Statement of

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On behalf of

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Organization for the Promotion and Advancement of Small Telecommunications Companies
-
Western Telecommunications Alliance

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In the Matter of

"Universal Service Reform – Bringing Broadband To All Americans"

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Introduction

Thank you for the opportunity to participate in today's discussion regarding the critical and ongoing role that universal service and related cost recovery mechanisms will play in bringing broadband to all Americans.

I am the Chief Executive Officer of the National Telecommunications Cooperative Association (NTCA), which represents approximately 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 together with NTCA; represent the vast majority of rural rate-of-return-regulated community-based communications and broadband service providers around the nation. These small businesses hold a deep commitment to the consumers and communities they serve. They are the very models of what policymakers are in search of and what America is in such need of today – the creators of rural jobs, the fuel of the rural economy, and the conduit between citizens and their government.

The Benefits of Rural Carrier Investments and Operations Flow to the Entire Economy

We know that a robust broadband infrastructure is critical to economic development. We know from a technological standpoint that all broadband networks, whether wireless or wired, ultimately rely upon the wired network. And we know that wired networks provide the capacity to support the type of applications that this Nation critically needs: telehealth, distance learning, civic participation, and interstate and global commerce.

But, as we consider social and commercial impacts, can we quantify rural broadband's impact on the economy? The answer is, yes.

A study undertaken by New Mexico State University reported that, in 2012 alone, reductions in USF based upon early 2011 proposals by the Federal Communications Commission (FCC) could lead to a total employment loss of 335 jobs, with more than 260 of those jobs being *outside* the telecommunications industry. In that first year alone, New Mexico personal income would be reduced by $14.1 million; over ten years, personal income in the state would decline $200.3 million, leading to a loss in State tax revenue of $13.6 million.

New Mexico is not alone: Oklahoma City University predicts 3,000 lost jobs over five years, with lost wages of $123 million. The news from Kansas is no better: Wichita State University estimates that USF reductions proposed by the FCC in its February 2011 Notice of Proposed Rulemaking would cost rural Kansas 367 jobs and $51 million in wages over a five year period. These results are not limited to the telecommunications sector, but instead extend to firms that do business with the carriers and their employees.

In fact, the impact of rural telecommunications on *all* of America is substantial. A study being released this week by the Hudson Institute indicates that rural telecommunications companies across the country contributed a collective $14.5 billion to the economies of the states in which they operated in 2009. Of this amount, $10.3 billion was through the carriers' own operations, while $4.2 billion arose out of the follow-on impact of their operations. Notably, the study also finds that of that $14.5 billion total, two-thirds – or $9.57 billion – accrues to the benefit of urban areas. We speak of universal service; let's talk about a universal economy. The rural telecommunications sector supported 70,700 jobs in 2009, both through its own employment and also through the employment that its purchases of goods and services generated.

The USF Program is Essential to Broadband Availability, Service Quality, and Adoption in Rural Areas

This level of economic activity and employment is consistent with the values underpinning access to advanced communications and advanced services in all regions of the nation, as supported by universal service. High-cost USF is a program that enables providers to deploy and operate advanced networks in places where low customer density and vast distances would deter even the most optimistic business cases. The availability of these networks, the investment in them, and the operation of them generates substantial economic activity to the extent described above. But the high-cost USF program does so much more as well. It is a service-quality program, requiring rate-of-return-regulated carriers to show how they are making good use of valuable USF resources to invest in and operate these essential networks for the benefit of their consumers. Indeed, small carriers have used the existing USF program to invest efficiently in advanced networks, increasing broadband service penetration to 92% of consumers using the FCC's current definition of broadband. This has occurred over the past 5 years with only a small 3% compound annual growth rate in high-cost USF support. It is also an adoption program – high-cost USF helps to keep rates reasonably comparable with urban areas in places where the costs of providing service would yield otherwise unaffordable prices.

If USF support were to decline, or disappear altogether, two scenarios would almost certainly result. In one, companies would raise prices and rural users would pay substantially more for communications service. In the other, companies would cut investment and the networks would shrink, deteriorate, and possibly disappear over time. Both outcomes would be inconsistent with our long-standing national statutory universal service policy demanding that all Americans receive access to affordable advanced communications services that are comparable in price and quality. And for those who think that someone else would fill such a void, consider again the nature of the areas served and the essential nature of these networks. These areas are served by small rate-of-return-regulated providers precisely because no one else could justify a business case to serve there in the first instance. These networks offer the only lifeline between these rural communities and outlying farms and ranches on the one hand and the rest of America and the world on the other; even if a wireless carrier might happen to operate in some portion of such an area, that wireless carrier cannot deliver high-quality broadband without the robust underlying capacity of the networks provided by these small entrepreneurial community-based carriers. There is good reason that Congress mandated universal service in the Telecommunications Act of 1996 – it stimulates the rural and national economy and ensures the availability, affordability, and quality of communications products and services.

Today, this statutory mandate is more important than ever, as all Americans increasingly rely upon such products and services to meet their social, economic, and civic needs. Rural communications providers throughout the country continue to respond aggressively to this challenge, rapidly transforming their traditional switched voice systems into powerful and dynamic Internet protocol (IP)-based broadband networks. This is a natural response for these community-based providers that have a long history of taking their service responsibilities seriously and responding to the demands of their consumers – their neighbors. Yet, the successful fulfillment of their mission of service requires predictable and sufficient support in the form of high-cost USF and a reliable intercarrier compensation (ICC) system.

It is Time to Restore Regulatory Certainty and Promote Sustainable Broadband

Universal service, intercarrier compensation, and consumer rates all play important delicately balanced roles in enabling rural providers to overcome these challenges and provide services that are reasonably comparable in quality and price. Each is a necessary part of justifying efficient network investment and operation in rural areas – and each has proven successful to date, promoting the kind of responsible and effective network deployment and service availability described earlier in this testimony.

Clearly, this is a model of success, but the time has come for change. The intercarrier compensation system needs reform, as arbitrage and self-help threaten to undermine its stability. High-cost USF has worked very well, but we acknowledge that updates are needed to provide greater predictability and to promote a broadband future. Our highest priority in reform must be to strengthen and preserve our cost recovery policies in a manner that both acknowledges their value and re-positions them for a sustainable future.

Small rural providers have experienced both lows and highs as policymakers debate reform and consider how to show their commitment to universal service. In the lead-up to the release of the FCC's National Broadband Plan (NBP) in March 2010, we had high expectations, for the FCC was putting in significant effort to evaluate our national communications landscape. We believed with all of the facts before them, the FCC would take advantage of the opportunity by making bold recommendations that would include a call for a national commitment to invest in and maintain state-of-the-art communications technologies throughout *all* of America. Unfortunately, while the NBP made substantial efforts to quantify the demands for and costs of broadband service, some of its policy recommendations were less specific and more experimental than pragmatic, leading to a substantial amount of uncertainty and confusion among service providers. In particular, as many highlighted in the wake of the NBP, the plan seemed focused upon delivery of broadband to the "unserved" without taking into account: (1) whether such service would be sustainable once deployed; or (2) what would happen if USF support or ICC revenues were slashed for those who were already making services available in high-cost, hard-to-serve rural areas.

Our associations and hundreds of our small business members have had many conversations in subsequent months with the FCC, many of you here in Congress, and other stakeholders to help explain how the NBP recommendations and other FCC proposals would harm rural consumers and undermine network investment and operation in rural areas. We believe these conversations have been extremely productive in shedding light on how reform could proceed down an alternate path without upsetting the careful balance of universal service in areas served by small rural companies. I mentioned that this has been a period marked by both lows and highs, and today, I can say we are now at least cautiously optimistic that sensible and carefully crafted reform could be on the horizon.

The "RLEC Plan," the "Consensus Framework," and Efforts to Pursue Balanced, Common-Sense Reform

In the early wake of the NBP's release, NTCA, OPASTCO, and WTA recognized from conversations with policymakers that it was not enough to "just say no." We heard the calls of FCC Chairman Genachowski for reforms that would modernize the USF and ICC systems and ensure fiscal responsibility and promote accountability in these mechanisms. We looked too, however, to the statutory mandates for universal service as a guidepost for reform, and also kept as an overriding principle of our own that the ultimate objective was to promote the availability and affordability of broadband on a sustainable basis throughout high-cost areas. With all of these principles firmly in mind, we set forward to develop a creative plan that would build upon the best aspects of the existing cost recovery mechanisms while re-positioning other aspects of them for a broadband-based, IP-enabled world. We looked to develop a plan that would balance the needs of those providers who had already invested to recover their costs in order to keep providing service with those providers who still needed the opportunity and support to invest in broadband-capable networks over time.

NTCA, OPASTCO, WTA and approximately 40 other state, regional, and tribal communications oriented organizations took up this challenge, putting forward in April 2011 a detailed, credible, and workable proposal centered on redefining the USF and ICC cost recovery systems. In particular, our Rural Local Exchange Carrier (RLEC) plan modernizes USF and ICC for today's broadband era and related needs, providing a transition from legacy high-cost USF mechanisms to a new Connect America Fund that will promote broadband services in rural areas. At the same time, through new constraints, the plan has been calibrated to seek even greater efficiency and aims toward a budget over the next several years that seeks to accommodate policymakers' desire for fiscal responsibility in the USF program. The plan also demands accountability by requiring that USF recipients live up to the carrier-of-last-resort obligations that are historically the hallmark of rural rate-of-return-regulated providers.

We all recognize the complexity of modernizing these systems, and the years of effort that have already been put into this process. We also recognized that no one party in this divided industry could hope to move a program for reform without some attempt at compromise and effort to seek consensus. Accordingly, earlier this year, with the support and urging of policymakers, we and some from other industry sectors made good faith attempts to seek common ground and crystallize differences on reform. While some industry sectors chose to hold back, small rural providers represented by NTCA, OPASTCO, and WTA stepped forward, reaching agreement on amendments to the previously filed RLEC Plan as part of a "Consensus Framework" with US Telecom, Verizon, AT&T, CenturyLink, Windstream, Frontier, and FairPoint. This Consensus Framework is comprised of two distinct but complementary plans – the RLEC Plan that would govern USF and ICC mechanisms in areas served by small rate-of-return-regulated carriers, and the America's Broadband Connectivity Plan that would govern reform of these same mechanisms in areas served by the larger and mid-sized providers. In addition to providing a reasonable path forward on USF reform, the Consensus Framework would shut down many of the arbitrage and self-help problems that threaten to eviscerate the ICC system today and establish a more unified, transparent, and enforceable means of ensuring that providers pay one another for use of each other's network. The bottom line is that the Consensus Framework will restore much-needed regulatory certainty and more predictable cost recovery, which will ultimately allow the industry to refocus on investments and operations in response to consumer demand and community need.

Outside of this framework, these parties have divergent interests and would not necessarily agree to these compromises. For example, the rate-of-return associations would be unlikely to support in other contexts any of the ICC reforms included in this framework. Similarly, the price cap carriers would have been unlikely to support certain constraints on the use of the forwardlooking cost model described in their proposal outside of the Consensus Framework. Others still would have refused to reach resolution on how carriers should be compensated for VoIP traffic terminating onto their networks.

For these reasons, we have emphasized to policymakers the need to recognize that material changes to individual components of the Consensus Framework could cause individual parties to withdraw their support for – or even oppose – other components of these proposals and/or the then-negated consensus framework as a whole. The parties to this consensus made substantial concessions in the interest of obtaining an industry agreement that could restore regulatory certainty and allow providers to focus more closely once again on the business of building and providing broadband.

The Consensus Framework is aimed at balancing sustainability of broadband where it is today with the need to promote more widespread deployment of broadband over time. It has also been designed to provide a path to meet consumer demand over time for upgraded services and improved networks. Recalling that the ultimate objective of this exercise is to promote a better experience for the consumer and a better outlook for the economy, we were pleased to see that fifteen organizations representing rural business, agricultural, educational, and economic development interests – including the National Grange, the American Farm Bureau Federation, the American Telemedicine Association, the Independent Community Bankers of America, and the Rural School and Community Trust – sent a letter last week to FCC Chairman Genachowski expressing concern over certain changes to the USF and ICC mechanisms as previously proposed and asking for further consideration of the plans in the Consensus Framework.

The Path Forward on USF and ICC Reform – and the Roadblocks Still Ahead

The devil is now in the details as the FCC considers final steps forward. While others continue to make broad policy arguments and press high-level principles, we are diving into the details. With valuable USF resources, the success of the rural economy, the experience of the rural consumer, and the livelihood of small business telcos all at stake, we believe good public policy can only be made by moving past sweeping rhetoric and making sure that any reforms actually work to the benefit of the American consumer. The RLEC plan is the only detailed and practical plan on the record for high-cost areas in which small providers are the carriers of last resort. It defines a clear roadmap of exactly how we can get from the USF and ICC status quo to the next generation of cost recovery. It avoids radical and untested concepts such as permanent caps, ill-defined auctions, or flash-cuts in ICC rate reductions that would only spike end user rates or lead to retrenchment in service. Indeed, the FCC should not and cannot adopt such proposals when there is no basis in the record for them – for example, there is simply no definition in the record of the processes for auctions and no detailed examination of what more aggressively paced ICC cuts would mean for consumers.

This brings me to one final concern as we approach what could be the culmination of a decade-long effort to achieve reform. Specifically, we are concerned whether the path forward on reform – or the successful implementation of any reforms – might be derailed through a "raid" on USF in the name of federal debt reduction. There can be no doubt regarding the severe nature of the debt crisis confronting our nation, the interest of the public in responding to it, and the absolute necessity of doing so in a manner that is consistent with legal mandates and precedents. Nevertheless, we are extremely concerned to know that certain concepts may be under consideration that have no place in such discussions.

Our concern first materialized upon seeing the recommendation in the December 1, 2010 report of the National Commission on Fiscal Responsibility and Reform that identified the *private* USF as a source of *public* debt reduction. Some months later we were further troubled to learn that debt negotiators were giving serious consideration to this concept. And in recent weeks, our unease has grown as we have learned that the Joint Select Committee on Deficit Reduction may also consider this ill-advised proposal.

In response, our organizations sent a letter dated September 23, 2011, to your colleagues serving on the Select Committee underscoring the unique nature of the federally mandated – yet *privately managed and funded* – USF program and why it has no place in these conversations.

We have also sent a similar letter to you and your Commerce Committee colleagues urging you to call upon the Select Committee to refrain from further consideration of this idea.

Throughout its long history, the USF has always been maintained outside the U. S. Treasury and managed by a non-governmental entity. While the Telecommunications Act of 1996 amended the previously existing framework of the USF, and thereafter the Office of Management and Budget displayed the private USF in the federal budget, there is no legislative or other official indication that Congress ever intended to change the manner in which the fund is maintained and administered.

Legal precedent and guidance confirm that the USF monies do not constitute "public monies" that are received for the use of the United States, but rather are private funds that are merely derived and distributed at the direction of federal statute. This conclusion was embraced and underscored by both the General Counsel of the FCC and the General Counsel of the Office of Management and Budget in an exchange of official correspondence dated April 28, 2000. Thus, the raiding of the privately funded and administered USF as a source of debt reduction would constitute a "taking" and the imposition of a new "tax" on the American people – in addition to the unfortunate follow-on impact that would upset the FCC's USF and ICC reform efforts thus leaving the industry, and particularly its rural sector, vulnerable to ongoing uncertainty and revenue disruption. An unforeseen consequence of raiding the USF in the name of debt reduction is that it would likely ultimately add to the nation's debt as carriers find themselves unable to repay the federal RUS loans many of them hold. There can be no question that going down this road would likely curtail broadband deployment that is so critical to our national and economic security today.

The objective of getting broadband out to rural areas and keeping it there is far too important to gamble on untested theories and ill-defined concepts. We are far too close to meaningful reform to have this process fall apart now, or to have this reform be for naught because some portion of the USF is subsequently siphoned away to address purposes unrelated to the reasons for which these funds are collected. NTCA, OPASTCO, WTA and our collective members took up the challenge to develop a detailed plan for USF and ICC reform. We took up the challenge to seek industry consensus on reform. Our members took up the challenge to provide detailed data to support an informed course of action on USF and ICC reform. We now hope the FCC will enable small rural carriers of last resort to meet their most important challenge – that of delivering affordable, high-quality broadband to millions of rural Americans who depend upon such access. To this end, we are hopeful that the FCC will give serious consideration instead to the RLEC Plan and pursue a common-sense, fact-based path for USF and ICC reform in its meeting later this month. We are also hopeful that the benefits of any such reform, once finally achieved after this long journey, will not be frustrated, undermined, or defeated by the siphoning of USF funds for other purposes.

Conclusion

We are excited to have a committee comprised of members with such knowledge of our industry and such a deep commitment to rural America. It is our sincere hope that we can count on each of you to help guide the FCC to adopt a well-defined and carefully developed reform framework that will promote sustainable and affordable broadband access for all Americans. Thank you again for the opportunity to testify today.