OPASTCO

WESTERN TELECOMMUNICATIONS ALLIANCE

Action Item: Universal Service

The Telecommunications Act of 1996 mandates that consumers in rural areas have access to communications services that are reasonably comparable in quality and price to those provided in urban areas. To help achieve this objective, the High-Cost universal service program provides support to telecommunications carriers serving rural areas where the cost of providing quality service is substantially greater than the national average.

The long-term sustainability of a robust Universal Service Fund (USF) is dependent upon sound policy regarding both support distributions and contributions to the Fund. In order to be eligible to receive distributions from the High-Cost universal service program, a carrier must first be designated as an eligible telecommunications carrier (ETC) by the relevant state commission or the FCC.

Presently, in rural service areas, competitive ETCs receive support based on the actual costs incurred by the rural incumbent local exchange carrier (ILEC). In early 2008, the Commission began a proceeding to comprehensively reform the High-Cost universal service program. The FCC has tentatively concluded that it should permanently eliminate the "identical support" rule for competitive ETCs and provide support to these carriers based on their own costs.

The current USF contribution methodology is based on a percentage of telecommunications carriers' interstate and international end-user telecommunications revenues. However, due to marketplace trends, the interstate revenue base has been shrinking, placing an increased funding burden on some consumers. The 1996 Act does not permit the FCC to assess intrastate revenues. The Act does allow the FCC to require other providers of telecommunications, such as broadband Internet access providers, to contribute to the USF. However, the FCC has thus far declined to require broadband Internet access providers to contribute.

In 2004, the FCC concluded that the USF is subject to the Antideficiency Act (ADA). This requires the USF administrator to have sufficient "unobligated" funds on hand that are at least equal to the value of all of its outstanding and new commitments before any funds can be dispursed. In 2004, the administrator was forced to suspend new funding commitments in the Schools and Libraries program because it did not have the unobligated funds to cover them. For the past several years, legislation has been passed that temporarily exempts the USF from the ADA for one year. The current exemption expires at the end of 2008. At the beginning of 2007, stand-alone legislation was introduced in the Senate and the House that would permanently exempt the USF from the ADA.

Congress should require the FCC to continue to calculate universal service support for rural ILECs based on their embedded network costs – not auctions, and to permanently abandon the "identical support" rule for competitive ETCs.

The existing support calculation methodology for rural ILECs, based on their embedded network costs, has been highly successful in achieving Congress' universal service objectives in rural service areas. It has encouraged prudent investment in network infrastructure, and has enabled the provision of affordable, high-quality services – including advanced services – to rural consumers. On the other hand, the consideration of auctions by some policymakers to determine carriers' support would place this record of success at significant risk, as the unpredictability of auctions would discourage network investments. Congress should therefore require the FCC to continue to use embedded network costs as the basis of rural ILECs' universal service support.

In addition, the existing rules, which provide competitive ETCs with support based on the rural ILEC's costs, enable competitive carriers to receive windfalls of support, while failing to provide the proper incentives to extend service to high-cost areas. The "identical support" rule also threatens the USF's sustainability. Not surprisingly, competitive ETCs have been responsible for virtually all of the growth in the High-Cost universal service program in recent years. Therefore, the FCC should be required to permanently abandon the "identical support" rule for competitive ETCs.

Congress should enable the FCC to assess all revenues – intrastate, interstate and international – derived from all communications services subject to USF contributions. Congress should also broaden the mandatory base of contributors to include all facilities-based broadband Internet access providers and all providers of two-way voice communications services that interconnect with the public switched network.

The contribution base of the USF needs to be broadened in order to ensure that the Fund remains viable for the long term. Permitting the FCC to assess all revenues that are derived from all communications services subject to USF contributions would address the marketplace trends that are causing instability in the current contribution base. In addition, all facilities-based broadband Internet access providers and all providers of two-way voice communications services that interconnect with the public switched network should be required to contribute to the USF. This would sustain the Fund as more and more consumers subscribe to broadband and Internet protocol-based services.

Congress should refrain from imposing a cap on the High-Cost universal service program.

A cap on the High-Cost universal service program is an arbitrary impediment to the provision of high-quality services in rural areas. A cap makes it impossible for rural ILECs to rely on a certain level of cost recovery through universal service support. This, in turn, creates a disincentive for rural carriers to make costly investments in modern network infrastructure. Thus, a cap on the High-Cost program is entirely at odds with policymakers' calls for affordable access to broadband for all Americans. The possibility of an unsustainable USF is a legitimate concern. However, by eliminating the "identical support" rule for competitive ETCs and broadening the base of contributors to the Fund, Congress can sufficiently contain and sustain the USF in a manner that is consistent with the statutory goals of universal service.

Congress should permanently exempt the USF from the Antideficiency Act.

The application of the ADA to the USF has the potential to seriously harm rural and low income telecommunications customers and the carriers that serve them. Were it determined that the ADA applied to the High-Cost and Low-Income universal service programs, it would likely require the USF administrator to suspend new funding commitments to carriers until sufficient cash was accumulated. Depending on the length of time support was suspended, it could result in upward pressure on local rates, and force carriers to cancel planned network upgrades that ensure continued high-quality service. In addition, it would likely cause the USF contribution factor to skyrocket, as the administrator would be required to "pre-collect" the funds necessary to support new commitments. This would cause all consumers nationwide to see an increase in the universal service fees on their telephone bills. Congress should therefore pass legislation to permanently exempt the USF from the ADA before the temporary exemption expires at the end of 2008. Furthermore, Congress should seek to remove the USF from the federal budget. This is appropriate because the USF is made up entirely of private funds derived from communications service providers and poses no cost to the federal government.

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