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## **Commission Conditions Consents, Caps Cost Contributions**

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In late October, Chairman Kevin Martin circulated three proposals designed to impose a temporary cap on Universal Service Fund (USF) payments, as recommended by the Federal-State Joint Board on Universal Service (Joint Board) in May. The Joint Board recommended that the Commission take “immediate action to rein in the explosive growth” in high-cost USF support disbursements. The federal fund subsidizes telecommunications and Internet connectivity in rural and underprivileged areas.

But before Martin’s proposals could be brought to a Commission vote, Martin spearheaded the placement of conditions on the purchase of two massive wireless providers, ALLTEL Corporation (ALLTEL) and Dobson. ALLTEL was purchased and privatized for \$27.5 billion by TPG Capital and Goldman Sachs Capital, while AT&T acquired Dobson for \$2.8 billion.

In issuing its consent to the purchases, the Commission imposed conditions on both companies, requiring them to accept an interim cap on high-cost, competitive Eligible Telecommunications Carrier (ETC) support. The conditions stated that the cap will be applied “until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years.”

The interim cap places both companies at the level of support that they received as a competitive ETC in 2007, measured as of the end of June, 2007, on an annualized basis. A limited exception was offered on both conditions, exempting ALLTEL and Dobson from the cap to the extent they: (1) file cost data showing their own per-line costs of providing service in a supported service area, and (2) demonstrate that their networks are in compliance with section 20.18(h) of the FCC’s rules specifying E911 location accuracy as measured at a geographical level defined by the coverage area of each Public Safety Answering Point (PSAP).

These unusual conditions were met with some criticism, including Democratic

Commissioners Michael Copps and Jonathan Adelstein. The Commissioners indicated that the conditions were improper, given that the Joint Board was busy working on recommendations on broader reform, while the Commission had an open proceeding to address how carriers must implement PSAP-level accuracy. Meanwhile, wireless carriers began a comprehensive lobbying effort to avoid the cap, arguing that they were being unfairly targeted by the Commission in addressing USF cap issues.

Some wireless industry representatives have been outspoken about Martin imposing conditions on just one segment of the industry, particularly one that is growing rapidly and is increasing its coverage into more remote rural areas. These conditions have the potential to thwart those efforts.

Copps, Adelstein and even Republican Commissioner Robert McDowell have expressed concern about the effects of imposing the conditions on these mergers before USF reform and E-911 location rules are sorted out on an industry-wide basis.

“[T]he condition prejudices the Commission’s open docket considering universal service support distribution,” McDowell wrote in a separate statement in the *ALLTEL Order*. “I also question whether we have thought about how the actions today may skew future treatment of similarly-situated parties.”

It remains to be seen whether the Joint Board’s recommendation will be implemented, with a blanket cap being imposed on all USF funds. But through Martin’s imposition of these interim conditions, the Commission has already taken major steps to address the Joint Board’s concerns.