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INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

WESTERN TELECOMMUNICATIONS ALLIANCE

March 10, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Room TW-A325
Washington, DC 20554

**Written *Ex Parte* Presentation**

**GN Docket Nos. 09-47, 09-51, 09-137**
**WC Docket No. 05-337**
**CC Docket No. 96-45**

Dear Ms. Dortch,

The Independent Telephone and Telecommunications Alliance (ITTA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Western Telecommunications Alliance (WTA) (collectively, the Associations) hereby submit this letter in response to the March 3, 2010 *ex parte* filing made by the Alliance of Rural CMRS Carriers (ARC). ARC proposes that the FCC impose a cap, on a "per-line basis," on high-cost universal service support to all incumbent local exchange carriers (ILECs).[1]

The Federal Communications Commission (Commission) already considered and soundly rejected placing an additional, interim cap on ILEC high-cost support when it adopted the interim cap on support received by competitive eligible telecommunications carriers (ETCs),[2] a decision that was subsequently upheld by the D.C. Circuit Court of Appeals.[3] ARC offers no valid arguments that are worthy of the Commission's

[1] Letter from David A. LaFuria, Counsel for the Alliance of Rural CMRS Carriers, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, GN Docket Nos. 09-47, 09-51, 09-137 (Mar. 3, 2010) (ARC *Ex Parte Letter*).

[2] *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et. al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (Interim Competitive ETC Cap Order).

[3] *Rural Cellular Association et al. v. FCC,* Case No. 08-1284 (DC Circuit, decided December 11, 2009).

reconsideration of its prior decision. Placing an interim "per-line" cap on ILECs' support is not necessary to sustain the Universal Service Fund (USF); would be harmful to consumers in rural and high-cost areas; and, is not needed to establish competitive neutrality between ILECs and competitive ETCs. Therefore, the Commission should summarily dismiss ARC's proposal and continue to focus critical attention on comprehensive reform of the USF.

In its Interim Competitive ETC Cap Order, the Commission specified that the cap it was imposing on competitive ETC support was an "*emergency*, interim cap."[4] The Commission characterized the cap this way because if left unchecked, the growth rate for support paid to competitive ETCs would have caused the USF to become unsustainable before the Commission was able to complete comprehensive USF reform. At the same time, the Commission recognized correctly that there was no need to place additional caps on the support received by ILECs because "…high-cost support to incumbent LECs has been flat and is therefore exerting less pressure on the universal service fund."[5] In fact, the total amount of support being received by ILECs has actually *fallen* every year from 2005 through 2009, with a four year decline of $131.2 million or 4.1 percent.[6] Conversely, support going to competitive ETCs over the same four year period increased by 126 percent, from $627.7 million to $1.4197 billion.[7] Thus, the Commission was correct to only apply interim cost controls "…to the aspect that most directly threatens the specificity, predictability, and sustainability of the fund: the rapid growth of competitive ETC support."[8] The support received by ILECs has not created an emergency situation, and there is no need to impose additional caps on these carriers' support amounts while the Commission pursues comprehensive reform of the USF.

ARC suggests in its filing that ILEC support is increasing on a "per-line" basis, and in a manner that is preventing the "repurposing" of high-cost support toward broadband.[9] The petition grossly mischaracterizes landline networks as being "relatively static" and the support being received by ILECs as "dedicated to providing fixed wireline voice service."[10] This statement conveniently ignores the Commission's prior multiple acknowledgments that while the current High Cost program does not explicitly support the provision of broadband, it does support investment in multi-use, broadband capable

[4] Interim Competitive ETC Cap Order, 23 FCC Rcd 8834, 8837, ¶¶1, 5 (emphasis added).

[5] *Id.*, 23 FCC Rcd 8839-8840, ¶10.

[6] *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 (2009) (Universal Service Monitoring Report).

[7] *Id.*

[8] Interim Competitive ETC Cap Order, 23 FCC Rcd 8839, ¶9.

[9] ARC *Ex Parte* Letter, p. 3. *See also*, Attachment to ARC *Ex Parte* Letter, pp. 1, 3.

[10] ARC *Ex Parte Letter*, p. 2.

infrastructure.[11] For example, the high-cost loop support (HCLS) mechanism supports broadband-capable loop distribution plant, which is a significant part of the underlying facilities that make the provision of broadband possible. This has enabled many ILECs serving rural and high-cost areas to make great strides in deploying broadband to a substantial percentage of their customer base. Therefore, at least part of the reason why some ILECs' per-line support has increased in recent years is precisely because of their investments in multi-use infrastructure that enables the provision of broadband to rural consumers. Were the Commission to impose an interim cap on ILECs' per-line support, it would result in a drastic deceleration of broadband investment in many rural and high-cost areas.

It is critical, however, that the fundamental flaw of the ARC petition be addressed: ILECs do not obtain USF high-cost support on a "per-line" basis. Rather, ILECs present the costs of their networks (a practice the wireless community has demurred) and obtain deferred recovery on costs incurred to support a network capable of supporting carrier-of-last-resort (COLR) obligations throughout an entire study area. The major components of wireline network costs are fixed. This means that within a reasonable range of output, these costs do not go up or down significantly as individual lines are added or disconnected by consumers. Therefore, to the extent an ILEC's line count decreases, its so-called "per line" amount may increase. It is important to remember that the high-cost support that ILECs receive as COLRs was never intended to support individual lines; it is intended to encourage investment in high-quality *networks*. The Commission itself has recognized that "…an incumbent carrier's loss of subscriber lines…is unlikely to be offset by a corresponding reduction in its total embedded cost of service."[12] Further limiting ILECs' high-cost support with an interim per-line cap would not only ignore the underlying basis on which Federal USF policy is crafted, but would also seriously threaten these carriers' ability to fulfill their obligations as COLRs and to continue offering affordable, high-quality communications services throughout their service areas. The Commission previously declined to freeze per-line support, finding that it may have the unintended consequence of discouraging investment in rural infrastructure.[13] Furthermore, it is ironic that ARC fails to recognize that wireless carriers rely on ILECs' ubiquitous wireline networks to connect their towers and switches and deliver their traffic. Thus, if an ILEC was forced to halt investment in their network as a result of an interim per-line cap, not only would the quality of the ILEC's end-user services be compromised, but the availability and/or reliability of wireless services would be harmed as well.

[11] *A National Broadband Plan for Our Future,* GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4354, ¶39 (2009); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11322, ¶200 (2001) (Rural Task Force Order).

[12] Rural Task Force Order, 16 FCC Rcd 11294, ¶125.

[13] *Id.*, 16 FCC Rcd 11296, ¶129.

Finally, throughout its filing, ARC contends that an interim cap on ILEC per-line support is necessary to establish "competitive neutrality" between ILECs and competitive ETCs.[14] However, the Commission, and subsequently the District of Columbia Circuit Court of Appeals, have already thoroughly debunked that notion. To begin with, the Interim Competitive ETC Cap Order recognized that the identical support rule created perverse incentives for competitive ETCs to increase their subscriber counts in lower-cost portions of rural areas rather than expand the geographic scope of their networks into truly high-cost regions.[15] This, in turn, led to the excessive and unjustified growth in these carriers' support amounts which threatened the Fund's sustainability. The Commission also recognized that almost all ILEC support mechanisms are either capped (*e.g.*, HCLS), subject to a targeted limit (*e.g.*, interstate access support), have built-in restraints on growth (*e.g.*, high-cost model support), or have been stable in recent years (*e.g.*, local switching support).[16] In stark contrast, prior to the implementation of the Interim Competitive ETC Cap Order, the support received by competitive ETCs was permitted to grow unfettered as the number of competitive ETCs grew and as their line counts grew. As a result, the D.C. Circuit Court of Appeals rightly found that the FCC's principle of competitive neutrality "…only prohibits the Commission from treating competitors differently in 'unfair' ways. Based on the Commission's findings that CETCs and not ILECs were responsible for the surge in costs, a solution targeting only CETCs was hardly unfair."[17]

In conclusion, there is absolutely no justifiable reason for imposing an interim cap on ILECs' per-line support. Doing so would only serve to harm the provision of service to consumers in rural and high-cost areas, including the availability and quality of broadband services. The Associations certainly acknowledge the need for comprehensive reform of the entire USF with the goal of enabling the provision of high-quality, affordable broadband services throughout rural and high-cost areas. We urge the Commission to move forward with that effort and reject ARC's proposal.

[14] ARC *Ex Parte* Letter, pp. 3, 4; Attachment to ARC *Ex Parte* Letter, pp. 1, 3.

[15] Interim Competitive ETC Cap Order, 23 FCC Rcd 8844-8845, ¶¶21, 22.

[16] *Id.*, 23 FCC Rcd 8839-8840, ¶10.

[17] *Rural Cellular Association et al. v. FCC,* Case No. 08-1284 (DC Circuit, decided December 11, 2009), p. 16.

Sincerely,

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