

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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: May 11, 2007

Released: May 14, 2007

Comment Date: 14 days after publication in the Federal Register

Reply Comment Date: 21 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that the Commission take immediate action to rein in the explosive growth in high-cost universal service support disbursements.¹ Specifically, we seek comment on the Joint Board's recommendation that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive.² 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*.³

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.⁴ 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 provides service.⁵ In response, the Joint Board made many

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*) (attached as Appendix A).

² *Id.*

³ *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) (*Public Notice*).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002). We urge parties wishing to address comprehensive high-cost reform to file their comments by the comment dates set out in the *Public Notice* (i.e., comments by May 31, 2007, and reply comments by July 2, 2007).

⁵ *Id.*

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.⁶ Instead, the Joint Board recommended that it and the Commission continue to 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.⁷

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*.⁸ In August 2004, the Joint Board sought comment on issues that the Commission had referred to it related to the high-cost universal service support mechanisms for rural carriers.⁹ The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas.¹⁰ 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.¹¹

III. ISSUES FOR DISCUSSION

4. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support provided to competitive ETCs to stem the dramatic growth in high-cost support.¹² Specifically, the Joint Board recommended that the Commission cap the amount of support that competitive ETCs may receive for each state based on the average level of competitive ETC

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (Fed.-State Jt. Bd. 2004).

⁷ *Id.* at 4294, para. 88.

⁸ 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).

⁹ 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 (Fed.-State Jt. Bd. 2004).

¹⁰ See *id.* at 16094, paras. 36-37.

¹¹ 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 (Fed.-State Jt. Bd. 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 (Fed.-State Jt. Bd. 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 (Wireline Comp. Bur. 2007).

¹² See *Recommended Decision* at paras. 4-7. The Joint Board committed to making recommendations on fundamental comprehensive reform within six months and sought comment on comprehensive reform in a public notice released at the same time as the *Recommended Decision*. See *id.* at 8; *Public Notice* at paras. 3-8.

support distributed in that state in 2006.¹³ The Joint Board further recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost universal service reform.¹⁴

5. We seek comment on the Joint Board's recommendations. In particular, commenters should address whether the Commission should control the growth of high-cost support by capping support on competitive ETCs as recommended by the Joint Board. We also ask parties to address the Joint Board's recommendation to limit the cap to competitive ETCs only, and whether there are public interest concerns that warrant modifying the application of the recommendation to providers of certain services. Parties should also consider 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. Specifically, if the Commission adopts a cap on support, should the duration of the cap be one year from the date of any Joint Board recommended decision on comprehensive universal service reform or some other period? Those parties that support alternative timeframes for the length of the cap should explain their rationale for a different time period. We also seek comment on the Joint Board's recommendation to impose the cap on a state-by-state basis, including how this would affect the state ETC designation process. For those commenters that believe a state cap is not appropriate, we ask that they detail what alternative geographic basis is supported and why. Parties should also address whether the cap should be set at the level of support received by competitive ETCs in 2006, as the Joint Board recommended, or some other level. Finally, to the extent that there are any other operational, administrative, or implementation issues that should be considered, we invite parties to address these issues. We emphasize that the purpose of this Notice is to seek comment on the interim cap recommended by the Joint Board and that proposals for or comments on comprehensive high-cost universal service reform should be filed in accordance with the Joint Board's recent *Public Notice*.¹⁵

6. Comments and reply comments will be due 14 and 21 days after the publication of this Notice in the Federal Register.¹⁶ Although we take no position on the merits of the Joint Board's recommendations in this Notice, we believe that a short comment cycle is consistent with the Joint Board's recommendation that the Commission take immediate action to rein in the explosive and dramatic growth of high-cost support to competitive ETCs.¹⁷ In addition, we find that any negative effect from the somewhat abbreviated comment cycle is ameliorated by the fact that parties were able to submit comments to the Joint Board prior to the release of the Recommended Decision,¹⁸ and parties have had a further opportunity to comment on the Recommended Decision since its release on May 1, 2007. In

¹³ *Recommended Decision* at paras. 5-13.

¹⁴ *Id.* at para. 8.

¹⁵ *See supra* n.3.

¹⁶ *See infra* Section IV.D.

¹⁷ *See Recommended Decision*, paras. 1, 5, 8. In recommending that the Commission take immediate action, the Joint Board emphasized the rapid growth of high-cost support for competitive ETCs in recent years, from \$15 million in 2001 to nearly \$1 billion in 2006, and the potential for additional growth in support both to existing competitive ETCs and to carriers with ETC applications pending. *Id.*, paras. 4-5.

¹⁸ *See, e.g., 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 9229 (Fed.-State Jt. Bd. 2006); Letter from Mary L. Henze, Senior Director Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45 (filed Mar. 22, 2007) (recommending methods for short-term stabilization of high-cost support mechanisms); Letter from David C. Bergmann, Chair, NASUCA Telecommunications Committee, to Chairman Kevin Martin, Commissioners Jonathan Adelstein, Michael Copps, Deborah Tate, and Robert McDowell, Federal Communications Commission, CC Docket 96-45 (filed Apr. 6, 2007) (asking the Commission to impose an interim cap on high-cost support to competitive ETCs).

addition, release of this Notice in advance of Federal Register publication lengthens the amount of time available for interested parties to review the issues and submit comments. We also believe that this comment cycle provides parties with sufficient time to address the Joint Board's recommendation given its narrow and interim nature.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended,¹⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.²⁰ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.²¹

B. Paperwork Reduction Act Analysis

8. This Notice of Proposed Rulemaking does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.²²

C. *Ex Parte* Presentations

9. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.²⁴ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.²⁵

D. Comment Filing Procedures

10. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²⁶ interested parties may file comments 14 days after publication of this Notice in the Federal Register, and reply comments 21 days after publication of this Notice in the Federal Register. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking

¹⁹ 5 U.S.C. § 603

²⁰ See 5 U.S.C. § 603(a).

²¹ *Id.*

²² See 44 U.S.C. § 3506(c)(4).

²³ 47 C.F.R. §§ 1.1200-1.1216.

²⁴ 47 C.F.R. § 1.1206(b)(2).

²⁵ 47 C.F.R. § 1.1206(b).

²⁶ 47 CFR §§ 1.415, 1.419.

Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

11. In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission’s duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; website: www.bcpweb.com; phone: 1-800-378-3160;
- (2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: Antoinette.Stevens@fcc.gov.

12. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or

theodore.burmeister@fcc.gov, or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7491, or katie.king@fcc.gov.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403, this Notice of Proposed Rulemaking IS ADOPTED.

14. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE RECOMMENDED DECISION

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

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

RECOMMENDED DECISION

Adopted: April 26, 2007

Released: May 1, 2007

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

I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) recommends that the Commission take immediate action to rein in the explosive growth in high-cost universal service support disbursements. Specifically, we recommend that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.¹ We also recommend that the Joint Board and the Commission further explore comprehensive high-cost distribution reform. As part of that effort, today in a companion Public Notice we seek comment on various proposals to reform the high-cost universal service support mechanisms.² We also commit to making further recommendations regarding comprehensive high-cost universal service reform within six months of this Recommended Decision. Finally, we recommend that the Commission act on these further recommendations within one year from the date of our further recommended decision.

II. BACKGROUND

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

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

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

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

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

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

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

A. Need for Immediate Action

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

⁴ *Id.*

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

⁶ *Id.* at 4294, para. 88.

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

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

⁹ See *id.* at 16094, paras. 36-37.

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

jeopardy of becoming unsustainable.¹¹ Today, the universal service fund provides approximately \$4 billion per year in high-cost support.¹² Yet, in 2001 high-cost support totaled approximately \$2.6 billion.¹³ In recent years, this growth has been due to increased support provided to competitive ETCs which receive high-cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETC's own costs. While support to incumbent LECs has been flat or even declined since 2003,¹⁴ by contrast, in the six years from 2001 through 2006, competitive ETC support grew from \$15 million to almost \$1 billion – an annual growth rate of over 100 percent. Based on current estimates, competitive ETC support in 2007 will reach at least \$1.28 billion if the Commission takes no action to curtail this growth. Moreover, if the Commission were now to approve all competitive ETC petitions currently pending before the Commission, high-cost support for competitive ETCs could rise to as much as \$1.56 billion in 2007.¹⁵ High-cost support to competitive ETCs is estimated to grow to almost \$2 billion in 2008 and \$2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.¹⁶

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

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

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

¹³ *Id.*

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

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

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

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

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

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

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

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

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

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

²¹ *See infra* para. 12.

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

B. Length of Time

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

C. Operation of the Cap

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

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

11. For example, if in State A, the capped amount is \$90 million and the total uncapped support is \$130 million, the reduction factor would be 69.2 percent ($\$90/\130). In State A, each

²³ See 47 U.S.C. § 254(a)(2).

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

²⁵ 47 C.F.R. § 54.307.

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.²⁶ Thus, we recommend that the Commission expressly place competitive ETCs on notice that identical support without cost justification may be an outdated approach to USF funding.

D. Base Period for the Cap

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

IV. FUNDAMENTAL HIGH-COST DISTRIBUTION REFORM

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

²⁶ See *infra* para. 14.

²⁷ See *supra* para. 4.

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

²⁹ *May 2007 Public Notice*.

³⁰ *Id.*

Notice, we expect parties to submit comprehensive reform proposals pursuant to the pleading cycle set forth in the Public Notice.³¹

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

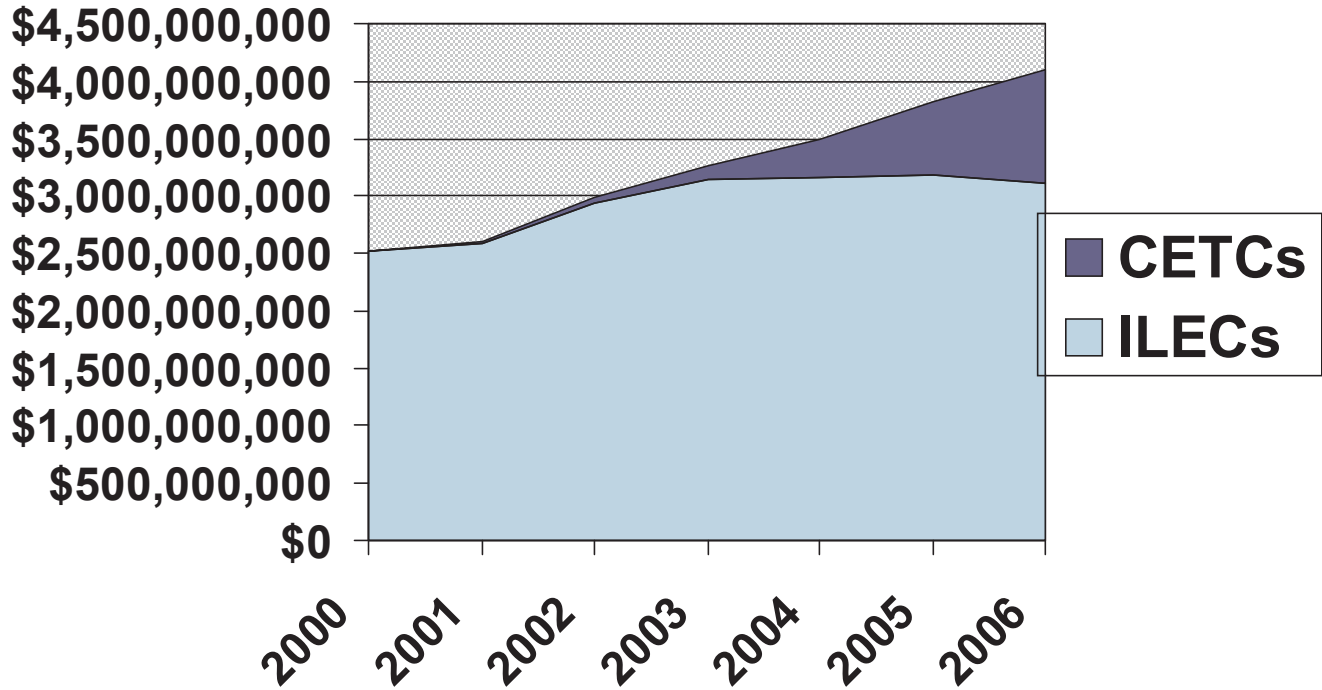
Marlene H. Dortch
Secretary

³¹ See *id.* at para. 1.

APPENDIX A

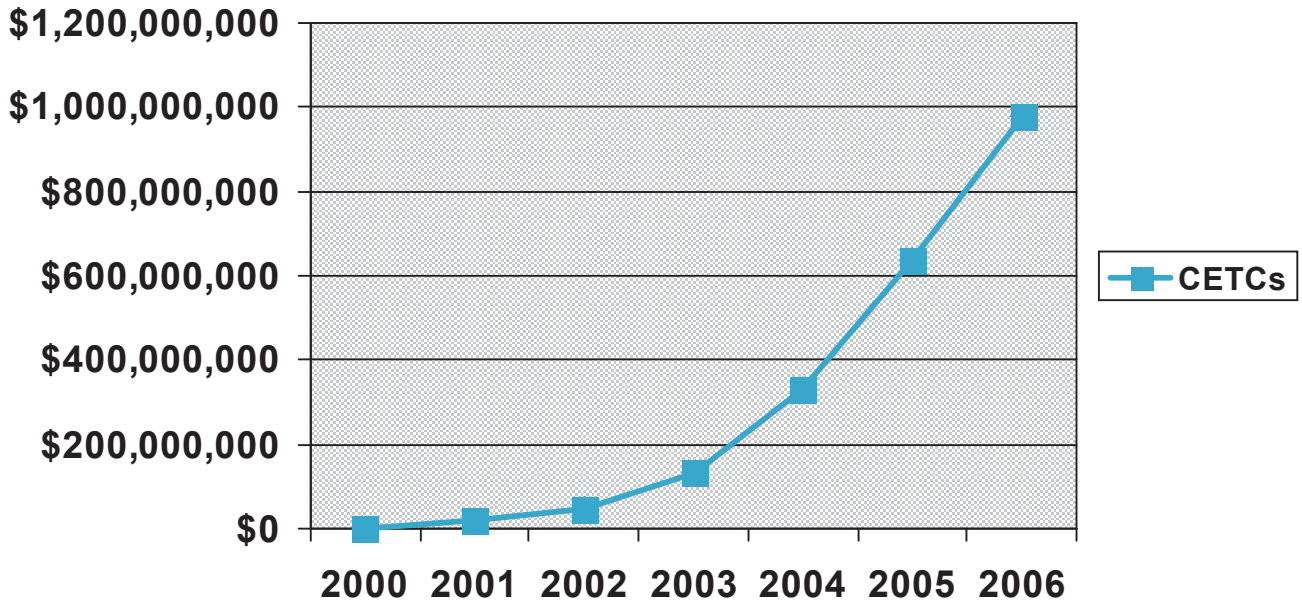
Charts Presented by Chairman Martin at February 2007
En Banc Hearing of the Federal-State Joint Board on Universal Service

Total High-Cost Support Fund Payments – ILECs and CETCs



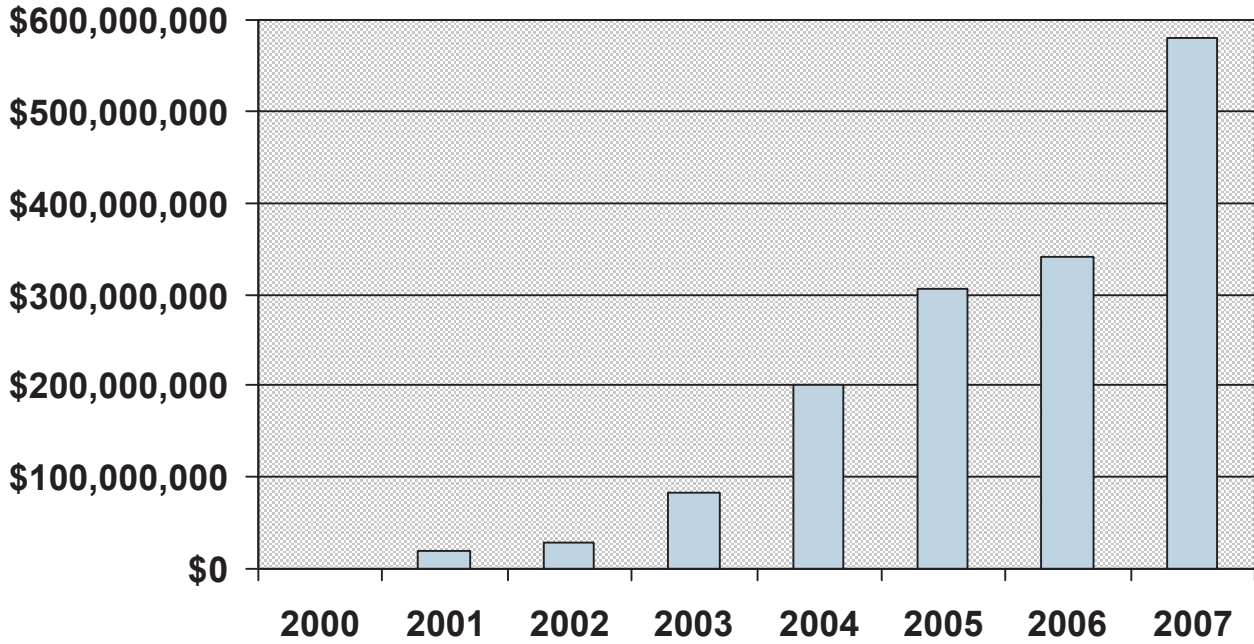
Source: USAC Data and Projections

Total High-Cost Support Fund Payments - CETCs



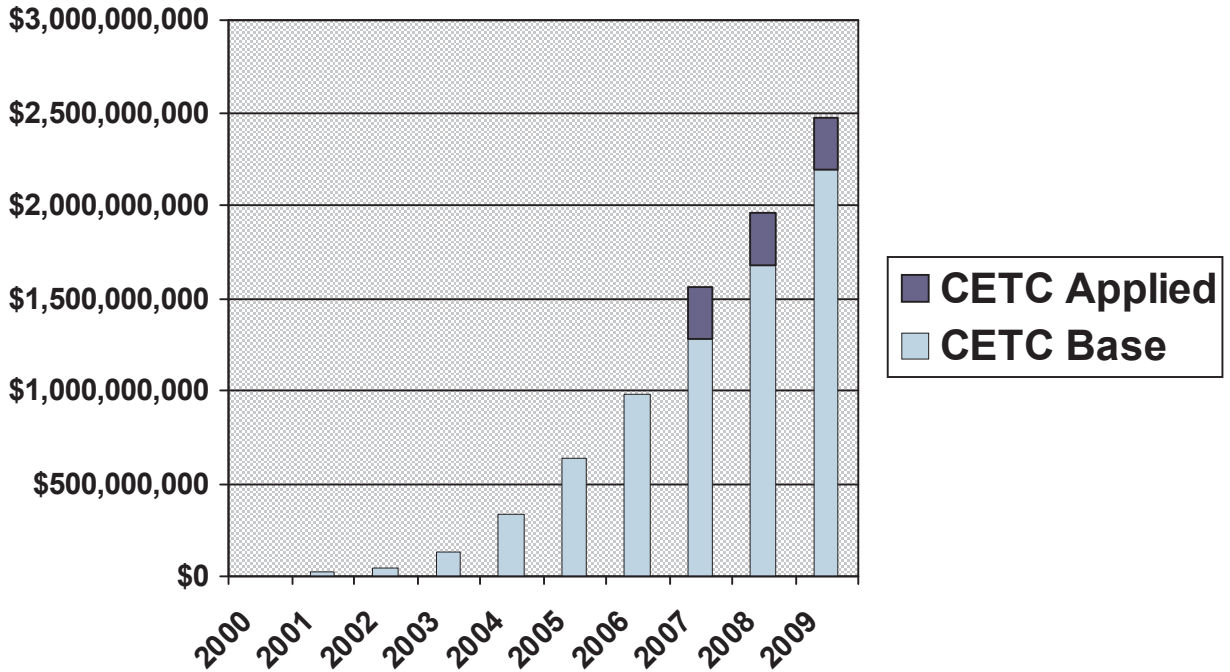
Source: USAC Data and Projections

CETC Dollar Growth



Source: USAC Data and Projections

CETC Disbursements



Source: USAC Data and USAC and FCC

APPENDIX B

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

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

Ranked by 2006 Total Support (cont.)	2006 Incumbent ETC Support	2006 Competitive ETC Support	2006 Total Support
State	\$ Millions		
39 Ohio	\$41.6	\$0.0	\$41.6
40 Hawaii	\$22.6	\$18.2	\$40.8
41 Maine	\$23.8	\$13.2	\$37.0
42 Nevada	\$24.9	\$6.3	\$31.2
43 Vermont	\$24.9	\$5.9	\$30.8
44 Virgin Islands	\$25.3	\$0.0	\$25.3
45 Utah	\$23.9	\$0.3	\$24.2
46 Guam	\$9.4	\$7.3	\$16.7
New 47 Hampshire	\$7.8	\$0.3	\$8.1
48 Maryland	\$4.5	\$0.0	\$4.5
49 Massachusetts American	\$2.8	\$0.0	\$2.8
50 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		2006 Competitive ETC Support
State		\$ Millions
1	Mississippi	\$139.6
2	Puerto Rico	\$93.9
3	Alaska	\$55.5
4	Kansas	\$54.8
5	Wisconsin	\$51.2
6	Washington	\$43.8
7	Iowa	\$42.2
8	Louisiana	\$41.9
9	Minnesota	\$40.3
10	North Dakota	\$39.5
11	Arkansas	\$30.6
12	South Dakota	\$29.4
13	Kentucky	\$25.9
14	Texas	\$24.6
15	Nebraska	\$23.5
16	Hawaii	\$18.2
17	Wyoming	\$18.0
18	Oklahoma	\$16.6
19	Alabama	\$16.4
20	Arizona	\$15.9
21	New Mexico	\$15.2
22	Michigan	\$15.1
23	Virginia	\$13.8
24	Maine	\$13.2
25	Montana	\$11.5
26	West Virginia	\$10.7
27	Oregon	\$10.0
28	Florida	\$9.4
29	Georgia	\$8.6
30	Colorado	\$8.5
31	North Carolina	\$7.4
32	Guam	\$7.3
33	Nevada	\$6.3
34	Vermont	\$5.9
35	Indiana	\$5.6
36	New York	\$3.3
37	Pennsylvania	\$1.5
38	Tennessee	\$1.5

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

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

Source: Universal Service Administrative Company

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN*****In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

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

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

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

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

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

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE*****In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

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

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

Every member of this Joint Board supports the principles of universal service: to promote the availability of quality services at just, reasonable, and affordable rates; to increase access to advanced telecommunications services throughout the Nation; and to advance the availability of such services to all consumers. Our recommendation today is a step towards more 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 buildout, absent Universal Service support.

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

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

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

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

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

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

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

STATEMENT OF
COMMISSIONER JOHN BURKE

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

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

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

**CONCURRING STATEMENT OF
COMMISSIONER RAY BAUM*****In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

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

1. I underscore that today's decision is interim. The Joint Board intends to recommend major reform of the USF to the FCC within six months of the date of this decision. Parties should file their comments in response to the accompanying Public Notice within the comment periods. Parties who wait to put forward their proposals in ex parte submissions will jeopardize their consideration. The Joint Board intends to move expeditiously, and takes seriously the six month deadline for recommending major reform.
2. My support for a cap of this nature is limited to the 18 months outlined in today's decision. In several states, there are high cost rural service areas that had no CETC drawing USF support during the interim cap's 2006 base period. As a result of the cap, consumers in these rural areas may not enjoy the same quality and reliability of service that is enjoyed by rural consumers in states with earlier CETC designations. The CETC portion of the fund is now disproportionately allocated among rural consumers and states. This cap does not remedy that inequity.
3. Broadband is critical to telecommunication/information services of the future, for both rural and urban Americans. Rural ILECs have generally done a good job of making broadband available to the rural consumers they serve; non-rural ILECs generally have not. The Joint Board and commenting parties should address whether this inequity can be remedied by properly focused incentives to ETCs, both wireline and wireless, to provide necessary broadband services to all rural consumers.
4. Due to unsustainable growth pressures on the fund all ETCs should anticipate changes to current USF distribution mechanisms. The identical support rule for CETCs may not survive. Rural ILECs may no longer receive support based on their embedded costs. All parties should use the forthcoming comment periods to put forth their best ideas, describing in detail how they are to be implemented.

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

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS*****In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 9 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. Section 254(a)(2) of the Communications Act of 1934, as amended (the Act),⁴ requires that the Commission implement within one year recommendations from the Joint Board based on the universal service requirements provided in section 254 of the Act, which establishes a number of principles for the preservation and advancement of universal service in a competitive telecommunications environment.⁵ On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs to rein in the explosive growth in universal service.⁶ In this Notice, the Commission seeks comment on the Joint Board recommendation that the Commission cap competitive ETC support at the amount of support received by competitive ETCs in 2006.⁷ The objective of the Notice is to explore whether the Commission should take action to cap the high-cost universal service support in the manner that the Joint Board recommends, and whether there are other issues related to the interim cap that should be considered.⁸

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201, 202, 205, 214, 254, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 205, 254, 410 and sections 1.1, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411, 1.412, 1.415, 1.419, 1.1200-1.1216.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 U.S.C. § 254(a)(2). The Communications Act of 1934 was amended by the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996)(1996 Act).

⁵ See 47 U.S.C. § 254(b).

⁶ *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*) (Appendix A).

⁷ See Notice, para 4.

⁸ *Id.*, para. 5.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted.⁹ The RFA generally defines the term “small entity”¹⁰ as having the same meaning as the terms “small business,”¹¹ “small organization,”¹² and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.¹⁴ Under the Small Business Act, a “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).¹⁵ Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.¹⁶ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁷ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁸

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.¹⁹ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,²⁰ Paging,²¹ and Cellular and Other Wireless Telecommunications.²² Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

⁹ 5 U.S.C. § 604(a)(3).

¹⁰ 5 U.S.C. § 601(6).

¹¹ 5 U.S.C. § 601(3).

¹² 5 U.S.C. § 601(4).

¹³ 5 U.S.C. § 601(5).

¹⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register.” 5 U.S.C. § 601(3).

¹⁵ 15 U.S.C. § 632.

¹⁶ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

¹⁷ 5 U.S.C. § 601(4).

¹⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

²⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

²¹ *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

²² *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

1. Wireline Carriers and Service Providers

6. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.²⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

7. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to Commission data,²⁶ 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

8. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷ According to Commission data,²⁸ 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees.²⁹ In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

2. Wireless Carriers and Service Providers

9. *Wireless Service Providers.* The SBA has developed a small business size standard for

²³ 15 U.S.C. § 632.

²⁴ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁵ 13 C.F.R. § 121.201, NAICS code 517110.

²⁶ *Trends in Telephone Service* at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ *Trends in Telephone Service* at Table 5.3.

²⁹ *Id.*

wireless firms within the two broad economic census categories of “Paging”³⁰ and “Cellular and Other Wireless Telecommunications.”³¹ Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.³² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.³³ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.³⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.³⁵ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

10. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.³⁶ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.³⁷ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.³⁸ We have estimated that 221 of these are small under the SBA small business size standard.

3. Satellite Service Providers

11. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.³⁹

12. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via

³⁰ 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

³¹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

³² U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

³³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

³⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³⁶ 13 C.F.R. § 121.201, NAICS code 517212.

³⁷ *Id.*

³⁸ *Trends in Telephone Service* at Table 5.3.

³⁹ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

a system of satellites or reselling satellite telecommunications.”⁴⁰ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁴¹ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁴² Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

13. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”⁴³ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴⁴ Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴⁵ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The specific proposals under consideration in the Notice would not, if adopted, result in additional recordkeeping requirements for small businesses.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.⁴⁶

16. This IRFA seeks comment on how the Joint Board’s recommendation could be implemented in a manner that reduces the potential burden and cost of compliance for small entities. We also seek comment on the potential impact of the proposed recommendations related to the interim cap proposal on high-cost universal support for competitive ETCs. In the Notice, the Commission has offered several alternatives and that might avoid or mitigate reductions in the amount of high-cost support flowing to

⁴⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

⁴² *Id.* An additional 38 firms had annual receipts of \$25 million or more.

⁴³ U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴⁵ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴⁶ *See* 5 U.S.C. § 603(c).

competitive ETCs, some of which might be small entities.⁴⁷ For instance, the Commission inquires into other methods, besides a cap, to control the growth of high-cost support; asks about the length of time the interim cap should be in place; seeks comment on the level that the cap should be set at; and asks whether other operational, administrative, or implementation issues might have an impact on implementing an interim cap.⁴⁸

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

17. None.

⁴⁷ Notice, paras. 4-5.

⁴⁸ *Id.*