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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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Statement by

Shirley Bloomfield
Chief Executive Officer
National Telecommunications Cooperative Association

On behalf of the

NTCA
National Telecommunications Cooperative Association
OPASTCO
Organization for the Promotion and Advancement of Small Telecommunications Companies
WTA
Western Telecommunications Alliance

Before the

United States House of Representatives
Committee on Energy and Commerce's
Subcommittee on Communications, Technology, and the Internet

In the Matter of

H.R. 5828, The "Universal Service Reform Act of 2010"

September 16, 2010

Introduction

Chairman Boucher, Ranking Member Stearns, members of the Subcommittee, good morning and thank you for the invitation to participate in today's discussion regarding H.R. 5828, The Universal Service Reform Act of 2010, which is sponsored by Chairman Boucher and Rep. Terry.

I am the Chief Executive Officer of the National Telecommunications Cooperative Association (NTCA), which represents more than 580 small, rural telecommunications cooperatives and commercial companies. However, my remarks today are also being made on behalf of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Western Telecommunications Alliance (WTA), which along with NTCA, represent more than 1,100 rural rate-of-return regulated community-based communications and broadband service providers from around the nation. Collectively, the service territories of these companies cover more than one-third (37%) of the nation's land mass while their total subscriber base accounts for only about 5% of the national total.

Our organizations would like to thank the members of the Subcommittee – and Chairman Boucher and Rep. Terry, in particular – for their long-standing focus on and understanding of both the critical importance of universal service support for today's telecommunications networks, and the need for reform to usher in a new era of advanced communications. As you know, OPASTCO, NTCA, and WTA have endorsed H.R. 5828. The bill represents a laudable effort to seek compromise between many different viewpoints and interests on important issues. Your ability to find some common ground on such a complex and controversial topic is a testament to your efforts to serve the American public and your dedication to advancing telecommunications policy to reflect better the needs of a broadband-focused world.

Universal service continues to be a cornerstone of our nation's communications policy. It ensures that Americans living in rural areas of the country receive services comparable in performance and price to those living in more urban areas. We must continue working to ensure that all Americans, including those living in rural areas, have the opportunity to experience the benefits offered by a nationwide integrated advanced communications network. Indeed, for consumers in rural or remote communities, broadband represents a vital link to the rest of the world for the most basic of communications, and it will play an even more important role in such areas as civic, economic, educational, and medical interactions increasingly migrate online.

The Universal Service Reform Act of 2010

Today, telecom providers and policy makers alike are shifting their primary focus from voice services to broadband, which offers the promise of being the great equalizer between rural and non-rural areas of our nation. Rural communications service providers are working to replicate the success of their telephone service build-out by steadily deploying broadband infrastructure and related services to an increasing percentage of their subscribers.

But this task is not easy, and more remains to be done. A typical self-sustaining business plan in an urban area is much more difficult to identify and implement in rural markets. It is in these high-cost areas that universal service remains critical to overcome the economic challenges of deploying communications networks. As members of the industry and Members of Congress recognize, it is time to update the universal service program to reflect this shift from voice to broadband. The Universal Service Reform Act of 2010 would support such a transition and would enable many other important steps to update and improve the program.

The Universal Service Reform Act of 2010 contains a number of program modifications that we support. Among the modifications we support, the bill:

- Maintains rate of return regulation for eligible communication service providers;

- Defines universal service to include high speed broadband service, so support for the deployment and operation of broadband networks will be explicit;

- Requires contribution to the Universal Service Fund from a wider range of providers, including all broadband providers;

- Requires the Federal Communications Commission (FCC) to act on intercarrier compensation reform in the near term and allows the Universal Service Fund growth factor to accommodate any intercarrier flows directed to it;

- Addresses so-called “phantom” traffic by mandating identification of all calls;

- Prohibits implementation of a primary line restriction;

- Includes requirements to ensure audits are fair and auditors are trained in universal service fund program compliance;

- Eliminates the so-called “parent trap” so that providers acquiring exchanges are not stymied from investing in such markets;

- Maintains current Act requirements on comparability of service in terms of price and scope as well as sufficiency of support; and

- Provides some relief from deployment requirements for high-speed broadband service to unserved areas where significant high-cost market conditions exist.

Addressing each of these modifications in further detail:

Rate of Return Regulation

H.R. 5828 maintains rate-of-return regulation for the recovery of costs and distribution of high-cost support to eligible communication service providers. Rate-of-return regulation represents a significant broadband deployment success story. Unfortunately, the National Broadband Plan recommends eliminating this regulatory framework that has enabled carriers operating in hard-to-serve, high-cost areas to install and maintain critical high-speed connections. The Universal

Service Reform Act of 2010 recognizes that rate-of-return regulation promotes highly desired investment in America's rural communications networks by providing stability to the carriers that serve these areas. In addition, under rate-of-return regulation, waste, fraud, and abuse are held in check and monitored regularly by regulatory bodies. Rate-of-return regulation is well-tailored for promoting responsible investment in broadband networks in rural America.

By contrast, price-cap regulation, which the National Broadband Plan proposes to replace rate-of-return regulation, tends to drive investment where risk is least and likelihood of recovery is greatest and quickest – in other words, toward more urban and densely populated markets. Price-cap regulation often provides little, if any, incentive to invest in many parts of rural America where the costs to deploy are highest and the customer base is small. As a result, price-cap regulation has proven far less successful in encouraging deployment of advanced communications infrastructure in rural America. If policymakers truly desire to promote ubiquitous deployment of state-of-the-art communications infrastructure, the rate-of-return form of regulation must be sustained as a foundation for broadband deployment.

Explicit Support for Broadband Deployment

Government policies and programs, including universal service, are instrumental in promoting affordable and comparable communications services for all. The United States public switched telecommunications network remains the envy of the world. The same should hold true as this network transitions toward provision of broadband services. While rural carriers have taken significant steps to deploy broadband already, more remains to be done, and the Universal Service Reform Act of 2010 takes an important step by declaring broadband to be a universal service.

While technological advances may help to reduce some costs associated with broadband deployment, it is still always going to be more expensive to serve rural America due to low population density, expansive distances, and often-rugged terrain. Without federal policies such as universal service to ensure adequate and predictable cost recovery mechanisms for broadband, our national goal of universal broadband access may never be realized.

Contribution Expansion

The bill would assess contributions on any entity that currently pays into the Universal Service Fund, any provider of a service that uses telephone numbers or IP addresses to provide voice communications, and any provider that offers a network connection to the public. We support efforts to broaden the contribution base, and we believe that all those who enable users to access networks should contribute to the Universal Service Fund. Expanding the current universal service programs to include broadband as a supported service without also requiring broadband services to contribute to universal service would undermine the goal of providing affordable, robust, and reasonably comparable broadband access service to all Americans.

Intercarrier Compensation

The bill would give the FCC authority to reform both interstate and intrastate intercarrier compensation, and directs the agency to act on such reform within one year of enactment of the bill. It also states that the FCC may recover intercarrier compensation revenues through an alternative recovery mechanism.

Intercarrier compensation was developed to help ensure that local exchange carriers can obtain sufficient cost recovery from other providers for use of the network. Such compensation is an essential part of operating and maintaining local connections to consumers. While we recognize the need for intercarrier compensation reform, the complete elimination of intercarrier compensation systems – which in many cases account for about one-third of rural telephone company revenue – would have a devastating impact on the ability of such providers to sustain operations and investment. H.R. 5828 takes a reasonable approach to this issue, allowing the FCC to direct that costs traditionally recovered via intercarrier compensation may be recovered via the universal service system in the future.

Traffic Identification

The Universal Service Reform Act of 2010 requires carriers to identify all traffic on their networks and requires all carriers to pass through that identification to ensure appropriate payment of intercarrier compensation. Our organizations support this effort to eliminate so-called "phantom traffic," which has substantially undermined the proper application and operation of the existing intercarrier compensation framework. We believe the time has long since come for policymakers to act on this matter in order to stem any further hemorrhaging of compensation as a result of phantom traffic.

Audits

The Universal Service Reform Act of 2010 directs the FCC to use appropriate audit methodology and auditors specifically trained in universal service fund program compliance. We recognize the fundamental role that audits can play in the oversight of policies and programs if they are conducted appropriately and responsibly. Unfortunately, the existing audit process has proven burdensome, and its costs appear to far outweigh its benefits. This failure was outlined by the February 12, 2009 report from the Universal Service Administrative Company (USAC) that explained the audit's shortcomings in terms of costs, approach, findings, and reporting. The USAC report noted how over the course of approximately three years, tens of millions of Universal Service Fund dollars have been spent to conduct more than 1000 separate audits – funding which could have been better used to enhance broadband deployment in high-cost areas. Yet, even more telling, is that all these dollars later, the audit reports have identified no instances of fraud or gross non-compliance within the high-cost portion of the program.

In apparent recognition of the need to improve these processes, the FCC recently took preliminary steps in conjunction with USAC to modify its audit approach. We support the efforts of this Subcommittee, and the provisions included in this bill, to help ensure that the FCC uses appropriate audit methodologies and processes, and reports factual program information to Congress and the public in the future.

Elimination of the "Parent Trap"

We support elimination of the FCC's "parent trap" rule that forces carriers acquiring exchanges to receive support based on the level of support, if any, that the previous owner/carrier received. This policy limits the ability of carriers to invest in areas that may drastically need such investment. Elimination of the parent trap may make it more cost effective for carriers, in particular, small, rural carriers, to acquire and improve service to areas where quality service is currently not available.

Comparable Access in Rural, High Cost Areas

The National Broadband Plan (Plan) sets a national goal of four Mbps, but also announced a primary goal to provide 100 Mbps to 100 million households. Our nation has had a long-standing commitment to ensuring that reasonably comparable communications services are available to all Americans. But if the Plan's goals are implemented as announced, they could result in a digital divide between the 100 million (likely urban or suburban) households receiving 100 Mbps and those in high-cost, rural areas that would receive speeds 25 times slower. H.R. 5828 rightfully commits to just, reasonable, and affordable rates, and comparable services for all regions of the Nation. Specifically, the bill reaffirms that all consumers should have access to telecommunication and information services and rates that are reasonably comparable to those services provided in urban areas.

Primary Line Restriction

We support the bill's prohibition on restricting universal service support only to a primary line connection. Congress has rightfully declined to limit universal service support to primary lines on several occasions – such a limitation would be inconsistent with the underlying reality that telecommunication providers build and maintain networks rather than a patchwork of individual lines and connections. There is an overall cost to building a network, and limiting cost recovery to only a few singular elements of the overall infrastructure would grossly underestimate the actual costs of deployment – leaving carriers and their consumers to make up the dramatic difference.

Rural small businesses would be particularly vulnerable to such limitations. A primary line restriction would limit the ability to recover the high costs associated with providing telecommunications services in rural areas. This would put rural businesses at a distinct disadvantage to their urban counterparts and is unfair to residential consumers as well.

Rural wire-line carriers rely on this support, and the restriction would dramatically reduce incentives for the deployment and upgrade of facilities in rural areas. Moreover, because of its artificial limits on cost recovery, such a restriction could jeopardize the ability of rural carriers to service debt for and continue to operate already constructed plant facilities.

Eligibility Waivers

Rural carriers have made substantial strides to deploy broadband in the areas they serve – despite the fact that these areas represent some of the highest-cost, hardest-to-serve locations in the country. A National Exchange Carrier Association survey indicated that rate-of-return carriers participating in its traffic-sensitive pool had deployed DSL-capable broadband networks to 92% of their subscribers on average as of 2009. This is consistent with the long track record of investment by rural providers in their communities, and rural providers are eager to deliver even higher bandwidth services to their customers going forward. In fact, rural carriers have a history of taking every reasonable step to provide state-of-the-art communications infrastructure and services to their consumers. They are invested in their communities, and they are not expending effort to figure out how ***not*** to serve their friends, neighbors, and communities. For example, it was the rural sector that first completed the migration from multi-party to single party voice systems. It was the rural sector that first completed the transition from analog to digital. It was the rural sector that embraced wireless, fiber and a host of other technological and service advances ahead of other sectors of the industry. Why? Because doing so represents the very core of their mission – that is why they exist – to provide their consumers a service, not simply to generate profits. To put it another way, they exist to ensure rural Americans can access the same economic, educational, health care, and personal opportunities Americans in every other region enjoy.

Yet, geographic, technological, product availability, and economic considerations dictate that rural carriers operate in a common sense and judicious fashion. At times, the costs to reach individual customers or a given area may be so high that they limit or altogether preclude investment at a given point in time in the broadband networks necessary to serve the affected customers. The authors of this legislation have taken proper account of this reality.

The waiver mechanism in the bill ensures that core statutory universal service principles will be upheld by promoting deployment of broadband on as widespread a basis as possible – while also recognizing that, even with best efforts, carriers operating in very high-cost areas may not be able to provide the speeds and types of services that will ultimately be required by the FCC to some small sliver of their subscriber base. Such a framework is particularly important given that the exact standards are still to be developed by the FCC in implementing this bill, and we therefore do not yet know what speeds and availability commitments would be required under a revised universal service program. Without the automatic waiver for very high-cost areas as contained in the current version of the bill, a rural carrier could make every possible effort to reach 100% broadband availability, fall only a handful of customers short of that standard because of the high-cost nature of the area it serves, and still lose essential universal service support. Not only would such a drastic loss of support be counterproductive in trying to reach the remaining unserved customers, but it would also threaten the ability of the provider to operate and maintain the substantial investments made in getting to 97%, 98%, or 99% network penetration. This automatic waiver for very high-cost areas is therefore critical to allow providers in such areas to operate and invest without fear that a minor shortfall in availability could result in a grievous loss of support – a loss that will undermine their ability to continue serving the overwhelming majority of customers to whom they have delivered broadband.

Areas of Concern

In the opening part of this testimony, I referred to this bill as a laudable effort at finding common ground on very difficult issues, and for that reason, our organizations endorsed the bill. This being said, a few provisions of the bill cause concern for small, rural telecommunication providers. As representatives of these providers, we are obligated to identify and express these concerns. Two provisions in particular are worth noting:

- Reducing or eliminating high-cost support in "competitive areas"; and

- Implementation of a new, unproven cost model that may not permit rural providers to meet universal service goals of providing reasonably comparable and reliable service in high-cost areas.

Reducing or Eliminating High-Cost Support in "Competitive Areas"

The bill proposes to reduce or eliminate altogether high-cost support in certain portions of those areas where at least 75% of the households can purchase wireline voice service and wired high-speed broadband service from an unsupported, facilities-based, non-incumbent provider. Many of the details of this proposal, such as how exactly areas will be apportioned and the process for "losing" and/or "re-obtaining" universal service support, are left for the FCC to develop in subsequent rulemakings. This uncertainty is of significant concern to rural providers, and could have the unintended consequence of hindering investment in broadband networks in the near-term.

Moreover, rural providers are particularly concerned that this proposal could lead to a dramatic loss of the support needed to continue operating and meet obligations to serve customers in high-cost areas. For example, the bill precludes imposition of carrier-of-last-resort obligations on the non-incumbent provider in a "competitive area." This indicates that the incumbent will therefore continue to bear carrier-of-last-resort obligations in that competitive area, even as it may now receive little or no funding for bearing and living up to that obligation.

The carrier-of-last-resort obligation is essential to ensuring that service is available in rural areas. It effectively compels a carrier to keep or make network facilities available for customers in places where there might otherwise be no business case to do so. Even if a facilities-based competitor may enter a market (thus prompting a potential loss of support for the existing provider), this does not mean that the competitor will necessarily be there forever or operate throughout the entire area it once indicated it would serve. Companies rise and fall all the time, and what may look initially promising for entry into a new market often may not prove out over the longer term. If there is no carrier-of-last-resort backstop and no recognition of the support needed to ensure that the carrier-of-last-resort can live up to such obligations, we may find that rural communities are left in part or in whole with no one to turn to for broadband service. Any attempt to reduce or eliminate support in "competitive areas" must therefore be carefully coordinated and reconciled with the essential function that carriers of last resort will continue to play throughout rural America.

The Cost Model Proposal

As the industry is changing, so too is the manner of its cost recovery. The pressure to push direct consumer rates higher – to levels rural consumers can ill afford – is nearing a breaking point. The formula upon which intercarrier compensation has historically been based is undergoing extreme upheaval as communications minutes and types of traffic decrease and evolve. And the efforts to address these issues arise against a backdrop of simultaneous and contradictory pressures to both expand the universal service program (to support broadband deployment) and contract it (to control costs).

The costs associated with providing communications services to consumers are not decreasing. Indeed, quite the contrary is true as carriers move to deploy and maintain equipment that responds to the increasing network capacity demands of consumers. Some contend, however, that fund growth can be constrained by using a cost model to drive particular kinds of network investment that may be perceived in the abstract as more efficient. Unfortunately, as rural carriers expressed in comments recently filed with the FCC and as congressional policy-makers themselves have raised in years past, cost models generally fail to capture the nuances and unique characteristics of different companies operating to serve different population densities in different topographical and geographic environments.

We raise this concern to underscore once again that there is far more to this debate than merely attempting to set a competitively neutral stage or to limit costs that are already monitored and strictly audited. We agree that steps should be taken to ensure that universal service funds are used in the optimal manner and consistent with the public interest. However, it is crucially important to point out that the public interest includes living up to our statutory universal service responsibilities, which include the provision of reasonably comparable services and the resolve to provide such services in a ubiquitous manner – more directly, to provide comparable services to all and in all areas, rather than focusing only upon those customers and portions of serving areas that are the least economically challenging.

Conclusion

Mr. Chairman, I want to thank you again for inviting me to be here. Your knowledge of the industry and your commitment to strengthening advanced communications in both urban and rural America make us all fortunate to have you serve on this Subcommittee.

The bill we are discussing here today is the product of many years of hard work for this Subcommittee. We look forward to continue working with you to move and improve this important bill going forward. In addition, I look forward to answering any questions you or your colleagues may have.