NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES NASUCA

August 17, 2009

Chairman Julius Genachowski
Federal Communications Commission
Eighth Floor
445 12th Street, S.W.
Washington, D.C. 20554

RE: WC Docket No. 05-337, CC Docket No. 96-45, Interim Cap on High-Cost Funding for Wireless Carriers EX PARTE COMMUNICATION

Dear Chairman Genachowski:

On July 23, 2009, the Rural Cellular Association ("RCA") filed an ex parte communication, purporting to respond to the June 19, 2009 ex parte filed by the National Association of State Utility Consumer Advocates ("NASUCA"). In its turn, the NASUCA filing was a response to the May 1, 2009, RCA ex parte, which consisted of a six-page cover letter and a 27-page "position paper" entitled "Cut the Cap: The Commission Should Repeal the Interim Cap on High-Cost Universal Service Support Received by Wireless Carriers" ("*Cut the Cap*").

RCA asserts that "NASUCA is more concerned about how much consumers pay into the fund rather than ensuring that rural consumers receive the benefits that the fund was intended to deliver."[1] RCA is incorrect: NASUCA is equally concerned about both. We are especially concerned, however, because the record does not show that the benefits rural consumers will receive are substantial compared to the total amounts that other consumers would be paying if funding to competitive eligible telecommunications carriers ("CETCs") is uncapped. As the Commission knows, most CETCs are wireless carriers like RCA's membership.

Notably, RCA does not deny that, as stated by NASUCA, "[T]he vast majority of the RCA cover letter and *Cut the Cap* consists of reargument of points RCA and other

[1] RCA July 23 ex parte at 1.

[CETCs] made before the Commission and have made in the pending appeal of the Commission Order that imposed the cap."[2] Neither does RCA dispute the fact that its first discussion of supposed harm from the cap, the issue of whether there have been "unwarranted reductions" in support resulting from interpretations by the Universal Service Administrative Company ("USAC"), is on appeal to the Commission.[3] Neither does RCA dispute that, despite RCA's claims of harm from the cap in states that have not yet designated CETCs, the amount of high-cost universal service support in those states is minimal, and "the fact that no competitive carriers have received ETC designation in those states in the 13 years since the 1996 Act went into effect suggests that the odds were not good for any future action."[4]

More fundamentally, however, in *Cut the Cap* RCA presented a table purporting to show how much support has been "lost" in 26 states, comparing the amount of funding that would have been received absent the cap to the support that was received under the cap.[5] In its July 23, 2009 response, RCA refers to only two of those states, however: Virginia and North Carolina.

According to RCA, "Virginia loses $11 million in funding this year that would be entitled to in an uncapped environment. As a result, competitive carriers, in the aggregate, are not going to invest $11 million in Virginia this year as a result of the cap."[6] But the eight Virginia CETCs **will** receive $15 million this year, as RCA admits,[7] which perforce will be invested in Virginia.[8] So the question is, what incremental value would the $11 million lost have brought to Virginia? Despite RCA's protestations, there is no guarantee on how much of that investment would have gone to unserved areas.

RCA does provide a bit more specifics for North Carolina. There, the six CETCs[9] will not receive $23 million due to the cap[10]; instead they will receive just over $10 million. As its **only** concrete example of investment supposedly not being made because of the cap, RCA states that "Carolina West Wireless ('Carolina West'), an RCA member, has canceled plans to build eight new cell sites in its licensed service area. As a result, 20 communities in western North Carolina served by Carolina West will continue to have

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[2] NASUCA June 19, 2009 ex parte at 1-2 (footnotes and citations omitted).

[3] Id. at 2, quoting *Cut the Cap* at 20.

[4] NASUCA June 19, 2009 ex parte at 2.

[5] *Cut the Cap* at 21.

[6] RCA July 23, 2009 ex parte at 1.

[7] Id.

[8] USAC's HC-01 Appendix for the third quarter of 2009 ("3Q09") lists the eight CETCs in Virginia, receiving support in 18 ILEC study areas.

[9] Similarly, USAC's HC-01 Appendix for 3Q09 lists the six CETCs in North Carolina, receiving support in 26 ILEC study areas. Notably, most of the ILECs in North Carolina have more than one CETC operating and receiving support in their study areas; AT&T in fact has 5 CETCs in its study area.

[10] RCA July 23, 2009 ex parte at 2.

limited or no cellular service."[11] Carolina West will receive $1.4 million in 2009 even under the cap, as opposed to the $5 million it would have received without the cap.[12] Thus Carolina West has decided to invest the $1.4 million not in the "20 communities in western North Carolina" that have "limited or no cellular service," but elsewhere. And even RCA admits that some of those communities do have wireless service, presumably just not wireless service from Carolina West.

NASUCA stated in the June 19, 2009 ex parte that "what we are left with is RCA's generalization that the lack of support has limited wireless investment in those states, and that that limitation of investment has harmed consumers. RCA cites no specific examples of wireless carriers that have actually curtailed investment, and gives no concrete examples of areas where wireless service is not available because of such curtailments."[13] RCA's response, in the July 23, 2009 ex parte, is to provide a single example. Again, as NASUCA stated, "This is scarcely a basis to eliminate the cap – particularly in light of the study in the record of this proceeding, never mentioned in *Cut the Cap* or otherwise, as far as NASUCA is aware, refuted by RCA or any wireless carrier, that there is no correlation between wireless deployment in rural areas and the receipt of high-cost support by the wireless carriers."[14]

RCA did not respond to NASUCA regarding the Criterion Study. In the interest of a complete record, however, NASUCA would note that there were attempts to refute the Study… three in number: Reply comments filed by ALLTEL Corp. ("ALLTEL") on June 21, 2007; an ex parte letter from Rural Telecommunications Group, Inc. ("RTG") on July 12, 2007; and an ex parte letter filed on behalf of U.S. Cellular Corporation ("U.S. Cellular") on July 24, 2007. Among the issues addressed by the carriers in those filings were whether the Criterion Study had considered roaming coverage[15]; the accuracy of the carriers' coverage maps[16]; the timing of CETC entry[17]; and the locations of carriers' receipt of high-cost funding.[18]

NASUCA stands by the assertion that the Criterion Study has not been refuted. On August 30, 2007, Criterion Economics filed a response to the criticisms of the Study.

[11] Id.

[12] USAC HC-01 Appendix for 3Q09.

[13] NASUCA June 19, 2009 ex parte at 3 (footnote omitted).

[14] Id., citing Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers (June 13, 2007) ("Criterion Study").

[15] ALLTEL Reply Comments at 13-17; U.S. Cellular ex parte at 1.

[16] ALLTEL Reply Comments at 13-17; RTG ex parte at 1; U.S. Cellular ex parte at 1.

[17] ALLTEL Reply Comments at 18.

[18] ALLTEL Reply Comments at 19-20; RTG ex parte at 1-2.

The response states that the Study did not include roaming coverage[19]; that the coverage maps are accurate[20]; that, for the purpose of the Study – to show whether unsubsidized carriers are serving areas also served by subsidized carriers – the timing of entry was simply irrelevant[21]; and that the Study accurately considered where support was received.[22] Based on this response, Criterion reiterated its conclusions that "(1) [I]n study areas where they receive funding, wireless CETCs serve fewer customers than unsubsidized wireless carriers; (2) wireless CETCs provide incremental coverage to only about two percent of households in these study areas; and [most importantly from NASUCA's perspective] (3) there is no statistically significant relationship between the subsidies received by wireless CETCs and either the extent of coverage or the number of choices available to customers in subsidized areas."[23]

To the best of NASUCA's knowledge, there has been little discussion of the Study's results since Criterion's August 30, 2007 response. Certainly, RCA's ostensibly comprehensive *Cut the Cap* did not even mention the Criterion Study.

RCA says that "NASUCA's claim that increasing contributions is a harm greater than the lack of high quality service in rural areas was unaccompanied by any factual support, so we'll provide it."[24] Actually, NASUCA's "claim" was that "RCA concludes *Cut the Cap* by appealing to the state of the economy to show that the wireless carriers need the USF funding as 'stimulus money.' But consumers, already likely to be battered by the highest USF contribution factor on record, hardly need the additional burden of supporting wireless carriers to the tune of an additional almost $300 million (in just the 26 states in RCA's table)."[25] RCA's response to this is to show that the increase of the universal service contribution factor from a $300 million increase in the USF "is pennies to low volume users of telephone services and negligible to high volume users."[26] Regardless of the correctness of RCA's calculation of the impact of USF contributions on individual consumers, the fact is that the total impact on consumers is… $300 million. And at least with USF dollars, a "stimulus" granted to one part of the country comes directly out of

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[19] Criterion Economics ex parte (August 30, 2007) ("Criterion Response") at 1-5.

[20] Id. at 5-9. Nonetheless, we note that none of the carriers' coverage maps guarantee coverage at a specific location, as indicated by the disclaimers on the maps.

[21] Id. at 9-10.

[22] Id. at 10-11.

[23] Id. at 1. Despite our acceptance of the results of the Criterion Study, we also accept one of ALLTEL's criticisms of Verizon's use of the Study: The Study's focus on wireless support does not mean that all support for wireline carriers is needed. See ALLTEL Reply Comments at 20-21. Of course, wireless service is typically priced on a state-wide or nation-wide basis, meaning that the key issue is service availability, not whether rural rates are reasonably comparable to urban rates. Given the greater ubiquity of wireline service, reasonable comparability of rates is the more substantial issue for incumbent carrier.

[24] RCA July 23, 2009 ex parte at 2.

[25] NASUCA June 19, 2009 ex parte at 3 (footnotes omitted).

[26] RCA July 23, 2009 ex parte at 3.

other consumers' pockets. RCA states, "The Commission should be much more concerned about the effects of poor wireless service on rural North Carolina and Virginia consumers than the incremental cost incurred by all consumers nationwide who pay into the fund."[27] NASUCA respectfully disagrees, especially because neither RCA nor any other wireless carrier has shown how necessarily or to what degree CETC funding improves "poor wireless service" for consumers in rural North Carolina, Virginia and other states.[28]

Part of the problem with CETC support is, of course, the identical support rule, which provides support to wireless carriers like RCA's members based on the costs of the incumbent local exchange carrier rather than on the CETC's own costs. That is one of the reasons that NASUCA has supported the creation of a separate mobility fund that would focus on areas currently unserved by wireless carriers.

Respectfully submitted,

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[27] Id.

[28] Again, NASUCA does not necessarily agree that USF payments to wireline carriers guarantee lower rates.