

**Response of WTA – Advocates for Rural Broadband
to the House Energy and Commerce Committee’s White Paper on
Modernizing the Communications Act**

January 31, 2014

In its White Paper on Modernizing the Communications Act, the House Energy and Commerce Committee (Committee) requests public comment on several broad issues related to updating the Communications Act. WTA – Advocates for Rural Broadband (WTA)¹ appreciates the Committee’s desire to conduct a review of the nation’s communications laws to determine whether they are adequate in regards to meeting the current and future needs of the country and welcomes the opportunity to provide comments on this and future papers regarding this initiative.

The fast-paced nature of change in the communications sector combined with the fact that major revisions to the statute have not occurred since 1996 are good reasons for a review at this time. However, neither changes in the underlying communications technologies nor the age of the statute in and of themselves necessitate fundamental alterations to the Communications Act where current law has proven successful at enabling network evolution and promoting innovation, competition, universal service, and consumer protection.

¹ WTA – Advocates for Rural Broadband is a trade association representing more than 250 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

In embarking on its review, the Committee should keep in mind three key points: 1) the communications industry and technology have changed over the decades, yet many of the principles underlying current law remain sound; 2) rural areas of our country served by WTA's members have different market dynamics than more suburban and urban areas and continue to need regulatory structures tailored to these unique circumstances; and 3) federal universal service policies for areas served by rural local exchange carriers (RLECs) have helped to ensure consumers living in high-cost rural areas receive services reasonably comparable to those in more densely populated areas.

WTA's members are rate-of-return regulated RLECs that serve some of the most rural and remote areas of the country with voice and data services. These companies and cooperatives came into existence because the larger, dominant carriers did not show interest in providing communications services to these areas of the country. These RLECs are locally oriented and tend to be some of the largest employers in their rural communities. They would not be able to serve the residents and businesses to the degree that they do today were it not for support from the federal Universal Service Fund (USF). While it predated the Communications Act of 1934, the principle of Universal Service was made explicit in the 1934 Act,² and then it was updated and expanded in Section 254 of the Telecommunications Act of 1996. At that time, there was bipartisan agreement among lawmakers that rural areas are different than suburban and urban areas when it comes to deploying communications infrastructure, and that these differences justified careful and distinct treatment under the law. These differences have not changed with the passage of time. While these rural areas are different, they are no less important than urban areas of the country, as there is interdependency among residents living in urban, suburban and rural areas for goods, services and commodities.

In its White Paper, the Committee correctly notes that intermodal competition has increased since the 1996 Act. WTA's members are prime examples of the convergence that

² The opening paragraph states that the Communications Act's purpose is "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to *all the people of the United States*...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with *adequate facilities at reasonable charges*..." (emphasis added)

has taken place in the industry. Several decades ago, traditional voice service over copper wires was the sole service provided by WTA's members. Today, WTA's members provide more than voice service over hybrid copper/fiber networks. They have deployed networks capable of delivering high-speed broadband and access to video services and, in some cases, wireless services. To become more efficient and to meet their customers' future communications needs, these companies' TDM-based networks are evolving to become more IP-based. Looking at the industry as a whole, there has been a convergence of technology and services and therefore the dividing line between local telephone, long distance telephone, cable, wireless and wireline voice, and Internet service companies is not as distinct as it once was. In addition, there are types of service providers that did not even exist when the 1996 Act was written.

Despite these changes, the fundamentals and principles underlying much of the Communications Act and its various amendments, especially Section 254, remain highly relevant. Ensuring universal service, protecting consumers, requiring interconnection among common carriers, and encouraging competition where feasible are just as important today as they were twenty years ago. That being said, modernizations and modifications certainly should be made to the USF program despite the fact that the fundamentals and principles still apply today. However, the Federal Communications Commission (FCC) has all the authority it needs to, for example, allow RLECs to seek USF support for consumers that choose not to take the RLEC's voice service but who want only broadband. The FCC also has the authority to update the USF contributions methodology, just like it has addressed USF distributions methodology with its 2011 *USF-ICC Transformation Order*. None of these modernizations require changes in law. However, if the Committee desires to do so, WTA would encourage the Committee to adopt language reassuring the FCC of its authority to pursue reform on these specific issues, and WTA welcomes the opportunity to go into more detail on these issues in response to future questions from the Committee.

Rural America is Different

Evaluating the success of the nation's telecommunications policies must take into account the differences between the more rural areas typically served by smaller telephone companies and the more urban and suburban areas typically served by larger companies. The objective of fostering competition in urban and suburban areas has worked well. Competition among multiple wireline carriers and multiple wireless carriers should continue to ensure that fiber and wireless broadband facilities are extended, that broadband speeds and bandwidths are increased, and that broadband services continue to be rolled out in response to customer requests and preferences.

However, competition does not ensure the same result in rural areas because of issues associated with geography and demographics as mentioned earlier. As the Committee is aware, rural areas lack the population density that encourages communications providers to build expensive infrastructure and compete for rural consumers' business. WTA's members confirm this theory. From informal surveys of WTA's membership, it has been found that, in regards to voice service, the availability of unaffiliated wireless service is inconsistent outside of the towns and away from the major highways. In some instances, such service is not even provided in the towns or on the rural highways. Even less pervasive in these rural high-cost areas are the wireless broadband speeds found in urban areas.

When it comes to fixed or wireline service options, in many urban and suburban neighborhoods customers have a choice of wireline broadband providers, but in rural areas the small RLEC is often the only terrestrial option for broadband for the vast majority of the territory it serves. Some WTA members report broadband competition from a local cable company, but when cable competition exists, its franchise area rarely extends beyond the town limits. The homes, businesses, ranches and farms outside of town rarely receive service. The lack of reliable competition in most rural areas is evidence that market forces alone cannot be relied upon to deliver communications services – basic and advanced – in rural areas that are reasonably comparable in quality and price to urban areas.

The policy of universal service is the key to the success in parts of rural America served by locally focused, rate-of-return RLECs. The principles contained in Section 254 of the 1996 Act – quality telecommunications and information (i.e. broadband) services at just, reasonable and affordable rates for all Americans; reasonably comparable telecommunications and information services in terms of quality and rates in rural and urban areas; and specific and predictable support mechanisms to advance these goals – have ensured that rural America is not faced with a digital divide. Continued adherence to these fundamentals and principles is necessary to make sure that rural areas do not fall behind.

Appropriateness of Separate Regulatory Structures

The Committee questions whether the silos contained in current law are the best method of regulating the industry going forward. When considering increased intermodal competition within the industry and alternatives to the current silos, the Committee should keep in mind that though there has been convergence, the services provided by these differently regulated competitors are not interchangeable or direct and equal substitutes.

In general, wireless communications and wireline (or fixed) services are complementary services. Notwithstanding stories about “cutting the cord,” the substantial majority of American businesses and households currently subscribe to both wireline and wireless services. More than 60% of American households subscribe to wireline voice service despite the benefits of mobility provided by cellular phones.³ In addition, most cellular phone users transfer to a local WiFi network, which is typically a wireline network with a wireless router attached, whenever possible. Wireline and wireless broadband services presently utilize different equipment and technologies and are used by customers for

³ CDC, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2013*, December 2013. <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201312.pdf>

different purposes and at different times and places. For example, a businessman may use wireline broadband service at work and at home, and wireless broadband service while traveling and commuting. These differences, as well as the trade-offs that customers are willing to make regarding things such as speed, capacity, file size, screen size and mobility, mean that wireline and wireless facilities and services will play separate but complementary roles in the future of the network.

These differences are even more acute in rural areas, where wireless services are less ubiquitous and less robust (not to mention wireless service would not work without an underlying wireline network that transports wireless calls in rural areas from towers to and from the network backbone). To illustrate this point, football, basketball, and baseball are all sports serving different entertainment purposes, but they are not interchangeable simply because they are all sports. They are complementary in that many people like all three. Similarly, wireline and wireless are communication services, but they serve different purposes and complement each other.

Likewise, there are good, historical reasons why cable companies are regulated differently than common carriers, and the reasons for this are readily apparent in rural areas. In rural areas, incumbent local exchange carriers (ILECs), both large and small, have been designated carriers of last resort in order to ensure that all people have access to telecommunications services. Cable companies, understandably, have no such obligations because policymakers have never considered television an essential communications tool. While many traditional cable companies are now providing voice service and many ILECs are providing access to video services, there is still a need for a carrier of last resort in rural and high cost areas of the country. While WTA does not presume to speak for cable or wireless carriers in regards to whether they would want to take on the role and obligations of a carrier of last resort in the future, it does not appear likely at this time, therefore the separate regulation still serves a purpose in rural areas. WTA strongly encourages the Committee to keep the different circumstances of rural areas in mind when considering regulatory silos.

Conclusion

The telecommunications fundamentals, principles and policies adopted over the years have benefited residents and businesses throughout the country. In particular, fostering competition in areas that have the demographics to support it has led to intermodal competition, while universal service policies in rural areas served by small, rate-of-return RLECs have forestalled a digital divide. In rural areas, the USF High Cost program has been an overwhelming success, helping making basic voice service nearly ubiquitous. Should similar policies be continued for the broadband and IP era, rural areas will continue to keep pace with their urban counterparts in terms of access to modern and affordable communications technologies. As it proceeds with its goal of updating the nation's communications laws, the Committee should recognize that bringing broadband to all Americans, regardless of whether they live in urban, suburban or rural areas, requires different regulatory models.