

**Response of WTA – Advocates for Rural Broadband
and the Washington Independent Telecommunications Association
to the House Energy and Commerce Committee’s White Paper on
Universal Service Policy and the Role of the Federal Communications Commission**

September 19, 2014

In its White Paper on *Universal Service Policy and the Role of the Federal Communications Commission*, the House Energy and Commerce Committee (Committee) requests public comment on several issues regarding universal service policy for the modern communications ecosystem and the federal and state roles in maintaining and advancing universal service.

WTA – Advocates for Rural Broadband (WTA) is a national trade association representing more than 250 small rural telecommunications providers that serve some of the United States’ most remote, difficult and expensive-to-reach areas and are providers of last resort to those residing there. Most WTA members serve fewer than 3,000 access lines in the aggregate and fewer than 500 access lines per exchange. Whereas WTA members were predominately providers of traditional voice services over copper networks during the early 1990’s when the Telecommunications Act of 1996 was being debated and enacted, they have now evolved substantially down the path toward the provision of increasingly higher-capacity broadband data, video and voice services over hybrid fiber/copper networks. They are also in the midst of converting from Time Division Multiplexing (TDM) to Internet Protocol (IP) technology. The Washington Independent Telecommunications Association represents independent RLECs throughout the state of Washington.

In its response to the Committee’s initial White Paper on Modernizing the Communications Act, WTA emphasized that the Committee should keep in mind the following three key points: (1) while the communications industry and technology have changed over the decades, 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 that consumers living in high-cost rural areas receive services reasonably comparable in quality and price to those provided in more densely populated areas. WTA reiterates the validity and importance of these three principles.

Statement of WTA Position on Universal Service Policy

Since the passage of the Telecommunications Act of 1996, a host of major changes have taken place in the telecommunications industry, including the growth of the Internet, website marketing, blogs, social media, smart phones and video streaming. Yet, Section 254 continues to provide a remarkably relevant and up-to-date framework for universal service policy. This is in large part because the public network continues to require investment in a capital-intensive infrastructure of increasingly fiber optic trunks and lines, plus radio towers and transmitters, as it develops from the Public Switched Telecommunications Network (PSTN) into the Public Broadband Network. In other words, both the critical importance of infrastructure investment and the basic trunk/line/tower network structure have remained similar since 1996, whereas the mass of the observed changes have been comprised of an explosion of new applications and services provided over the underlying network.

The Section 254(b) principles of quality services, affordable rates, access to advanced services, reasonably comparable services and rates in urban and rural areas, and specific, predictable and sufficient universal service support mechanisms remain equally relevant and critical for the emerging Public Broadband Network as they were for the PSTN. Section 254(c) wisely defined "universal service" as an "evolving level of telecommunications services" that the Federal-State Joint Board on Universal Service (Joint Board) and Federal Communications Commission (FCC) could periodically review and redefine for purposes of their eligibility for support by federal universal service support mechanisms. Section 254(d) equally wisely avoided the uncertainties and political conflicts of the federal budget process and continued to fund federal universal service support mechanisms via equitable and nondiscriminatory contributions from carriers and customers that enjoy the network effect benefits of being able to communicate with virtually all other Americans. Finally, Section 254(e) required recipients of federal universal service support

to be scrutinized and approved as eligible telecommunications carriers by their state commission or the FCC and mandated that such support be used only for the provisioning, maintenance and upgrading of facilities and services for which the support was intended.

WTA and its members have disagreed with the FCC's interpretation and implementation of some of the provisions of Section 254. However, the existing wording of Section 254 continues to address the basic universal service issues – particularly, the need to provide carriers with effective and appropriate incentives to invest in the necessary fundamental network infrastructure – in 2014 as well as it did in 1996. Rather than revising Section 254, Congress should exercise its oversight authority to compel the FCC to implement and administer Section 254 so as to provide the statutorily mandated stability and certainty (that is, the Section 254(b)(5) and 254(e) “specific, predictable and sufficient” support mechanisms) that are essential to encourage and enable carriers to make the 10, 20 and 30-year infrastructure investments (including obtaining and repaying associated loans) needed to extend and upgrade their networks to provide an evolving level of universal service to their customers.

Responses to the Committee's Specific Questions

1. How should Congress define the goals of the Universal Service Fund? Should Congress alter or eliminate any of the six statutory principles, codify either of the principles adopted by the FCC, or add any new principles in response to changes in technology and consumer behavior?

Congress did an excellent job in the 1996 Act of defining the relevant, long-term goals of the Universal Service Fund (USF) in the six statutory principles of Section 254(b). In light of the critical and continuing importance of infrastructure investment in achieving the desired ubiquitous national public network (initially voice, and now increasingly broadband), it is very difficult to conceive of any more enduring or effective principles than the quality services, affordable rates, access to advanced services, reasonably comparable services and rates in urban and rural areas, and specific, predictable and sufficient universal service support mechanism principles adopted in Section 254(b).

The additional principles adopted by the FCC have been somewhat less successful in achieving USF goals. While not objectionable *per se*, the FCC's “competitive neutrality” principle has often served to reduce the quality of supported services to the lesser standards capable of being met by wireless services and was the basis for the now discredited program of providing multiple

wireless carriers in many markets with “identical support” based upon the higher costs of wireline carriers of last resort (CoLR). WTA’s position has long been that wireline and wireless are complementary (rather than equivalent or competitive) services and that they are used in tandem by a majority of Americans for diverse purposes.¹ Therefore, wireline and wireless services should both be supported via separate USF mechanisms so that residents of rural and other high-cost areas have access to wireline and wireless services reasonably comparable to those available in urban areas. WTA also notes that wireline networks are essential to provide backhaul for wireless networks and to carry the high-capacity voice, data and video traffic that would otherwise produce disruptive congestion on wireless networks.

Similarly, by imposing broadband build-out requirements upon a universal service system that continues to explicitly support only voice services, the FCC’s recent “support for advanced services” principle constitutes an awkward alternative to the much more straightforward approach of using the Section 254(c) process to designate broadband transmission services as supported services. While political considerations regarding “regulation of the Internet” are responsible in large part for the FCC’s approach, a less convoluted alternative would have been to make the Section 254(c) designation of broadband transmission service (that is, the common carrier broadband telecommunications component included in broadband service rather than the retail broadband service sold to consumers) as a supported telecommunications service and use the Section 10 forbearance process to eliminate any unnecessary Title II regulation of specific broadband services where warranted.

2. Universal service was created to fund buildout in areas incapable of economically supporting network investment. How should our policies address the existence of multiple privately funded networks in many parts of the country that currently receive support?

Virtually none of the rural areas served by WTA members have truly competitive service providers that serve the entire RLEC service area; provide relatively equivalent services, service quality and prices; or otherwise fulfill the CoLR roles that have long and successfully been borne by RLECs.

For example, most WTA member companies do not have a *bona fide* cable competitor offering comparable voice and broadband services; and virtually none have such a competitor that offers service throughout its entire rural service area. In many areas where there is purported cable

¹ CDC, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2013*. <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>

competition, the alleged “competitor” is the RLEC’s own affiliated cable television (CATV) or Internet Protocol television (IPTV) service. In addition, another significant group of WTA member service areas contain small, locally owned CATV systems that have limited channel capacity, that provide minimal or no voice or data services and that do not extend their services far (if at all) outside the town center. Finally, the relatively few, large, multiple system CATV operators that serve WTA member areas virtually always limit their service to towns and other more densely populated areas and rarely ever extend their networks out into the much higher cost and more sparsely populated farm, ranch and mining areas surrounding these population centers.

With respect to wireless networks, many WTA members report that the availability of unaffiliated wireless voice service in their rural areas is inconsistent outside of major towns and away from major highways and is not available at all in some towns and along some rural highways. Wireless broadband coverage and service quality are also problematic in many rural high-cost areas. FCC Chairman Tom Wheeler recently noted that even in cases where competition from mobile broadband services does exist, “today it seems clear that mobile broadband is just not a full substitute for fixed broadband, especially given mobile pricing levels and limited data allowances.”²

Whereas some formerly rural areas have become more densely populated and suburbanized as urban areas have expanded to encompass them,³ the demographics of the vast majority of rural areas have not changed, and the basic problems continue to be sparse populations, rugged terrain, long distances between customers and high per-customer costs. WTA members and other RLECs continue to be the only entities that have demonstrated a sustained, long-term commitment to accept responsibility as CoLRs to invest in, construct and maintain the networks needed to serve these high-cost rural areas.

The FCC is currently developing rules and procedures to limit the provision of federal universal service support in areas where there are one or more “unsubsidized competitors.” With respect to RLEC service areas, if these rules are properly crafted and implemented, they will affect only recently suburbanized areas where CATV or other wireline competitors offer equivalent services throughout the entire RLEC study area. In contrast, if these rules allow competitors to cherry

² Wheeler, Tom. "The Facts and Future of Broadband Competition." 1776, Washington, D.C., 9 Sept. 2014. <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>

³ Whether or not these newly suburban areas attract one or more competing networks, the increased economies of scale and lower per-customer costs resulting from their population growth will soon render these areas ineligible for high-cost support.

pick population centers and neglect outlying areas in the RLEC service territory, the resulting reductions of federal universal service support in such population centers will be counteracted by much higher costs and support in the outlying areas and/or substantial reductions of investment and service in those outlying areas. The Committee should monitor the FCC's "unsubsidized competitor" rulemaking and make certain that it provides the requisite incentives and support for continued rural network infrastructure investment.

3. What is the appropriate role of states and state commissions with respect to universal service policy?

The states and state commissions possess the major advantage of proximity to their various regions, communities and residents. They are in a much better position than the FCC to discern and monitor the interests and service needs of their various regions and constituencies and the reasonableness and appropriate costs of various alternatives for meeting them. At the same time, the former system of allowing state commissions to designate multiple competitive eligible telecommunications carriers (CETCs) to receive federal "identical support" led to waste and inefficiencies as some state commissions designated as many as 8 or 10 or 12 CETCs in various rural study areas.

Some states have established state universal service funds of various sizes, while other states have not. State universal service funding is likely to become more complicated in the future as the role of jointly federal and state regulated voice services decreases and the role of broadband services over which the FCC has claimed virtually exclusive regulatory jurisdiction increases. However, broadband service is so important to the economic, educational, medical, governmental and social well-being of their residents that states should have a substantial interest in funding broadband infrastructure whether or not they have telecommunications regulatory authority over various broadband services.

WTA suggests that Congress examine ways to create incentives for state governments to become more proactive in providing universal service funding for broadband infrastructure deployments and upgrades in their high-cost areas. One possible approach would be to review the status and effectiveness of current federal-state regulatory jurisdiction over broadband services and perhaps confer greater regulatory jurisdiction over broadband services upon states with state universal service funds that support broadband infrastructure and services.

4. What is the appropriate role of the Federal-State Joint Board on Universal Service in a broadband, IP-enabled, largely interstate world? What is the appropriate role of related joint boards, such as the Federal-State Joint Board on Separations or the Federal-State Conference on Advanced Services?

The Joint Board has express statutory authority under Section 254(c) of the Communications Act to recommend changes in the services supported by federal universal service support mechanisms. The Joint Board has long provided a valuable opportunity for federal and state regulators to discuss and debate universal service policies from a variety of different perspectives and to devise potential regulatory solutions that have a broader base of support throughout the country. Whereas the FCC has the discretion to adopt Recommended Decisions of the Joint Board in whole or part or to reject them, these Recommended Decisions have proven over the years to be an effective way to ensure both that universal service issues receive comprehensive consideration from a large and diverse base of interested parties and that the solutions presented for ultimate FCC consideration have been reviewed and tested by a varied group of federal, regional and state regulators, industry participants and consumer advocates.

5. The Universal Service Fund is one of several federal programs that support buildout of communications facilities. Are current programs at other federal agencies, like the National Telecommunications and Information Administration (which oversaw the Broadband Technology Opportunities Program) or the Rural Utilities Service (which oversees lending programs and oversaw the Broadband Initiatives Program) necessary?

Rural Utilities Service (RUS) loans have long been essential for RLEC network infrastructure deployment and upgrade projects. Whereas federal universal service support helps RLECs to recover, after the fact, the depreciation, maintenance and operating expenses that enable them to repay their outstanding construction loans and provide ongoing services, it is RUS construction loans that have enabled many RLECs to accumulate the large up-front sums they need to undertake substantial infrastructure deployment and upgrade projects -- that is, to purchase network equipment and to hire the contractors to construct and install it. Given that major RLEC infrastructure investments remain necessary to extend and upgrade the Public Broadband Network, the RUS loan programs remain essential during the foreseeable future to facilitate and implement these investments.

As the Committee is well aware, the National Telecommunications and Information Administration's (NTIA's) Broadband Technology Opportunities Program (BTOP) and the RUS's Broadband Initiatives Program (BIP) were limited, one-time grant-loan programs that

were part of the 2009 American Recovery and Reinvestment Act. These grant-loan programs helped their recipients to deploy broadband infrastructure, and many WTA members would be interested in future broadband grant-loan programs that the Congress might adopt. However, unless and until BTOP/BIP or similar grant-loan programs are established on a recurring and predictable basis, such programs will not provide the long-term, comprehensive infrastructure investment incentives and capabilities that the RUS loan programs have produced.

6. How can we ensure that the Universal Service Fund is sufficiently funded to meet its stated goals without growing the fund beyond fiscally responsible levels of spending?

As the FCC noted in its National Broadband Plan, the Public Broadband Network “is the great infrastructure construction project of the early 21st Century.”⁴ Like the earlier canals, roads, railroads, telegraph and telephone networks and interstate highways that both enabled the United States to expand across the continent and brought its people closer together, the extension and upgrading of this network to meet present and future broadband service needs will cost significant amounts of public and private dollars and be well worth the investment.

Given the critical importance of a nationwide broadband network able to meet the increasing capacity and speed needs of American businesses and households, sufficient support for the required network infrastructure investments and service improvements should be near the top of federal budgetary priorities. This does not mean that fiscal caution should be forsaken, but budgets should be based on reasonable end goals and objectives rather than arbitrary numbers that are never reassessed. At a minimum, support levels need to be adjusted for inflation over time. Readily scalable wireline broadband networks and complementary wireless broadband networks in rural areas can increase federal, state and local tax revenues by enabling the creation and growth of new businesses and increasing job opportunities and wages while simultaneously decreasing private and public costs of education, health care and government services. These direct benefits should be considered by policymakers when deciding whether to distribute an additional USF support above the current budget targets to increase the pace of broadband extensions and upgrades in rural areas.

To ensure sufficient funds are available, it is important that federal policymakers reform how USF contributions are collected. The nation’s history with major infrastructure initiatives (e.g.,

⁴ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 3 (Mar. 16, 2010), <http://www.broadband.gov/download-plan/>

the Interstate Highway System) demonstrates that, as a country, we have the vision and ability to design, build and pay for the facilities and tools necessary to open new markets and drive economic growth and job creation. A properly structured infrastructure funding program, with a fair and equitable system of USF contributions, will lead to increased economic growth, job creation and consumer benefits. Given that the wireline long distance toll service that previously provided a major portion of USF contributions is being superseded and reduced by other technologies and pricing plans, it is becoming more and more urgent to review the services and service providers that benefit from the public network. Broadening the USF contribution base in a more equitable manner will mean not only more money will be available for network infrastructure investment and other endeavors, but also individual contributors will be subject to much lower contribution rates.⁵

The FCC started down this path a few years ago with its April 30, 2012 *USF Contributions Reform Further Notice of Proposed Rulemaking*. In this FNPRM, the FCC asked a number of questions about who should contribute, how contributions should be assessed, how the administration of the contributions system could be improved and how carriers should recover their contributions to the USF from their end-user consumers. The FCC's efforts in this area have stalled, and it would be appropriate for Congress to require the FCC to complete its USF contribution reforms by a specified deadline in 2015.

7. Are all of the funds and mechanisms of the current Universal Service Fund necessary in the modern telecommunications marketplace?

The current USF High Cost Fund mechanisms⁶ and their future revised versions or successors are essential to encourage and enable the basic network infrastructure investment needed to bring the telecommunications and broadband services available in urban areas to Rural America at reasonably comparable speeds and prices. The High Cost Fund provides the investment incentives and cost recovery for the basic underlying networks in rural and other high-cost areas. These networks would not currently exist, and will not exist in the future, without predictable and sufficient High Cost Fund support. While market forces will provide for the communication needs of the majority of the country, there will always be high-cost, rural areas where there is no business case to provide service. Although current High Cost Fund mechanisms need some

⁵ A more in depth examination of this subject can be found in WTA's White Paper, *Investing in Rural Broadband Infrastructure: The Critical Need for Universal Service Contribution Reform*, found here: <http://w-t-a.org/wp-content/uploads/2014/08/USF-Contributions-2014-FINAL.pdf>

⁶ High Cost Loop Support, Interstate Common Line Support, Connection America Fund – Inter-carrier Compensation Support and CAF Phase II Support

updating to take into account the transition from the PSTN to the emerging Public Broadband Network, the High Cost Fund itself remains *the* essential Universal Service Fund for the still numerous rural areas where the costs of constructing and operating the basic underlying public network exceed the revenues that can be generated by the reasonably comparable rates that local residents can afford to pay.

In the absence of the underlying network in rural and other high-cost areas, the other USF Funds would be greatly handicapped if useful at all. The Schools and Libraries Program and the Rural Health Care Program would not be able to connect their supported facilities efficiently and inexpensively into local networks but rather would have to construct lengthy special purpose networks to reach rural schools, libraries and clinics. Likewise, low-income individuals in high-cost areas would not be able to obtain satisfactory service regardless of the amount of Lifeline Program support for which they qualified. Accordingly, the High Cost Fund is the critically important USF program because it supports the underlying network upon which all of the other USF programs ride.

8. In lieu of the current support mechanisms, could any of the programs be better managed or made more efficient by conversion to:

- a. A state block grant program;**
- b. A consumer-focused voucher program;**
- c. A technology-neutral reverse auction; or**
- d. Any other mechanism.**

In the case of the High Cost Program – the USF program on which WTA members rely – the current High Cost support mechanisms would not be better managed or made more efficient by conversion to any of the listed alternatives. While the current USF contribution mechanism clearly needs to be modernized and various changes to USF distribution mechanisms are being considered or implemented at the FCC, transitioning to an entirely new methodology will create needless disruptions and consequences.

First, a state block grant program would suffer from a fatal disconnect between the power to distribute funds and the responsibility for raising them. One of the problems with the previous state commission designations of multiple wireless CETCs to receive “identical support” in RLEC service areas was that some states appeared to look at the process primarily as a way to bring “free” federal money to their states without considering the ultimate impact upon the USF budget. It is a fact of life that efficiency and accountability are increased and waste is reduced

when the same officials or agencies bear responsibility both for raising funds and distributing them.

A consumer-focused voucher program would be a major disincentive to broadband infrastructure investment because it would destroy the predictability and sufficiency of USF support. Given the likelihood that consumers would have the right to decide periodically (month-by-month or year-by-year) the carrier that would receive their voucher support, RLECs and other ETCs would be deprived of the stable USF revenue streams necessary to develop and fund their investment and business plans. Put simply, unpredictable and fluctuating monthly or annual USF revenue streams are wholly incompatible with 20 to 30-year infrastructure investment projects. The virtually certain result of a voucher program would be a cessation of broadband infrastructure expansion and upgrades in areas where carriers rely significantly upon USF revenue streams.

In addition, the amounts of vouchers would be very difficult and politically controversial to determine. If every eligible end user received a voucher in the same amount per month, such vouchers would constitute a windfall in lower-cost service areas and would be insufficient to sustain networks and services in higher-cost areas. On the other hand, if end users in different service areas received vouchers in differing amounts, or if end users in the same service area received vouchers in differing amounts over time, both the FCC and Congress would be inundated by complaints that various constituents were not being treated equally or fairly.

Finally, in regards to technology-neutral reverse auctions, while proponents claim that they can reduce USF support to “efficient” levels, they have yet to be tested over a sufficient period to determine their actual impacts and unforeseen consequences. The prime concern is that some reverse auction participants will have substantial incentives to underbid in order to obtain USF support for the area. This could lead to a race to the bottom, leaving rural residents with an unreliable and underfunded carrier that provides increasingly inferior and outmoded service. In the alternative, Congress and the FCC may be inundated by requests from winning underbidders for waivers to relieve them from the consequences of their strategy and to significantly increase the amount of their actual USF support over the amount that they had bid (and likely in excess of the amounts that some of the losing reverse auction participants had bid). While no one can predict the future with absolute certainty, history and human nature indicate a high probability that underbidding and gaming will be a substantial feature of reverse USF auctions. They will be particularly harmful where an insubstantial and poorly funded underbidder is able to take the

USF support of the carrier that has long served an area and to drive that carrier away before it becomes apparent that the underbidder is not capable of providing quality and affordable service in the longer term.

Conclusion

WTA thanks the Committee for the opportunity to participate in its White Paper process. It looks forward to continuing discussions with the Committee on telecommunications matters, particularly with regard to the legislative and oversight activities that are needed to enable WTA's RLEC members to invest in the extended and upgraded broadband network infrastructure and to obtain the Internet Protocol interconnection arrangements that are required to permit their rural customers to participate in the rapidly emerging Public Broadband Network.