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**
	:	

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

Dated: October 7, 2010

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INTRODUCTION AND SUMMARY

On September 3, 2010, the Federal Communications Commission (FCC) released an Order (Order) as well as Notice of Proposed Rulemaking (NPRM) regarding Universal Service Fund high-cost support in WC Docket No. 05-337 and CC Docket No. 96-45. The FCC's Order pertained to a request by Corr Wireless Communications, LLC that the FCC review a decision by the Universal Service Administrative Company (USAC) pertaining to its interpretation of the Verizon Wireless and Sprint Nextel merger orders. Among other things, the Order provides that high-cost support surrendered by a competitive Eligible Telecommunications Carrier (ETC) need not be redistributed to other competitive ETCs. In the NPRM, the FCC seeks comment on a proposal to modify its rules to better enable the FCC to reclaim certain high-cost support and, consistent with the recommendations of the National Broadband Plan (NBP), use that support to promote broadband universal service programs. Specifically, the FCC proposes to permanently amend the interim cap rule to allow for a reduction in the high-cost cap when a competitive ETC relinquishes its ETC status in a particular state and to direct any retained support to universal broadband programs, as recommended by the NBP. Additionally, the FCC seeks comment on amending section 54.709(b) of its rules in order to enable the FCC to provide the Universal Service Administrative Company (USAC) alternate instructions for implementing prior period adjustments. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its comments and recommendations.

DISCUSSION

I. High-Cost Support for Competitive ETCs

In furtherance of the principle of universal service, the Universal Service High-Cost program was established to ensure that subscribers in rural, insular, and high-cost areas have access to telecommunications services at rates that are affordable and reasonably comparable to those in urban areas. This is accomplished by providing support to carriers in high-cost areas in which a business case cannot be otherwise made for offering service. In providing such support, the program allows carriers serving high-cost areas to recover some of their operating costs from the federal Universal Service Fund's High Cost Fund. While this support was initially only provided to the incumbent local exchange carriers (ILECs) who were designated as the ETC for high-cost areas in their service territories, it was expanded to cover competitive ETCs providing service in the same high-cost areas as the ILEC ETCs. Under the identical support rule, the support received by competitive ETCs was based upon the ILEC ETC's costs without regard to each competitive ETC's actual costs. This resulted in each competitive ETC in a particular geographic area receiving the same level of support as the ILEC ETC in that area. The consequence of this policy has been a dramatic increase in the level of the High-Cost Fund and, in the Ohio Commission's opinion, is largely the reason that high-cost reform continues to be necessary today.

The Ohio Commission has long taken the position that multiple subsidies should not be provided in high-cost areas. For this reason, as well as other public interest reasons, the Ohio Commission has never designated a competitive carrier as a competitive ETC for high-cost purposes in Ohio. The Ohio Commission reaffirms its position in these comments: high-cost support should not be provided to multiple carriers in those areas where a business case cannot be made for providing service without a subsidy. Consistent with this position, the Ohio Commission has supported the FCC's previous efforts at reforming high-cost support, particularly the action taken by the FCC in the 2008 *Interim Cap Order* to cap the level of high-cost support received by competitive ETCs.[1] The action taken by the FCC through its Order as well as the policies and rule

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[1] *See, e.g.*, *Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost universal Service Support for Competitive Eligible telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45 (Comments of the Public Utilities Commission of Ohio) (June 6, 2007); *Notice of Proposed Rulemaking Regarding an Interim Cap on High-Cost Universal Service Support for Competitive Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45 (Reply Comments of the Public Utilities Commission of Ohio) (June 21, 2007).

modification proposed in the NRPM are further steps toward achieving the *Interim Cap Order's* goal of reining in high-cost universal service disbursements.[2]

II. Adjusting the High-Cost Cap

In the NPRM, the FCC proposes amending its interim cap rule to allow for a reduction in a state's high-cost interim cap amount whenever a competitive ETC relinquishes its ETC status in that state. According to the FCC's proposal, whenever a competitive ETC relinquishes its ETC status in a state, the cap amount for that state would be reduced by the amount of support that the competitive ETC was eligible to receive in its final month of eligibility, annualized.[3] In states where this occurs, there should be no negative effect for the remaining competitive ETCs or their subscribers since, as the FCC points out, there would be no reduction in support to these competitive ETCs.[4] Should additional competitive ETCs subsequently enter the market, all competitive ETCs would be supported from the smaller cap amount. The Ohio Commission believes that this would likely discourage new carriers from seeking ETC status in high-cost areas. On the other hand, the Ohio Commission believes that failing to reduce the cap amount would continue the proliferation of duplicative support since additional support would be available to the remaining competitive ETCs. Additional support, as noted

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2 *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. September 3, 2010) at 5,¶ 10 (Order & NPRM).

3 Order & NPRM at 10, ¶ 23.

4 *Id*. at ¶ 24.

in the Order, would not necessarily result in the expansion of service to currently unserved areas,[5] but instead, would perpetuate the escalation of the High-Cost Fund. Accordingly, the Ohio Commission agrees with the FCC's proposal to reduce the interim cap amount in a state when a competitive ETC relinquishes its ETC status.

The NBP recommends gradually reducing high-cost support to competitive ETCs in order to make funds available for broadband deployment and support.[6] Specifically, the NBP calls for the complete elimination of high-cost support to competitive ETCs within a five year period.[7] In the Ohio Commission's opinion, the FCC's proposal to amend its rules to allow for reductions in the interim cap amount is consistent with this objective as it promotes the reduction of the aggregate competitive ETC support and channels the reclaimed support toward broadband deployment. In doing so, states such as Ohio, which are net payers into the High-Cost Fund, would likely benefit from this reclaimed support being directed, instead, toward broadband deployment and support in the unserved areas of those states through mechanisms such as the Mobility Fund and Connect America Fund. The Ohio Commission believes that using this reclaimed support to make service available in unserved areas best serves the public interest and, accordingly, supports the FCC's proposal to direct excess high-cost toward broadband deployment and support.

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5 Order & NPRM at 5, ¶ 11.

6 Federal Communications Commission, *Connecting America: The National Broadband Plan*, Executive Summary at 145 (rel. March 16, 2010) (NBP).

7 *Id*. at 148.

III. Proposed Amendment to Section 54.709(b)

Section 54.709(b) of the FCC's rules requires USAC to apply any excess high-cost contributions received during a quarter toward high-cost support for the following quarter.[8] The contributions required for the following quarter are then adjusted accordingly.[9] In its Order, the FCC waived section 54.709(b) on an 18 month interim basis to reserve the high-cost support surrendered by Verizon Wireless and Sprint Nextel as a down payment for broadband universal service programs.[10] This action served the public interest by minimizing the volatility in the contribution factor and enabling the FCC to accumulate reserves for broadband universal service reform.[11] The FCC, through its NPRM, has proposed permanently amending section 54.709(b) to better enable it to reclaim certain high-cost support and apply the reclaimed support toward broadband universal service programs.[12] The Ohio Commission urges the FCC to make the interim waiver permanent by adopting the proposed amendment to section 54.709(b).

The Ohio Commission believes that the FCC's proposed revision to section 54.709(b) through the addition of the clause "unless otherwise instructed by the Commission" is sufficient to allow the FCC to reclaim excess high-cost contributions and provide alternative instructions to USAC for implementing prior period adjustments. Consistent

8 47 C.F.R. 54.709(b).

9 *Id*.

10 Order & NPRM at 9-10, ¶ 22.

11 *Id*.

12 *Id*. at 10, ¶ 23.

with the NBP, this approach provides the FCC with the flexibility to direct excess funds toward broadband universal service programs.[13] These funds will likely be a necessary component of the $15.5 billion that the NBP recommends being shifted from the current High-Cost Fund over the next decade[14] and provide the FCC with a head-start on filling the broadband availability gap.

CONCLUSION

The Ohio Commission supports the FCC's proposal to amend its interim cap rule to permit the interim cap amount in a state to be reduced when a competitive ETC relinquishes its ETC status in that state as well as the FCC's proposed amendment to section 54.709(b). The Ohio Commission believes that these proposals enable the FCC to promote broadband deployment and support through the reclamation of excess high-cost contributions. This approach will, in the opinion of the Ohio Commission, help achieve the Interim Cap Order's objective of reining in high-cost universal service disbursements and will accelerate the phase-out of competitive CETC high-Cost support. Finally, the Ohio Commission is confident that FCC's proposed amendment to section 54.709(b) will allow it to carry out the objectives of its proposal by enabling the FCC to provide USAC

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[13] *See* NBP at 150.

[14] *Id*. at 147.

with alternative instructions for implementing prior period adjustments. The Ohio Commission appreciates the opportunity that the FCC has given it to share its thoughts on these matters and is pleased to submit its comments for consideration.

Respectfully submitted,

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Summary: Comments submitted on behalf of the Public Utilities Commission of Ohio by Assistant Attorney General John Jones on October 7, 2010 to the FCC to be filed in WC Docket No. 05-337, In re High Cost Universal Service Support, and CC Docket No. 96-45, In re Federal-State Joint Board on Universal Service electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio