T, however, remains committed to serve all customers, wherever they live. With proper support, this commitment could—and should—include the deployment of next-generation services. But as AT&T and other carriers across America have experienced first-hand, insufficient and unstable Universal Service funding not only threatens the continued quality of today's legacy services; it also is a major deterrent to investment in advanced, broadband facilities and services.

The current Universal Service high-cost support system is broken and badly needs reform. For this reason, we support both the short term recommendations and the long term goals contained in the Federal-State Joint Board Recommended Decision. High-cost funding has increased 54 percent in the last 5 years—and is already racing to exceed that level. As the high-cost fund has careened out of control, it has become increasingly impossible to consider, much less implement, long-overdue reform measures. The Joint Board proposes to rein in the explosive growth by imposing an interim, emergency cap on support to competitive Eligible Telecommunications Carriers ("ETCs").

The Board's interim solution provides a temporary and tailored reform measure that should bring needed discipline to the fund. In the past 5 years, funding for competitive ETCs has increased sixty-seven fold from $15 million (roughly .5 percent of the overall Fund) to $1 billion (25 percent of the overall Fund). And this funding is not targeted to underserved areas: consumers are in many cases footing the bill to subsidize *multiple* competitive ETCs vying for the same customers in the same neighborhoods and often as many as *three* or even *four* wireless ETC lines in the same household. Because high-cost support to competitive ETCs is expected to increase to $2 billion next year, an interim cap is necessary to prevent further increases due to the designation of additional competitive ETCs as well as line growth among current ETCs.

We support this measure even though there will be some adverse impacts. Many carriers, including AT&T, will be required to shoulder at least a short-term reduction in otherwise certain funding. In light of this, we have provided specific comments to the FCC on ways to minimize disruptions to existing carrier investment plans. In the end, however, this short-term challenge is a small price to pay for immediate Fund stabilization and the breathing space to engage in reasoned exploration of comprehensive reform, including the right way to promote broadband deployment and wireless coverage in rural underserved areas without overburdening an already overburdened system.

AT&T would like to share with you its vision of Universal Service reform, the second aspect of the Joint Board's Recommended Decision. In addition to the interim cap on competitive ETC funding, comprehensive reform must embrace the following elements:

1. Replacement of the existing revenues-based contribution mechanism with a telephone numbers/connections based mechanism.
2. Reform of intercarrier compensation to preserve Universal Service during the transition to a fully deployed broadband environment. *Let me be very clear on this point. When broadband gets fully deployed current access charges vaporize. They go away. This needs to be addressed.*
3. Reform of the existing Federal high-cost funding mechanisms to promote deployment of next-generation broadband, and expanded and improved wireless service, in rural areas.

Let's focus on this third element. We specifically propose that the FCC make available funding in a pilot program designed to support deployment of lower-cost, higher-speed broadband alternatives in underserved rural areas. Similarly, the FCC should identify areas that currently lack reliable, mobile wireless services. In each pilot program created by the Commission, a single provider would be eligible to obtain funding within a specific geographic area in order to build new facilities to provide service to underserved populations. Such pilot programs would provide the FCC much needed experience and information about funding levels and other issues that will enable the Commission to craft the right incentives to support deployment to underserved areas.

Finally, policymakers should not be enticed by seemingly easy solutions. For instance, there has been much attention placed on the so-called "identical support" rule, which allows all competitive ETCs to receive the same per-line support in a particular study area that the ILEC receives, regardless of their own costs, service territory or circumstances. We agree that this rule is not in the public interest, but the problem cannot be addressed by modifying this rule alone, as the root of the problem runs deeper. Rather, the problem is that the rules fail to identity rural areas where the support is most needed to preserve Universal Service. The result is that many rural areas receive no funding at all, and other areas that are not particularly rural or high cost receive significant support.

The identical support rule exacerbates this problem by allowing all ETCs that serve a given area to receive the same support that is poorly distributed in the first instance. Thus, the only places a competitive ETC can receive support are where the underlying incumbent LEC is already supported, regardless of the competitors'

costs and build-out plans. But simply changing the identical support rule without addressing the fundamental problem of the poorly targeted support is a mistake. It may change the incentives facing competitive carriers interested in becoming ETCs, but it will not advance Universal Service goals for the consumers in rural areas.

There are four big questions that need to be answered in order to develop a robust Universal Service policy: what areas need to be supported; what services do you want to support; who are you going to pay to deliver those services; and how much are you willing to pay? The identical support rule goes to the fourth and final question. Addressing it in isolation will virtually guarantee that the funds are not sent to the areas most in need.

Thank you and I look forward to your questions.

Senator STEVENS. Thank you, Mr. Lubin.

The last witness is Mr. Everett B. Flannery, Chief Deputy of Kennebec County.

STATEMENT OF EVERETT B. FLANNERY, JR., CHIEF DEPUTY, SHERIFF'S OFFICE, KENNEBEC COUNTY, STATE OF MAINE; REPRESENTATIVE, MAINE SHERIFFS' ASSOCIATION

Mr. FLANNERY. Thank you, Mr. Vice Chairman.

Mr. Vice Chairman and Members of the Committee, I'm Everett B. Flannery, Jr., the retired Sheriff for Kennebec County. I've been a law enforcement officer in the State of Maine for almost 30 years, currently acting as Chief Deputy for Kennebec County—and that's a story, upon itself, which I can tell you later.

The Maine Sheriffs' Association has designated me as their spokesman to provide you with a rural public safety official's perspective on the importance of continuing, and, if possible, expanding, Universal Service Fund support for the build-out of our Nation's wireless network into the many poorly served areas of Maine.

My message is very simple: although wireless service appears to be outstanding in the urban and suburban portions of our Nation, there are many rural areas of the State of Maine that suffer greatly from the lack of quality wireless service. In fact, there are many communities that have no wireless service at all. I understand that this problem is common in other rural communities in the United States, as well.

All of us who live and work in rural Maine struggle with the problem of inadequate wireless service. For example, I have no wireless service at my home in Clinton, Maine. Also, I understand from members of her staff that the Senator from Maine serving on this Committee has frequent difficulty staying in touch with her office and her constituents as she travels about the State of Maine.

The absence of good wireless service prevents those of us responsible for public safety in America's rural areas from doing our job properly. Poor wireless service exposes both rural law enforcement officers and the public to unreasonable health and safety risks. Poor mobile service makes it less likely that citizens will be able to give timely notification to public officials of an emergency, whether it is a car crash, an accident in a logging operation, a hunting mishap, an ATV or snowmobile accident, or any other emergency that needs to be reported.

The nonavailability of wireless service represents a danger both for public safety officials and the public alike. For example, when our dispatch center receives a 9-1-1 domestic violence call, the deputy assigned will call into dispatch and be connected directly to the

caller. Deputies are trained to use their cell phones to call ahead to determine what's going on and whether the deputy should call for assistance or not, looking for answers like, "Has someone made a threat? Are drugs or alcohol involved? Are children present? Does someone have a weapon?" Oftentimes, just speaking with a deputy will calm the situation down. However, poor cell service in Kennebec County means that the deputy will often be unable to get through to the residents. As someone who has handled rural patrol duties, I can assure you that you would really prefer to know whether someone inside the residence has a gun before you knocked on the door.

Bad as this—excuse me—as bad as this is, I get even more concerned when I consider our readiness to manage a disaster like September 11 or a Hurricane Katrina. Maine's public safety officials are trained, equipped, and staffed to handle major incidents, but the absence of quality mobile service to enable the public to communicate with us, and we with them, leads us to conclude that we may not be able to deliver the services that people need and deserve in such situations.

I urge you to review the White Paper included as an exhibit to my testimony which documents the critical role played by a USF-supported wireless carrier in the recovery from Hurricane Katrina. The white paper explains that the FCC funded the distribution of thousands of mobile phones to Katrina victims. Why? Because, in the immediate aftermath of the storm, the Universal Service-supported wireless carrier had the only operating communications system on the Gulf Coast of Mississippi. If we, in rural Maine, were to be hit with such a disaster of this magnitude, I feel that we would have no means of communication at all.

In Maine, the level of support going to rural wireless carriers from the Universal Service Fund will determine our ability to cope with a disastrous situation. Maine's public safety officials cannot understand why the Federal Government would consider capping rural wireless expansion funding just as it is beginning to achieve the results intended by the Congress in its landmark Telecommunications Act of 1996. Avoiding a cap on wireless Universal Service funding is a very important issue for Maine. That is why our entire Congressional delegation has gone on record opposing the cap in the letters filed with the FCC. Also, earlier this month, the legislature of the State of Maine enacted a joint resolution memorializing Congress and the FCC in opposition to this cap. As this illustrates, achieving improved wireless service for our State is a thoroughly bipartisan effort.

In closing, I want to extend my thanks to the Committee and its staff for providing me with the opportunity to share the perspective of Maine's rural public safety officials with you at this hearing. I especially want to thank Senator Snowe and her excellent staff for their assistance in connection with my appearance here today.

Thank you.

[The prepared statement of Mr. Flannery follows:]

PREPARED STATEMENT OF EVERETT B. FLANNERY, JR., CHIEF DEPUTY, SHERIFF'S OFFICE, KENNEBEC COUNTY, STATE OF MAINE; REPRESENTATIVE, MAINE SHERIFFS' ASSOCIATION

Mr. Chairman and members of the Committee, I am Everett B. Flannery, Jr., and I am a career law enforcement officer in Kennebec County, a largely rural portion of the State of Maine. Currently, I serve as the Chief Deputy Sheriff for the County. I was the elected Sheriff of Kennebec County from October 5, 2001 to December 31, 2006, but I stepped down in January of this year in order to shift my focus from management and administration of the Sheriff's Office to computer forensics and information technology. My résumé is attached as Exhibit 1 to this Testimony.

I am here today both in my own capacity and as a representative of the Maine Sheriffs' Association ("MSA"). The Maine Sheriffs have designated me as their spokesman to provide you with a rural public safety official's perspective on the importance of continuing and, if possible, expanding, Universal Service Fund ("USF") support for the build-out of our Nation's wireless network into the many poorly served, rural areas of the United States. On Friday of this week, the MSA will take up a Resolution formally opposing the cap on competitive ETC funding proposed by the Federal State Joint Board on Universal Service. A draft of this Resolution is attached as Exhibit 2. I am confident that it will be adopted, and I ask permission to supplement the record with the final version of the Resolution, as adopted.

My message is very simple: although wireless service appears to be outstanding in the urban and suburban portions of our Nation, there are many rural areas of the State of Maine that suffer greatly from the lack of quality wireless service. In fact, there are many communities in Maine that have no wireless service at all. I understand that this problem is common in other rural communities in the United States.

The "Wireless Gap" between urban and rural America was not supposed to happen. As I understand it, the 1996 Telecom Act set up the Universal Service Fund to ensure that telecommunications services in rural and urban areas would be "*reasonably comparable*" in terms of price and service availability. Adequate support from the USF remains the key to closing the Wireless Gap in America. Until the Gap has been closed, those of us living in the rural areas of the United States have a right to expect, and do expect, that Universal Service Fund will continue to provide support for rural wireless service.

The absence of good wireless service prevents those of us responsible for public safety in America's rural areas from doing our job properly. For reasons I will explain later, poor wireless service exposes both rural law enforcement officials and the public to unreasonable health and safety risks and greatly compromises the public safety community's ability to carry out our homeland security duties in the event of a natural or man-made disaster. I will also explain why this condition stifles any hope of much-needed economic development in rural areas.

Right now, our only hope of correcting this terrible situation rests on continued and, if possible, expanded support from the Universal Service Fund for rural wireless expansion. We in rural Maine cannot understand why the Federal Government would consider capping rural wireless expansion funding just as it is beginning to achieve the results intended by the Congress in its landmark Telecommunications Act of 1996. I would hope that the FCC could be convinced of the importance of expanded rural wireless funding. If not, then I would hope that Congress would take action to override the FCC.

This is my third trip to Washington as the MSA's spokesman on this issue. (On my two prior trips I met with FCC Commissioners and their staff and with the members of Maine's Congressional delegation and their staff, in each case to discuss the need for expanding USF support for rural wireless expansion.) Whenever I am in Washington I begin to understand why it might be difficult for some policymakers in this city to appreciate the importance of rural wireless funding to those of us in Maine. Here in Washington, I notice that my mobile phone shows a strong signal wherever I go. The signal quality remains excellent as I travel around the city and I rarely drop a call here. Folks here in Washington do not experience poor wireless service, and I am tempted to recommend that the Congress require the FCC to move its offices to rural Maine, and require the Commissioners to live and try to work there, so that they can experience what we experience every day. I am confident that we would enjoy much more reasonable policy treatment should you decide to take this step.

My point, of course, is that wireless service where I live and work in Kennebec County, Maine, is not at all comparable to what I find here in Washington. I have very poor wireless service at my home in Clinton, in the northern part of the County, and service is generally spotty unless you are in the Augusta area (Maine's cap-

ital) or on one of the County's major roads. The smaller towns in the County, such as Albion, Benton, Mount Vernon, Fayette, Rome, and Vassalboro have very poor or no service.

Now let me explain why this presents a serious public safety problem. Poor mobile service makes it less likely that citizens will be able to give timely notification to public safety officials of an emergency, whether it is a car crash, an accident in a logging operation, a hunting mishap, ATV/snowmobile accident or any other emergency that needs to be reported.

Here's a specific example. My son is a paramedic in Somerset County, another rural area of our State. He is often the first responder, for example, when a logging truck with a full load overturns on the highway. His job is to evaluate any injuries on the scene, do what he can to stabilize the injured party and transport the injured to the hospital in Skowhegan. In many cases, there is no VHF or cell service at the accident scene. This means that he has to flag down passing motorists and ask them to drive to a house with wireline service and call for assistance. The alternative is to climb a nearby hill and hope he can catch a signal, leaving the injured in the hands of a single paramedic. The delay in arranging care and/or transportation by helicopter can often be life-threatening.

Poor wireless service also prevents public safety personnel from carrying out their day-to-day responsibilities in an efficient and effective way. For example, the dispatch center in our office frequently gets 9-1-1 calls regarding domestic violence, and a deputy in a cruiser will be sent to the scene. Our deputies will call into dispatch to be connected directly to the caller. Often a domestic incident will resolve itself when the parties involved know that law enforcement will be arriving shortly.

Also, during the call the deputy tries to determine whether anyone at the scene has a weapon, whether alcohol or drugs are involved, and whether children are in the house. This enables the deputy to decide whether to arrange back-up both for his or her own safety and for the safety of the citizens at the scene. I myself handled rural patrol responsibilities such as this earlier in my career, and I can tell you that you would really prefer to know before you knock on a strange door whether anyone inside the house is armed.

In the many areas of Kennebec County where mobile service is poor, our deputies either cannot make these calls at all, or the calls are dropped frequently. So, does the deputy assume the call was dropped or was the phone ripped out of the wall? The result is a very unsafe condition both for the citizens we are trying to protect and for the public safety people who are trained to deliver these vital services.

Because modern digital technology is secure, we often rely on cell phones in our surveillance and undercover work. These very valuable tools are useless in rural towns where service is unreliable.

These are just three examples of the kinds of problems public safety people in Maine face every day in our struggle with inferior wireless service. Bad as this is, I get even more concerned when I consider our readiness to manage a disaster on the scale of a September 11 or a Hurricane Katrina. We are trained, equipped and staffed to handle major incidents like these, but the absence of quality mobile service to enable the public to communicate with us (and we with them), leads me to conclude that we may not be able to deliver the services that people need in such situations.

In training scenarios involving natural or man-made disasters we will deploy our mobile command post to the area. Often times we must place the command post not at the best location for the incident, but to obtain a wireless signal to have access to the Internet and needed information, *i.e.,* weather and wind conditions, posting emergency public alerts, etc.

Last year, I participated in the preparation of a White Paper covering the homeland security aspects of Universal Service Fund support for rural wireless expansion. The White Paper, which is attached as Exhibit 3 to this testimony, focused on the impact of Universal Service Fund support for a wireless service provider serving the Gulf Coast of Mississippi. The White Paper found that although Hurricane Katrina knocked out much of the wireline network in this area for several weeks, the wireless network, supported by steady infusions from the Universal Service Find, proved remarkably resilient. Indeed, the FCC, which today seems poised to limit funding for wireless carriers, exercised its emergency authority over the USF to fund the distribution of hundreds of thousands of free mobile phones to storm victims, since no other means of communication was available in the area.

The White Paper also found that public safety personnel relied on the wireless network almost exclusively in the aftermath of the storm and for some time thereafter. For example, here is a quote from a dispatcher in the Gulf Coast area:

> I work as a dispatcher for the Ocean Springs Police Department. During the storm my Cellular South [mobile] phone was the only phone I could count on to be working at all times. I never lost a signal and was able to use the phone as needed. Also, the police officers were able to use the phone to check on family and loved ones.

As this shows, USF support for rural wireless build-out will not only help public safety officials in our day-to-day task, but will permit us to deliver critical services in disaster situations.

At a time when we are considering whether to implement an Emergency Alert System that will enable us to text message citizens with disaster reports or warnings of imminent weather or other emergencies, it should be obvious that these tools will be useless in areas where there is poor cell service. Likewise, for all of the investment that is going into 9-1-1 and E–911 technologies, both at the carrier level and on the public safety side, the lack of service availability will make these technologies useless in many rural areas.

Although my field is public safety, I am also very aware that poor mobile service hamstrings rural areas in our efforts to attract new businesses vitally needed to counteract the departure of our traditional manufacturing industries. I discussed this frequently with Sheriffs in other parts of Maine and the story is the same all over: no business wants to locate to an area with poor mobile service. The Sheriff of Oxford County in Maine told me a story that makes this point better than anything I could say. He told me that an economic development official in his County was taking a businessman to a location to try to interest him in relocating his business. On the way there, the prospect took out his cell phone, noticed that he had no service, and asked to be taken right back to the airport.

Aside from the significant public safety and business development concerns posed by poor mobile service, I would hope that the Committee would consider the countless daily frustrations that this condition inflicts on the people of rural America. To try to make this point, I would refer you to Exhibit 5 of United States Cellular's Comments filed on the issue of the cap with the FCC. (A copy of these Comments were submitted to the Committee with Mr. Rooney's testimony.) This Exhibit consists of the testimony of thirty-six people from three small Maine towns: Bingham, Fort Fairfield, and Jonesport. This testimony was submitted in 2004 by United States Cellular Corporation to the Maine Public Utilities Commission in support of its Eligible Telecommunications Carrier application. Here you will find the stories of common, every day rural people struggling to cope with poor mobile service:

- the mussel farmer who cannot contact his customers while harvesting,
- the business consultant who cannot make calls as he travels around the State,
- the shop owner who has to share his store's phone five times a day with passing travelers,
- the ambulance service operator who has trouble communicating with his drivers,
- the operator of a hydro-electric plant who cannot communicate with crew members working in dangerous areas away from the office,
- the wood fuel purchaser who cannot communicate with his power plant customers or with his truck drivers,
- the potato farmer who cannot communicate with his wife from his tractor,
- the operator of a horse feed operation who cannot communicate with her employees in satellite facilities,
- the hardware store owner who cannot call his store or his customers from the road,
- the contractor who cannot call his workers, his customers, his suppliers, or the local building inspector from the job site,
- the husband who worries when his wife, who works the night shift 20 miles away, has to drive home in the pitch dark of a January night in an ice storm over roads where cell service is unavailable,
- the fisherman who cannot order a part or call his wife from his boat,
- the fisherman's wife who would like to be able to call her husband when his boat is overdue, or to tell him that the new grandchild has arrived.

I also understand from members of her staff that a Maine Senator serving on this Committee frequently has difficulty in staying in touch with her office and her constituents as she travels around Maine.

I am very pleased to say that the Maine PUC granted ETC status to United States Cellular, that U.S. Cellular has begun receiving proceeds from the USF, and that with those proceeds, it has expanded its mobile network into Bingham, Fort Fairfield and Jonesport, Maine, improving the lives and livelihood of citizens in these areas. The Maine PUC has certified to the FCC (most recently in October of last year) that U.S. Cellular and Unicel, the only other wireless ETC in Maine, are complying with all USF requirements. This shows that USF support for rural wireless can really work just as Congress intended.

But in fact the work is just beginning. We still have many areas in our State that the wireless infrastructure does not reach, and thus continued and expanded USF support is imperative if we are to create a safe and modern environment to attract business and keep our young people in the State of Maine.

Avoiding a cap on wireless USF funding is a very important issue for Maine. Illustrating this is the fact that our entire Congressional delegation has gone on record opposing the cap in letters filed with the FCC. (These letters are attached as Exhibit 4.) Governor Baldacci has likewise written to Senator Snowe urging her to continue her much appreciated efforts in this regard. Also, earlier this month the Legislature of the State of Maine enacted a Joint Resolution memorializing Congress and the FCC in opposition to the cap. I have attached this Resolution as Exhibit 5 of my testimony, and I have an original of the Resolution here to present to Senator Snowe at the conclusion of this hearing.

As this illustrates, achieving improved wireless service for our State is a thoroughly bipartisan effort.

In closing, I want to extend my thanks to the Committee and its staff for providing me with the opportunity to share the perspective of Maine's rural public safety officials with you at this hearing. I especially want to thank Senator Snowe and her excellent staff for their assistance in connection with my appearance today.

EXHIBIT 1

Résumé of Everett B. Flannery, Jr.

(This is retained in the Committee's files.)

EXHIBIT 2

Maine Sheriffs' Association

Resolution in Opposition to Proposed Limitation on Federal Universal Service Funding for Rural Wireless Expansion

WHEREAS, the Maine Sheriffs' Association finds that in at least a portion of each County of the State of Maine, and in significant portions of the rural areas of the State of Maine, wireless service is either non-existent or unreliable, and

WHEREAS, due to the large size and largely rural character of the State of Maine, this lack of reliable cellular service puts the health and safety of Maine citizens at great risk, and

WHEREAS, the Telecommunications Act of 1996 provides that telecommunications services in rural areas of the United States shall be reasonably comparable in price, availability, consumer choice and quality of service to that available in the non-rural portions of the United States, and for that purpose established the Federal Universal Service Fund ("USF"), and

WHEREAS, the lack of adequate wireless service in Maine's rural areas indicates that the promise of "reasonable comparable service" included in the Telecommunications Act of 1996 has not been met, at least in much of rural Maine, and

WHEREAS, according to the Public Utilities Commission:

(a) wireless subscribership has in Maine grown from 368,000 to 630,000 between 2001 and 2006, and

(b) in 2006, approximately fifty percent (50 percent) all E–911 calls were placed by wireless subscribers.

Based on this, the Maine Sheriffs' Association concludes that Maine's inadequately served rural areas are falling farther and farther behind the non-rural areas of the state both in services and in the basic capacity to meet public safety requirements, and

WHEREAS, the continued expansion of cellular service throughout rural Maine is therefore of vital importance to the ability of the sixteen sheriff's departments of Maine to adequately protect the health and safety of the citizens we serve, and

WHEREAS, on May 1, 2007, the Federal-State Joint Board on Universal Service issued a Recommended Decision recommending that the Federal Communications

Commission ("FCC") impose a cap on USF support for competitive carriers, almost all of whom are wireless carriers, and

WHEREAS, the proposed cap would limit USF funding for wireless expansion in Maine by an estimated amount of $2 million per year in 2007 and more in succeeding years, and

WHEREAS, in the opinion of the members of the Maine Sheriffs Association the Joint Board's proposed cap would be harmful to the health, safety and welfare of Maine's citizens,

NOW, THEREFORE, the MAINE SHERIFFS' ASSOCIATION hereby unanimously adopts the following resolution:

(A) That the Maine Sheriffs' Association hereby finds that the continued expansion of cellular service is in the best interest of the health and safety of Maine citizens. The current lack of dependable cellular service in rural Maine often

(1) Prevents Maine law enforcement officers from carrying out their Homeland Security responsibilities and other large-scale operations;

(2) Prevents Maine law enforcement officers from calling for back-up assistance when confronting a violent offender,

(3) Prevents Maine law enforcement officers from contacting complainants prior to arriving at a scene to determine the seriousness of the situation and the need for back-up or other emergency services,

(4) Prevents Maine law enforcement officers and other "first responders" from contacting either physicians or LifeFlight of Maine when dealing with a life-threatening injury requiring immediate attention, and

(5) In general, hampers the efficient and safe discharge of the duties of law enforcement officers in rural Maine; and

(B) That the Maine Sheriffs' Association hereby unanimously opposes the May 1 Recommended Decision of the Federal-State Joint Board and instead urges the FCC to reject the proposed cap on funding for rural wireless expansion so as to redeem the promise of the Telecommunications Act of 1996 to provide telecommunications services in rural areas of the United States that are reasonably comparable in price, availability, consumer choice and quality of service to that available in the non-rural portions of the United States; and

(C) That the Maine Sheriffs Association directs its officers to take such action as they may deem appropriate to bring this Resolution to the attention of the Maine Congressional delegation and the FCC, and to undertake such other actions as they deem appropriate to effectuate the purposes of this Resolution.

IN WITNESS WHEREOF, I hereby certify that the above Resolution has been unanimously adopted by the Maine Sheriffs' Association.

SHERIFF JAMES P. MADORE,
President,
Aroostook County

EXHIBIT 3

White Paper

Federal Universal Service Fund Support for Rural Cellular Carriers: A Homeland Security Perspective Based on the Experience Gained from Hurricane Katrina

October 2006

This White Paper will review the homeland security implications of continued Federal Universal Service Fund ("USF") support for wireless carriers serving the rural portions of the United States. The Paper discusses the remarkable performance of the rural wireless infrastructure in the areas affected by Hurricane Katrina and the vital role played by rural wireless carriers in meeting the short- and long-term communications needs posed by that disaster. The paper also reviews the FCC's use of its emergency powers to make USF funds available to provide wireless handsets to hundreds of thousands of low-income storm victims. The Paper concludes, based on this experience, that USF funding for rural wireless carriers serves an important homeland security function, and urges policymakers in the homeland security area to strive to ensure continued USF support for rural wireless carriers. A Congressional affirmation that qualifying rural wireless carriers will have predictable, ongoing, and guaranteed access to USF support until they can complete the build-out of America's rural areas will allow Federal, state and local public safety

officials to design their disaster response plans on that basis. This will help them to achieve the elusive goal of developing interoperable communications systems for use in disaster situations.

I. Universal Service Support for Rural Wireless Carriers

The Telecommunications Act of 1996 (the "Tel Act") reaffirmed the "Universal Service" policy of the United States, which, at that time, had been a hallmark of American telecommunications policy for over sixty years. To accomplish the Tel Act's goal of ensuring that the rural portions of the United States have a level of telecommunications service comparable in quality and price to that found in the urban portions of the country, 47 U.S.C. § 254(b), Congress included provisions in the Tel Act establishing the Universal Service Fund. America's rural wireline carriers promptly secured Eligible Telecommunications Carrier ("ETC") status under the Tel Act, allowing them to obtain USF funding. Since the passage of the Tel Act, rural wireline carriers have received almost $20,000,000,000 in USF support payments. As almost all of these carriers have fully built-out land-line systems, the wireline carriers have used USF support payments primarily to improve the affordability of rural wireline service.[1]

Over the past 5 years, many rural wireless carriers have obtained ETC status, most in contested case proceedings at state public utility commissions, with local wireline carriers actively participating. Wireless ETCs have been certified in all but one rural state. Unlike their wireline counterparts, most rural wireless carriers have immature networks that require substantial additional capital expenditures to develop fully built-out systems. Consequently, Wireless ETCs use most of their USF funding to expand service in the rural areas that they serve. These carriers typically file build-out plans with state public utility commissions, which must re-certify the carriers annually in order to maintain their ETC status and, hence, their USF funding.

Although wireline carriers have taken in almost $20 billion in USF support payments since the passage of the Tel Act in 1996, Wireless ETCs over the same time period have taken in just over $1 billion in the aggregate.[2] The severe under-funding of Wireless ETCs serving rural America (as compared to their wireline counterparts) has undermined the Tel Act's objective, as embodied in Section 254, of having service in rural areas that is "comparable" in quality and price to that found in urban America. Thus, although urban and suburban America enjoy virtually ubiquitous wireless service, today, 10 years after the enactment of the Tel Act, many portions of rural America suffer from poor or non-existent wireless service. For example, a report on rural Washington County, Maine, commissioned by Maine Governor John E. Baldacci found that

> For any business engaged in interstate and/or international commerce, a comprehensive network of broadband and wireless interconnection is as necessary as the telephone—as the computer and cell phones have become indispensable to business. Such infrastructure, however, has established only a tentative toehold in Washington County.[3]

Although USF support has enabled Wireless ETCs to expand their service into many rural communities, the above-quoted Washington County Report, issued in the fall of 2005 (nine years after the Tel Act became effective) describes conditions that are typical in many portions of rural America. For these communities, continued USF support for Wireless ETCs is the only realistic hope for building the wireless infrastructure needed to allow them to remain economically viable in the 21st century.

Lack of adequate wireless service also creates adverse public safety conditions in rural America even in non-disaster situations: to cite just a few examples, emergency medical technicians cannot place wireless calls to arrange for medical care and transportation for injured motorists, deputy sheriffs responding to a domestic violence report cannot call ahead to determine whether someone in the house has a gun, and ordinary citizens enduring a landline phone outage during a flood or blizzard are completely cutoff from any assistance. Obviously, should a terrorist inci-

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[1] In other words, the wireline carriers and their state regulators treat wireline USF funds as an operating subsidy, resulting in rates for local exchange service that are lower than they would be without the USF subsidy.

[2] As of December 21, 2005.

[3] *Report on an Economic Development Strategy for Washington County,* Prepared by David Flanagan, Governor Baldacci's Special Representative to Washington County, November 17, 2005, at p. 52. (*http://www.maine.gov/Governor/baldacci/issues/washington_county/WC Report.doc*).

dent or a natural disaster, such as a hurricane, occur in an under-served rural area, the public safety implications of inadequate wireless service would be catastrophic.

The service provided by wireless carriers in the wake of Hurricane Katrina, discussed below, demonstrates the positive impact, from a public safety standpoint, of adequate wireless service in coping with the disruption caused by a disaster.

II. The Role of Wireless Carriers in Hurricane Katrina

Despite the widespread devastation caused by Hurricane Katrina, the wireless infrastructure in the Gulf Coast demonstrated a remarkable resiliency. An independent panel convened by the Federal Communications Commission ("FCC") reported that although more than 1,000 wireless base stations were affected by Katrina, only about 1 percent (1%) of the cell towers in the area affected by *all of the storms* that wracked the Southeastern and Gulf Coast in 2005 (including both Katrina and Rita) suffered any significant damage.[4] In general, the cell sites that ceased to function as a result of Katrina lost service either due to a power outage or to the loss of connectivity to the landline telephone network. Within a week after Katrina hit, approximately 80 percent of the cell sites within the affected area were operating.[5] Wireless carriers restored service to many areas on a temporary basis using over 500 mobile cellular base stations.[6]

On the landline side of the equation, Katrina and the floods it caused knocked out service to over 3,000,000 landline customers. Although Bell South and the other affected landline companies restored service to about 90 percent of these lines within 10 days after Katrina's landfall, the hardest-hit areas suffered prolonged outages (weeks or months without service) due to flooded switches, multiple fiber breaks and chronic power outages. In these areas, wireless service was virtually the only means of communications available to public safety personnel and the general public. (See Section III below.)

Many first responders and other public safety workers involved in Katrina-related operations took advantage of Wireless Priority Service ("WPS"), which was developed following 9/11 to address wireless network congestion problems encountered in emergency situations. In the World Trade Center incident, as in Katrina, many people in the affected area found themselves displaced from their homes and places of work. They and their loved ones flooded the wireless network trying to contact each other, often causing delays in completing wireless calls. Consequently, public safety personnel encountered substantial difficulties in completing emergency calls on the wireless network during these congested periods.

The WPS program is administered by the National Communications System ("NCS") a Federal agency with various communications-related public safety responsibilities. Dr. Peter Fonash, an NCS official, explained in his statement to the Senate Committee on Homeland Security and Government Operations that, "The need [for a priority program] was recognized after 9/11 because many Federal and State and local Government and industry leaders utilize wireless as a primary means of mobile communications."[7] In the WPS program, public safety and other critical personnel can enter a pre-assigned WPS number when making wireless emergency calls during congested periods and get priority service: they are "moved to the head of the line," and are assigned the next channel opening up on the wireless system. The NCS provided WPS service to over 4,000 emergency workers during Hurricanes Katrina and Rita.[8]

III. The FCC's Use of Universal Service Funding To Provide Wireless Service to Low-Income Storm Victims

Hurricane Katrina displaced thousands of Gulf Coast families. As a result, the restoration of landline phone service in a given area made little or no difference in the lives of the families whose homes in that area had been destroyed and who were living in a series of temporary quarters. As the FCC observed in an Order issued 6 weeks after the storm, "Thousands of people—many evacuated to neighboring

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[4] *Report and Recommendations to the Federal Communications Commission,* Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, June 12, 2006 ("FCC Katrina Panel Report"). The Report and additional information regarding this panel's work can be found at: *http://www.fcc.gov/eb/hkip/*.

[5] FCC Katrina Panel Report at 9.

[6] These consisted of about 100 "cellular on wheels" (or "COWs") facilities and 427 "cellular on light trucks" (or "COLTs") installations. Statement of Peter Fonash, Deputy Manager, National Communications System, to Senate Homeland Security and Government Operations Committee, February 6, 2006, available at *http://kyl.senate.gov/legis_center/subdocs/030805_fonash.pdf*.

[7] Fonash Statement at 4.

[8] *Id.* at 5.

states—remain without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment."[9]

Recognizing that many of the storm's victims were low-income families, the FCC exercised its emergency powers to make $39 million available from the Universal Service Fund to reimburse wireless carriers willing to provide a free wireless handset and 300 free minutes to low-income storm victims. The FCC estimated that about 300,000 households would be eligible for this benefit.[10] The FCC's Order underscores both the role played by the Universal Service Fund in making wireless service available to low income consumers and their extraordinary need for wireless service:

> We note that this relief, combined with the action we took earlier with regard to waiver of the geographic porting requirements, would allow evacuees to maintain their home phone numbers, and promote continuity with regard to personal contacts, employment, education, and housing. Under the unique and devastating circumstances caused by the hurricane and its aftermath, we conclude that provision of this support, including a free wireless handset, is consistent with the purpose of section 254 [of the Tel Act] because it is reasonably necessary to ensure that low income consumers have immediate access to telecommunications services. We further find that this support fulfills the Commission's broader mandate to make wire and radio communication service available to all people of the United States, and to promote the safety of life and property.[11]

Under the terms of the FCC's Hurricane Katrina Order, the temporary relief afforded under that Order originally expired on March 1, 2006. In advance of that date, the Louisiana Public Service Commission and T-Mobile successfully petitioned the FCC for an extension of the program. T-Mobile's Petition noted that it had distributed over 25,000 handsets under the program. (By the time T-Mobile filed its Comments with the FCC's Hurricane Katrina Panel in May of 2006, the number of handsets distributed *by T-Mobile alone* exceeded 44,000.) The FCC's March 1, 2006 Order extending the term for USF funding of wireless service for low-income Katrina victims ("FCC Extension Order") observed that:

> The purpose of the original relief was to provide some stability and continuity of access to telecommunications for Hurricane Katrina victims while they were away from their destroyed homes and transitioning to a more permanent living situation. Because many of the hurricane victims remain displaced, we find that it is in the public interest to extend the provision of the Federal Lifeline Katrina relief until June 1, 2006.[12]

The FCC's October 2005 Hurricane Katrina Order and its March 1, 2006 Extension Order exemplify the compelling need for continued USF funding to support wireless service under disaster conditions. In the case of Katrina, USF-funded wireless service proved invaluable not only in meeting the public-safety-related communications needs of first responders and personnel involved in storm clean-up activities, but also to afford some means of communications for the hundreds of thousands of average Americans displaced by the catastrophe. For these people, a USF-funded wireless handset was the sole means of communications with other family members, employers and government relief agencies. Continuing and prudent investment of high-cost support funds for wireless infrastructure in rural areas will improve the availability of these important health and safety benefits.

IV. Cellular South: Portrait of a Wireless ETC's Role in Katrina and its Aftermath

Located in Jackson, Mississippi, Cellular South provides wireless service to 5.8 million customers in both rural and urban portions of the State of Mississippi. It also provides service in four other states in the southeastern United States. The State of Mississippi certified Cellular South as an ETC in 2001, and the company began receiving USF support shortly thereafter.

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[9] FCC *Hurricane Katrina Order,* October 14, 2005 ("FCC Hurricane Katrina Order"), at 2. The FCC noted that "Unless addressed, this lack of access to telecommunications will lengthen the already-long period of time anticipated for recovery from the damage caused by Hurricane Katrina." *Id.* at 4.

[10] "We estimate that this will have approximately a $39 million impact on the low-income fund, based on an estimated $130 per approximately 300,000 eligible evacuee households without telephone service." FCC Hurricane Katrina Order at n. 23.

[11] *Id.* at 8.

[12] FCC Extension Order at 5.

The USF support has allowed Cellular South to convert much of its network to modern CDMA technology, increase substantially the capacity of its system, and expand its service through the construction of numerous new cellular sites in many rural communities that would otherwise not have high-quality mobile service. In 2006 alone, Cellular South plans to add approximately 225 new cell sites at a cost of $126 million, a significant portion of which will be funded through USF support.[13]

As an ETC, Cellular South has provided Federal Lifeline and Link-Up benefits to low income customers. Consequently, eligible low-income rural customers living within Cell South's ETC territory have a choice of providers, and can obtain Cellular South wireless service for as little as $7.00 per month.[14]

Thanks to careful planning and the extraordinary dedication of its workforce, sixty percent (60%) of Cellular South's Gulf Coast network was operational 1 day after Katrina hit, and full service was restored to the entire network within 2 weeks after landfall. In many of the hardest hit areas, *Cellular South had the only operational communications network* in the weeks following the storm's coming ashore. Remarkably, Cellular South did not lose a single tower on the Mississippi coast, and never lost wireless service at any time in some of the hardest-hit areas such as Hattiesburg, Biloxi and Bay St. Louis.[15] On the day after the storm hit, Cellular South handled a record 1,000,000 calls, and over the next few weeks its daily volume surged to 2,600,000 calls per day.

In the first week after the storm, Cellular South assisted over 7,000 storm victims and evacuees at various phone banks it established, and offered free cellular calling and free handset charging to all wireless customers regardless of the customer's carrier. More than 90 percent of the company's retail locations were open after the storm, with storefronts in Biloxi, Bay St. Louis and Hattiesburg operating out of tents.[16] Realizing that it had the only operational communications network available on the Gulf Coast, the company distributed over 500 handsets at no charge to public safety personnel in the Gulf Coast region.[17]

Cellular South's ability to maintain the continuity of its service despite the storm's wholesale destruction enabled public safety officials to carry out their disaster relief responsibilities in a remarkably efficient manner, given the wholesale disruption of the region's landline telecommunications infrastructure. George Scholl, the Director of the Jackson County (Mississippi) Emergency District, explained:

> Throughout the worst of the storm, I used my Cellular South phone to stay in touch with Bell South to coordinate 9-1-1 coverage and with Motorola officials to coordinate repair of our primary 800 MHz radio system. After the storm, even with the 800 MHz system restored to full capability for operational use by first responders, there was a continuing need by county and city command structures for an "administrative" system to either replace destroyed landline phones or to enable workers to move immediately into alternate facilities that had no communications capabilities. Cellular South was vital in helping to fulfill this need and continues to do so.[18]

Likewise, Jim Catchot, the E-911 Dispatcher for the Ocean Springs, Mississippi, Police Department stated:

> I work as a dispatcher for the Ocean Springs Police Department. During the storm my Cellular South phone was the only phone I could count on to be working at all times. I never lost a signal and was able to use the phone as needed. Also, the police officers were able to use the phone to check on family and loved ones.

Mr. Catchot's remark regarding the average citizen's need for Cellular South's highly resilient wireless service for communicating with loved ones was echoed over and over again throughout the beleaguered Gulf Coast. For example, a Biloxi woman who was evacuated to Hattiesburg wrote to Cellular South thanking the company for its outstanding service and provided the following typical story:

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[13] Article: *Cellular South: An Honest Approach & No Excuses,* Wireless Week, April 1, 2006 (Wireless Week Article) at 3.

[14] Testimony of Carson Hughes (CEO of Cellular South's parent company) before the Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, at 2–3, April 2, 2003.

[15] Wireless Week Article at 3.

[16] Blog: *Eyes on Katrina, a South Mississippi Hurricane Journal,* September 8, 2005.

[17] Cellular South website: "Storm Stories" *http://www.cellularsouth.com/hurricane/storm Stories.jsp*.

[18] *Id.*

> I never lost cell phone service through the entire storm and after. I was able to stay in contact with my father on the coast on his Cellular South cell phone—although he did lose his ability to call out I could still call him. After the storm while walking down the streets of what was left of my town I came across crying people standing on what used to be their homes. So many people were able to use my cell phone to call their families in other states to let them know they were okay. I came across a 79 year old woman crying on the side walk. I offered to let her use my phone to call her family. She was amazed that my phone worked, she lost her house and was able to call her family in LA to come and get her. She hugged me and cried and thanked me. Of all the cell phone services I am so happy to have Cellular South. Without my working cell phone I would have not known if my family or friends were okay. Thank you.[19]

Recognizing the extraordinary performance of Cellular South, its management and its employees, in providing outstanding wireless service through the Katrina disaster, the Mississippi Legislature enacted a Resolution commending:

> the executives and employees of Cellular South for their exemplary service, conduct and performance rendered prior to and subsequent to Hurricane Katrina's unprecedented destruction on and near the Mississippi Gulf Coast in August and September 2005, and we offer our thanks to these individuals for their assistance in providing communications during this critical time, as we endeavor to rebuild our state and restore its economy.[20]

Based on the lessons learned from Katrina, Cellular South plans to invest an additional $8 million to enhance the resiliency of its network even further through the installation of measures such as microwave links that will allow it to bypass the landline network to complete calls in the event of another disaster and a mobile command center.[21]

In its Comments filed with the FCC's Katrina Panel, Cellular South emphasized that its status as an ETC, and its receipt of USF support, was a critical factor in its ability to provide vital wireless service during and after Katrina.

> Cellular South has used USF to deploy and operate Cellular South's CDMA network in rural, high-cost areas of Mississippi and Alabama, including many of the areas affected by Hurricane Katrina. Without USF, Cellular South's response to Hurricane Katrina and the access and capacity that Cellular South provided to first responders and CDMA users would have been significantly reduced.[22]

V. Conclusion: Homeland Security Considerations Alone Warrant Continuation of USF Support for Rural Wireless Carriers

This White Paper has demonstrated that:

> (a) wireless carriers provided a critical communications service during and after Hurricane Katrina. Specifically, Cellular South, a rural wireless carrier ETC, had the *only operational communications network in many portions of the Gulf Coast in the period during and after landfall;*
>
> (b) first responders and other public safety personnel rely extensively (and in many cases solely) on wireless service, including the service provided by Wireless ETCs, to meet their emergency and administrative communications needs in the wake of Katrina;
>
> (c) the widespread availability of wireless service in the areas hit by Katrina effectively mitigated the "interoperability problem" that plagued public safety personnel in the World Trade Center and other disasters, since wireless service was virtually the only telecommunications service available in many areas;
>
> (d) the FCC's Wireless Priority System, implemented after the World Trade Center disaster, further enhanced the effectiveness of wireless service as the primary communications mode for public safety personnel working in the Gulf Coast area;
>
> (e) Federal high-cost USF support for Cellular South and other ETCs serving the areas affected by Katrina enabled the supported carriers to install a broad

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[19] *Id.*

[20] The full text of the Resolution is attached to this White Paper.

[21] Article "Cell Companies Beefing Up In Preparation For Hurricane Season," *San Diego Union-Tribune,* June 1, 2006.

[22] Comments of Cellular South, Inc. and Cellular South Licenses, Inc. to FCC Katrina Panel, May 11, 2006, *http://www.fcc.gov/eb/hkip/PubCom/ACT3066.pdf.*

and resilient network in many rural areas that would not otherwise have the benefits of mobile service;

and

(f) Supplemental low-income USF support provided by the FCC for wireless ETCs was critical in making free handsets and 300 minutes of wireless network time available to hundreds of thousands of low-income Katrina victims.

These facts alone should be sufficient to compel the conclusion that continued Federal USF funding for rural wireless ETCs should be an urgent homeland security priority.

The FCC's actions in making millions of USF dollars available to wireless carriers to furnish Katrina victims with the means to purchase and use wireless telephones also underscores the fact that in disaster situations, commercial mobile wireless service is the best reasonably available means of communications for the general public. The FCC recognized that people displaced from their homes and businesses and moving from place to place must have good mobile service to provide the continuity of communications needed to function in today's world.

The Gulf Coast region was fortunate in that it enjoyed a fairly robust wireless network—thanks, in significant part, to the USF funding previously provided to rural Wireless ETCs such as Cellular South. Should a powerful and disruptive storm, or a terrorist incident, strike an area of the United States that suffers from limited or no mobile service, the absence of adequate wireless communications would leave public safety personnel, such as first responders, and the general public in a communications vacuum. A Katrina-level storm hitting Washington County, Maine, for example, where mobile service "has established only a tentative toehold,"[23] would be devastating.

Continued USF funding of rural wireless carriers will ensure that over time, the Universal Service promise of the Tel Act will be achieved: rural areas will have a mobile communications system comparable to that enjoyed in non-rural areas. This, in turn, will ensure that the people living in rural areas will likewise have a communications system adequate to see them through the kind of man-made and natural disasters that have struck the more settled areas of the United States. With roughly $7 billion of Federal USF being distributed annually, Federal policies that accelerate wireless infrastructure development in rural areas must be pursued.

On the other hand, discontinuing this funding will consign communications in rural America to permanent second-class status, with obvious implications for rural America's economic vitality as well as its ability to survive significant natural or man-made disasters.

Public safety in America's rural areas, both in disaster and non-disaster situations, requires Congressional action, in the homeland security context, reaffirming that USF support for rural Wireless ETCs will continue at least until the build-out of America's wireless network has reached all of the rural portions of the United States.

Mississippi Legislature

2006 Regular Session

By: Senator(s) Hewes, Browning, Butler, Carmichael, Chaney, Clarke, Dearing, Frazier, Gollott, Harden, Hyde-Smith, Jackson (11th), Jackson (15th), Jackson (32nd), Jordan, King, Mettetal, Pickering, Posey, Ross, Simmons, Thames, Thomas, Walls, White

Senate Concurrent Resolution 538

(As Adopted by Senate and House)

A Concurrent Resolution Commending Cellular South Network for Performing Exemplary Service on the Mississippi Gulf Coast During the Hurricane Katrina Crisis.

WHEREAS, founded in 1988, Cellular South is the Nation's largest privately held wireless company and the only wireless company headquartered in Mississippi; and

WHEREAS, Cellular South announced that its wireless network in South Mississippi, including the Mississippi Gulf Coast, was fully operational as of Friday, September 9, 2005, 3 days earlier than previously estimated. Despite Hurricane

[23] See Section 1 above at n. 1.

Katrina's destruction, the Mississippi-based company never lost service in parts of the most storm-ravaged areas, particularly in Hattiesburg and Biloxi and had teams in place that began immediate repairs of cell sites and infrastructure following the storm; and

WHEREAS, on Monday, August 29, 2005, Hurricane Katrina, a Category Four Hurricane, crashed with unrelenting and violent force onto the entire Mississippi Gulf Coast, making landfall at or around Waveland, Mississippi. In 1 day, the worst natural disaster in our history struck us a grievous blow, leaving a 90-mile swath of destruction along the coast and causing severe damage throughout central and north Mississippi; and

WHEREAS, the reliability of the Cellular South network after the storm is reflected in the fact that the company has seen a 256 percent increase in the number of minutes carried on behalf of other carriers' customers since the storm in the affected area. The increase equates to more than 8.5 million minutes of usage (MOUs) from other carriers' customers, following the storm; and

WHEREAS, "Cellular South employees, some of whom were dealing with their own personal losses, knew that communication was critical for hurricane victims and evacuees and they did everything they could to fully restore our customers' ability to reach loved ones or call for emergency help in the aftermath of the storm," said Hu Meena, company President. "As just one example, *The Washington Post* noted in one of its stories a Cellular South network technician in Biloxi who literally crawled out of his home that had been destroyed by a fallen tree, got his family to safety and then traveled to the nearest cell site to begin repair work;" and

WHEREAS, Cellular South utilized 300 generators and 20,000 gallons of fuel, as well as over 400 employees dedicated to restoring the network as quickly as possible. Through the dedication and hard work of the team, the network was restored ahead of schedule, and reported record minutes of use upon restoration of service. Cellular South donated over 1,000 phones to local, state and Federal officials who worked and are still working to rebuild Mississippi, as well as to many Red Cross Shelters so that hurricane victims would have a way to communicate with their loved ones. Cellular South donated a total of 50 million free relief minutes to customers in the hardest hit of areas; and

WHEREAS, while it is still early to complete a full assessment, estimates indicate the financial impact of Hurricane Katrina on Cellular South are likely to be in the range of $8 to $12 million; and yet, the company's goal was to do whatever it took to restore service for customers and take care of employees—both those affected by Hurricane Katrina and those working to restore wireless service:

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That we do hereby commend the executives and employees of Cellular South for their exemplary service, conduct and performance rendered prior to and subsequent to Hurricane Katrina's unprecedented destruction on and near the Mississippi Gulf Coast in August and September, 2005, and we offer our thanks to these individuals for their assistance in providing communications during this critical time, as we endeavor to rebuild our state and restore its economy.

BE IT FURTHER RESOLVED, That this resolution be forwarded to Mr. Hu Meena, President of Cellular South, and be made available to the Capitol Press Corps.

EXHIBIT 4

LETTERS FROM MAINE PUBLIC OFFICIALS IN OPPOSITION TO PROPOSED CAP

June 6, 2007

Hon. KEVIN J. MARTIN,
Federal Communications Commission,
Washington, DC.

Dear Chairman Martin:

I am writing to express my concern regarding the recent recommendation by the Federal-State Joint Board on Universal Service that the Commission impose a temporary cap on the amount of support that competitive eligible telecommunications carriers (ETCs) may receive through the Universal Service Fund (USF).

While I understand the Joint Board's concern that the rapid growth in high-cost support is unsustainable and places the Fund in jeopardy, I believe that the impact of the proposed interim cap would be felt disproportionately by Maine.

Two wireless ETCs serve high-cost rural areas of Maine with the assistance of USF support. These companies have told me that they had planned to invest a total of $15 million in new service towers and other infrastructure in Maine this year. If the cap is implemented, these companies may be forced to curtail investments by $2 million, and will likely forego construction of five cell towers, sacrificing desperately needed coverage in hard to reach areas of my home state.

I am hopeful that the Commission can find an alternative means of reforming the Universal Service Fund without adopting the interim cap proposed by the Joint Board.

Thank you for your attention to this matter.

Sincerely,

SUSAN M. COLLINS,
United States Senator.

June 5, 2007

Hon. KEVIN J. MARTIN,
Chairman,
Federal Communications Commission,
Washington, DC.

Dear Chairman Martin:

I understand that the Federal Communications Commission is currently considering whether to adopt the recent recommendations of the Federal-State Joint Board on Universal Service that would place a cap on payments from the Universal Service Fund (USF) for competitive eligible telecommunications carriers (CETCs). Most CETCs are wireless carriers serving rural areas of the country, including much of my home State of Maine, and have used USF funding to expand wireless infrastructure in regions which continue to suffer from cellular telephone coverage that is far below the quality experienced in urban areas of the United States. Because the proposed cap would unduly deter continued investment in expanding wireless service in rural America, I urge the Commission to reject the Joint Board's recommendations.

The Telecommunications Act of 1996 established the USF in order to ensure that our rural areas would have a level of telecommunications service reasonably comparable, in terms of prices and availability of modem services, to that found in urban areas of the United States. Most Maine residents and visitors would agree that this promise has not been kept with respect to wireless service, which is either spotty or non-existent throughout many of the state's rural communities. This is not a mere inconvenience. Poor mobile telephone service undermines the ability of Maine's law enforcement officers to deliver basic public safety services. Moreover, the public increasingly relies upon wireless service to contact public safety officials during an emergency: according to the Maine Public Utilities Commission, nearly 50 percent of 9-1-1 calls placed in 2006 were dialed with a cellular telephone. The inability to get a signal on one's mobile phone could very well be a matter of life and death.

Maine's substandard wireless coverage also hinders our rural communities' efforts to attract new economic development. A cap on funding for wireless service expansion, as proposed by the Joint Board, will have a disproportionately negative impact on these endeavors. In today's world, telecommunications means more than just a landline telephone connection. The technological advancements of the past decade, as well as those expected in the decade to come, have long been viewed as a key mechanism for reducing the economic competitiveness gap between urban and rural areas. The Joint Board's recommendations, if adopted, could very well have the reverse effect, and exacerbate this gap.

As an author of USF legislation in each of the last three Congresses, I am keenly aware of the financial strains the Fund is experiencing and the need for a solution to provide it long-term stability. The Joint Board's recommendation, proffered as a short-term solution, is also short-sighted. If implemented, investment in the wireless infrastructure so desperately needed in rural America will almost certainly be curtailed. If belt-tightening is truly warranted, it should be done in a manner that equally affects all segments of the industry and regions of the country, not imposed solely on wireless carriers who serve rural customers.

In stabilizing and strengthening the USF, the Commission's goal should be to craft equitable and permanent solutions that reflect Congressional intent as embodied in the 1996 Telecommunications Act, to develop Universal Service mechanisms that provide rural consumers with choices in advanced telecommunications

services, and to develop strategies that encourage all stakeholders to meaningfully contribute to the process. The Joint Board's recommendations do not measure up to these standards, and I therefore urge you to reject them.

Sincerely,

OLYMPIA J. SNOWE,
United States Senator.

cc: Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate

June 5, 2007

Hon. KEVIN MARTIN,
Chairman,
Federal Communications Commission,
Washington, DC.

RE: WC DOCKET NO. 05–337

Dear Chairman Martin:

I am writing in opposition to the proposed cap on Universal Service Fund support to competitive eligible telecommunications carriers (CETCs) as recommended by the Federal-State Joint Board on Universal Service.

The Universal Service Fund faces a fiscal challenge, and I appreciate the FCC's attention and commitment to comprehensive reform of the Fund. However, I am concerned that approval of a cap on CETC support, though meant to be a temporary measure, could further delay needed reform. Though the Joint Board has stated its intention to make further recommendations within 6 months, I am concerned that a cap, even if temporary, would set a precedent of singling out one sector of the telecommunications industry.

Maine has two wireless ETCs that have productively used Universal Service funds to expand service to remote areas in our largely rural state. The growth in Maine's support has been moderate, not explosive. I believe the cap as proposed would negatively impact the expansion of modern telecommunications services of all types to residents in rural Maine.

I appreciate your attention to this matter and look forward to your response.

With warmest regards,

MICHAEL H. MICHAUD,
Member of Congress.

May 22, 2007

Hon. KEVIN MARTIN,
Chairman,
Federal Communications Commission,
Washington, DC.

RE: WC DOCKET NO. 05–337

Dear Chairman Martin:

I am writing to voice my opposition to the proposed cap on Universal Service support to competitive eligible telecommunications carriers (CETCs) as recommended by the Federal-State Joint Board on Universal Service.

I appreciate the fiscal situation facing the Universal Service Fund and understand the desire to institute urgent measures to address the financial issues. While the cap on CETC support is proposed as a temporary measure, I am concerned that its approval could act as a pressure valve that could lead to further delay of comprehensive reform.

It is true that payments to CETCs are the fastest growing element of the high-cost fund By its nature, freezing CETC contributions improves the fiscal outlook of the overall fund. My worry is that this action will act as a pressure valve and decrease the urgency for broader reform. While I appreciate the Joint Board's intention to make further recommendations within 6 months, if it does not, we could see a "new norm" within the high-cost fund that leaves one sector of the industry unfairly singled out.

Maine has two wireless ETCs that have productively used Universal Service funds to expand service to remote areas in our largely rural state. The growth in Maine's support has been moderate, not explosive. It is not fair that residents in rural

Maine should lose the access to modern telecommunications services under a one-size-fits-all cap.

Again, I urge the Commission to reject the proposed cap on CETC and work toward comprehensive solutions to control cost growth in Universal Service funds.

Sincerely,

TOM ALLEN,
Member of Congress.

cc: The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M McDowell

May 8, 2007

Hon. OLYMPIA J. SNOWE,
Russell Senate Office Building,
Washington, DC.

RE: PROPOSED CAP ON UNIVERSAL SERVICE FUNDING

Dear Senator Snowe:

Last July, I wrote to you asking your help in ensuring that telecommunications reform legislation then before the Senate would not have an adverse impact on much-needed Federal Universal Service Fund payments. As my July 24, 2006 letter indicated (copy attached), Unicel and United States Cellular, Maine's two wireless Eligible Telecommunications Carriers ("ETCs"), are moving aggressively to implement their ambitious build-out programs in Maine using these funds. Public understanding of the role of Federal Universal Service involvement in rural wireless infrastructure improvement is growing, as demonstrated in the attached editorial, which appeared in the January 30 edition of the *Bangor Daily News.*

I was pleased to learn of your successful efforts on last year's bill—I understand that the final version of Sen. Stevens' legislation was benign, if not favorable, in this regard. Unfortunately, I again need to request your assistance on an issue relating to wireless ETC funding.

As I understand it, hearings recently conducted by the Senate and House committees overseeing the Federal Communications Commission ("FCC") revealed that the Federal-State Joint Board may recommend that the FCC "cap" Universal Service funding—*but only to competitive ETCs (CETCs) operating in rural areas*—pending a reform of the FCC's Universal Service distribution mechanism. I am advised that this rural funding cap would stay in place for as long as 2 years while the Joint Board and FCC consider possible changes to the distribution mechanism for Universal Service support.

Given rural Maine's significant need for infrastructure development, I am deeply troubled by the notion of capping rural CETC funding just when our two wireless ETCs are aggressively building new rural network facilities. I certainly understand the need for proper stewardship of the Universal Service mechanism. However, even if FCC Chairman Martin's estimate—that funds to CETCs will grow by $300 million in 2007—comes to pass, the projected growth would be *less than 5 percent* of the total $7 billion fund—hardly an emergency situation.

Also, I cannot understand why *rural* people should bear the full brunt of any cap, especially in light of the enormous health, public safety and economic development disadvantage that rural areas suffer due to the lack of wireless infrastructure.

Accordingly, I urge you to advise the Joint Board that funding to CETCs should not be capped, even on an interim basis. There are other ways to control Fund growth and ensure competitive neutrality without impeding the investment in our rural infrastructure that Maine citizens so desperately need.

Sincerely,

JOHN E. BALDACCI,
Governor.

EXHIBIT 5

RESOLUTION OF THE LEGISLATURE OF THE STATE OF MAINE IN OPPOSITION TO CAP

Joint Resolution Memorializing the U.S. Congress and the Federal Communications Commission to Forego Imposing a Cap on Federal Universal Service Fund Support for Maine's Rural Wireless Carriers

WE, your Memorialists, the Members of the One Hundred and Twenty-Third Legislature of the State of Maine now assembled in the First Regular Session, most re-

spectfully present and petition the U.S. Congress and the Federal Communications Commission as follows:

WHEREAS, the Federal Telecommunications Act of 1996 through the establishment of the Federal Universal Service Fund was intended to promote the availability of quality services at just, reasonable and affordable prices, increased access to advanced telecommunications services throughout the Nation and the availability of quality services to all consumers, including those in low-income, rural, insular and high-cost areas, at rates that are reasonably comparable to those charged in urban areas; and

WHEREAS, the intended goals of that legislation have not been met in the State of Maine, and many of Maine's communities have no wireless services or inadequate wireless service; and

WHEREAS, the failure to achieve the goals of improved and high-quality services has, and will continue to have, a direct and substantial negative impact on the health and safety of the people living and working in Maine's rural areas; and

WHEREAS, the failure to achieve this goal of high-quality wireless services at just, reasonable and affordable rates to everyone is a very significant barrier to the economic development of much of rural Maine; and

WHEREAS, there are 2 rural wireless carriers in Maine that have successfully sought certification as eligible telecommunications carriers and have used the Federal Universal Service funding they have received to construct significant additional wireless infrastructure in rural Maine; and

WHEREAS, the Maine Public Utilities Commission has certified that these Maine rural wireless carriers have used the funds received from the Federal Universal Service Fund in a manner consistent with all laws and regulations governing the funds; and

WHEREAS, the Federal-State Joint Board on Universal Service has recommended that the Federal Communications Commission impose a cap on funding for competitive eligible telecommunications carriers; and

WHEREAS, this recommended cap would limit Federal Universal Service Fund support for Maine's rural wireless carriers currently receiving these funds; and

WHEREAS, the proposed cap on funding would serve to undercut the purpose and objective of the Federal Telecommunications Act of 1996 by impairing the ability of Maine's wireless eligible telecommunications carriers to expand infrastructure into rural Maine so that rural and urban wireless service is equal, as promised by that Act; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to request that the Federal Communications Commission reject the cap proposed by the Federal-State Joint Board on Universal Service; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the United States Congress take action to repeal the cap if it is adopted by the Federal Communications Commission; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Kevin J. Martin, Chairman of the Federal Communications Commission, to the President of the U.S. Senate, to the Speaker of the U.S. House of Representatives and to each Member of the Maine Congressional Delegation.

STATE OF MAINE

June 6, 2007

Hon. MARLENE H. DORTCH,
Secretary,
Federal Communications Commission,
Washington, DC.

RE: DOCKET NO. 96–45

Dear Secretary:

Forwarded herewith are Comments of the Maine Public Utilities Commission in the above docket with regard to the Recommended Decision of the Universal Service Joint Board.

Should you have additional questions, you may contact Trina M. Bragdon, the primary staff person in this docket.

Sincerely,

TRINA M. BRAGDON
Maine Public Utilities Commission.

Enclosure

Before the Federal Communications Commission

Washington, DC

In the Matter of Federal-State Joint Board on Universal Service
High-Cost Universal Service Support
CC Docket No. 96–45
WC Docket No. 05–337

Comments of the Maine Public Utilities Commission

The Maine Public Utilities Commission (MPUC) is a state regulatory agency charged with ensuring that there is a regulatory system consistent with the public interest and with State law. It is the policy of the State of Maine to ensure that access to advanced services be made available to all communities without regard to geographic location, 35–A M.R.S.A. § 7101. With these duties in mind, the MPUC files these initial comments in response to the Notice of the Commission published in the *Federal Register* on May 23, 2007.

We recognize that the existing Universal Service Fund mechanism for providing support to competitive carriers is causing the Federal Universal Service Fund to grow substantially in some areas of the country. We also recognize that the "equal support rule" which bases support payments for Competitive Eligible Telecommunications Carriers (CETCs) on the support payments of the incumbent carrier is causing the Fund to grow dramatically. The "equal support rule" is also providing more total support than is needed in some states because in those states the incumbent's costs are much greater then those incurred by the wireless CLEC to provide full rural area wireless coverage. Furthermore, in some states the CETC support is not being used by carriers for rural "build-out" purposes.

Nevertheless, there are states, such as Maine, where the current CETC support is not excessive. This occurs because the costs of rural wireless build-out are higher than the national average and in many cases are higher than the costs for providing wireline service. The MPUC also requires that all CETC support be used to build-out rural systems and it monitors compliance with that requirement.

The capping of the CETC support at 2006 average payment level will likely cause delay in the construction of towers in Maine that have been planned for the next year, even if Maine designates no additional CETCs. These planned towers would generate little if no revenue for the wireless carrier because the areas they serve have very few fixed customer locations. Nevertheless, the public health and safety requires remote areas to be provided with mobile wireless service and Universal Service support for such service should be continued.

Instead of capping the CETC fund nationally at average 2006 levels for each state, the MPUC suggests capping the Fund only in those states where growth has been excessive and where state commissions have not established mechanisms to insure that all CETC support is used for rural build-out purposes. If the growth in CETC support for each state were limited to provide funds needed to cover planned rural build-out projects and states were required to certify that the support was both needed and being used for rural build-out purposes, the growth in the Fund should be controlled. Rural wireless build-out could then continue at a moderate price while support mechanisms for CETCs are reexamined.

The solution to controlling rapid growth of the CETC USF should focus on those areas causing the problem and not penalize those areas, such as Maine, where the growth in the Fund has been moderate and all funds have been used for their intended purpose. Since the FCC has not acted on meaningful Universal Service reform since 2001, we are very skeptical that the proposed emergency cap will, in reality, last for a short time as the concept's advocates suggest. Rather, we believe an extended moratorium will occur that will significantly delay rural infrastructure investment in advanced services. Therefore, a cap at average 2006 levels is likely to irreparably harm rural residents of Maine.

Accordingly, the MPUC respectfully suggests that the Commission give serious consideration to the approach suggested above so that wireless rural build-out may continue in Maine and other similarly situated areas.

Respectfully submitted,

TRINA M. BRAGDON, *Esq.,*
Maine Public Utilities Commission.

Senator STEVENS. Thank you very much.

On behalf of the Chairman, let me ask you his questions.

This first question would be to all members of the panel. One criticism of the so-called "identical support rule" for Universal Service is that it results in an overly generous support to wireless carriers because levels of support are based on the cost of providing *wireline* services. In light of this, Chairman Inouye wants three questions answered. "Do you believe that Universal Service should support both wireline and wireless service in rural America? Would it be possible to construct a model for wireless carriers that would calculate support based upon the cost of *wireless* carriers? Third, what effect would tying wireless support to wireless cost have on the size of the Fund?"

Mr. Rooney?

Mr. ROONEY. Let me take it in order. First of all, I would say that it would be in the interest of the government, the U.S. Government, and good policy, to have the lowest-cost provider of service being the primary provider of service in the area. I think technology has overtaken things that have taken place in the past. If wireless service provides service in the most economical and reasonable fashion—those costs should be used, but they should be used for everyone that is providing that service in those areas. In other words, this is to use the highest cost to justify recompense is sort of turning the whole idea of competition upside-down.

So, yes, this whole thing needs to be reworked. And we're not at all opposed to a complete review of this particular situation. I've been on both wireless and wireline sides of this thing, and basically you go back to the days where, you know, wireline service was the only dependable service. Wireless service now is as dependable as any service in the world. And it can be delivered at a much lower cost. And to continue to subsidize the provision of the high-cost provider, rather than the low-cost provider, seems to me contrary to everything that we stand for. And, yes, I'm pushing wireless, because I happen to be in the wireless industry, but I also know the capabilities of the wireless carrier.

Senator STEVENS. Thank you.

Mr. Nishi?

Mr. NISHI. We believe that the services—wireless and landline service—they're complementary in nature. So, yes, we believe that there should be support for both types of services so that both networks are sufficiently built out. And in the long-term, we believe that will benefit all the citizens of the U.S.

As to the second question, whether a model can be developed for wireless support, we believe that one can be developed. Our models for wireline companies today are based on our cost of doing business. And we do come up with our costs, and the funds are adequately distributed from those costs.

So, I do believe the wireless industry can come up with a plan. And, when they do come up with a plan or a costing type of model, I believe that their costs will be less, given the fact that they have not had carrier-of-last-resort obligations and they have not been regulated in the same fashion we have been through all the years. So, I think that is a possibility.

Your third question, as to what effect it would have on the size of the Fund, I think the Fund for the wireless industry would be less than what they're receiving today, based on the identical sup-

port rule. As I've said, the identical support rule is illogical, it's based on our costs, not on the costs of the wireless companies and their cost of doing business.

Senator STEVENS. Mr. Foxman?

Mr. FOXMAN. Yes. To your first question, "Should both wireless and wireline be supported?" I think the perspective on that should be that it's not so much about the delivery mechanism as it is about the supported service, because, just as we're having this discussion here today, a year from now, 2 years from now, there may be a new technology that's able to deliver those services to customers, too, and they shouldn't be excluded from the public interest, for the benefit of the end-user, there shouldn't be a restriction based on what our technology and delivery mechanism is. So, yes.

And tying in, I guess, with the second question, too, about, "Is it possible to do a model for wireless?" I think the issue of competitive neutrality comes up in that. If we have a different model for each different kind of company that comes and proposes to deliver a service, how long does that take? When is the right stage, when a new technology is offered, to build that model? I think that would get very challenging to be able to manage.

That said, we certainly could come up with a model. You know, we, as operators, know our own costs, and I don't think we would have problems sharing that information.

As it relates to what that actually means for the size of the Fund, and what our costs would be, I think a complicating issue there is, it really depends on what stage of development. So, if the public-interest benefit that we're trying to get to is building networks in places that are underserved and have a great need today, the cost of doing that for any service provider can be very high. The cost of, for example, edging out a new network into more rural places is one thing, the cost of deploying new service, wireless or any other technology, in a completely underserved area is going to be much greater than that.

Senator STEVENS. Mr. Lubin?

Mr. LUBIN. Thank you.

With regard to the first part of the question, "Should Universal Service support both wired and wireless?" from my point of view, I would say that is a clear public policy question that the public policymakers must answer. If the answer is yes, then AT&T Wireless will be very eager to serve those rural areas. Just as we are an ETC in five states today, we will be very eager.

The question gets to be somewhat more complicated once a policy decision is reached if you want to support wireless, and that is, what is most critical. I believe there are four questions to be answered. Do you want it supported? If the answer is yes, which I assume it is, given this discussion, the next question is, what areas do you want to serve? And I assume it's the underserved rural areas. And so, then you would have to make sure that we have a plan that's designed to support, truly, the underserved areas. The third part of that question is, am I going to support one CETC or multiple CETCs? It's a critical question to be answered. And the final question is, the identical support rule, do you want to use the same cost structure as the incumbent? Probably the same cost structure is not appropriate, but the point is, once you answer all

four questions, the final point is, do we have any idea how big the size of the Fund will be? Well, depending on how you answer these questions, the size of the Fund could become extremely large. That is why AT&T has put a pilot on the table, to say, "Let's begin to learn, specifically, answering your specific questions."

And the final point here is, not only is this addressing wireless, but there was a panel here about a month or two ago before you talking about broadband deployment. So, now the issue is, how much funding can we have, and how much are customers ultimately going to pay? Because it's all about what is seen on the customer's line of their bill. And so, ultimately, we're going to have to answer these questions, but we're going to have to ultimately prioritize, depending on how big the size of the Fund gets, if we are truly interested in serving underserved areas, which AT&T is, and that's why we've put the two pilots on the table.

Thank you.

Senator STEVENS. Chief Flannery?

Mr. FLANNERY. Well, Mr. Vice Chairman, I'm certainly not a policymaker in this discussion, but I will tell you how this looks from the law enforcement standpoint in the rural State of Maine.

Should there be support for both in the Universal Service Fund? I definitely think the formula needs to be adjusted to take care of the underserved wireless parts of rural areas. I think that your comments, made earlier, at the beginning, that the FCC had the power beforehand to—Ms. Tate had said that she knows the issues and the problems that need to be addressed, but yet, there was no action taken to do that, but just to make this cap on primarily the wireless carriers.

How does this affect us in the State of Maine to accomplish our homeland security initiatives? It pretty much handcuffs us to do that. We're currently, right now, working on being able to establish different training sessions to carry out mass casualty and mass disasters in the area of central and northern Maine. And we're having a problem right now identifying areas of where there's wireless service to implement and place our command posts for communications to be able to get weather broadcasts and Internet access. So, you can see that that portion of it is a very crucial aspect for the State of Maine and other rural areas.

So, I guess the question is—the model to calculate should be based more on what Mr. Lubin had said about where the actual need is, and identify that. Things change in law enforcement, day in and day out, as much as they do at the FCC. And it's important for you to prioritize and to recognize where your priorities are, and take action toward resolving these. I haven't seen that done.

Senator STEVENS. Well, thank you.

I just want to ask one of my questions and then let the other Senators ask questions, and I'll come back to the Senator Inouye's questions later.

One of the problems I have with this situation is that we have, in these small communities, legacy carriers that are basically fixed-wire distribution hooked into satellite communications, in many instances. The new wireless services are—those services, by the way, are primarily local people who started these small systems, and have improved them as much as they could under the cir-

cumstances of the income that they're receiving plus the Universal Service support they get—when the wireless services come in and compete, they get the money from the Universal Service Fund based upon the legacy carrier's costs. And there's a windfall there. But with the windfall comes a situation where they destroy the local legacy carrier and local employment is gone, the local investment's gone, and we find that there's a distant carrier—in terms of emergencies, they're not there.

How do you answer that? Somehow or other, I think we have to find some way to preserve the local carriers, where they perform more of a service than just delivering a hookup. They are part of the emergency system, the local legacy carrier, resident in the area, and I think that it's the worst problem that we face, along comes a new carrier, primarily from a company miles away, and there's no attempt to restore service in the local area in the event of an emergency, as there would be from the people who are resident there and trying to restore service. Am I getting across, Mr. Rooney?

Mr. ROONEY. Well, with all due respect, Senator, wireless service, at least in the experience that I've had, generally speaking, has responded to emergencies better than the wireline services.

Senator STEVENS. How far away is your wireless service compared to where the people are?

Mr. ROONEY. Well, can I talk about a prior life for a minute?

Senator STEVENS. Sure.

Mr. ROONEY. Because Senator Inouye would be very, very familiar with this. But in a prior life, when Iniki hit Kaua'i—the company that I was president of was headquartered in Chicago—we effectively were the only telecommunications supplier up and operating in Kaua'i through the hurricane and through its recovery period. The landline service went down, and the other wireless service went down.

In the case of Missouri, back in the 1990s, when they had the flooding that basically broke down every dam and berm in the area, our wireless service was serving the Red Cross and other places when the landline service was down.

Excuse me, but there's one more point. In current service, in New England, when they had the flooding last year, and in Missouri again this year, when the services went down, we operated, because we're now building what they call "hardened sites." And our engineers live in the communities that they work in, so the repair people, the people that service these places, are part of the communities we serve. This isn't like having guy come in with a satchel and put up a terminal and then walk away from the area that they serve. I think wireless basically has demonstrated, time and time again, its viability and its ability to operate quickly and over a period of time in service areas where there is trouble.

Senator STEVENS. Well, I don't want to prolong it, but I have the vision that the wireline services have local people involved, local investment, and the newcomers are basically from outside those communities. I understand what you're saying, during an emergency, but during just routine operation, I have the vision that, with these new situations, they just come in and put up an automated thing somewhere on a hill near the community, and that's the commu-

nications service, there's nobody that goes with it, there's no one local at all.

Mr. ROONEY. With all due respect, that's not the way we operate.

Senator STEVENS. Is that true, Mr. Nishi?

Mr. NISHI. I can't speak to Mr. Rooney's company, but I do know that, for the rural ILECs, we are in the communities we serve, we are part of the community. We're proud to be a part of the community, and we make contributions to the communities.

Senator STEVENS. Well, I won't prolong this, but I'll get back to Senator Inouye's questions. I believe we have to have modernization, and I don't understand this cap, on the CLECs, because they're bringing in new service, and not having any caps at all on existing service. On the other hand, I do not understand why we should take away from the smaller communities their local investment and their—the people who have pioneered communications simply because someone else comes in under the existing rules and gets paid the same thing that the wireline service carrier gets, in terms of Universal Service support where their costs are so much lower. It's not really a fair competitive advantage that they have when they come into the community.

Senator McCaskill?

Senator MCCASKILL. Thank you, Mr. Chairman.

I'd like to ask the representatives—Mr. Rooney and Mr. Nishi and Mr. Foxman—if any of your companies are taking advantage of the RUS program in USDA, the program to expand broadband service that is available, the loan program that is available there.

Mr. ROONEY. I'm not aware that we are.

Mr. FOXMAN. We're not, either.

Senator MCCASKILL. Mr. Nishi, is your company?

Mr. NISHI. I know that there are various rural exchange carriers throughout the U.S. They are taking advantage of the plan. We are currently reviewing a lot of the rules and regulations with the plan to see if there are ways that can enhance rural carriers to make it more of a value to them.

Senator MCCASKILL. Could any of you explain why you are not utilizing the RUS program within USDA that we have appropriated hundreds of millions of dollars to support?

Mr. ROONEY. To be very honest with you, I wasn't aware of it.

Senator MCCASKILL. Yikes. OK.

Mr. FOXMAN. I've spent a little bit of time, and we're investigating it. But, frankly, one of the challenges we've had is that it's extremely complicated to navigate, so, with some assistance, we're trying to do that now, but, frankly, struggling with it.

Senator MCCASKILL. Let me ask you, Mr. Nishi, if we got rid of the identical support rule, would you then oppose this cap?

Mr. NISHI. I think getting rid of the identical support rule is key. And if we did get rid of the identical support rule, I'm not sure we would need a cap at this point in time. I do believe that a cap will spur people to really work on this issue. I think people are working on this issue very seriously now, given everything that's been said in this hearing and in other hearings dealing with Universal Service funding. We're taking what you're saying very seriously, and what the Joint Board is saying very seriously.

May I add one thing——

Senator MCCASKILL. Sure.

Mr. NISHI.—in terms of what Mr. Rooney said regarding wireless networks? One thing that we do—all networks are interconnected. And anytime there is an emergency, for wireless service to be working, our networks are also working. And I do need to note that is because we do provide backhaul for many, many of their wireless cell sites.

Senator MCCASKILL. I think the points Mr. Rooney made were good about wireless being there in times of natural disaster. I think a lot of people think of the 9-1-1 system when they think of an emergency, they think of the individuals that are calling for help in an individual law enforcement setting.

I would also point out that the wireless has become very important in terms of law enforcement because of the tracking capability of cell phones. We just had a horrendous abduction and murder of a young woman in the Greater Kansas City area, on the Kansas side of the line, and it was too late, but they were able to find her body quickly and apprehend the suspect because they were able to ping her phone. So, I think it's important to remember that the wireless world is a contributor, in terms of the law enforcement community. And I think, with technology, it's going to continue to be an even bigger player as it relates to the more traditional role of law enforcement, aside from the kind of natural disasters that you referred to, Mr. Rooney, in terms of hurricanes or floods or things of that nature.

Mr. ROONEY. If I fell into a ditch in the middle of Missouri, I'd sure as heck be very grateful that I had E–911 service that could help find me.

Senator MCCASKILL. They can find you, in terms of a GPS system. I think a lot of Americans don't realize that there is a built-in GPS capability on their cell phones at this point.

You've got my attention, Mr. Foxman, when you said "cost-plus." That's like for me, as a former auditor, that's like fingernails on a blackboard.

[Laughter.]

Senator MCCASKILL. And that term, in and of itself, will bring my attention back to whatever is being said. And so, I would like to ask questions of the other representatives of the companies that are in this for ultimately—I mean, we have to be honest here—I know all of you want to talk about serving community first, but all of you have to make a profit, you're in business to make a profit, you wouldn't be in business if you weren't making a profit. And so, I want to talk to the other reps about the fact that we have no downward pressure whatsoever on the average cost to deploy, the way this is set up. Do you all agree with Mr. Foxman's analysis that the way this is set up right now, we are not incentivizing anyone to try to do this at the lowest cost in the most efficient way?

Mr. Rooney?

Mr. ROONEY. I think my understanding of landline accounting is that it's completely upside-down. You can go back a few years ago, when the Congress was trying to work out access to landline service, and deal with accounting for local loops and TELRIC and all that kind of stuff. Instead of having a nice simple generally accepted accounting principle definition of costs, you went through tre-

mendous law readings, and then, you know, you'd come up with an answer, and then it went to the appellate courts. And, you know, landline accounting is all convoluted, and I mean, when you look at the accounting that we use for our cellular business, it's GAAP. So, what you see is what you get. And I'm perfectly willing to have everybody use GAAP accounting to try and determine what the cost of deployment is. And, yes, it should be lowest-cost winner.

Senator MCCASKILL. Mr. Nishi?

Mr. NISHI. When Mr. Foxman referred to "cost-plus," I'm assuming that he means an adequate return on our investment. I can say that when we build networks, we build them as efficiently as possible, as we try to get advanced services out to the customers we serve. I will add that, since the cap was reindexed in 2001, and when $2.5 billion didn't come to the rural ILECs, that that did directly impact our bottom line at Waitsfield and Champlain Valley Telecom. We had to make hard decisions on where we were going to deploy our new networks. And, in fact, that's one thing which—I think many people fail to realize that there's the whole issue of sections 201 and 254, and the sufficiency principle, and affordable and comparable rates. The high-cost loop-support mechanism—in Vermont, on an annual basis, we send out a letter to our consumers, saying, "Without such high-cost support funding, your rate would be such-and-such dollars higher." So, that amount we have received from the Fund has gone to help keep local rates lower. So, it has impacted our operations over time.

I'm not sure I got to the heart of your question, but——

Senator MCCASKILL. I think you danced a little, but I'm not going to hold you responsible for that.

Yes, Mr. Lubin?

Mr. LUBIN. Thank you.

I'd like to take your question apart a little bit, because a lot of things get said, and generalizations are being made, and I'd like to unpack it.

Right now, the ILECs, incumbent local exchange carriers, are generating roughly $3 billion of the $4 billion, using 2006 values. Of that $3 billion, there's something known as, let's say, "nonrural companies," who are getting access to the Universal Service, but under a different set of rules. These are generally what is known as price-cap companies. For those companies, it is not cost-plus. It is not. Even further, if one of those companies loses a line, they lose money. Again, a point that was somewhat misleading here today.

Then, there's $2 billion of the $3 billion that go to rural companies.

Senator MCCASKILL. Right.

Mr. LUBIN. Of that $2 billion, $1 billion of it, approximately, is from the high-cost loop fund. That fund is capped. And if lines decline, the aggregate dollars decline. And what we're seeing today in rural America, generally, is rural lines are declining, and the aggregate is going down.

The rural lines may be declining for a couple of reasons, one of which is second lines are declining because of broadband.

Senator MCCASKILL. Right.

Mr. LUBIN. And you have some wireless substitution, albeit possibly not as great as people think, because the growth of wireless is really another service, called mobility. We can debate that point, but that's OK, because if people want mobility, right now that is being allowed. But there's another point of why mobility is growing so much. In this country, 21 percent of the households have probably three or four wireless connections. So, the identical support rule does have a problem. It has a problem, because it's created off of an incumbent LEC that doesn't have 21 percent of their households with three or four lines, causing the overall cost to potentially go up. How much higher, we can debate all these things.

Now, what about the remaining $1 billion, right? Because I said there's $3 billion, and I've now said, hey, there's $1 billion.

Senator MCCASKILL. Right.

Mr. LUBIN. That $1 billion is something known as "cost-plus," which is rate-of-return regulation. And I want to give you the plus and the minus of that.

The minus could be, well, hey, there's a mentality of you can put in more dollars.

Senator MCCASKILL. Right. I get the minus part. Give me the plus part. That's what I'm asking——

Mr. LUBIN. I'll give you the plus part. The plus part again, it all depends where you stand or where you sit whether it's a plus or not, but the rural companies have been doing a pretty good job—and I think you alluded to it in your opening statement, whereby they're deploying more and more infrastructure that potentially could help them for broadband deployment. Some people would call that a plus, some people may say that's not a plus. But the point here is, if we think broadband deployment is a good national goal, then they've got a mechanism in place that, in fact, is encouraging them to do that. Now, whether it's gold plating, that issue always comes about, and, from my observation—I'll let Roger Nishi speak to it—these companies are trying to figure out how to survive in the new world as we move from a circuit-switched world into a broadband world with VoIP application and many other applications.

Senator MCCASKILL. Well, thank you for that.

And thank you, Mr. Chairman. There is a little irony, that the plus part of the billion that you referred to is actually not part of the legislative intent of this Fund, which is kind of what I alluded to before. Your explanation as to why the cost-plus part of the program, the billion dollars, which is, you know, a lot of money that consumers are paying—is helping something that, frankly, the RUS program is supposed to be helping, but this money wasn't even designed to help. So, that just goes to the point that we've got to get at this broadbased reform in the whole area.

Thank you all very much.

Thank you, Mr. Chairman.

Senator STEVENS. You're absolutely right, Senator, and I don't think it can be solved without legislation. I'm not sure the FCC has the power to reach over to the other Department and say, "You've got to coordinate with us and do it the way we say."

Senator Snowe?

Senator SNOWE. Yes, thank you, Mr. Chairman.

Sheriff Flannery, I thank you for being here today, and I want to thank you, as well, for your 29 years of service to the State of Maine law enforcement. And I appreciate your views here today, because I think it does give the dimension of the realities, you know, on the ground in law enforcement and homeland security, which is of, obviously, our national interest.

Can you speak to some of the realities of this technology gap, you know, between accident responses and domestic violence responses, for example? I know you've included that in some of your filed testimony, but I think it also is illustrative of the problems that we face in the areas that have neither subsidy in a nonexistent wireless service.

Mr. FLANNERY. Right. I have three sons, and they're all in some type of public service or another—one, the Army; one, the Navy; and one's a paramedic in Somerset County, which, as you're aware, is just north of Kennebec County. Just before I came down to D.C., I spoke with my son, who is the paramedic up in Somerset County, and asked him "What is one of the biggest impacts on you, involving wireless service, and the lack thereof?" And, of course, he talks about Route 201 coming right up from Skowhegan all the way up into Jackman and the Canadian border, having accident scenes there—and some of them are quite horrific, between tractor trailers with logging trucks and severe recreational accidents—not being able to call the hospital to speak with the doctor in the emergency room to be able to provide them with information on the injured party so that they can treat the patient the way the patient needs to be treated at that time. So, what they have to do is, they do the best they can at the ground level, load the patient up, and drive, if possible, to an area where they have cell service, so that they can communicate with the hospital as to what's going on with the patient. And I will tell you that, at times, he has said that that has made a difference in life and death. And we should be resolving that problem when these people—there's no reason not to.

Senator SNOWE. Well, I—go ahead.

Mr. FLANNERY. We've had numerous hostage situations lately, where the hostage negotiator wants to be able to establish a view of the residence or building where the hostages are located, so that he or she can see the scene as it's playing out, while they're negotiating with the subject on the phone. Many times, we have to send that hostage negotiator off, you know, 2 or 3 miles up and down the road to be able to get a signal to talk to the person to be able to commence with negotiations. That's kind of a "haphazard" way of doing things, because it now takes that hostage negotiator out of seeing what's going on, and now you have a radio in one ear, telephone in the other, to try to see what's going on, on the scene, with—you have to mute, and as you can see, it creates a major problem when things are happening at lightning speed.

What's going on in the State of Maine right now with this, is that the legislature has made new laws allowing for private business to negotiate and work with the State government on working with private property, their own property, and State property, to be able to utilize putting up wireless information systems so that the entire Department of Public Safety system is based on their MDTs, mobile data terminals, are based on wireless communication

through the cell phone service, and they have never had yet to get it to work because of the inefficiencies in the wireless system in the State of Maine. So, for us to be able to fulfill our obligations of homeland security, we have reached an obstacle where we can't do it that way. Some of us have gone with radio frequency to try to get over that hurdle for now; but what that does, it limits you into your own system, not being able to get into outside systems, as far as the Internet goes. So, it helps with going over the state's communication system to check on wants and warrants for individuals, but we're also starting to eat up that bandwidth, because the only way we can access other services in the system—we can't use wireless, so we have to go through the state's metro system to be able to do that, so there's a big caution right now of eating up all that bandwidth. So, we're trying to get around it, but yet, we're going to hit a wall here eventually on that. And that's only for those areas that have decent wireless service in their communities. Aroostook County, as you well know, doesn't. And they have a very, very difficult problem, as well does Somerset County, where I was talking about my son. He's had opportunities where they've been off-trail into ATV or snowmobile accidents, and had to send his partner up a hill to get a signal so that he could tell LifeFlight the GPS coordinates, so they could fly in to a particular area to pick up the patient. And, of course, all that takes time.

One that really sticks in my mind, he told me about, was a rafting accident on Kennebec River. The raft turned over, everybody went in the water. One person had swallowed a lot of water, and the rafting guide got the person onshore, began CPR, and sent another rafter off to the—there's no cell signal there on the water—so, sent him off to the road. No cell signal on the road. Stopped the first car coming by to have him give him a ride to the next house to get to the phone line, make the phone call. My son got a call 45 minutes later, after the incident happened, arrives there 20 minutes later, and was unsuccessful in reviving the person.

Senator SNOWE. Well, I appreciate that. And, obviously, I think, your examples, I think, illustrates the point, frankly, that the lack of wireless service is not just mere inconvenience, it's a matter of life and death. And, obviously, even, you know, creating perilous circumstances for our country with respect to homeland security, as we are trying to integrate that national response, as well, and that includes the rural areas of America.

Mr. Rooney, your plans for Maine—I know—and I think this is indicative of the other states in which you serve—obviously, are going to be put on hold as a result of this cap, as I understand, from what I've——

Mr. ROONEY. The new service would be. And one of the inequities of the cap is Maine gets hurt, going forward. But we have three states that we serve—Illinois would be eligible—if they froze the cap—ineligible to—competitive communications operation would be eligible for $2,000 of funding, because that's what they've got right now. And in Missouri it would be $120,000. This is the total.

Senator SNOWE. Total.

Mr. ROONEY. And in New Hampshire, where Senator Sununu's from, it's $103,000. So, there's inequity between the states. Each one of these three states, by the way—when we look at going into

these areas, we're going into what I call "virgin territory." There isn't anybody—we're talking about where there is no cell service. In some of the other States, like Washington and Oregon, it's going to get complicated when analog service goes away, because a lot of the areas in Maine, when we built the system, back in the 1980s, were set up for 3-watt bag phones. We don't use 3-watt bag phones anymore. The phones that we have are six-tenths of a watt. Analog service isn't being supported by anybody anymore, so that goes away next year. And, effectively, now, to fill in those areas and provide any kind of service that would be called reasonable, we have to build another group of towers to effectively fill in the areas where these little six-tenths-of-a-watt phones wouldn't reach. So, there's the capital requirements to sustain, and, especially in rural areas, build further, are very significant, and I think you know some of the areas in Maine. There's not enough traffic on an ongoing basis to justify a $350,000 investment.

Senator SNOWE. I appreciate that, and I appreciate the panel here today. And I'd say that this is a matter of public interest, as well. I know that Commissioner Tate indicated that—hope that the industry would reach a consensus on some of the questions, and, obviously, the dimensions on identical support rule and so on. And I think that's a real issue, as to whether or not the industry is in a position. But I happen to think that the cap is going to be a disincentive to doing that, because it's going to affect, singularly, one sector of the industry.

Is it possible to reach a consensus within the industry on this question, between wireless and wireline? Mr. Lubin, finally?

Mr. LUBIN. Thank you.

AT&T possibly is in a unique situation, both a wired company and a wireless company. And, as I said before, we're currently in five States, as a competitive ETC and we have applications in five other States. And so, on one hand, we're very eager to try to figure out how to get this done so that we can go in and put in the right infrastructure, be it for wireless. On the other side, the reason why AT&T is supporting the cap, which means we're going to take money away, and we're going to have the problem that Mr. Rooney's highlighting in selected areas—by the way, it doesn't mean, since we're going to still get some money—there are some places where we still could invest, but not as much as we otherwise would. And so, the only reason AT&T, in my opinion, is supporting the cap is to figure out a long-term solution. So, now the issue that you're asking is, will there be the ability to reach consensus? I think it's going to be, (a) difficult, because there's obviously a lot of money on the table, and (b) if there is no cap, my fear is, we lose an opportunity, because we don't get the parties to come to the table with real passion to try to figure out a compromise. And that's my fear, with it being uncapped.

Bottom line is, if we don't figure out a long-term solution, we've just lost one super opportunity to try to figure out how to really get the money, as Mr. Flannery highlights, into the underserved areas, if that's what the public policy decisionmakers elect to do.

Senator SNOWE. OK.

Yes, Mr. Foxman, yes, very quickly.

Mr. FOXMAN. Very—sorry, I just——

Senator SNOWE. Yes, thank you.

Mr. FOXMAN.—wanted to respectfully disagree that I think that the nature of the cap accomplishes the exact opposite. If we wanted to fix the problem properly, then—everyone works best with a deadline—put the pressure on the Commission, on the industry, whoever, to get it done.

Senator SNOWE. Yes, because it's not balanced, as it stands. And, frankly—hopefully, the industry would, but certainly FCC's action shouldn't be predicated on that, and should, defer this rule and try to reach an agreement.

Senator STEVENS. We're going to have to call it off. I don't know if you realize it, the President's coming up. The halls will be closed soon. And we have to get back to the Capitol before the doors close.

So, I do appreciate very much your appearances here today, and I think we all have a better understanding of the problem. I'm not sure we've got the solution, but we understand the problem. Thanks for your courtesy in coming and joining us today.

We will submit the Chairman's questions and the ones I would ask. They're very few. I would ask you to respond to them, if you will, please.

Thank you very much.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT BY HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Today the Committee revisits a familiar topic: Universal Service.

More than a decade ago, in the Telecommunications Act of 1996, as a Congress, we made clear that we are committed to the principle of Universal Service. We stated that in all regions of the nation—rural, urban and everywhere in between—consumers are entitled to comparable services at comparable rates. The Federal Communications Commission was charged with translating this lofty principle into concrete action. To do so, they set up the Universal Service Fund.

But today, that fund faces some difficult challenges. If the Fund continues to expand at its current pace, some say we may jeopardize Universal Service itself. Incumbent carriers urge us to place limits on the ability of other carriers to access these funds. How is it feasible, they ask, for the Universal Service Fund to support so many different carriers serving so few customers in rural areas?

Still other carriers, many of them wireless providers, ask if it is fair to reduce support that may be necessary to serve large swaths of rural America. In order to provide comparable services at comparable rates, they say they need access to these funds.

Last month, the Federal-State Joint Board on Universal Service weighed in on this matter. It recommended that the Commission cap the amount of funds available to competitive providers as an interim measure, pending broader Universal Service reform.

In the end, we cannot let short-term proposals free us from the need to address long-term reform. If comprehensive reform requires a more vigorous review of the identical support rule or any other aspect of existing policy, we should proceed down that road. After all, ensuring the long-term sufficiency and stability of the Universal Service Fund means ensuring that all of our citizens have the communications capabilities they need to compete in the global economy.

Before The Federal Communications Commission

Washington, DC

June 6, 2007

In the Matter of High-Cost Universal Service Support
Federal-State Joint Board on Universal Service
WC Docket No. 05–337
CC Docket No. 96–45

Comments of ComspanUSA

ComspanUSA ("Comspan") files the following Comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking issued on May 14, 2007.[1] Specifically, the Commission has requested and Comspan offers these comments on the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") that the Commission impose an interim cap on the amount of high-cost support that competitive eligible telecommunications carriers may receive.[2]

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[1] *In the Matter of High-Cost Service Support Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, FCC 07–88, (rel. May 14, 2007) (*NPRM*).

[2] *Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, FCC 07J–1, (rel. May 1, 2007) (*Recommended Decision*).

I. Introduction and Summary

Comspan is a wireline competitive local exchange carrier ("CLEC") and a competitive eligible telecommunications carrier ("CETC") delivering broadband voice, data, and video services to rural communities and small towns in the State of Oregon. Through its state-of-the-art fiber-to-the-home ("FTTH") networks, Comspan is fulfilling the central goals of the Telecommunications Act of 1996 (the "Act")[3] by bringing competition, higher quality services, lower prices, and the rapid deployment of innovative telecommunications technologies to Oregon markets.[4] And significantly, Comspan is directly addressing the Universal Service goals of the Act by delivering these services to those high-cost areas of the state that have largely been ignored by the incumbent local exchange carriers ("ILECs") and the local cable companies.[5]

Comspan has already completed FTTH networks in two Oregon cities and has plans to build networks in an additional ten small towns and rural communities throughout the state *within the next year*. However, Comspan cannot fund the substantial capital needs of these fiber builds without support from the Federal Universal Service Fund (the "Fund").[6] Accordingly, if the temporary caps recommended by the Joint Board are adopted by the Commission, Comspan's expansion plans will be stopped in their tracks, and citizens in Oregon's underserved communities will be denied precisely those benefits and services that the Act was intended to promote.

It is a fundamental premise of the Act that competition and Universal Service are mutually supportive and reinforcing goals.[7] With this understanding, the Commission has held "competitive neutrality" as a guiding principle in implementing Universal Service. In the face of the pressure of a growing Fund, the Joint Board is now asking the Commission to abandon the principle of competitive neutrality by adopting caps that favor the incumbent local exchange carriers and are likely to put many CETCs out of business.

Comspan recognizes that the Fund is growing at an unsustainable pace and that reform is necessary. However, wireline broadband CETCs such as Comspan are the solution—not the problem. These carriers are serving high-cost communities in efficient and effective manners. If the FCC adopts a permanent solution that eliminates carriers such as Comspan from the marketplace—if the FCC denies carriers such as Comspan equal access to the same high-cost support as is available to the incumbents—it will have sacrificed the goals of the Act in order to achieve a quick, and ultimately ineffective, fix.

Comspan therefore urges the Commission to reject the Joint Board's proposed caps and instead act to adopt mechanisms for reforming the Universal Service that preserve the ability of CETCs to continue to draw support from the Fund on the same terms as the ILECs, and by so doing, to continue to encourage the provision of advanced services to all citizens.

II. ComspanUSA

A. History of the Company

Comspan is a wireline competitive local exchange carrier headquartered in Roseburg, Oregon—a small town in southern Oregon. Comspan was formed in 2002 by a group of local business people intent on providing a competitive alternative to the incumbent local exchange carrier, Qwest Communications ("Qwest"). Five years later, Comspan provides local exchange and long distance service to a significant percentage of the households in Roseburg, and in the neighboring communities of Sutherlin and Winston as well.

Based on its experience in Roseburg, Comspan became convinced that it could offer advanced telecommunications services to Oregonians living in small towns throughout the state, and that it could offer these services at affordable prices. In order to realize its plan, Comspan teamed up with the LTS Group of Companies ("LTS"), which serve the telecommunications, utilities, and industrial sectors in Canada and the United States. LTS's network development arm specializes in system designs and development of "triple play" networks, delivering voice, data, and television services. Together, the two companies have embarked on an ambitious plan to construct, deploy and manage FTTH networks in small towns and rural

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[3] 47 U.S.C. § 251 et seq.

[4] *Id.*

[5] *See generally, id.* § 254(b).

[6] Comspan is also certified to and does receive support from the Oregon Universal Service Fund.

[7] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499, (rel. August 8, 1996) ("*Local Competition First Report and Order*"), ¶ 4.

areas throughout Oregon. LTS has since purchased Comspan, lending the company LTS's significant financial strength and technical expertise.

B. Bandon and Coquille

After some preliminary market research, Comspan chose to deploy its first FTTH network in Bandon, Oregon. Bandon is a town with a population of approximately 3,100 residents located on the Southern Oregon coast, and Comspan's preliminary market research revealed that it was an underserved area. Although the local ILEC did advertise DSL services, Comspan received reports that approximately 50 percent of the households lived too far from the ILEC central office to be eligible for DSL. And the local cable company made it known that it had no plans to upgrade its network to allow it to offer broadband services to Bandon for another 20 years.[8] For these reasons, Comspan determined that Bandon was a perfect spot to test its market strategy.

Comspan broke ground on the project in February 2006, and turned up its first customer in August 2006. The Bandon network is built around a central office and video head-end located in Bandon, connected to approximately 90 percent of the households in Bandon via Comspan's passive optical network ("PON"). Over this state-of-the-art architecture, Comspan offers Bandon's citizens not only basic local exchange and long distance service, but high-speed data[9] and video as well. And Bandon's citizens have welcomed Comspan's services with open arms. In less than a year, Comspan now serves a full 35 percent of the households in Bandon, and is gaining new customers every day. The company expects to achieve a 50 percent market share by mid summer and a 65 percent market share within 2 years.

Once the network in Bandon was completed, Comspan immediately began building in Coquille—a slightly larger town of approximately 5,000, located about 17 miles away. Like Bandon, Coquille residents had few choices when it came to broadband services. The local ILEC offers DSL but only to those households close in to the central office, while the local cable company neither offers nor has plans to offer broadband services in the foreseeable future. It is not surprising, then, that Comspan has had remarkable success "preselling" its services in Coquille. The company expects to turn up its first customers in Coquille this month.

Based upon its success in Bandon and Coquille, in the next 12 months Comspan is planning to begin building FTTH networks in an additional 10 small towns located across the state.

C. The Role of Universal Service Funding in Comspan's Plans

Small towns like Bandon and Coquille are significantly less dense than mid-to-large cities, and are therefore costlier to serve. Moreover, because the customer pool is small, it is impossible to achieve the same economies of scale associated with cities with larger populations. Thus, from the beginning, Comspan has depended on anticipated support from the state and Federal Universal Service funds in order to build its FTTH networks. Accordingly, Comspan applied for and received Federal ETC status in Bandon and Coquille in order to use the relatively modest, but not insignificant, funding to help to pay for the infrastructure essential for the delivery of basic voice services in those communities. It has also applied for ETC status in the nearby communities of Reedsport, Veneta, Myrtle Creek and Oakridge, and will file additional applications as it prepares to build-out additional cities.

The continued availability of Fund support is critical to Comspan's ability to deliver its advanced services to underserved communities throughout Oregon. Indeed, if Universal Service funding becomes unavailable to Comspan, or if it is significantly diminished from current levels, Comspan will be unable to complete its expansion plans beyond those communities it is currently serving. The elimination of CETCs such as Comspan—who are providing advanced broadband services—would constitute a real loss to consumers in small towns and rural communities who will otherwise have only limited (if any) access to broadband. Indeed, wireline broadband CETCs like Comspan, more than those of any other class of ETC, serve the goals of the Act and should be ensured continued Fund support:

- *First, Comspan is bringing new technologies to small towns and rural areas.* The Act specifically declares: "Access to advanced telecommunications and information services should be provided in all regions of the Nation."[10] By providing

[8] Since that time, the cable company is now estimating it will be in a position to provide broadband services in 3, not 20, years.

[9] Comspan's network offers commercial data speeds of up to 7 mbps, with technical capabilities of 100 mbps.

[10] 47 U.S.C. § 254(b).

state-of-the-art, fiber-based voice, video and high-speed data, Comspan is doing precisely that—and importantly, Comspan is delivering these new technologies in areas of the country that would not otherwise receive these services. And the benefits of these services can make a remarkable difference in these communities. The availability of true broadband brings with it opportunities for advances in healthcare through telemedicine applications, educational opportunities through e-learning applications, and economic development.

- *Second, Comspan encourages competition in small towns and rural areas.* In adopting the Act, Congress did not call for a two-tier society that promotes competition in large urban markets, while monopolies retain their grasp on Americans living in small towns. On the contrary, Congress envisioned that all Americans would reap the benefits of competition in local telecommunications markets. Comspan is fulfilling the Act's vision of competition for rural Americans.
- *Third, Comspan services compete head-to-head with and serve as complete substitutes for ILEC services.* That is, when a consumer purchases Comspan service, that consumer will drop the ILEC service. Thus, the support provided to CETCs such as Comspan would not cause the Fund to increase at all if the current system did not provide continued support to the ILEC even after the ILEC loses the customer.

III. The Joint Board's Proposed Caps

The Joint Board's proposal to cap high-cost support to CETCs represents an extreme and unwarranted departure from the Commission's principle of competitive neutrality in the implementation of Universal Service, and should therefore be rejected.

A. The Proposed Caps Violate the Act's Principle of Competitive Neutrality and Thereby Subvert the Act's Pro-Competitive Goals

The Act expressly rejects the previously-held belief that telecommunications services are natural monopolies, best delivered by a single incumbent carrier.[11] In drafting the Act, Congress instead offered the vision of a vibrant marketplace in which carriers compete with one another to bring to customers the latest technological innovations at the lowest cost. And while Universal Service remains an equally important goal, it was never intended to be furthered at the cost of competition. On the contrary, competition and new technologies were expected to further the goals of Universal Service as they would "greatly reduce the actual costs of providing Universal Service over time."[12]

In implementing the Act, the Commission has remained true to this vision. In its *First Report and Order,*[13] the Commission declared "competitive neutrality" a "guiding principle" for the preservation and advancement of Universal Service. The Commission stated:

> "Universal Service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that Universal Service support mechanisms and rules neither unfairly favor nor disfavor one provider over another and neither unfairly favor one technology over another."[14]

The Commission not only adopted competitive neutrality as "an additional principle" under 254(b), but it also found the principle to be embodied in several of the Act's explicit requirements—including 254(e)'s requirement that Universal Service support be explicit, section 254's requirement that state Universal Service contributions be equitable and nondiscriminatory, and section 214(e)'s requirement that any carrier can become an eligible telecommunications carrier if it meets certain statutory criteria.[15] Accordingly, the Commission found that "an explicit recognition of competitive neutrality in the collection and distribution of funds and the determination of eligibility in universal support mechanisms is consistent with Congressional intent and necessary to promote a 'pro-competitive, deregulatory national policy framework.'"[16]

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[11] *Local Competition First Report and Order,* ¶ 1.

[12] Telecommunications Competition, S. Rep. No. 104–23 at 26 (1996).

[13] *Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776 (rel. May 8, 1997) ("*First Report and Order*").

[14] *First Report and Order,* ¶¶ 46–47.

[15] The Commission also noted that section 254(h)(c) requires the Commission to establish competitively neutral rules relating to advanced telecommunications and information services for eligible schools, healthcare providers and libraries. *Id.* ¶ 48.

[16] *Id.* ¶ 48.

The Commission certainly recognized that strict adherence to the principle of competitive neutrality would be difficult to achieve, even suggesting that there would be times when disparities between types of carriers would exist. However, the implication was that these disparities would be small and would exist only where they could not be eliminated. The Commission explained:

> "Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the market place or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers." [17]

In contrast, the Joint Board's recommended caps are like throwing a hand grenade at a kidnapper. You may stop the kidnapper, but at too great a cost. Similarly, the caps may halt the growth of the fund, but they are also likely to inflict severe damage on CETCs such as Comspan. And, in so doing, they will subvert the Act's pro-competitive goals.

B. The Proposed Caps Are Likely to Drastically Reduce the Amount of Support Available to CETCs Such as Comspan

The Joint Board proposes to cap total support to CETCs, by state, at the amount distributed in 2006. So, as the number of lines served by CETCs grows in any state, the amount of per-line support will decrease. It is impossible for Comspan to calculate with precision how much the caps may reduce the support available to it in Oregon. That said, Comspan has analyzed publicly available information in order to make a good faith estimate. The results are alarming.

According to the Universal Service Administrative Company ("USAC"), Oregon CETCs were the recipients of approximately $10 million in high-cost support in 2006.[18] However, two new carriers—Cingular and Eagle Telephone—were certified by the Public Utility Commission of Oregon ("OPUC") in late 2006 and early 2007; [19] in that same time period, Comspan received ETC certification in two new wire centers in the state.[20] In forecasts provided to USAC, Oregon CETCs have projected that by the third quarter of 2007 they will receive over double the amount received by CETCs in 2006, *assuming current support levels.*[21] In other words, Oregon CETCs are projecting that they will more than double their number of lines over the first three quarters of 2007. If the caps are adopted and the total amount distributed remains constant, then the per-line support received by the CETCs in Oregon will be less than half of what it is now. And if history is any predictor, the disparity will continue to grow as these CETCs gain a foothold in the high-cost markets.

As discussed above, a significant level of support is necessary in order for Comspan to fund the substantial initial cash outlay required for building its FTTH infrastructure in new markets. Comspan's decision to enter new markets depends on the availability of that support. Comspan certainly cannot sustain its business plan with the cuts in support that these estimates suggest.

Moreover, even if the amount of funding under the caps *were* sufficient to allow Comspan to move forward, the market would be tilted more steeply against it. Competitive local exchange carriers always face an uphill battle, as they compete against ILECs who enjoy all of the advantages of incumbency. If, in addition to all of the natural advantages, the incumbent LECs were also entitled to twice as much USF support than the CETCs, then Comspan's ability to compete will be burdened further.

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[17] *Id.*

[18] *Recommended Decision,* Appendix B.

[19] Eagle Telephone received ETC certification in Oregon on December 21, 2006. *See In the Matter of Eagle Telephone Systems, Inc., Application for Designation as an Eligible Telecommunications Carrier,* OPUC Docket UM 1237, Order No. 06–680. Cingular received ETC certification in Oregon on March 29, 2007. *See, In the Matter of Cingular Wireless, LLC, Application for Designation as an Eligible Telecommunications Carrier,* OPUC Docket UM 1253, Order No. 07–111.

[20] *See In the Matter of Wantel Inc.'s Application for Designation as an Eligible Telecommunications Carrier in the Bandon Wire Center,* OPUC Docket UM 1255, Order No. 06–681 (Dec. 21, 2006); *see also In the Matter of Wantel Inc.'s Application for Designation as an Eligible Telecommunications Carrier in the Coquille Wire Center,* OPUC Docket UM 1307, Order No. 07–210 (May 29, 2007).

[21] CETC forecasts are found on the USAC website as HC01. The CETCs listed for Oregon (not including Sprint Spectrum, which has not even applied for CETC status as of this date) forecast that, under current support levels, they will receive over $22 million in USF support.

The Joint Board has attempted to minimize the harm that its proposed caps might produce by pointing out that the caps are intended to be temporary.[22] However, in view of the complexity of the issues involved, it seems unlikely that the Commission will have lifted them in favor of permanent mechanisms within the 18 months projected in the *Recommended Decision.* Given what would be an at-best uncertain situation, it is reasonable to imagine that, if the caps are adopted, many CETCs will either halt their expansion plans, as projected by Comspan, or exit high-cost markets altogether.

C. Customers Will Lose if the CETCs Are Eliminated

It should be abundantly clear that competition in high-cost areas is good for consumers. Competitive ETCs such as Comspan are bringing a variety of advanced services to underserved areas—thereby introducing new technology and innovative services to customers who would otherwise have no such access. Moreover, Comspan's own experience in Bandon illustrates just how effective competition can be, even in rural areas, at spurring the incumbent LECs and cable companies to upgrade their own networks. As mentioned above, before Comspan announced its intention to enter the Bandon market, the local cable provider had no intention of upgrading its facilities to allow it to offer broadband services for twenty years. After having lost significant market share to a competitor, that same company is now estimating that it will be able to provide Bandon with cable modem services in 3 years.

If the Commission adopts the caps proposed by the Joint Board in its *Recommended Decision,* Comspan and other CETC's like Comspan will be damaged. However, the real losers will be the customers in those Oregon communities that Comspan plans to serve—customers who now have a chance to enjoy the same technological advantages as customers in larger cities—who instead will have to wait up to 20 years to come into the 21st century.

IV. Conclusion

Comspan appreciates this opportunity to comment on the *Recommended Decision* and looks forward to providing additional comments in the future.

Respectfully submitted this 6th day of June, 2007.

McDowell & Rackner PC,
Lisa F. Rackner,
Counsel for ComspanUSA.

Prepared Statement of the National Association of State Utility Consumer Advocates (NASUCA)

NASUCA Supports a Cap on the High-Cost Universal Service Fund

The National Association of State Utility Consumer Advocates submits for the record of this Committee's hearing scheduled for June 12, 2006, the attached copy of comments filed at the Federal Communications Commission on June 6, 2007, regarding the proposal of the Federal-State Joint Board on Universal Service for a cap on the Federal high-cost fund as it applies to competitive eligible telecommunications carriers, including wireless carriers.

Before The Federal Communications Commission

Washington, DC 20554

June 6, 2007

In the Matter of High-Cost Universal Service Support
Federal-State Joint Board on Universal Service
WC Docket No. 05–337
CC Docket No. 96–45

Comments of the National Association of State Utility Consumer Advocates Supporting a Cap on the High-cost Universal Service Fund

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[22] *Recommended Decision,* ¶ 8.

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I. Introduction and Summary

The National Association of State Utility Consumer Advocates ("NASUCA")[1] files these comments to support the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") that the Federal Communications Commission ("Commission" or "FCC") take immediate action to impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers ("CETCs") may receive.[2] This is necessary, in the Joint Board's words, "to rein in the explosive growth in high-cost Universal Service support disbursements."[3] The Commission seeks comment on the Joint Board's recommendation.[4]

The NPRM is on an extremely tight timeline.[5] But that is justified by the "emergency" in which the USF finds itself.[6] Unfortunately, the emergency is, in part, caused by the failure of the Commission and of the Joint Board to act in a coordinated fashion on many of the issues that have previously been put out for comment.[7] But that does not alleviate the need for a cap on the high-cost Universal Service Fund ("USF") like that recommended by the Joint Board.

II. The Joint Board Recommendation and Issues for Comment

The Joint Board recommended that the Commission cap the amount of support that CETCs may receive for each state based on the average level of CETC support distributed in that state in 2006.[8] The Joint Board further recommended that the interim cap apply until 1 year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost Universal Service reform.[9]

The Commission seeks comment on the Joint Board's recommendations.[10] The Commission asks commenters to "address whether the Commission should control the growth of high-cost support by capping support on CETCs as recommended by the Joint Board."[11] The Commission also asks "parties to address the Joint Board's recommendation to limit the cap to CETCs only, and whether there are public interest concerns that warrant modifying the application of the recommendation to providers of certain services."[12]

The Commission also asks for comment on the Joint Board's recommendations regarding the "operation of any interim cap, including the duration of the cap, its application, and the base period for the cap."[13] The Joint Board had recommended that the duration of the cap be 1 year from the date of any Joint Board recommended decision on comprehensive Universal Service reform, which the Joint Board committed to issue within 6 months of May 1, 2007.[14] The Commission also seeks comment "on the Joint Board's recommendation to impose the cap on a state-by-state basis . . ."[15] The Joint Board had recommended that the cap be set at the level of support received by CETCs in 2006 . . ."[16]

III. Capping the Fund as an Interim Step Is Necessary

The Joint Board presents more-than-adequate justification for placing an emergency cap on the fund:

> 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. Today, the Universal Service Fund provides approximately $4 billion per year in high-cost support. Yet, in 2001, high-cost support totaled approximately $2.6 billion. 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, by contrast, in the 6 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. 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.[17]

The impact on consumers across the Nation of this growth in the Fund is substantial. The current USF contribution factor is 11.7 percent.[18] All other things being equal, if the disbursements to CETCs grew to the cited $1.56 billion for 2007, the contribution factor would grow to 11.9 percent.[19] The Joint Board's estimate does not take into account all of the CETC designations pending in the various states,[20] which likely outweigh those pending at the Commission. Consumers cannot be asked to bear this burden.

IV. Applying the Cap Only to CETCs Is Reasonable

As quoted above, the Joint Board correctly notes that in recent years the growth in the Fund is almost entirely attributable to CETCs: "While support to incumbent LECs has been flat or even declined since 2003, by contrast, in the 6 years from 2001 through 2006, competitive ETC support grew from $15 million to almost $1 billion—an annual growth rate of over 100 percent."[21] Therefore, the most direct way to deal with the growth in the Fund as an interim measure is to limit the source of growth: CETCs.

We are likely to hear, and we have already heard, from those who would be impacted—namely wireless carriers—that capping the Fund for CETCs is not competitively neutral.[22] We have also heard that capping the Fund for CETCs would discourage wireless carriers' deployment of services in rural areas.[23]

With regard to the first point, it should first be recalled that the principle of competitive neutrality is not found in Section 254. It was derived by the Commission based on its ability to adopt "additional principles" pursuant to 47 U.S.C. 254(b)(7).[24] Depending on the context, one principle may be important enough to trump any or all the other principles.[25] In this situation, the need for "specific, predictable and sufficient" support[26] can override the derived principle of competitive neutrality. As the Joint Board has found, "sufficient" also implies "no more than sufficient."[27] Further, incumbent LECs have had their support from the high-cost loop fund capped since the 1990s. Thus additional support for CETCs can be put temporarily "on hold" without violating the Act.

Likewise, with regard to the second point, while it is likely that the receipt of Universal Service funds eases wireless carriers' deployment of services in rural areas, many carriers were and have been deploying wireless facilities *without* such support. The impact of a temporary cap on wireless funding while other USF issues are being resolved is speculative; the impact on consumers of the increased funding that will occur without a cap is definite.

The speculative impact of a cap is reinforced by the fact that the Joint Board recommended that the Commission consider "abandoning or modifying" the so-called identical support or portability rule.[28] The Joint Board correctly notes that the rule "seems to be one of the primary causes of the explosive growth in the fund."[29]

Further, as the Joint Board has noted:

> 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.[30]

For all of these reasons, limiting the cap to CETCs makes sense and is within the Commission's discretion.[31]

The D.C. Circuit has recently reaffirmed that, with regard to the Commission's interpretation of Section 254, where Congress has not spoken directly to an issue (as it has not here), the ultimate test is whether the Commission's ruling is reasonable under the circumstances.[32] Imposing a temporary cap on CETC funding is, under these circumstances, eminently reasonable.

V. The Proposed Period for the Cap Is Reasonable

The Joint Board recommends that "the cap expire 1 year from the date of any Joint Board recommended decision on comprehensive and fundamental Universal Service reform."[33] To place a definite outer limit on when the cap will end, the Joint Board "commit[s] to adoption of a further recommended decision addressing fundamental high-cost reforms within 6 months of today's Recommended Decision."[34] Taken together, this means that the cap will expire within 18 months of May 1,

2007, the day the Recommended Decision was released, in other words November 1, 2008.

The entire premise behind the cap is that it is to be interim, "until such measures can be adopted that will ensure that the Fund will be sustainable for future years" and "while the Joint Board and the Commission consider fundamental reforms to address issues related to the distribution of support."[35] It appears that another 18 months to resolve issues, some of which have been pending since the passage of the 1996 Act, is sufficient (and probably not more than sufficient).[36] Clearly, though, the Commission should attempt to resolve these issues even more expeditiously, after giving the stakeholders an adequate opportunity to present their views.

VI. The Cap Should Apply on a State-by-State Basis

The Joint Board "recommend[s] that the Commission immediately impose a cap on competitive ETC support for each state."[37] The Joint Board further notes "that a competitive ETC cap applied at a state level effectively curbs growth. . . ."[38] NASUCA agrees. *A state-by-state cap means that no state will receive less support for CETCs than it currently receives, no matter what happens in other states.*

The appropriateness of a state-by-state cap is best seen by comparison to other possibilities. The Joint Board states that it:

> 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.[39] 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.[40]

NASUCA agrees with the Joint Board's assessment of the problems with using a national cap and with using a study area (or smaller) area.[41] Placing the cap per state also keeps the responsibility with state commissions, which under the Act have primary responsibility for designation of ETCs.[42]

VII. The Cap Should Be at the Level of Support Awarded in 2006

The Joint Board "recommend[s] that the Commission cap competitive ETC support for each state at the level of competitive ETC support actually distributed in that state in 2006."[43] The Joint Board correctly points out that "using 2006 data allows the Commission to use actual support amounts, rather than relying on USAC projections to set the cap amounts."[44] NASUCA agrees with this approach.

If the Commission orders a cap as expeditiously as appears may happen,[45] more recent data—for 2007—will be limited to the first, second and possibly (but hopefully not) third quarters of the year. That data will not be representative: As the Joint Board points out, there are "seasonal or one-time fluctuations that may be reflected in any single quarter."[46] Using actual data for the year 2006 will "smooth out" these fluctuations.[47]

Using the 2006 data does not capture the increases in CETC support that have occurred in the past year. But that increase is part of the problem, of course: Comparing USAC's HC01 appendices for the second quarter of 2007 to the second quarter of 2006 shows an increase of 24 percent in total CETC support just in that 1 year.[48] And comparing the first quarter of 2007 to the first quarter of 2006 shows an increase of 37 percent in total CETC support.[49] The composite increase (comparing both quarters in 2006 to both quarters in 2007) is almost 30 percent. If there is a compulsion to "true up" the 2006 numbers, an increase of 30 percent could be applied. Truth be told, any cap is better than no cap; consumers will suffer if the increases in the high-cost fund are allowed to continue.

VIII. A Cap on the Entire High-Cost Fund Would Be Feasible

The Joint Board did "not recommend additional caps on support provided to incumbent LECs, because the data show less growth pressure from incumbent LECs."[50] This is largely because "incumbent LEC high-cost loop support is already capped and incumbent interstate access support has a targeted limit" while "local switching support and interstate common line support provided to incumbent LECs have been stable in recent years."[51] As stated above, NASUCA agrees with the limitation of the cap to only CETCs; any lack of competitive neutrality is offset by the benefits to the public interest.

If, however, the Commission insists on maintaining competitive neutrality, then the cap could be applied to the entire high-cost fund.[52] NASUCA proposed such a cap in an April 6, 2007 *ex parte* letter.

The cap would work just like the CETC cap, but would also cover incumbent LEC ETCs. To paraphrase the description in the Recommended Decision:

> First, on a quarterly basis, the Universal Service Administrative Company ("USAC") would calculate the support each ETC would have received under the existing (uncapped) equal per-line support rule and would sum these amounts by state. Second, USAC would calculate a state reduction factor to reduce this amount to the 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 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.[53]

The example used by the Joint Board also applies:

> 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 ETC's support would be multiplied by 69.2 percent to reduce support to the capped amount. 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.[54]

A state-by-state cap on all high-cost payments should also have a one-year duration and should also use actual 2006 payments as the amount of the cap.

IX. Conclusion

The Commission cannot stand by as consumers continue to pay ever-increasing amounts into the USF while the Commission figures out ways to constrain the growth in the fund.[55] A cap on payments to CETCs will, for the short term, address the "explosive growth" in high-cost support disbursements.

The proposed cap is reasonable because the known benefits of such a cap far exceed the known costs of failing to do so. Under current rules, there is no assurance that high-cost support for CETCs results in service deployment that would not have been made without such support. There is also no assurance that the current amount of support (over $1 billion annually and rapidly growing) is subsidizing investments that will not generate substantial profits in future years. Moreover, under current rules, there is no assurance that the amount of support is reasonable given that it is based on the costs of wireline carriers rather than the costs of wireless carriers. Therefore, until the Commission has an opportunity to reform the current funding mechanism, it would be prudent to adopt the recommended cap as an immediate interim measure, and thereby limit the risk that public support is being converted to private profits through the high-cost support mechanism.

The Commission should expeditiously adopt the proposal of the Joint Board.

Respectfully submitted,

DAVID C. BERGMANN,
Assistant Consumers' Counsel Chair,
NASUCA Telecommunications
Committee,
NASUCA.

Endnotes

[1] NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and Federal regulators and in the courts. *See, e.g.,* Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309–4(a); Md. Pub. Util. Code Ann. § 2–205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34–804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.,* the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] *Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, FCC 07J–1 (rel. May 1, 2007) ("Recommended Decision").

[3] Recommended Decision, ¶ 1.

[4] Notice of Propose Rulemaking, FCC 07–88 (rel. May 14, 2007) ("NPRM").

[5] Comments are due 7 days after *Federal Register* publication, and replies are due fourteen days after publication. See NPRM, ¶ 6.

[6] *Id.,* ¶ 1; see Recommended Decision, ¶ 4.

[7] See Comments of the National Association of State Utility Consumer Advocates on "Long-Term, Comprehensive High-Cost Universal Service Reform," in WC Docket No. 05–337 (May 31, 2007) at 3–5.

[8] Recommended Decision, ¶¶ 5–13.

[9] *Id.,* ¶ 8.

[10] NPRM, ¶ 5.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Recommended Decision, ¶ 8.

[15] NPRM, ¶ 5.

[16] Recommended Decision, ¶ 13.

[17] Recommended Decision, ¶ 4 (footnotes omitted).

[18] *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-1330A1.pdf.*

[19] Adding one-quarter of the $0.28 billion increase to the Fund need for the second quarter of 2007.

[20] Recommended Decision, n. 15.

[21] *Id.,* ¶ 4.

[22] See *http://www.ctia.org/media/press/body.cfm/prid/1689.*

[23] See *In the Matter of 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,* GN Docket N. 07–45, Comments of CTIA—The Wireless Association® (May 16, 2007) at 16–17.

[24] See *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776 (1997), ¶¶ 48–49.

[25] *Id.,* ¶ 52.

[26] 47 U.S.C. 254(b)(5).

[27] See Recommended Decision, FCC 02J–2, 17 FCC Rcd 20716 (2002), ¶¶ 14, 16.

[28] Recommended Decision, ¶ 12.

[29] *Id.*

[30] *Id.,* ¶ 6.

[31] If the Commission decides not to limit the cap to CETCs, a cap on the entire high-cost fund could be imposed. This is discussed later in these comments.

[32] *Vonage Holding Corp.* v. *FCC,* ____ F.3d.1 ____, Case 06–1276 (D.C. Cir. 2007), slip op. (June 1, 2007) at 12, citing *Am. Fed'n of Gov't Employees, Local 446* v. *Nicholson,* 475 F.3d 341, 355 (D.C. Cir. 2007).

[33] *Id.,* ¶ 8.

[34] *Id.*

[35] *Id.,* ¶ 5.

[36] The issues at issue should not be just those that were identified in the May 1, 2007 Public Notice (FCC 07J–2). See NASUCA's comments filed May 31, 2007 in response to that Public Notice.

[37] *Id.,* ¶ 9.

[38] *Id.* The Joint Board also states that this "allows states some flexibility to direct competitive ETC support to the areas in the state that are most in need of support." Id. It appears that this "flexibility" would be limited to authorizing new ETCs in some areas; states would not (and should not) have the ability to reallocate support among currently authorized ETCs.

[39] Just as some states have designated multiple ETCs under the current system. See *id.,* ¶ 5, n. 17 and Appendix B.

[40] *Id.*

[41] USAC's latest quarterly filings show 2,274 study areas nationwide. Although not all of those study areas receive high-cost support, and although not all of those study areas have CETCs authorized, the burden on the states and on the Commission would be a distraction from the fundamental purpose here, which is to develop long-term reforms for the high-cost support mechanism.

[42] 47 U.S.C. 214(e)(2). Under 47 U.S.C. 214(e)(6), the Commission has this authority when a state commission cannot designate ETCs. The Joint Board recommendation does not explain the interaction of Federal and state authority to utilize the

"flexibility" under the cap, but one would hope that the Commission would exercise the same restraint that the Joint Board expects of the states.

[43] Recommended Decision, ¶ 13.

[44] *Id.*

[45] See NPRM, ¶ 6.

[46] Recommended Decision, ¶ 13, citing the fact that, 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.

[47] *Id.*

[48] From the 2Q06 figure of $259 million to the 2Q07 figure of $321 million.

[49] From the 1Q06 figure of $219 million to the 1Q07 figure of $299 million.

[50] *Id.,* ¶ 5.

[51] *Id.*

[52] The issues being dealt with here are issues with the high-cost fund. Thus the Commission need not consider, at this juncture, a cap for the other pieces of the USF (schools and libraries, low-income and rural telemedicine).

[53] See *id.,* ¶ 10.

[54] See *id.,* ¶ 11. The Joint Board's example includes the notation that "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." Id. The only jurisdiction that receives no high-cost support at all is the District of Columbia; under a total cap, no carrier in the District would be able to receive any high-cost support as long as the cap lasts.

[55] See footnote 33, *supra*.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. DEBORAH TAYLOR TATE

Question 1. The Joint Board recommendation for a cap on funds available to competitive carriers is designed to be a short-term fix for the growth in Universal Service demand. In order to ensure the long-term stability of Universal Service, what specific further reforms do you favor?

Answer. As we look to achieve the long-term goals of the Universal Service program we must recognize how technological changes are putting strains on the mechanics of both our contribution and distribution systems. With respect to the contribution mechanism, I believe that a numbers-based contribution mechanism would help maintain the stability of the Fund by assessing all technologies used to make a phone call on a similar basis and, unlike the current revenue-based system which treats technologies differently, would be competitively and technologically neutral. With respect to the distribution mechanism, I generally support proposals that allow carriers to receive support based on their own costs. In particular, along with the Joint Board, I support the elimination of the identical support rule. I further believe we should review whether the use of reverse auctions is an effective and competitively neutral way to determine high-cost Universal Service funding to Eligible Telecommunications Carriers (ETCs). Like you, I want to help insure no area or group of our citizens are left behind.

Question 2. The Joint Board recommends that Universal Service funds for competitive carriers be capped on a state-by-state basis. But the recommendation omits any mention of tribal lands. In light of special jurisdictional concerns involving Indian country, how should the FCC apply the cap to tribal lands?

Answer. Any interim cap order adopted by the Commission will continue the Commission's traditional recognition that underserved tribal lands and Alaska Native Regions are uniquely situated and deserving of individual treatment to ensure that they are not left behind urban areas of the country.

Question 3. In order to preserve the sovereignty of the tribes, would it be best to address support for competitive carriers serving tribal lands on a case-by-case basis?

Answer. Whatever effective mechanism is adopted, a fundamental reform plan will ensure that the Universal Service Fund promotes the availability of reasonably comparable services at reasonably comparable rates throughout the country in a technologically and competitively neutral manner. Comprehensive reform also must take into account those areas of our country which are uniquely situated. Any comprehensive reform plan will continue the Commission's traditional recognition that underserved tribal lands including those in Hawaii and Alaska Native Regions are uniquely situated and deserving of individual treatment to ensure that they are not left behind urban areas of the country.

Question 4. The Joint Board characterizes its proposal for a cap on support for competitive carriers as interim, while it considers options for long-term reform. In the long term, do you believe the Universal Service Fund should support both wireline and wireless technologies?

Answer. I believe the Universal Service Fund should be administered in a competitively and technologically neutral manner. All carriers, regardless of their chosen technology platform, should be eligible to receive support based on their own costs.

Question 5. In the long term, do you believe that Universal Service funding should be available to more than one carrier in a geographic area?

Answer. In many areas defined as high cost by the Commission's rules, multiple service providers receive Universal Service support. Indeed, the recent runaway growth of the high-cost fund is largely a function of subsidizing multiple competitors to provide voice services in rural areas. I therefore question the wisdom of funding multiple carriers in high-cost areas in order to ensure the sustainability of the Fund to serve underserved areas.

Question 6. In 1997, the FCC decided to add to the Universal Service principles created by Congress a new principle of "competitive neutrality." Do you believe that the Joint Board recommendation is consistent with the principle of competitive neutrality?

Answer. Yes. As discussed in the Recommended Decision, the Joint Board found 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:

> 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.[1]

The Joint Board further noted that incumbent LEC high-cost loop support is already capped and incumbent interstate access support has a targeted limit.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO HON. DEBORAH TAYLOR TATE

Question 1. The Communications Act, as amended, seems to indicate that distribution of USF funds should be on a competitively neutral and nondiscriminatory basis. Do you believe that the proposed interim cap—which only impacts competitive carriers—comports with Section 254 and other relevant sections of the Communications Act?

Answer. Yes. As discussed in the Recommended Decision, the Joint Board found 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:

> 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.[2]

The Joint Board further noted that incumbent LEC high-cost loop support is already capped and incumbent interstate access support has a targeted limit.

Question 2. The Joint Board recommendation indicates that the interim cap on support for competitive carriers should only last for a maximum of 18 months as

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[1] *Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, FCC 07J–1 (Fed.-State Jt. Bd., rel. May 1, 2007) *(Recommended Decision).*

[2] *Id.*

the Joint Board and the FCC consider further USF reform efforts. However, the recommendation does not set a firm date for expiration of the cap. Would you favor a firm expiration date as a means of ensuring that the "interim cap" does not become a permanent solution—and that further reform efforts are kept on an expedited schedule?

Answer. I do not believe that a firm expiration date is necessary. 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 6 months of this Recommended Decision. I am committed, as the Federal Chair, to putting the Joint Board in a position to make those recommendations. Once the Joint Board issues a Recommended Decision to the FCC, the Commission is statutorily required to complete its proceedings responding to the Recommended Decision within 1 year.[3]

Question 3. If an interim cap is not adopted, would the USF contribution factor increase past its current rate of 11.7 percent? If so, how high do you think it would go by the second quarter of 2008?

Answer. High-cost Universal Service support has been rapidly increasing over the past several years, caused primarily by growth in support for competitive ETCs. Competitive ETC high-cost distributions have been growing at a trend rate of 101 percent-per-year since 2002. Specifically, in 2000, competitive ETCs received $1 million in support. According to USAC, competitive ETCs received almost $1 billion in 2006. However, we do know, in absence of a cap, that high-cost distributions will continue to grow with the designation of additional competitive ETCs and line growth among existing competitive ETCs. Absent the imposition of a cap, it is very likely that high-cost support to competitive ETCs will continue to grow. It is difficult, however, to predict the effect this continued growth in competitive ETC high-cost support would have on the contribution factor. The contribution factor is based on expected interstate telecommunications revenues and so the amount of revenues generated can affect the contribution factor. Additionally, the contribution factor is based not only on the support required for the high-cost fund, but support for the other Universal Service support mechanisms as well. These mechanisms are the schools and libraries, rural healthcare, and low-income programs. Additionally, other factors, such as prior period adjustments and changes in interest income due to interest rate changes, will affect the contribution factor in a given quarter. Given these other variables, we cannot make an accurate prediction of the contribution factor based on whether or not an interim cap on competitive ETC high-cost support is adopted.

Question 4. In your testimony, you note that the Joint Board is committed to releasing a list of comprehensive reform recommendations by November 1. Can you give us an update on the specific measures you are pursuing? What sort of cost savings can we expect from these recommendations, if implemented?

Answer. The Joint Board held a meeting on July 18, 2007 in New York City to discuss the comments and reply comments filed in response to the *Joint Board Comprehensive Reform Public Notice.* The discussion was spirited and wide-ranging, and addressed a variety of recommendations that have been placed before the Joint Board for our consideration. I look forward to continuing to work with my colleagues on the Joint Board to narrow the scope of our discussions and focus on specific measures toward the goal of Fund reform.

I can not at this time estimate the cost savings that would result from the implementation of some or all of the recommendations currently under discussion. As stewards of public funds, however, our obligation to preserve and advance Universal Service mandates that we do all we can to achieve fundamental reform to ensure that affordable, quality services are available to consumers all across the country while ensuring the stability of the Fund itself.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO HON. DEBORAH TAYLOR TATE

Question 1. New Jersey is the second-largest net donor to the Universal Service Fund in the country, contributing almost $200 million. Will the Joint Board's proposed interim cap help to reduce this burden on New Jersey?

Answer. I appreciate your comments regarding New Jersey. My home State of Tennessee is also a net donor state. High cost Universal Service support has been rapidly increasing over the past several years, caused primarily by growth in sup-

[3] 47 U.S.C. § 254(a)(2).

port for competitive ETCs. Imposition of an interim cap on high-cost support provided to competitive ETCs pending fundamental reform will ensure that the Fund will be sustainable for future years. This action will prevent increases in high-cost support due to the designation of additional competitive ETCs or line growth among existing competitive ETCs. Although I would have preferred that the Joint Board make a recommendation with respect to fundamental reform, 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.

Question 2. What can be done to reduce the growth in the Universal Service Fund and lessen the burden on consumers in donor states?

Answer. As we look to achieve the long-term goals of the Universal Service program, we must recognize how technological changes are putting strains on the mechanics of both our contribution and distribution systems. With respect to the contribution mechanism, I believe that a numbers-based contribution mechanism would help maintain the stability of the Fund by assessing all technologies used to make a phone call on a similar basis and would be competitively and technologically neutral. With respect to the distribution mechanism, I generally support proposals that allow carriers to receive support based on their own costs. In particular, I support the elimination of the identical support rule by which competitive Eligible Telecommunications Carriers (ETCs) receive support based on the incumbent's costs, even if its costs are significantly lower. I further believe we should review whether the use of reverse auctions is an effective and competitively neutral way to determine high-cost Universal Service funding to ETCs. Implementation of such proposals would benefit consumers in both net donor and net recipient states.

Question 3. Is the Joint Board considering the use of reverse auctions to distribute Universal Service funds? Would reverse auctions reduce the size of the Fund and help donor states like New Jersey?

Answer. On August 11, 2006, the Joint Board issued a Public Notice seeking comment from interested parties on the use of auctions to determine Universal Service support.[4] More than 50 parties filed comments and reply comments in fall 2006, responding to the Joint Board's request for comment. On February 20, 2007, the Joint Board held an *en banc* hearing in Washington, D.C., where it heard, among other issues, from experts in support of, and in opposition to, the use of auctions to determine Universal Service support. [5] The Joint Board also issued a Public Notice on May 1, 2007 seeking comment on proposals for long-term, comprehensive reform of high-cost Universal Service support.[6] Among the proposals on which the Joint Board sought comment is a proposal to use reverse auctions to distribute high-cost support. I further believe we should review whether the use of reverse auctions could provide a technologically and competitively neutral means of controlling Fund growth and ensuring that supported carriers utilize the most efficient technologies over time, which would benefit consumers in both net donor and net recipient states.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO ROGER NISHI

Question 1. The Joint Board characterizes its proposal for a cap on support for competitive carriers as interim, while it considers options for long-term reform. In the long term, do you believe the Universal Service Fund should support both wireline and wireless technologies?

Answer. Yes. Both services are complimentary to each other and, in the long term, the Fund should support both wireline and wireless technologies. However, the support should be based on the carriers own costs and, therefore, the identical support rule should be eliminated. As Chairman of OPASTCO, I am on record in support of the Joint Board's recommended interim cap on the competitive eligible telecommunications carrier (CETC) portion of the Fund.

Question 2. In the long term, do you believe that Universal Service funding should be available to more than one carrier in a geographic area?

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[4] *See Joint Board Auctions Public Notice,* 21 FCC Rcd 9292 (2006).

[5] *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). Statements, slides and audio transcripts are available at *http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html.*

[6] *Joint Board Comprehensive Reform Public Notice,* FCC 07J–2 (Fed.-State Jt. Bd., rel. May 1, 2007).

Answer. Yes. As stated above, both wireline and wireless technologies should be supported. Carriers receiving Universal Service Fund (USF) support should fulfill the goals of the 1996 Telecommunications Act by being accountable, efficient and by properly using the funds.

Question 3. In 1997, the FCC decided to add to the Universal Service principles created by Congress a new principle of "competitive neutrality." Do you believe that the Joint Board recommendation is consistent with the principle of competitive neutrality?

Answer. Yes. The USF's high-cost loop fund for wireline service has been capped for a number of years. As FCC Chairman Kevin Martin has illustrated, all of the current growth in the high-cost program has been in the CETC portion of the Fund while there has been no growth in the incumbent local exchange carrier (ILEC) portion of the Fund. The Joint Board's current recommendation is to temporarily cap CETCs. The proposed interim cap is to slow the growth of the Fund while both Congress and the FCC enact comprehensive USF reforms.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO ROGER NISHI

Question 1. For those of you who do not support the interim cap, what other steps can we take to immediately control growth of the USF?

Answer. As Chairman of OPASTCO, I am on record in support of the interim cap on CETCs. In addition, elimination of the identical support rule would substantially control the growth of the Fund.

Question 2. The rapid recent growth in the Fund seems to indicate that we must do something—I'd like to hear your solutions.

Answer. First, the FCC needs to quickly adopt the Joint Board's recommendation to temporarily cap the CETC fund. Next, both Congress and the FCC need to move forward with long-term reforms such as eliminating the identical support rule, broadening the base of contributors to the Fund and strengthening the requirements for CETC designation.

Question 3. Getting beyond the issue of an interim cap, what recommendations do you have for comprehensive Universal Service reform?

Answer. Eliminate the identical support rule, broaden the base of contributors to the Fund and strengthen the requirements for CETC designation.

Question 4. What savings do you think these suggestions would generate?

Answer. The suggested reforms in the above answer would make the Fund more efficient, require greater accountability and provide for the proper use of the Fund as envisioned by the 1996 Telecommunications Act. However, if policymakers want to achieve ubiquitous broadband and mobility services, it is unreasonable to expect the size of the Fund to shrink.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO JONATHAN D. FOXMAN

Question 1. The Joint Board characterizes its proposal for a cap on support for competitive carriers as interim, while it considers options for long-term reform. In the long term, do you believe the Universal Service Fund should support both wireline and wireless technologies?

Answer. I believe Universal Service Fund support should not distinguish among technologies. The fund should support the designated services regardless of the technology (wireless *vs.* wireline), and regardless of category of service provider—whether the provider satisfying the ETC criteria is an incumbent or a competitive entrant. The purpose of the Fund is to provide rural communities with services and choices that are comparable to those available in urban communities. I believe what technology is utilized to deliver those services is incidental. In fact, it serves the public interest for government to be "color blind" with respect to technology. If a new technology can provide the same or better service or more services at a lower cost, then allowing it to be utilized, *i.e.,* without the discrimination that would be implicit in unequally subsidizing a less efficient technology, will force one or both of the following beneficial outcomes of competition. Either the company that provides the more efficient technology will win customers and deliver to them a better service at a lower cost or incumbents will be forced to (a) improve the efficiency and capabilities of their businesses or (b) adopt the new technology and bring the same benefits to consumers. In either case, the consumer will benefit. For this reason, I be-

lieve the Universal Service Fund should support any technology—wireless, wireline, or whatever may develop in the future.

Question 2. In the long term, do you believe that Universal Service funding should be available to more than one carrier in a geographic area?

Answer. Yes. Competition is essential to delivery of high quality, affordable advanced communications services. The evidence is overwhelming. So much of our Nation's economic system, regulations, and laws are based upon this principle of the benefits of competition.

I feel very strongly that the public interest is served best when companies can compete freely to earn consumers' business. The human mind and, therefore, all that it creates (including businesses) is driven by a complex system of responses to incentives and disincentives. There must be an incentive to providing the best service at the lowest cost and a disincentive to not doing so. Anything less cannot maximize the benefit to consumers and, therefore, does not serve the public interest. If only one carrier can access Universal Service funding support in a geographic area, then it will have little incentive to serve consumers' needs adequately; and competitive entrants would be denied the ability or incentive to enter the market. There are no examples in our economic history when this has been a good thing. Therefore, I believe it is critical that Universal Service funding be available to more than one carrier in a geographic area.

Question 3. In 1997, the FCC decided to add to the Universal Service principles created by Congress a new principle of "competitive neutrality." Do you believe that the Joint Board recommendation is consistent with the principle of competitive neutrality?

Answer. I do not believe that the Joint Board's recommendation is at all consistent with the principle of competitive neutrality. It is inappropriate for regulators, rather than consumers, to distinguish among types of companies and, thereby, pick winners and losers in what is supposed to be a free market.

Similarly, I do not believe that eliminating the so-called "identical support" rule would be consistent with the principle of competitive neutrality. If the government gives the incumbent ILEC $1 per line, then it should give the CETC $1 per line; that is competitive neutrality. If a cap were imposed and the ILEC received, for example, $1 per line while the CETC only received 75 cents for providing the same supported service to the same customers, that would blatantly violate competitive neutrality and would amount to improperly favoring one technology or type of competitor over another. Specifically, if you support the highest cost competitor in a marketplace with greater subsidization, are you not favoring them? Are you not accommodating their inefficiency and interfering with the workings of the free market?

Furthermore, wireless is required and accountable to use the $1 to expand its network. If it happens that the wireless company can do more with that $1 per line, for example build two cell sites instead of one, then that is a good thing; it benefits consumers and avoids waste of public funds. Every penny of the dollar will be spent to further the public interest, as intended by Congress in the Telecommunications Act of 1996 and as mandated of the FCC in its formative statute. In fact, when the dollar goes to rural construction investment by the low-cost competitor, more of the dollar goes to serving the public interest than if the dollar were given to an incumbent ILEC, many of whom are guaranteed a very comfortable rate of return which they can send to their investors. If identical support results in pressure on the incumbent ILECs to maximize their efficiency or even to improve or change their technology, those improvements will benefit consumers.

The benefits of identical support per line, regardless of how the level of support is determined, include resulting fairness, public service, and efficiency: (a) the government will have done its job of ensuring competitive neutrality, *i.e.,* "I gave you each $1; I did not arbitrarily decide that one of you would receive that funding but not the other," (b) the CETC will have done its job by investing that $1 in its network as required by law, benefiting the customer and again with clear accountability because of the detailed accountings required by state government, and (c) the marketplace will have done its job by then pressuring all competitors to be as efficient as possible, even to the point of evolving their businesses and technologies if necessary, to meet the needs of rural consumers. Perfect!

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO JONATHAN D. FOXMAN

Question 1. For those of you who do not support the interim cap, what other steps can we take to immediately control growth of the USF?

Answer. As an important preface to my response, I urge you to reconsider whether there is truly a need to "immediately control growth of the USF." Growth in the Fund is in fact not an imminent threat, and therefore does not need to be immediately controlled. In fact, while the Joint Board claims an "emergency" has arisen from recent growth, the Fund over the years has weathered significant growth rates without becoming "unsustainable." Support to ILECs jumped from $1.7 billion in 1999 to $3.1 billion in 2003, and continued to increase from 2003 to 2005. (Support to ILECs was growing during these periods even though ILEC line counts were decreasing.) Moreover, three-quarters of the 2.0 percent increase in the contribution factor from 9.7 percent to 11.7 percent from the first quarter to the second quarter of 2007 was as a result of true-up mechanisms within the program (1.5 percent of 2.0 percent). Only one-tenth of the 2.0 percent increase resulted from increases in high-cost support. This calculation corresponds with FCC Chairman Martin's letter responding to an inquiry from Representative Edward Markey.[1] Moreover, the contribution factor decreased significantly (to 11.3 percent) in the third quarter of 2007.

Even accepting, for the sake of argument, the Board's unsupported projection that the Fund could increase by another $1 billion in the next year, that increase would add only 31 cents to the Federal Universal Service charge. As the Montana Public Service Commission recently stated, the annual percentage rate of growth in the Fund is trending toward decreasing, and "[t]he growth in the size of the FUSF that CETCs receive appears to behave like an "S-curve" (logistic)."[2]

Furthermore, Universal Service Administrative Company ("USAC") projections between the fourth quarter of 2006 and the second quarter of 2007 show high-cost support rising 3.9 percent.[3] This is a much lower rate of growth than prior periods, suggesting that the growth rate is slowing. Moreover, these increases are largely a product of the fact that CETCs are new entrants who started with a baseline of zero support from the fund. As competitive entry has advanced, CETCs' share of the Fund has increased correspondingly.

However, increased payments to competitors were foreseen by the drafters of the 1996 legislation.[4] What legislators did not anticipate[5] was that after competitors en-

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[1] Letter from Kevin J. Martin, Chairman, FCC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives (rel. May 14, 2007), at 1 ("Martin Letter"):

> Several factors contributed to the 2 percent increase of the contribution factor for the second quarter of 2007. The largest single factor was prior period adjustments that acted to reduce the Universal Service Fund's revenue requirements in previous quarters. Specifically, these prior period adjustments arose from additional contributions made by AT&T and Verizon on past underreported revenue, and from a change in the amount of funds that the Universal Service Administrative Company held in reserve for bad debts. The absence of these prior period adjustments caused a 1.5 percent increase in the contributions factor. The remaining 0.5 percent of the increase was due to reductions in the funding base, increases in program demand, including for high-cost support.

[2] MTPSC Comments, *In the Matter of High-Cost Universal Service Support,* WC Docket No. 05–337, CC Docket No. 96–45, at 4 n. 4 (June 6, 2007) ("MTPSC Comments"). That Commission noted:

> While the FUSF growth due to CETC designations has increased monotonically since year 2000, the annual percentage rate of growth has at the same time nearly decreased monotonically. . . . [F]or the Joint Board to now predict a 90 percent plus annual percent growth rate for 2006 to 2007 is suspect.

MTPSC Comments, at 4.

[3] *Proposed Fourth Quarter 2006 Universal Service Contribution Factor,* CC Docket No. 96–45, DA 06–1812, FCC Public Notice (rel. Sept. 11, 2006); *Proposed Second Quarter 2007 Universal Service Contribution Factor,* CC Docket No. 96–45, DA 07–1330, FCC Public Notice (rel. Mar. 15, 2007).

[4] If concern over Fund size relates to carrier receipts, consider the fact that wireline carriers still receive an enormous share of Universal Service funding. In the State of Montana, in 2006, according to the Joint Board, incumbent wireline carriers received $69.7 million in funding, and competitive carriers such as wireless received $7.2 million in funding. *See* Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report,* Table 7.2 (2006), attached hereto ("Monitoring Report Attachment"). Incumbent wireline carriers still receive more than three times as much funding as their wireless and wireline competitors, and in some states, they receive 100 percent of Universal Service funding. The FCC adopted a five-year transition period, which it has extended indefinitely, during which rural ILECs would not lose support when CETCs entered. *See Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244, 11294–95 (2001).

[5] Joint Board Member Billy Jack Gregg, in testimony before the Communications Subcommittee of this Committee, described legislative intent and expectations in 1996 as follows (emphasis supplied):

tered rural markets, there would be a failure of regulatory will to concomitantly reduce funding to carriers who lost customers or used funds inefficiently.[6] Certainly, Federal decisions in these matters cannot be universally popular with all industry participants—but consumers, not carriers, are the intended beneficiaries of Universal Service. As the Montana Public Service Commission noted recently,[7]

> There is, however, need to consider the benefits of CETC designation, benefits that play out in terms of economic development, public interest benefits to consumers, and ultimately Universal Service. If the FCC is to have a balanced decision, it must not ignore Universal Service benefits to the exclusive focus on Fund size.

Congress, enacting the 1996 Telecom Act, decided that rural consumers should have the access to advanced services such as wireless that are reasonably comparable in quality and price as their urban counterparts, from providers operating in competitive markets, governed by technology-neutral rules. In short, the growth of the Fund is not some unintended aberration; it is the direct result of a conscious and enlightened public policy.

If some perceive that the Universal Service Fund is attracting too much demand, then we need to consider whether Universal Service funding should be equitably distributed to the carriers who can use it most efficiently, and whose services are most in demand. Any other result would injure citizens, who increasingly desire wireless service—particularly in rural areas, where wireless service is very useful for stranded people roadside, and where wireless carriers need Universal Service funding in order to fiscally justify extending their networks to serve additional areas. Unlike incumbent local exchange carriers, wireless carriers do not have a built-in, regulator-guaranteed rate of return. Moreover, we do not collect access charges, a solid revenue stream for wireline carriers. Accordingly, our business model depends upon making a solid business case, in terms of customer revenues, for every tower we must fund. If the customer revenues cannot justify the tower, then it cannot be built, pursuant to lenders' and investors' fiscally responsible requirements—unless another source of funding for that tower is available, such as Universal Service. If Universal Service funds are denied to wireless carriers, or diminished, many towers in rural areas, therefore, will not be built.

Meaningful competition does not exist in rural areas where wireless carriers cannot, without support, provide consumers with a viable substitute for wireline service. This is supported by FCC data. Between 1995 and 2005, the average cost per minute for wireless service has dropped from 43 cents per minute to 7 cents per minute.[8] Competitive forces have not only driven down prices, they have driven the average number of wireless minutes per month upward from 119 minutes to 740 minutes over the same period.[9] Accordingly, the price of telephone service for wireless consumers, who contribute more to the USF than any other class of consumers, has decreased dramatically thanks to competition, even including the increase in the contribution factor. The drafters of the 1996 Act were correct in believing in, and desiring to permit, the benefits of competition.

Without receiving Universal Service funds comparable to those received by wireline carriers, wireless carriers cannot compete on an even footing with the USF-receiving LECs, and the benefits of true competition cannot reach rural areas.

It should not be surprising that funding for competitive ETCs has increased. After all, before the advent of competition incumbents received 100 percent of high-cost funding. It was expected that as competitors gained ETC status and won customers in high-cost areas, their high-cost funding would rise. *What is surprising is that incumbent support has not dropped by an amount proportionate to the increase in competitive ETC funding. . . .*

Not only was the introduction of competition expected to lower prices of telecommunications services, it was supposed to lower the cost of Universal Service as providers competed for the Universal Service subsidy.

Testimony of Billy Jack Gregg before Communications Subcommittee, Senate Commerce, Science and Transportation Committee, at 6–7 (March 1, 2007), *referencing* House Report No. 104–204 (I) (1995), Arnold & Porter Legislative History P.L. 104–104 *(A&P)* at 60; Senate Report No. 104–23, *A&P* at 254 (1995).

[6] In 2006, the FCC extended *indefinitely* the transition period during which rural ILECs would not lose support when they lost the customers/lines to whom that support had related. *Federal-State Joint Board on Universal Service, Order,* 21 FCC Rcd 5514 (2006).

[7] MTPSC Comments, at 7.

[8] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993—Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report,* 21 FCC Rcd 10947 (2006), App. A, Table 10.

[9] *Id.*

Nevertheless, if steps are to be taken in order to immediately control growth in the Fund, please see the response to the next question, below.

Question 2. The rapid recent growth in the Fund seems to indicate that we must do something—I'd like to hear your solutions.

Answer. First, as noted in the preceding response, growth in the Fund is nothing new or extraordinary, and most of the recent growth was not even caused by increases in the high-cost fund (relating to wireless carriers).[10] In addition, on June 11, 2007, the FCC's Wireline Competition Bureau announced that it would release an additional $650 million in unused E-Rate funds from funding years 2001–2004.[11] We support appropriate use of funds for schools and libraries. But this unexpected disbursement of $650 million in previously withheld funding—equivalent to nearly two-thirds of the total support granted to CETC carriers for the entire year of 2006—raises questions about the basis for the contribution factor and the reasons for the wild fluctuations in the rate (from 9.7 percent in the first quarter, to 11.7 percent during the second quarter, to 11.3 percent during the third quarter of 2007). Why was this enormous disbursement made if the Fund is in jeopardy?

Moreover, the effect of Fund growth on consumer rates is, at least currently, we believe, offset by the fall in prices for wireless services, as discussed in detail in my written testimony submitted with this Committee. Accordingly, for all of the foregoing reasons, Joint Board and FCC concern over this growth is vastly overstated.

Nevertheless, I offer here suggestions for legislative action. *In summary, a long term plan should be developed and implemented, including portability of support and broad based contributions to the Fund, and recognizing the increasing importance of the broadband and mobility aspects of telecommunications services.* The details are as follows.

A. Make Support "Portable": If a Carrier Loses a Line, It Should Lose Support/Funding for That Line

We favor making support fully portable, in order that a carrier that wins a line wins the accompanying USF support. Many of the lines' for which local exchange carriers receive support were dug in and paid off many years ago; some are no longer even used to provide service. CETCs' customers are increasingly shouldering the burden of funding the USF, and indeed will eventually be the primary contributors in some areas. Accordingly, it would be illogical to take from the customers of new entrants still paying for their initial infrastructure in order to give to the customers of the existing carriers with entrenched customer bases, USF incomes, access line incomes, and little if any new construction expenses.

We believe the carrier that has the customer should receive the support for serving that customer. And logically, when a carrier loses a customer, the support should stop arriving. This approach was initially upheld by the Fifth Circuit Court of Appeals in the case of *Alenco Communications, Inc.* v. *FCC:*

> . . . [T]he [FCC's Universal Service] order provides that the Universal Service subsidy be portable so that it moves with the customer, rather than stay with the incumbent LEC . . . The purpose of Universal Service is to benefit the customer, not the carrier. "Sufficient" funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.[12]

Yet, inexplicably, this course was reversed by the FCC, and now, the cost of USF subsidies that are still being paid to wireline carriers for customers those carriers have lost (lines that were built long ago and paid for many times over) is over $300 million per year. Wireless carriers, in contrast, lose support when we lose customers. The Senate can direct the FCC to reduce waste in the system by requiring that a carrier no longer serving a customer give up its claim to funds initially relating to that connection. We believe that a carrier that loses a customer should stop receiving support for that customer's lines.

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[10] See note 1, *supra,* citing the letter wherein FCC Chairman Martin noted that most of the recent Fund growth stems from *"prior period adjustments arose from additional contributions made by AT&T and Verizon on past under-reported revenue, and from a change in the amount of funds that the Universal Service Administrative Company held in reserve for bad debts."* Martin Letter (emphasis supplied).

[11] *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2007,* (DA 07–2470) (released June 11, 2007) (pursuant to 47 C.F.R. § 54.507(a)(2), the Commission carried forward these unused schools and libraries funds to the 2007 funding year).

[12] *Alenco Communications, Inc.* v. *FCC,* 201 F.3d 608, 615 & 621 (5th Cir. 2000).

B. Broaden Base of Support

In addition, we suggest broadening the basis of support in order that all providers of communications-based services, including broadband voice and information services, will be required to contribute to Universal Service. Specifically, we believe contributions should be supported by VoIP, broadband (wireline, cable, and wireless), and voice-grade mobile, ILECs, and CLECs.

C. Recognize Increasing Importance of Broadband and Mobility

Please see the response to the question below.

Question 3. Getting beyond the issue of an interim cap, what recommendations do you have for comprehensive Universal Service reform?

Answer. We suggest shifting away from the current funding structure, which is oriented to support legacy voice services, and instead focusing on support for the deployment and operation of broadband services and mobile wireless services, in high-cost rural areas. This would recognize citizens' increasing desires in rural areas for advanced broadband and mobile services similar to those available in urban areas, but that have not yet been fully deployed in many rural, high-cost areas. Broadband and mobility are the 21st century functionalities that consumers most intensely want and need.

Accordingly, we believe it is logical to replace the existing system with one that targets funds, on a competitively and technologically neutral basis, to the broadband and mobile networks that should be built to satisfy consumers today—and that concomitantly draws equitable contributions from all telecommunications-based services, including all IP services. At the same time, the existing "legacy" funding mechanisms should be reformed and phased down, because the traditional 20th century voice services to which they are targeted are already fully deployed in most rural areas, and demand for those services is declining. Many of the carriers that deployed legacy voice systems would now like to deploy advanced broadband or mobile technologies, so this system should transition their fund receipts from legacy voice system funding to funding for the new, advanced technologies.

Question 4. What savings do you think these suggestions would generate?

Answer. We believe these suggestions will save sufficient funds to stabilize the Fund, and will generate benefits that far outweigh any costs. They will target the disbursed funds more efficiently, by creating incentives for all carriers to provide improved services, with funding based on a model of forward-looking costs of an efficient provider of services. These suggestions would focus disbursements so as to motivate efficient provision of the broadband and mobility services that modern citizens increasingly want, for critical public safety as well as business and personal communications, including in the rural areas this Fund was designed to serve.

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