

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20553**

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
)	
_____)	

**INITIAL COMMENTS ON THE FEDERAL-STATE JOINT BOARD
RECOMMENDED DECISION**

**BY THE NATIONAL CONSUMER LAW CENTER,
on behalf of**

TEXAS LEGAL SERVICES CENTER

And

**EDGEMONT NEIGHBORHOOD COALITION,
Represented by Advocates for Basic Legal Equality**

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I. Introduction

The National Consumer Law Center¹, on behalf of Texas Legal Services Center² and Edgemont Neighborhood Coalition³, respectfully submits these comments to the Federal Communications Commission in response to the Notice of Proposed Rulemaking on the Federal-State Joint Board on Universal Service’s Recommended Decision.⁴ Our comments will focus on the interplay between the Recommended Decision and the Lifeline and Link-Up program and the major reforms to the current High Cost fund necessary for achieving the Universal Services Fund goals for low-income consumers.⁵ Our comments are also focused on the broader conceptual framework for the reform, as many of the details on program design will hinge on this broader framework.

II. Support for the Shift to Three High Cost Funds, the Overall Cap on the High Cost Fund and the Elimination of the Identical Support Rule and CETC Reform

Overall, we are generally supportive of the Joint-Board’s recommendation to transition the current High Cost Fund into three separate funds, the Broadband Fund, the

¹ The National Consumer Law Center is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts in 1971. Its purposes include representing the interests of low-income people and enhancing the rights of consumers. Throughout its history, NCLC has worked to make utility services (telephone, gas, electricity, and water) more affordable and accessible to low-income households.

² The Texas Legal Services Center is a statewide Legal Aid program that sponsors the TexasLawHelp.org website that provides Texans with free information concerning their legal rights. Pursuant to Texas law, TLSC established a Collaborative Community Network with the State Bar and public libraries known as the Partnership for Legal Access to ensure consumers have free access to consumer-oriented legal information.

³ The Edgemont Neighborhood Coalition is a community organization in a low income African American neighborhood in Dayton Ohio. The Coalition works to improve the neighborhood and to expand telecommunications access for the residents.

⁴ In the Matter of High-Cost Universal Service Support Federal-Sate Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Jan. 29, 2008) and published in 73 Fed Reg. 11597 *et seq.* and 73 Fed Reg. 11580 *et seq.*

⁵ The Impact of the proposed high-cost find transition on Lifeline Linkup [*sic*] initiatives is also an important consideration. The Joint Board recommends that the Commission seek comment on whether Lifeline/Link-Up customers may be negatively affected by any aspects of the transition to the new three fund approach. Parties should feel free to include specific proposals to remedy any infirmities created by the three fund approach. (¶73. Impacts on Lifeline/Link-Up): Recommended Decision, In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Nov. 20, 2007) (“Recommended Decision”)

Mobility Fund and the Provider of Last Resort (POLR) Fund; the proposal to cap the overall High Cost Fund, and the proposal to eliminate the identical support rule and reform the CETC subsidy. These changes are designed to contain the dramatic increases to the size of the High Cost Fund which could jeopardize the viability of the Universal Service Fund and eliminate subsidization of the build-out of duplicative networks in high-cost areas. At the same time the Joint Board's proposal would target the build out of broadband and mobility services to unserved areas, which is in line with the Universal Services principles set forth by Congress.

Low-income consumer advocates have been, in particular, frustrated by the tension between the development of low-income broadband services support and the growth of the universal service fund. While the need for low-income consumers to have access to affordable broadband services is urgent and great, increases in universal fund surcharges on phone bills can make those services unaffordable for the large numbers of low-income consumers that qualify for Lifeline and are not enrolled⁶ and for those who are right above the Lifeline eligibility cut-off. Hence, it is important that the High Cost Fund reform changes contemplated in this docket avoid resulting in increases to the local and long distance universal services fund surcharges that appear on consumers' phone bills. This is why the proposed cap in the overall High Cost fund to 2007 levels is so important.⁷ We note that of the four funds comprising the Universal Service Fund (the High Cost Fund, the Low-Income Fund, the Schools & Libraries Fund and the Rural Health Care Fund) from 2003 to 2007, the High Cost Fund grew by \$1 billion while the other funds experienced modest or negative growth.⁸ Thus the growth in the Universal Service Fund is largely due to the growth of the High Cost Fund.

We are supportive of the removal of the inefficiencies within the High Cost Fund due to the identical support rule. This will also allow the fund to transition to the proposed Mobility Service fund without increasing the overall size of the High Cost

⁶ See USAC's 2006 Lifeline Participation Rate by State available at <http://www.usac.org/res/documents/li/pdf/li-participation-rate-map-2006.pdf> (all but 4 states have a Lifeline participation rate below 50% and almost half of the states have a participation rate lower than 20%).

⁷ Recommended Decision at ¶26.

⁸ Testimony of Billy Jack Gregg, Director, Consumer Advocate Division, Public Service Commission of West Virginia, Before the Senate Commerce, Science and Transportation's Communications Subcommittee (March 1, 2007) at 4.

Fund. A closer look at the support streams within the High Cost Fund during the period from 2003 to 2007 reveals that support for the competitive eligible telecommunications carriers (CETCs), which are primarily wireless carriers, has been the cause of the growth in this fund.⁹ The identical support rule reimburses CETCs based on the support to incumbent local exchange carriers (instead of the CETCs own costs) and allows for the support of multiple wireless networks in high cost areas.¹⁰ The proposed CETC reform removes this inefficient use of USF High Cost support by eliminating the identical support rule and redirecting the funds currently going to wireless carriers to the Mobility Fund which is “tasked primarily with disseminating wireless voice services to unserved areas” through subsidies for construction of new facilities, including for public safety concerns such as areas served by the traveling public such as highways.¹¹ The Joint Board listed population density and lack of wireless service as elements of the definition of “unserved area”¹² We recommend that a consideration of the average income levels for areas in question also be a factor in the criteria developed to determine “unserved” so that priority would be given to regions that have less ability to subsidize this infrastructure on their own. The same consideration should also be given to the definition of “unserved area” contemplated for the Broadband service fund.

III. Adherence to Universal Services Principles Requires a Lifeline and Link-Up Broadband Discount and a Lifeline and Link-Up Mobility Discount

In the past when the Commission has determined the types of services that would be supported by the low-income universal service program, the Commission stated that, “In determining the specific services to be provided to low-income consumers, we adopt the Joint Board’s reasoning that section 254(b)(3) calls for access to services for low-income consumers in all regions of the nation, and that universal service principles may

⁹ *Id.* at 5 (payments to CETCs grew from \$126.7 million in 2003 to \$1.2 billion projected for 2007 while payments to rural incumbents and non-rural incumbents declined during the same period).

¹⁰ Recommended Decision ¶ 35.

¹¹ Recommended Decision ¶ 16.

¹² *Id.*

not be realized if low-income support is provided for service inferior to that supported for other subscribers.”¹³

The rationale cited above still holds true today. It would be inequitable for low-income consumers to be limited to Lifeline and Link-Up services that only covers POTS while the High Cost fund finally moves towards the support of modern telecommunication technologies, in particular, broadband services. We note the first three Universal Service principles set forth by Congress:

- (1) Quality services should be available at just, reasonable, and affordable rates.
- (2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (47 U.S.C. § 254(b)(1)-(3))

Currently, all ETCs must offer Lifeline and Link-Up¹⁴ and this requirement should not be avoided in the new High Cost reform being proposed. However, in order to avoid the loss of ETCs currently providing Lifeline support, the services for the three funds should not be absolutely identical. The existing supported services should remain for the POLR Fund ETCs, but the broadband services support should be applicable only to the Broadband ETCs and the mobility services support should be applicable only to the Mobility ETCs. In other words, POLR ETCs should not be expected to provide supported Broadband or Mobility services as this could diminish the number of ETCs in High Cost areas providing Lifeline and Link-Up support.

Low-income consumers will be relegated to plain old telephone service (POTS) unless the Commission also moves to include them in the reform of the universal services

¹³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, May 8, 1997, § 28

¹⁴ 47 C.F.R. § 54.405.

High Cost Fund. In order to avoid this inequitable outcome which is contrary to the universal services principles set forth by Congress, we urge the Commission to also consider development of a Lifeline and Link-Up support for the proposed Broadband service and Mobility service. Currently eligible telecommunications carriers (ETCs) have the same list of covered services for the Lifeline program and the High Cost program. This structure should continue for each of the three new High Cost Funds being contemplated. Thus, there would be a Broadband Lifeline and Link-Up and a Mobility Lifeline and Link-Up support mechanism. Thus a mechanism would be in place to achieve universal service for low-income consumers for all supported services.

However, both the Mobility Lifeline and Link-Up and Broadband Lifeline and Link-Up discount must consist of meaningful, reasonable discounts that achieve the USF affordability goal for low-income consumers. The Universal Services principles emphasize quality services and in that vein, there needs to be service quality standards developed for the High Cost Fund supported services. Finally, we note that the duty to advertise Lifeline and Link-Up services remains for all ETCs under the new High Cost Fund restructuring.¹⁵

In order for the Broadband and Mobility Funds to achieve the intent of universal service, higher funding levels (above the amounts from the reshifting of existing High Cost funds) are likely needed. However, this should be accomplished in a manner that will not result in the increase of Universal Service Fund surcharges on residential consumer local and long distance bills. While it is estimated that \$1 billion can be moved to the Mobility Fund based on current High Cost support going to wireless carriers, the Recommended Decision would provide \$300 million for the Broadband fund.¹⁶ This may not be adequate. The Commission should impose an assessment on broadband providers to increase the Broadband Fund, especially since there will be Universal Service funds devoted to enhancing the value of their network.

There remains a great number of issues and details for the Commission to work out in order to achieve the overarching High Cost reform in the Proposed Decision such as defining “reasonably comparable” and “affordable” pursuant to 47 U.S.C. § 254;

¹⁵ 47 U.S.C. § 214 (e)(1)(B).

¹⁶ Recommended Decision at ¶¶ 28 - 29.

determining what services should be covered by the Broadband and Mobility funds, determining the criteria for the allocation of these new funds to the states, addressing the effect of deregulation on local phone rates and how that interplays with the proposed POLR fund. We urge the Commission to also consider the low-income issues and recommendations set forth in these comments as it moves forward with the reform of the High Cost Fund.

Respectfully Submitted,

_____/s/_____/

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