

**UNIVERSAL SERVICE: TRANSFORMING THE  
HIGH-COST FUND FOR THE BROADBAND ERA**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED ELEVENTH CONGRESS**

**SECOND SESSION**

—————  
**JUNE 24, 2010**  
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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## **UNIVERSAL SERVICE: TRANSFORMING THE HIGH-COST FUND FOR THE BROADBAND ERA**

**THURSDAY, JUNE 24, 2010**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan, presiding.

### **OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. We're going to call the hearing to order.

Senator Rockefeller is unable to be with us, and he has asked me to chair the hearing.

I'm Senator Dorgan, and I'm pleased that all of you are here, and my colleagues, as well.

We thank the witnesses for coming this morning. This is a hearing on the issue of "Universal Service: Transforming the High-Cost Fund to the Broadband Era." This is a very, very important issue, and obviously has been one of my top priorities. And I recall we've been talking about this issue for a long, long time. Senator Ted Stevens, formerly Chair of this Committee, had bills. I had bills. We had some bills together. This is one of those issues that goes on and on and on.

But, broadband is an infrastructure challenge for our country, and I want to just to put it in the perspective, as I see it. Things like, oh, highways, that we decided ought to be reasonably universal, we built out a network of highways in the country. The building out of electricity infrastructure—very important—and the buildout of broadband—in my judgment, just as important.

The other day, at a hearing, I pointed out that, in North Dakota, there's a little town called Sentinel Butte—80 people. And about 30 miles away is Beach, North Dakota—about 1,200 people. Those two communities are connected by a four-lane interstate highway, Interstate 94. Now, if someone were to look at that and said, "Well, how dare you spend the money connecting the 30 miles between a town of 80 people and a town of 1,200 people." Of course, that's not what the interstate was about; it was connecting New York to Seattle. So, you can pull out a segment, and say, "How do you justify that cost?" But, that's not the way you would review it.

Same is true with respect to the electrical grid. Can you imagine our country, in which, in the major cities, we have an advanced electrical grid, and in the country, we'd have rolling brownouts,

just because it was more expensive to build it out, so we didn't build it out. We built it out where all the people were and built part of it out in other areas. But, we didn't do that, not with electricity. The build-out is universal.

The question is, should the same hold true for broadband? The answer clearly is yes.

The Telecommunications Act of 1996 is one that I helped write, on this committee. It defines "universal service" as, "an evolving level of telecommunications service." With "broadband" then defined as an "information service," later, by the FCC, in my judgment the legal foundation for universal service is unnecessarily and probably dangerously undermined. And that's one of the reasons I support the notice of inquiry that the FCC voted out last week. The need for universal service to support the advanced communications networks in this country is why I believe the FCC should move forward with this reclassification. I know that's very controversial, but I want to make the point that I think it is essential.

We have to ensure that rural and high-cost areas of our country have the opportunity to be on par with every other corner of the country, and universal service will help achieve that. Otherwise, we clearly will have a digital divide.

I'll be in my hometown this weekend, which is its 100th anniversary. It's a town of 280 people. That city has very high-cost service per unit of telephone. But we have a different approach on how we assess costs for telephone, and so we have universal telephone service in the smallest towns, just as you do in New York City. The same needs to be true with respect to broadband and with respect to the opportunity for people in small towns.

As you know, high-speed broadband is, in my judgment, not a luxury, but a necessity for participating in this 21st-century economy. Access to comparable service at comparable rates has always been a cornerstone of our communications policies. We included those very words in the 1996 Act. It's always been a cornerstone, and is today, in my judgment.

The question is, what kind of concerted Federal policy can exist, what kind of Federal strategy can exist, to meet the challenge of ensuring that high-speed broadband is available to every corner of this country?

I and 21 other Senators have written to the FCC expressing concern about two different broadband speed goals, with respect to urban and rural America, in the National Broadband Plan. The plan creates a goal of broadband at 4 megabits per second for rural areas, while suggesting that 100 million urban Americans should have access to 100 megabits per second. We need to be, in my judgment, breaking down our digital divides, not perpetuating or creating a new one. So, that's a concern of mine, as well.

But, this is a very important issue. It's gone on for a long while. I think the FCC is finally deciding we've got to bite into this—so should Congress—and figure out how we address it so that we develop a communications system that has universal capability, as we've done with roads and electricity and other issues. If we do not do that, the question of what areas of the country develop, economically, in the future will largely be determined by what kind of ca-

pability exists in those communities for high-speed broadband. I mean, that's just a fact of life.

So, I appreciate the witnesses being here. The Ranking Member is not here, but if members wish, we'll call on very brief opening statements, before we hear the witnesses, of a minute or two.

Senator JOHANNIS, you were here first. Do you wish to make a statement?

Senator JOHANNIS. Mr. Chairman, I thank you for the opportunity, but my time is a little bit limited to be at the hearing today, I'd be happy to proceed to the witnesses.

Senator DORGAN. Thank you very much.

Senator Vitter.

**STATEMENT OF HON. DAVID VITTER,  
U.S. SENATOR FROM LOUISIANA**

Senator VITTER. Thank you, Mr. Chairman. Thank you for holding this hearing. It's very, very important.

Universal service is an important issue everywhere. It's certainly important in Louisiana, which is relatively rural. We have many underserved areas. And obviously the concept and the policy of universal service has to be updated for the Internet Age. Having access to an antiquated voice-only line certainly no longer qualifies as being truly connected.

As we work on these important issues, I think we need to focus on where the need is, focus on underserved rural areas, and connecting those areas to broadband. I think, at the same time, we need to try to ensure that, in doing that, we don't put new regulations in other areas that will stifle growth, investment, and innovation. And certainly I look forward to working on policy that accomplishes all of that.

Thank you, Mr. Chairman.

Senator DORGAN. Thank you very much.

Senator Begich.

**STATEMENT OF HON. MARK BEGICH,  
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Mr. Chairman, I'll just be very brief. I'm looking forward to the testimony.

And, as you know, in Alaska—a very remote area, and universal service is critical, in the sense of the fund and how it's utilized, to making sure there's access to some of the very remote of the remote places of this country.

And so, I'm anxious to hear the testimony and then engage in some questions and answers, Senator.

Thank you.

Senator DORGAN. We will hear first today from The Honorable Michael J. Copps, who's a Commissioner of the Federal Communications Commission. And then we will turn to The Honorable Mignon Clyburn, another Commissioner of the FCC; and finally, The Honorable Meredith Attwell Baker, Commissioner of the FCC.

Let's begin with you, Commissioner Copps. Welcome.

**STATEMENT OF HON. MICHAEL J. COPPS, Ph.D.,  
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. COPPS. Thank you.

Senator DORGAN. The entire statements of all three will be part of the permanent record. And we would ask the three to summarize.

Mr. COPPS. Thank you, Mr. Chairman, members of the Committee.

I appreciate your visiting with us about the important challenge of shaping universal service for the Digital Age. Getting this right is really "make-or-break" for the success of the National Broadband Plan.

High-value broadband intersects with just about every great challenge confronting our Nation today. There are no solutions to job creation, international competitiveness, education, energy, healthcare, the environment, overcoming disabilities, opening doors of equal opportunity, even our civic dialogue, that do not have a broadband component as part of its solution.

Chairman Genachowski's broadband team has produced a plan to bring robust broadband to every corner of America. While no plan is perfect, and I suspect each Commissioner would have had his or her own variations on what was proposed, now it comes down to a whole lot of followthrough. And I'm sure, when it comes to the Universal Service Fund, we are all in agreement that reform is in order.

Of the four programs under the Universal Service Fund, the high-cost program provides direct support to ensure that consumers across the country have access to what the law requires: services and rates that are reasonable and comparable in rural areas to those in urban areas. This has been, in most ways, a success, with telephone penetration at about 98.2 percent.

But now we're in the Digital Age, and the advanced telecommunications are high-speed connections to the Internet. It is long past time to bring broadband fully into universal service. This requires more than just tinkering with the current program; it's going to take some fundamental changes.

We should keep in mind the good things that have come from the existing high-cost program:

Infrastructure for voice service has been built out in rural areas, where bigger companies often didn't want to go, built by smaller telephone companies that would have had no ability to fund such deployment without high-cost USF support.

With network upgrades for voice services, some providers have also been able to provide broadband services. The high-cost fund has led to more wireline and wireless voice services, more competition, less industry consolidation, more jobs, and more broadband.

Recognizing its successes, we all know the program is far from perfect. It is an incredibly complicated system, providing support in different ways for rural and nonrural carriers, rate-of-return and price-cap carriers, as well as incumbent and competitive carriers.

The various categories and subcategories of high-cost support can be mindboggling in their intricacies, applications, and exemptions. In addition, any program that distributes money faces attempts by some to engage in arbitrage schemes and, sometimes, outright

fraud and abuse. Keen oversight and effective auditing of such a program are necessary.

Plus, with its technology-neutral and pro-competitive aims, the program has been criticized for funding multiple providers in one area.

There are also serious questions concerning basic equity when it comes to the distribution of USF support. At the end of the day, of course, it is consumer equity that must drive the train.

The National Broadband Plan starts us down a right path. It includes recommendations to phaseout the existing high-cost program for voice services while ramping up a Connect America Fund for broadband services and a Mobility Fund for wireless services, over a transition period of 10 years. The goal of this reform is to make sure that broadband and 3G and, hopefully, more wireless services are available throughout the country while we continue to ensure the almost ubiquitous voice service made possible through the legacy High-Cost Program. A big goal, but the devil will be in the details of what we do next.

What the Commission really needs to do now is bring it home. We need to launch a multiplicity of proceedings and expeditiously make the difficult decisions to get this done. This process has started, but it will be no easy task to get us where we need to go, and it will require shared sacrifice among all participants as we build our broadband future.

I know there are naysayers out there who think the FCC should stay out of the business of broadband, that everything is working fine, and there's no need or place for government. As my written testimony explains, that's not how we built this country's infrastructure, going back to our earliest days. And in giving us our universal-service mandate, Congress recognized that, without sound public policy and appropriate funding mechanisms, private business would not, could not, provide all Americans with state-of-the-art telecommunications infrastructure.

I believe that Congress already gave the FCC the statutory mandate to advance the cause of bringing access to advanced telecommunications to each and every American.

Finally, Internet access does more than just create technology and economic opportunity. As we begin to migrate so much of our national conversation—our democratic dialogue—to the Internet, we must understand the profound civic implications of what we do.

America's future town square will be paved with broadband bricks. Sustaining "small-d" democracy by effectively informing and engaging all of our citizens in the Digital Age should be at the heart of our broadband vision. It may be less tangible in some ways, but it is no less real, important, or urgent because of that. As members of this committee know, I will be more than happy to elaborate on this.

It's a pleasure for me to be here with my two colleagues this morning, Mignon Clyburn, who is the Federal Chair of the Joint Board on Universal Service, and Meredith Baker, like me, a Member of the Joint Board, both of whom are very knowledgeable about, and committed to, a universal service system that really works, as are, I might add, our State commission members.

With that, Mr. Chairman, I look forward to the Committee's comments and guidance as, together, we work to bring high-value broadband to the four corners of America.

I thank you for your attention, and thank you for holding this hearing this morning.

[The prepared statement of Mr. Copps follows:]

PREPARED STATEMENT OF HON. MICHAEL J. COPPS, PH.D., COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, I am pleased to have this opportunity to visit with you today to discuss one of the most important challenges confronting this committee, our Commission and the country. This is the challenge of bringing broadband to all our citizens. And I thank you for focusing on one of the central action items coming out of Chairman Genachowski's National Broadband Plan to get this job done. That's reforming, re-vising and reinventing the Universal Service Fund—particularly the high cost program—for broadband.

Since my confirmation as a newly-minted Commissioner in 2001, I have been calling for a national broadband strategy to ensure this Nation's going-forward global competitiveness. It is my belief that high-value broadband is the Great Enabler of our time. This technology infrastructure intersects with just about every great challenge confronting our Nation today—jobs, business growth, education, energy, climate change and the environment, international competitiveness, health care, overcoming disabilities, opening doors of equal opportunity, news and information, our democratic dialogue. There is no solution for any of these challenges that does not have some broadband component to it.

This Nation has a long history of successful infrastructure-building upon which to draw. Earlier generations met and mastered their own great infrastructure imperatives—things that *had to be built* if the country was to continue its forward march. So those generations built roads and bridges, turnpikes and canals, regional and then transcontinental railroads, an interstate highway system, nationwide electricity grids and nearly universal plain old telephone service. They did this, more often than not, by working together—private enterprise in the lead, to be sure, but encouraged by visionary public policy. That was this country's framework—our "how-to" manual—for building up and moving forward. It's how we built the place! But somehow, when it came to the roads and bridges and highways of the Twenty-first century—broadband—we forgot those lessons and fell victim to a strange and totally unhistorical assumption that broadband would somehow get built without any special effort, absent any enlightened public policy encouragement, and that business would build it out even in places where business had no incentive to go. That has cost us a lot. We have lost precious time, jobs, opportunities and competitiveness. And we have fallen behind other countries.

So, it was music to my ears when Congress called for the development of a National Broadband Plan. Just 3 months ago, Chairman Genachowski, with the hard work of an impressive team of FCC staff, presented a National Broadband Plan with clear objectives and a considered strategy aimed at ensuring that everyone in this country has equal opportunity in this new Digital Age, no matter who they are, where they live, or the particular circumstances of their individual lives.

The goal of the broadband plan, in my opinion, should be to ensure that a robust broadband ecosystem serves the American people. And I believe that the Chairman's Plan can, with a whole lot of follow-through, achieve this—with recommendations to reform the Universal Service Fund, identify additional licensed and unlicensed spectrum for wireless service, encourage ICT research and development, to name but a few. Each FCC Commissioner would have, I am sure, some variations on the Chairman's Plan. But, I suspect that when it comes to the Universal Service Fund, we are all in agreement that reform is in order.

The existing Universal Service Fund is comprised of four programs, created by the FCC pursuant to section 254 of the 1996 Act. The high-cost program—our focus today—provides direct support to ensure that consumers across the country have access to and pay rates for *telecommunications services* that are reasonably comparable to those in urban areas. This has been largely a success, with telephone penetration at about 98.2 percent—although it should be noted that there are areas like Indian Country that remain embarrassingly behind in even the most basic connectivity. But, unlike the E-rate and Rural Health Care programs, which provide support directly for broadband access pursuant to statute, the high cost program,

as well as the low income program, is not designed to support broadband directly. I strongly believe that if we are going to ensure that no community, no citizen, is left behind by lack of access to basic or advanced telecommunications in this new digital age, we must bring broadband fully into the Universal Service system. No doubt this is a tall order. The Fund includes many moving parts, and we must consider them all when bringing our Universal Service system into the broadband age. This will require something more than merely an adaptation of current USF programs—we must consider the broadband ecosystem and make fundamental changes, and this applies particularly to the high cost program.

As I mentioned, good things have come from the existing high cost program. We have almost ubiquitous telephone service. Infrastructure for voice service has been built out in rural areas by small incumbent telephone companies who would have had no ability to fund such deployment without high cost Universal Service support. With network upgrades for voice services, some providers have also been able to reap the incidental benefit of providing broadband services. Through its support, the high cost fund has led to more wireline and wireless voice services, more competition, more jobs and more broadband. Thanks to the efforts of many rural companies, we have service in places where we would have had no service. And we have, I suspect, less industry consolidation than we would otherwise have in an already overly-consolidated sector.

While we recognize these successes, the program has been far from perfect. The current high cost program is an incredibly complicated system providing support in different ways for rural carriers and non-rural carriers, rate-of-return and price cap carriers, as well as incumbent and competitive carriers. The various categories and subcategories of high-cost support can be mind-boggling in their intricacies, applications and exemptions. In addition, any program that distributes money faces attempts by some to engage in arbitrage schemes and, sometimes, in waste, fraud and abuse. The high cost program has been no exception. Keen oversight and effective auditing of such a program are necessary to make certain that funds are distributed efficiently and used as intended. There are also serious questions concerning basic equity when it comes to the distribution of USF support. At the end of the day, of course, it is consumer equity that must take precedence if we are to ensure consumers have access to reasonably comparable services at reasonably comparable rates—the dictate of the law. Additionally, with its technology-neutral and pro-competitive aims, the program has been criticized for funding multiple providers in an area, thereby increasing the overall Universal Service Fund, which some argue makes the Fund unsustainable. The Commission has been grappling with these concerns for several years, but now I think we are all prepared to roll up our sleeves and address them as we consider the critical matter of transitioning to a new program that addresses both voice and broadband needs across the country.

Chairman Genachowski's National Broadband Plan starts us on that path. The Plan includes laudable recommendations for phasing out the existing high cost program for voice services while ramping up a Connect America Fund for broadband service and a Mobility Fund for wireless service over a 10-year transition period. The goal of this reform is to make sure that broadband and 3G wireless services are available throughout the country while we continue to ensure the almost ubiquitous voice service made possible through the legacy high cost program. And, because we are dealing with a broadband ecosystem where many parts come together to form a complex, synergistic and interdependent whole, the proposed changes to the Universal Service system in the Plan also include recommendations to revise the contribution methodology for the new program, to update and fix the intercarrier compensation mechanism, and to consider the extent to which broadband deployment (*i.e.*, Broadband speeds) should be supported by the Connect America Fund. While the Plan is thorough in its recommendations for comprehensive Universal Service reform and its transition to broadband, the devil will be in the details as the Commission works on implementation.

We have a moment in time now—and these moments don't come around often enough—to do something both bold and badly-needed. What the Commission really needs to do now is “bring it home.” We need to launch a multiplicity of proceedings and expeditiously make the hard decisions that will get this done. The future of this country's communications network depends on it. And it will be no easy task to get to where we need to go—for anyone. There will have to be shared sacrifice among *all* participants as we pursue the goal of eliminating inefficiencies in the legacy high cost program and phasing it out. At the same time, we must develop broadband and mobility funds that focus carefully on providing support at efficient levels in geographic areas where there is no private sector business case for broadband and high-quality voice service, all the while making sure to be company- and technology-agnostic. This comprehensive reform must be at the top of our agenda as we work

to make sure that every American has access to 21st century communications services.

I know there are nay-sayers out there who think the FCC should stay out of the business of broadband—that all is working fine and there is no need or place for government. But in giving us our original Universal Service mandate, Congress recognized that, without sound public policy and appropriate funding mechanisms, private business would not—could not—provide all Americans with state-of-the-art telecommunications infrastructure. That same fact holds true for broadband—the advanced telecommunications infrastructure of today. We already know that one-third of Americans do not have broadband—because it is not available, because they can't afford it, or because they otherwise have not adopted it. This country's global competitiveness will depend on the extent to which all Americans have the opportunities to be productive members of our modern world through access to, and use of, the enabling power of broadband. You know better than I the many serious challenges our country confronts. Manufacturing jobs have been lost, other countries are putting more into basic research and development than we are, and the list goes on. Can we really afford not to be Number One in the all-important communications revolution of the Digital Age? Or, are we going to sacrifice that, too?

And, I would like to make one thing very clear, given some of the criticism I have heard. Nothing—absolutely nothing—that the FCC is considering, from the National Broadband Plan or otherwise, has anything to do with regulating the information or applications that ride over the Internet. If anything, any action proposed by this Commission is intended to make sure that end-users—you and I—have freedom of access to the Internet, so that consumers rather than a few entrenched interests have the major say in deciding how we are going to access the wonders of the Digital Age.

Internet access does more than just create technology and economic opportunity. As we begin to migrate so much of our national conversation to the Internet, we must understand the profound civic implications of what we do. America's future town square will be paved with broadband bricks. Sustaining small “d” democracy by effectively informing all of our citizens in the Digital Age goes to the core of what we are trying to achieve in the National Broadband Plan. Our democracy must always be vigilant to ensure we have the best information infrastructure possible. Increasingly this era's information infrastructure will be broadband. So the Internet must be accessible to all the diverse voices of our diverse land. These somewhat more intangible implications of broadband are, in reality, the most important of all.

I believe that Congress already gave the FCC the statutory mandate to advance the cause of bringing access to advanced telecommunications to each and every citizen of our country. I am hopeful that the Commission will use all tools necessary to move forward with implementing the National Broadband Plan. Robust discussion and difficult decisionmaking await us. Of course, time is not the friend of a nation that has so much broadband work that has gone unattended, but I am encouraged by the Chairman's agenda and determination to move quickly to put this Plan to work for the American people.

One final note, I understand that this panel represents not only three of the Commissioners of the FCC, but also the three Federal Commissioners on the Joint Board on Universal Service. At this time, the Joint Board has before it only one referral, and that is to address questions on eligibility, verification and outreach for the existing low-income program, and, should we move forward, consider how those questions would be addressed if broadband is supported by the program. The process for this review has just begun, and I look forward to working with my Federal and state colleagues to come up with a sound recommendation for the Commission. I know Commissioner Clyburn, as Federal Chair of the Joint Board, continues to urge our colleagues to act quickly and deliberately to address this matter. And I am pleased that Commissioner Baker brings her vast experience and expertise to the table, too. I know that all of us on the Joint Board are looking forward to more referrals from the Commission so that Federal and state Commissioners and staff may work together to transform our Universal Service Fund programs for a broadband world. This kind of Federal-state cooperation was, I believe, very much the intent of the Congress when it wrote the Telecommunications Act of 1996.

I look forward to our conversation today, and to your comments and guidance, to identify ways to move forward in bringing broadband to the four corners of this great nation and everywhere in between. We must have a Universal Service program that is robust, effective, and forward-looking, true to its essential mission and true to the needs of our country.

Thank you for your attention and for holding this hearing today.

Senator DORGAN. Commissioner Copps, thank you very much.

Next, we'll hear from Commissioner Clyburn.

**STATEMENT OF HON. MIGNON L. CLYBURN, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION**

Ms. CLYBURN. Chairman Dorgan, Senator Ensign, members of the Committee, thank you for the opportunity to testify on the National Broadband Plan's recommendation to overhaul the Universal Service Fund. I cannot think of a more timely and challenging issue. It is essential that we work together to ensure that all Americans have meaningful access to voice and broadband services and that we make the most out of every dollar contributed.

If there's one thing I have heard repeatedly since Commissioner Baker and I first appeared before you last July, it is that, as a whole, the Universal Service Fund is in dire need of repair. It has not served all the people it should. It is antiquated. And it is subject to waste, fraud, and abuse.

As a Commissioner who has lived and worked literally all of her life in a rural state, I am intimately familiar with the challenges faced by those communities. The current fund has not worked well for all rural areas. Without modern communications systems, the economic viability of rural areas is in doubt.

To fully participate in our 21st-century economy, all consumers, no matter where they live in our great Nation, must have access to broadband technology. Yet, 14 to 24 million Americans do not have access to broadband at home. Without broadband at home, families are placed at a significant disadvantage. Children cannot use high-speed Internet to complete their homework or apply for college online. For those families, it matters little whether broadband is available to 95 percent of all Americans, what matters to them is that broadband is not available at their home.

By overhauling the Universal Service Fund, the National Broadband Plan proposes to connect 99 percent of American homes within 10 years without increasing the overall size of the fund. The plan proposes to phase in the new rules so that service providers and investors will have time to adjust and providers that currently rely on funding can make the migration successfully.

In April, the Commission began a proceeding to consider the plan's recommendations, and this proceeding is just one of many to come this year to address reform. In my view, everything is on the table. Universal service reform is often discussed but rarely tackled. It will take enormous personal and political will. But, we simply cannot afford to wait any longer.

Reform will require difficult choices. Outside of any significant increases in the fund, we will have to find ways to make more out of what we already have.

We are also going to need input from all stakeholders. I am eager to work with the Committee, both individually and as a whole, in order to achieve a more robust and efficient universal service regime.

Thank you very much for inviting me and my colleagues to appear before you this morning. I look forward to answering any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

PREPARED STATEMENT OF HON. MIGNON L. CLYBURN, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, thank you for the opportunity to testify today on the National Broadband Plan's recommendations to overhaul the Universal Service Fund to support broadband. I cannot think of a more timely and challenging issue, and I am pleased that the Committee has turned its attention in this direction. It is essential that we both ensure that all Americans have meaningful access to broadband and employ a mechanism that makes the most out of every dollar contributed to the Fund.

In the Recovery Act, Congress required that the Commission develop a National Broadband Plan that ensures "all people in the United States have access to broadband capability." Congress also sought a detailed strategy for achieving broadband affordability and maximum utilization of broadband infrastructure; an evaluation of the status of broadband deployment; and the advancement of public purposes such as community development, health care delivery, energy independence, education, and job creation.

The Commission staff worked tirelessly over an 8-month period to put together a comprehensive plan that addressed Congress's aims. Although the Commissioners did not vote on whether to approve the Plan itself, at our March meeting we unanimously agreed on six broadband principles to guide our work. Three of those principles are most applicable for this hearing today, and I believe these are central in our quest to reform universal service.

First, every American should have a meaningful opportunity to benefit from the broadband communications era—regardless of geography, race, economic status, disability, residence on tribal land, or degree of digital literacy.

Second, the nearly \$9 billion Universal Service Fund and the intercarrier compensation system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.

Third, ubiquitous and affordable broadband can unlock vast new opportunities for Americans, in communities large and small, with respect to consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

If there is one thing that I have heard repeatedly since Commissioner Baker and I first appeared before you last July, it is that, as a whole, the Universal Service Fund is broken and in dire need of repair. It has not served all of the people it was designed to serve, it has become antiquated, and it has been subject to waste, fraud, and abuse.

As a Commissioner who has lived and worked nearly her entire life in a rural state, I am intimately familiar with the challenges faced by those communities. The current universal service fund has worked for some rural areas, but not all. Mr. Chairman, as you know all too well, we need look no further than West Virginia as an area that is in need of improvement. West Virginia ranks 48th for the number of households that subscribe to broadband, with only 47 percent subscribing as of December 2008, yet it is 20th for receipt of net USF funds and 31st in high-cost support.

Without modern communications systems, the economic viability of rural areas is in doubt. To fully participate in our 21st Century economy, all consumers—no matter where they live in our great nation—must have access to broadband technology. Yet, 14–24 million Americans do not even have access to broadband at home.

Without broadband at home, families are placed at a significant disadvantage. Children cannot use high-speed Internet to complete their homework, enhance their educational opportunities through distance learning, or apply for college online. Parents cannot apply for jobs that require online applications, and they cannot access many other services and critical information that is only available online. For those families, it matters little whether broadband is available to 95 percent of Americans. What matters to them is that broadband is not available at *their* home.

By overhauling the Universal Service Fund to explicitly support broadband, the National Broadband Plan proposes to connect 99 percent of American homes within 10 years and without increasing the overall size of the fund. The Plan proposes to phase in the new rules so that service providers and investors will have time to adjust to the new regime and providers that currently rely on universal service funding can make the migration successfully.

We are at the outset of that process. In April, the Commission released a Notice of Inquiry and Notice of Proposed Rulemaking to begin its consideration of the

Plan's recommendations. In these notices, the Commission is considering a wide range of issues, including, but not limited to, the broader use of economic models, employing a competitive procurement auction, and evaluating various proposals to shift legacy high-cost support to a broadband fund.

This proceeding is just one of many to come. The Chairman has proposed an ambitious schedule for us to consider a number of the USF reform proposals in the National Broadband Plan. For example, we will be considering the creation of a Connect America Fund, a Mobility Fund, contributions, and intercarrier compensation reform. We will also be addressing the extension of Lifeline and Linkup to broadband. Our work is certainly cut out for us.

In my view, everything should be on the table. Universal service reform is often discussed but rarely tackled. It will take enormous personal and political will. But we simply cannot afford to wait any longer.

There is no doubt that this process will require us to make difficult choices. Outside of any significant increases in the Fund, we are going to have to find ways to make more out of what we already have. Inevitably, some companies that receive a certain level of support may no longer retain that level of support. Others who have not had support, may now receive it. Our aim should not be to please any one company; but rather, to ensure that the American people—*all* of the American people—have meaningful access to essential service.

In order to arrive at the best possible result, we are going to need input from all stakeholders—providers, legislators, State regulators, RUS, and consumers. I am eager to work with the Committee both individually and as a whole in order to achieve a more robust and efficient universal service regime. We must proceed in a thoughtful way to ensure that we are preserving the current availability of voice and broadband services to consumers, while expanding the availability of those services to unserved areas.

Thank you very much for inviting me and my colleagues to appear before you today. I look forward to answering any questions you may have.

Senator DORGAN. Commissioner Clyburn, thank you very much.  
Commissioner Baker, You may proceed.

**STATEMENT OF HON. MEREDITH A. BAKER, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION**

Ms. BAKER. Thank you, Senator Dorgan. Thank you so much for stepping in to chair this important hearing on this important topic.

When asked to shorten our remarks, I thought, "Well, maybe I can just say what they said," because we agree on this topic. It's ripe for reform. And it's important to the people of America. But it's too important for me just to do that, so I'm going to proceed with a few remarks.

The National Broadband Plan really has created a base of knowledge and recommendations on which the Commission can build on to make critical reforms to achieve Congress' goal of ensuring that all people of the United States have access to broadband capability.

Significant parts of the plan deserve careful consideration, and this is particularly true on the analysis and the proposed reforms of the High-Cost Fund. When the plan was presented, the Commission, on a unanimous and bipartisan basis, laid out the goals for the Commission's work ahead, and comprehensive universal service reform is central to that consensus.

Historically, universal service has been a success story. With a combination of private investment and targeted support, nearly all Americans have telephone service today. And we are well on our way for that success for broadband.

Broadband is available to 95 percent of Americans, the vast majority of which have choice among competing providers. But there is much more to be done to reach the remaining 7 million unserved households that the plan has identified. We must strive to get more

broadband, with faster speeds, deployed to more Americans and more places.

I support the plan's emphasis on comprehensive USF reform targeted to broadband investment. A reformed and modernized High-Cost Fund is the key. At the same time, intercarrier compensation and middle-mile connections must be part of the regulatory reform if broadband is going to be a solid platform for economic development and job creation. It is widely recognized that our current system of implicit and explicit subsidies is inefficient, outdated, and poorly suited to a world increasingly dependent on broadband connections to the Internet.

I support the four guiding principles of comprehensive reform that were laid out in the plan: supporting broadband deployment directly, maximizing broadband availability, avoiding flash cuts to existing support, and coordinating reform between Federal and State levels.

Of course, the details will be challenging. It is critical that we transition in a careful way to an explicit support mechanism that will ensure accountability, efficiency, and adequate funding in areas where market forces are not sufficient to drive broadband services to Americans.

Many carriers are justifiably concerned about how this could affect network investment, services to consumers, and even financial viability. I have heard the deep concerns from rural carriers, in particular, including Delbert Wilson, of the Hill Country Telephone Cooperative in Texas, who will be on your next panel. The proposal in the plan does not answer all the questions. Many of the fine points will have to be fleshed out in the Commission's proceedings. We must move forward on universal service and moving it into the broadband era. But we do not do that on a blank slate. We must transition in a way that avoids shock to consumers or providers that could endanger broadband or traditional voice services on which users depend.

As we make decisions about how the new Universal Service Fund will work, we will not lose sight of the special circumstances facing rural America. We also recognize that certain areas of the Nation, such as Alaska and tribal areas, face unique challenges.

But we must also be mindful that the Universal Service Fund is not without limits. The fund has grown from \$2.3 billion in 1998 to nearly \$9 billion this year. The universal service contribution obligation has consequences for consumers, as well. The universal service contribution factor has been as high as 15.3 percent. A 15-percent contribution factor is effectively an extra \$7 tax on a \$50 bill, a bill that many consumers in these hard times cannot pay. Our efforts to modernize the fund should not lead to further growth of it. It is our obligation to ensure that money is spent wisely and achieve a goal set out by Congress but without distorting the market or breaking the bank.

As I have said many times, comprehensive universal service reform is long overdue. Untangling these issues has been perplexing to the Commission for decades. I am optimistic that, following the National Broadband Plan, we have an opportunity for real reform to finally address these thorny issues. Hard choices will have to be made, and not all vested interests will be satisfied, but I believe

we must repurpose the nearly \$9 billion Universal Service Fund for the broadband era. And that must include reform of the High-Cost Fund.

Chairman Genachowski has announced that we will launch several related notices of proposed rulemaking in the fourth quarter of this year. And I hope we'll be able to achieve this ambitious schedule for reform laid out in the plan. And I'm eager to work with my colleagues to achieve our consensus goals on universal service reform.

Thanks again for the opportunity to be here today, and we look forward to answering your questions.

[The prepared statement of Ms. Baker follows:]

PREPARED STATEMENT OF HON. MEREDITH A. BAKER, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, it is a privilege to appear before you today. I look forward to working with you as you consider the many important issues involved with reform of the Universal Service Fund (USF) broadly and the High-Cost component of the Fund more specifically. I would like to share a few remarks with you here this morning.

The National Broadband Plan was a monumental effort that has created a base of knowledge and recommendations on which the Commission can build critical reforms to achieve Congress' goal of "ensur[ing] that all people of the United States have access to broadband capability." Throughout the Plan, there are places where I would have made different recommendations and suggestions, but I am grateful to the Commission's Broadband Team for its hard work and find that significant parts of the Plan deserve careful consideration. In no part of the Plan is that more true than in the analysis of and proposed reforms for the High-Cost Fund. When the Plan was presented, the Commission—on a unanimous, bipartisan basis—laid out goals for the Commission's work ahead. Comprehensive universal service reform is central to that consensus.

Historically, universal service has been a success story. With a combination of private investment and targeted support, nearly all Americans have telephone service today. We are well on our way to that success for broadband. Under a light-touch regulatory approach, we have gone from a narrowband dial-up world to a multi-platform broadband world by crafting a regulatory framework that promotes facilities-based competition. Private industry from every communication platform has responded, making broadband available to 95 percent of Americans, the vast majority of which have a choice among competing providers.

But there is absolutely more to be done to reach the remaining seven million unserved households that the Plan has identified. We must strive to get more broadband—with faster speeds—deployed to more Americans in more places. Broadly speaking, I support the Plan's emphasis on comprehensive USF reform, targeted to broadband investment. A reformed and modernized High-Cost Fund is the keystone. At the same time, intercarrier compensation and middle-mile connections must be part of regulatory reform if broadband is going to be a solid platform for economic development and job creation.

It is widely recognized that our current system of explicit and implicit subsidies is inefficient, outdated and poorly suited to a world increasingly dependent on broadband connections to the Internet. I support the guiding principles of comprehensive reform laid out in the plan:

- Support broadband deployment directly.
- Maximize broadband availability.
- Avoid flash cuts to existing support.
- Coordinate reform between Federal and state levels.

Of course, the details here will be challenging. It is critical that we transition in a careful way to an explicit support mechanism that will ensure accountability, efficiency, and adequate funding in areas where market forces are not sufficient to drive broadband services to America's consumers.

Many carriers are justifiably concerned about how this could affect their network investments, services to their customers, and even their financial viability. I have heard the deep concerns from rural carriers in particular. The proposal in the Plan

does not answer all questions. Many of the fine points will have to be fleshed out in full Commission proceedings. We must move universal service forward into the broadband era—but we do not do that on a blank slate. We must transition in a way that avoids shock to consumers or providers that could endanger connections to the network—broadband or traditional voice services on which users depend. As we make decisions about how the new Universal Service Fund will work, we will not lose sight of the special circumstances facing rural America. We also recognize that certain areas of the nation, such as Alaska and tribal areas, face unique challenges.

But we must also be mindful that the Universal Service Fund is not without limits. The Fund has grown from \$2.3 billion in 1998 to nearly \$9 billion this year. Consumers pay for this. The universal service contribution factor has been as high as 15.3 percent. This is real money from real people. Our efforts to modernize should not lead to further growth of the overall size of the Fund. It is our obligation to ensure that money is spent wisely to achieve the goals set out by Congress—but without distorting the market or breaking the bank.

As I have said many times, comprehensive universal service reform is long overdue. Untangling these issues has been perplexing the Commission for decades. I am optimistic that following the National Broadband Plan, we now have an open window of opportunity for real reform to finally address these thorny issues. Hard choices will have to be made and not all vested interests can be satisfied. But I believe we must repurpose the nearly \$9 billion Universal Service Fund for the broadband era—and that must include reform of the High-Cost Fund.

Chairman Genachowski has announced that we will launch several related notices of proposed rulemaking in the fourth quarter of this year. I hope we will be able to achieve the ambitious schedule for reform laid out in the Plan and I am eager to work with my colleagues to achieve our consensus goals for USF reform.

Thank you again for the opportunity to be here today. I would be happy to answer any questions you may have.

Senator DORGAN. Commissioner Baker, thank you very much.

We've been joined by the Ranking Member, Senator Ensign. I want to call on Senator Ensign for a statement that he was not able to make at the front end of this. And then we'll begin a series of questions.

**STATEMENT OF HON. JOHN ENSIGN,  
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. Thank you, Mr. Chairman.

Universal service reform is an incredibly complex issue, yet it is a very important one for policymakers to understand. I applaud the Chairman for starting a dialogue here in the Committee over how to best fix an out-of-date and sometimes broken program.

This conversation is even more important in light of the FCC's National Broadband Plan, which proposed a very ambitious overhaul of the Universal Service Fund.

The FCC's plan advances some interesting ideas that should be explored, like limiting subsidies to one provider in a geographic area and moving the USF toward a more technology-neutral system. But, such options start with the assumption that simply turning the USF into a broadband plan is the best way to go. As the Committee considers universal service reform, I suggest we also consider alternative ways to support broadband deployment in high-cost and rural areas.

Before we start directly subsidizing broadband build-out with taxpayer dollars, it may make more sense to consider options like broadband infrastructure tax incentives and reducing other government barriers to deployment. Indeed, both Chairman Rockefeller and Ranking Member Hutchison have offered legislation that

would encourage increased broadband investment through tax incentives.

But, we cannot have a discussion about how best to get broadband to high-cost areas, without considering the bigger issue of Title II reclassification. We have heard, time and again, from broadband providers and industry analysts that the FCC's plan to regulate the Internet as a common carrier will jeopardize investment. If the FCC reclassifies, and if broadband investment really does shrink, what parts of the country do you think will suffer the most from this lost investment? We all know it is not going to be Los Angeles or New York. It is going to be places where it is already hard to deploy broadband networks, places like Pahrump, Nevada, or rural West Virginia, or rural North Dakota. I find it ironic that the FCC chairman is pursuing reclassification that will reduce broadband investment because he says he wants to update the USF so that there will be more broadband investment. Those two goals don't seem to line up very well.

Also, there are a lot of smart people who believe that the FCC can achieve the USF reform without reversing a decade of successful light-touch Internet policy.

Simply put, dramatically increasing regulation on Internet providers isn't the best way to get them to build broadband networks in high-cost, rural, or unserved areas.

So, thank you, Mr. Chairman. I look forward to the round of questions.

Senator DORGAN. Senator Ensign, thank you very much.

Commissioner Copps, I come from a state in which farmers waited for a long while to get electricity, and then it was pretty clear it was never going to come to them unless there was a Federal initiative called the REA, and we lit up America's farms and unleashed an unbelievable amount of productivity. And I suppose we still have a few people out there someplace muttering about how the Federal Government interfered with bringing electricity to farms. But the utilities weren't going to do it, and so the REA program did.

What if, in this case, with respect to the build-out of infrastructure of the Internet, we say, "Whatever happens, happens. Let the marketplace decide who gets what, and when." What will the result of that be?

Mr. COPPS. Well, I think the results are several. Number one, you're never going to get the infrastructure built. And, number two, I think it's a total denial of how this country of ours was built.

You can go back to our very earliest days and see that the private sector has always led the way in building infrastructure, but it has always been guided by visionary public policy. Whether it was building the roads and harbors and rivers and canals of the post-Colonial age, or the regional and transcontinental railroads that came after that, or the highway system, or rural electricity, or plain old telephone service, that's how we built the place. And it strikes me as an aberration that, over the last 8 or 10 years, we've suddenly decided, well, this new infrastructure challenge, the essential infrastructure challenge of the 21st century—getting broadband to all of our citizens—somehow fits in different category,

and we don't have to treat that in the all-American way that we built the country.

So, I think it's just not going to happen by itself. There is no—and this is not to blame business. There's no business case for business to go into a lot of these areas to build this infrastructure, which people need to be fully productive citizens in the 21st century, to get a job, to educate themselves, to care for their health, and everything else.

Senator DORGAN. I think that's a very important point, the business case. Investment flows out where the investment can produce a return. And I, just this morning, heard an ad. It was a company. "We cover 95 percent of the people in the country." Yes, that's true, probably. But, if you put up a map and figure out the geography of where they don't cover, significant parts, perhaps of South Dakota or North Dakota, where very few people live, the business case for getting out to covering that might exist sometime much, much later, but it might never exist. And that's the point. So, that's why I think there needs to be some national policy here to stimulate this, representing what we put in the 1996 Act—comparable service at affordable price for advanced services.

We didn't know much about that in 1996. I was sitting around this table with a bunch of folks. But, we did know enough to talk about the need for comparable service at affordable price for advanced telecommunications services. Which, it seems to me, in retrospect, is still clear enough for us to have some guidance from it.

Commissioner Baker and Clyburn, tell me about this 4 megabits versus 100 megabits. We're going to jack up the speed in rural America to 4 and have 100 million people have opportunities for 100. So, tell me about whether, if I were living in a rural area this morning, in South Dakota or North Dakota, whether I'd think that was a fair approach.

Ms. CLYBURN. Well, I, like you, am from a predominantly rural State and am excited about some of the prospects and recommendations put forth in the National Broadband Plan, which includes a recommendation, under the current economic framework, under the Universal Service Fund, to ensure that every American citizen has the opportunity to access and take advantage of 4 megabits per speed of broadband service. And the reason why that figure is so significant is that is where the majority of Americans are subscribing to their current uses and their current services. So, that's why that figure is so significant and is ripe for conversation today. It is a proposal, a speed, a level that, under the current economic framework, as was affirmed under—for \$8-\$9 billion, is, again, attainable under the current framework.

Senator DORGAN. What is the current definition of "broadband" in the Commission?

Ms. CLYBURN. High-speed—

Senator DORGAN. High-speed.

Ms. CLYBURN.—Internet access.

Senator DORGAN. But—no, but is it—

Ms. CLYBURN. In terms of the speed?

Senator DORGAN. What do we consider high-speed broadband? Is it 760 or—

Ms. CLYBURN. Or about—

Senator DORGAN.—seven-hundred and——

Ms. CLYBURN. Sixty.

Senator DORGAN.—sixty kilobits? Is that——

Ms. CLYBURN. That's a baseline.

Senator DORGAN. OK.

Ms. BAKER. I think——

Senator DORGAN. Commissioner Baker.

Ms. BAKER. Senator, I think you raise some really important points. First of all, the 4 megabits down, 1 up, is a recommendation by the plan, and we have not adopted that yet, as a Commission. So, we're happy to work with you on what you think the right number should be. Currently, the average rate of speed in America is 4. And that's why the plan addressed that.

But, to your point as to, "What are currently calling 'broadband'?" we haven't revisited the definition. We were calling it 200 kilobits, forever. And while that might have made sense 14 years ago, it doesn't make sense now. So, I think whatever speed we land on, we need to make sure that we revisit it.

Mr. COPPS. Can I just add one comment?

Senator DORGAN. Yes.

Mr. COPPS. Forty years ago this month, I went to work two floors up here for your friend and mine, Senator Fritz Hollings from South Carolina, and he was always advising us, "On the way through life, make this your goal, keep your eye on the doughnut and not the hole." You probably heard him say that many times.

Senator DORGAN. A hundred times.

Mr. COPPS. The doughnut here is getting the basic broadband, reasonably comparable services at reasonably comparable prices, out to everyone. And, indeed, under the Telecommunications Act, our focus is supposed to be on getting broadband to those—to folks at a level that other subscribers are already subscribing to. Nobody's subscribing to 100 megabits right now.

So, that's an aspirational goal. It's something we're looking for the private sector to do. There are things that we can do to help both of those, like dig-first policies and easing rights-of-way and things like that. But, I think the basic goal is broadband for each and every American.

Ms. CLYBURN. And only 6——

Senator DORGAN. Can I call on——

Ms. CLYBURN.—I'm sorry—and only 6 percent of Americans subscribe 10 megabits per second at this point.

Senator DORGAN. Part of that is pricing, I assume. But, part of it is also opportunity. Some people don't have that opportunity.

Let me call on my colleagues in a moment.

But, let me just say, I think that while there may be disagreement around this table about reclassification or this or that. I think there's no disagreement here that all of us aspire to the same result. I think all of us aspire to have a robust build-out, all across this country, of advanced telecommunications services, comparable speed at affordable prices.

Senator Ensign.

Senator ENSIGN. Thank you.

Section 254 of the Communications Act specifically requires the FCC to use the Universal Service Fund to promote access to, and

I quote, “advanced telecommunications and information services to all regions of the Nation,” unquote, in particular, to support low-income consumers and those in rural or high-cost areas. In other words, universal support for broadband. Nonetheless, the FCC chairman has stated that he needs to reregulate the Internet, under Title II of the Act, in order to implement his proposed USF reforms.

Commissioner Clyburn, as Chair of the Joint Board on Universal Service, do you believe that the FCC needs to reverse a decade of light-touch regulatory policy in order to expand the Universal Service Fund to explicitly support broadband services? And, if so, can you please tell me specifically which universal service fund provisions of the National Broadband Plan cannot be implemented without reclassification?

Ms. CLYBURN. First, I cannot say to you that is an impossible goal under the current framework, but I will say to you that, under current Title I framework, it is less likely for us to realize certain successes and work on certain important issues, such as cybersecurity, privacy, and, yes, universal service reform.

One of the things that—again, the Comcast decision made clear that this—the current framework will be more difficult for us. And so, the reason why we are engaging in these series of conversations—

Senator ENSIGN. Why is it more—

Ms. CLYBURN.—the reason why the NOI—

Senator ENSIGN. Why is it more difficult?

Ms. CLYBURN. It is more difficult because, under the current framework, we do not believe—the legal minds in our office do not believe that achieving and being able to work in this space would be straightforward and legally sustainable. There are too many—it’s not a predictable and a sustainable and straightforward approach.

Senator ENSIGN. Commissioner Baker, you like to comment on that?

Ms. BAKER. Thank you, I would, Senator. I respectfully disagree with my colleague. I think that we do have the authority to reform universal service under the current structure of Title I.

While section 254 is only 5 pages and is ambiguous to the specific question that you ask, I believe we have authority, because the statute talks in terms of how universal service will evolve, and the need for access to advanced services, as you mentioned, and also, it directly references information services like broadband.

So, I think we—I think the statute’s clear. I think that people are making the—they are interpreting the Comcast decision too broadly. It is far more discrete than people are making it out to be. What the Comcast decision said was that we have to tie our actions to a specific statute—authority in the statute. Here I think we can do it.

In addition, speaking of the Joint Board, the Joint Board actually passed a resolution, in 2007, which said that broadband should be supported under the Universal Service Fund, of which I agree.

So, I think we have the authority, and I think we can do it under Title I.

Senator ENSIGN. Commissioners Copps or Clyburn, going back to the point that I made in my opening statement—we hear from industry experts out there—not only the people who actually work in the industry, but people who analyze the industry—that reclassification will lead to less investment of infrastructure. In other words, there's going to be less money put out there, there's going to be fewer pipes; it's going to be more difficult to get more broadband to more people if there's less money in the private sector. That seems to be counter to what we're trying to do with Universal Service Fund, of getting broadband out there.

And so, can you just address what you think those, basically, countering proposals do to each other?

Ms. CLYBURN. Well—

Mr. COPPS. I don't—

Ms. CLYBURN. I'm sorry.

Mr. COPPS. I don't really buy into those claims that some of the companies are making. It seems to me, this is the greatest infrastructure challenge of our time. This is the investment opportunity of our time—all of the technology, all of the innovation that's going to continue to come. I can't see any company saying, "Well, we're not going to be a part of that." So, I think there's going to be plenty of opportunities.

And frankly, I think that business operates better when it doesn't have a question mark facing it. And we've had 8 or 10 years now of one darn question mark after another coming from some of the actions of the FCC. I'm not saying they're going to applaud this, but I am saying that business adjusts when they know the rules and they favor having some stability, some predictability, so they can go to the investment community and say, "Here are the rules." Actually, we did operate under these Commission rules before. We can operate under them again. And I think they'll be trying to encourage the investment community to help support this build-out.

Ms. CLYBURN. I have read the comments of some top analysts, from UBS, Bank of America, Merrill Lynch, and Goldman Sachs, who disagree that this will thwart investment.

And I also use history as a guide. I'm a daughter of a history teacher and a librarian, and I use history as a guide. And I look at the wireless industry, and how it has thrived under Titles II and Title III regulation. More than \$240 billion between 1998 and 2008 has been invested in this wireless space—\$20 billion in 2008 alone, in terms of wireless—under a similar framework. So, I'm not convinced that investment will be thwarted by this direction.

Senator ENSIGN. I realize my time is up. If we could just have Commissioner Baker just finish.

Ms. BAKER. Thank you. I actually met with a group full of—a roomful of investors yesterday. And they, again, said, "This is really—it's already causing stocks to decline. We have seen it. We don't support this reclassification. Why would we, you know, when the Euro is falling and there are so many questionable outcomes, why would we go toward telecom investment?" And I said, "I hear that all the time. But, apparently some people hear opposite things. What's the difference?" And they said, "Well, we're basically

telecom infrastructure investment folks, and what they're probably hearing from are edge investment people."

So, I think at a time when, really, our telecom infrastructure still needs to be built out, we don't need to endanger the investment in that sector. And I also see that all of these industries are moving together. So, you know, by the time we figure it out, the edge providers and the telecom providers are all going to be the same. So, I think we should continue classification the way it is right now.

Senator ENSIGN. Thank you, Mr. Chairman.

Senator DORGAN. Senator Johanns.

**STATEMENT OF HON. MIKE JOHANNS,  
U.S. SENATOR FROM NEBRASKA**

Senator JOHANNS. Thank you, Mr. Chairman.

Thank you for being here. I find the discussion to be fascinating. I can see that the Commission has a difference of opinion. That's probably healthy.

Let me, if I might, take a step back, here, because I think this is really important. Having served roughly in a position like yours, as a Cabinet member, and now being on this side of the table, I think it's always important to ask the basic, fundamental question when you're in your chair. And that fundamental question is, Do I have the power? Because, you see, if you don't, then we are thwarting our governmental system.

Now, nobody made me the Czar of Agriculture, when I became the Secretary of Agriculture. In fact, Congress would remind me, on many occasions, "You've gone too far," or, "You need to interface with us," or, "You can't do a farm bill without us doing the farm bill."

So, I want to get back to this really fundamental question about what your power is. And I kind of disagree with all of you, to be honest with you.

Commissioner Baker, I read that Comcast decision to be a striking blow to what the Commission thought it could do. And I think it jeopardizes a whole bunch of things under the Broadband Plan.

The other thing I will tell you, Commissioner Copps, is that when I hear you talk about, "Well, Congress has given us the power to bring broadband to every American," then I have to ask the next question. What kind of broadband are you talking about? Does that mean everybody gets the same speed? Do you have the power to decide what the differences will be, versus a rural area, versus in Los Angeles or New York City? And see, now when we start really digging into the extent of the power you claim to have, I think it begins to fray at the edges.

Now, there's a simple solution to this: come to Congress. We are the ones that did pay the filing fee. We are the ones that ran for office. And, versus trying to shoehorn into a 1930s view of the world, why wouldn't you come back here and say, "Look, we've got questions. Our own Commission, only five members, can't even agree on this. Help us sort this out through the policy debate that should happen on the floor of the Senate, on the floor of the House."

So, Commissioner Copps, why wouldn't that be a more reasoned approach, and why wouldn't that give more security to the market-

place, that we're going to follow the Federal system in coming to conclusions on this?

Mr. COPPS. Well, Senator, I appreciate your question. I know of your longstanding interest in broadband. I remember when you were Governor, we had a nice dinner out in—

Senator JOHANNNS. We did.

Mr. COPPS.—Creighton University one night, and you were very active in the Governor's Association to try to move this along.

I agree with you that the Comcast decision jeopardizes much of the Broadband Plan. And it seems to me the best way to deal with it is to base our case on the strongest part of the law. I don't think anybody says that the Commission has no power to do this. I think it's a question of: What are we basing our argument on? And do we reclassify? And there will be a court case, because whatever we do, there's a court case. And do we go to court and run it up to the Supreme Court and get a decision on that reclassification, or do we go through death by a thousand cuts, and, every time we want to do something, try to find some new permutation of Title I, and take it to the courts? I just don't think we're going to get broadband that way.

As to your question—I don't say the FCC has the power to bring broadband to every American, I say we have the obligation to develop policies that will be favorable so that the private sector and government can work together to accomplish the aims of visionary public policy.

And what speeds? I mean, I think we have plenty of guidance in the law—reasonable and comparable service. We all know broadband is an evolving technology. We're under instructions to look at it periodically. The Joint Board on Universal Service, on which the three of us and a lot of State Commissioners serve—like Ann Boyle, from your State—is under obligation to look at this. So, I think it's just kind of working together in partnership, and trying to anchor this on the strongest argument we can make.

I know we disagree on this. But, I just think, from my standpoint, I would rather rest my case on what I deem to be the most persuasive and the most solid foundation of the statute.

Senator JOHANNNS. I'm out of time, but I'll wrap up with this.

How you could come to the conclusion that shoehorning into a 1930s regimen for the system we have today is the most solid foundation just perplexes me. The most solid foundation is to come back to Congress and get the words to give you the authority to do specifically what you want to do. That's the most solid foundation.

Mr. COPPS. Well, I certainly always welcome any clarification that Congress cares to make, or elaboration that it cares to make. But, I think that the statute, as written in 1996, was pretty flexible. And while, as Senator Dorgan said, it didn't envision every possible development, I think it realized that technology was evolving. I think it realized that it was moving at a very fast pace. And I think it conferred sufficient flexibility upon us to do our job.

Senator DORGAN. If I might just give you a couple more seconds and point out that the decision to change the Internet from a telecommunications service to an information service was not a Congressional decision. That was a decision taken by Chairman Powell at the FCC. Many of us fully disagreed with that at the time. But

that was a decision they made. And so, the issue of shoehorning back simply would restore that which existed prior to Chairman Powell's original judgment to take it out of Title II.

So, I just want to make that point, because this isn't a case, in my judgment, of the FCC deciding, "We're going to do something that has never been done." It was always under Title II, until Chairman Powell took it out, by himself, and decided, it will be classified as an information service. I fully disagreed with that, so that's why we have a disagreement now about whether it should be restored, I suspect. But, I just wanted to make that point, it related to your discussion.

Senator JOHANNIS. And Mr. Chairman, I respectfully acknowledge that point. But, the point is, the Commission has decided that. And now to go back to Title II—to go back to a piece of legislation that really wasn't designed for what you're trying to do here, is where I think we're missing the policy point. But, again, there is a very simple solution to this: come to Congress and ask Congress to clarify what the extent of your power is, what we want the FCC to have power to do, and not to do. That's why we're here. That's our role in this debate, whether it's universal service or broadband.

Senator DORGAN. Senator Begich.

Senator BEGICH. Thank you very much, Mr. Chairman.

I appreciate this broader policy discussion, but you all agree on that. That needs to be reformed. Right? Isn't that why we're here today? OK. So, all that other stuff, we can debate at another time, to be very frank with you. I'm going to be very parochial. I've got a State that has desperate need of connectivity, and the use of the Universal Fund is critical.

I wish it was as simple, as my colleague from Nebraska says, to do stuff in this body. But we can't even extend unemployment benefits. So, I appreciate your comment that, "If we think there's a problem, we'll come to you." But, keep moving forward. I know there's disagreement. I think we have a good group, on the Commission, that will do their job and figure out the right approach.

But, you all agree that Universal Fund needs to be reformed. Right? No disagreement there.

Ms. CLYBURN. No disagreement.

Senator BEGICH. OK. Thank God that there's something that you all agree on.

[Laughter.]

Senator BEGICH. So, let's walk down this path, if we can. You know, I know there's, you know, the effort, in the long term, on the Connect American Fund and the 10-year transition period. I guess my concern is, after some review of the plan, how that really will make that transition in a State—and, again, being very parochial, in Alaska—where we have some at 256 bytes, I mean, just to give you a sense. It's dial-up, basically. That's our high speed in some of our areas. So, as you define it, I'll be very anxious to get 4 megabits. That would be just awesome. But, at 256, we're struggling just to, you know, send a form to somebody in a timely manner in the system we have.

To be honest with you, after reading the plan, I don't have a lot of faith yet that the transition from the Fund to the new Connect America Fund will ensure that places, like mine and others here,

who have very, very rural communities, are going to get that investment, that connection. I have a community of 46 people that have telephone service. I guarantee you, the big guys aren't coming to that community unless there's a high incentive of making sure they can afford the infrastructure investment.

So, I'll just kind of go down this side, down, if you want to comment on that. And I'm not interested in the reclassification of 1 to 2, so don't get into that.

[Laughter.]

Senator BEGICH. I just want to focus on what I thought the meeting was about. So—

Ms. BAKER. OK, I won't rebut.

Senator BEGICH.—I'm bringing everyone back home here to one area.

Ms. BAKER. No, I agree with you, Alaska is unique and very special. And we absolutely need to focus on that. The good news is, I actually do think that the National Broadband Plan shared your goals, shares our goals, to get broadband to unserved rural areas—or unserved areas, period. So, I think if we move forward with many of the recommendations in the National Broadband Plan, then we'll be doing just what you want us to be doing.

Senator BEGICH. Yes. If I can just add one thing so everyone's kind of prepared on the same level here, and that is, I know, under the proposal, it eliminates the support for multiple providers in an area. So, how do you address that? And again, I recognize the broad statement you just made. We're all in agreement on that. But, as you all have said, the trouble will be in the details of how you do this. And I just am very, very nervous. I know the fund is not perfect; I agree with that, but we've come so far in delivering. How do we make sure, especially when you're shrinking on the capacity in some cases and utilizing the reverse auctions and other new mechanisms? Help me understand that.

Ms. BAKER. Well, I think that one of the recognitions is that—is, Alaska is unique. So, when we capped, for instance, CETC fund, we did not cap it in Alaska.

Senator BEGICH. Right.

Ms. BAKER. And so, I think that, again, you have a unique situation in Alaska, that we will look forward to working with you and continuing to address.

I think, as we work forward, we need comprehensive reform. And so, as we look forward to that, all parts of the program need to be considered, and—you know, including CETC. And the ultimate decisions that we make are going to have to be guided by technology neutrality. But, I think, in the end of the day, one provider is going to serve consumers better.

Senator BEGICH. OK. Thank you.

Ms. CLYBURN. Some of the features, Senator, that are of interest to me in the plan, that would be in sync with your question, is one in which my colleague teed up, in terms of ensuring that we look at certain efficiencies, that we target the money where it's needed.

Right now, universal funding is following companies based on the—their—certain sizes, you know, and scopes, not necessarily where the money is needed. So, exactly where it's needed, that

could—it—where it could do the most good—that is not necessarily happening in key areas, like your State.

So, a technology neutral approach that will take cost into considerations, targeting those dollars where they're most needed, and encouraging pilot programs that could look at particular states like yours—tribal and insular states that have unique characteristics that no one else has. And so, if we do that in an efficient and targeted fashion, I think that will be an incredible blueprint for the rest of the country to follow.

Senator BEGICH. Let me go—my time is—

Mr. COPPS. I don't want to repeat what they said, because I agree with a lot of that—but, I think what we really need is a careful balance, here, of assurances to the companies that are there, and the customers in those areas, that there is going to be a long and considered and good transition, so that we don't become disruptive. But, we also have to make that commitment that we're actually moving to something, so there's motivation for people to sit down at the table and really work together, because that's the only way we're going to get this done—with all the participants. Everybody is going to have to sacrifice, everybody is going to profit, at the end of the day, but—and I do agree, there are unique places, and there are always unintended consequences to anything that you do. And if we don't have a process that is alive to that, and flexible enough to respond to it, then we'll be shooting ourselves in the foot.

Senator BEGICH. Thank you very much. My time is up.

And, Commissioner Clyburn, I'll look forward to seeing you in Alaska, I think, about 2 weeks or so.

Ms. CLYBURN. Absolutely. Looking forward to it.

Senator DORGAN. Senator Thune.

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman.

And I thank you for your input and testimony today.

And I don't think anybody has sufficiently yet answered the Senator from Nebraska's question about why you wouldn't do this by looking to Congress for some direction. And I don't think that—I would take a different view than my colleague from Alaska—I don't know how you deal with the USF issue, which, by the way, is an issue I care deeply about, as does the Chairman, absent dealing with the reclassification issue. It seems, to me at least, that what we're talking about here is whether or not we're going to depart from the light-touch Title I information services approach to this, which I think has led to an explosion, in the last decade, in broadband services around this country, and whether we're going to figure out a way to sort of adapt the USF fund, which is a \$7 to \$9 billion investment, around the \$50 to \$60 billion that's occurring every year in private-sector investment. Why would we rather take the \$50 to \$60 billion in private investment, put that in jeopardy, and try and shoehorn that around this issue, so we can fix the \$7 to \$9 billion investment, which does fill the gap, when there isn't a business case to be made?

So, it strikes me that this really is a contortion, to try and get a statutory portal to allow for this reclassification to occur, which, my understanding is, is going to lead to lots of litigation, and probably tortuous litigation.

And so, I guess the question I would have is—everything I hear suggests that this third way, this reclassification, is going to result in lengthy litigation, likely all the way to the Supreme Court—how does that provide the broadband industry with the investment certainty to continue investing \$50 to \$60 billion annually in this industry?

Ms. BAKER. I happen to agree that then only certainty would be if Congress acts. Everything else is ambiguous. The statute is ambiguous. I personally come down on the fact that we could reform universal service under a Title I classification. But, I think it would result in, you know, more litigation. Title I, Title II—it's all going to be litigated. If it's turned around under a Title II classification, then it really does undermine a legal—the legal foundation of all the work that we're laying here in universal service. So, I think it—then we'd have to revisit all the policy decisions that we would have made under faulty legal authority.

So, I—certainly, the best path forward would be for Congress to act. I think we can move forward on universal service reform under Title I classification. I do not think we can move forward on net neutrality rules under Title I classification.

Ms. CLYBURN. Senator, on what we do agree is, we all welcome Congressional action. The Act needs updating. It has been a lot of years. There has been a lot of evolution over the past several years. And so—but, we have a certain level of responsibilities that will be—that are ongoing in the meantime. So, I see us as partners in this process, working on parallel tracks.

As it relates to the Chairman's, quote/unquote, “third-way proposal,” we don't see this—I don't view this as old-style regulation at all. He—the proposal forbears from the majority of the Title II, you know, regulatory framework. There are only six provisions that are in question, as it relates to the notice of proposed rulemaking.

And we have—we are not unmindful of history. I mentioned the wireless industry under Titles II and III regulation, and a light-touch regulation, as an example of how this agency has worked cooperatively in an ever-evolving space. And the results are mind-boggling; \$240 billion in a 10-year period, in terms of investment in the wireless space, is incredible. And we've all been a beneficiary. And it's under Titles II and III.

Senator THUNE. Can the USF proposals in the National Broadband Plan be carried out without reclassifying broadband under Title II? I mean, do you believe that we can deal with the USF reform issue without having to go through this—what I say is a contortion—to reclassify broadband under Title II?

Mr. COPPS. I think it's a questionable proposition whether we can do that. There will be, as you pointed out, litigation. I think trying to go through one argument after another, and trying to do something under Title I authority, is just going to guarantee a lot more of those court cases than just having one case that goes all the way up, if we do the reclassification.

All I can do, when I take my oath of office, is implement the law as I see the law. And I see it as giving us that authority. I see 800 companies right now—over 800 companies that are offering broadband as a tariffed Title II proposition. And I think they're doing basically OK. And I agree with my colleague here that what Chairman Genachowski is talking about is a relatively light-touch or a modest-touch approach. I think he's fully cognizant, and I think we are all fully cognizant, that telecommunications technologies have changed. They're still telecommunications technologies, but how you treat them in an evolving atmosphere is what the law instructs us to be doing at the FCC, I think.

Senator THUNE. Commissioner Baker.

Ms. BAKER. As I mentioned before, I think that the specific terms of the statute do allow us to reform universal service under Title I. I also think that overturning, you know, 40 years of Commission precedent—precedent that has been affirmed by the Supreme Court is very questionable, as far as regulatory certainty. And I think the light touch is also going to be litigated, and who knows what the courts are going to say about our forbearance.

Senator THUNE. I see my time has expired, Mr. Chairman.

Thank you.

Senator DORGAN. Thank you very much.

Senator Udall.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Dorgan.

And I very much appreciate the testimony up until now. And I, like my colleague Senator Begich, are going to return to the Universal Service Fund, which I think we're trying to address here. And I hope that you move forward in that other area as aggressively as you can, because I don't really see much hope that Congress is going to act aggressively on this.

The Universal Service eligibility requirements penalize rural areas that are served by nonrural telephone companies like Windstream. This is a problem in New Mexico—I look at the list here of other States; it's a problem in Alaska—it's a problem in a number of States, where companies ineligible for high-cost rural support, such as Windstream and Qwest, have service territories that encompass many rural areas. Other States that are comparable in size and much less rural than New Mexico receive far more in USF high-cost support. And this is due to the fact that they have more eligible rural telephone companies and cooperatives.

How could the Universal Service Fund eligibility requirements be reformed in the near term to better serve deserving rural areas without creating flash cuts to those small companies that rely on USF support?

And why don't we just start, Commissioner Copps, with you and work down the line here.

Mr. COPPS. Well, I think the idea of moving to a different system and transitioning away from that is ultimately the response we're looking for. I understand there are inequities, as among States and providers, in the receipt of these funds, and we need to do some-

thing about that. And I think going to a system that targets geographic areas, that puts consumer equity first, is the way to go.

Over and above that, I think we have just recently put out a notice of inquiry to try to see what short-term fixes, if any, you could get folks to agree on to do away with some of those inequities, on a short-term—shorter-term basis.

Senator UDALL. Thank you.

Ms. CLYBURN. Senator, the scenario, in which you pointed out, reaffirms the need for us to tackle this most difficult issue. The current framework is unsustainable. You mentioned competition—growing competition in rural areas, where, a few years ago, no one was headed. That, consequently, has meant a shrinking contribution base, as it relates to the funding base. It has meant a decrease minutes of use, which has wreaked havoc on the intercarrier compensation system. All of those particulars that you point out just affirm the need for a total overhaul of the current system and the challenges in which we—the problems will not go away, but the challenges are more acute, based on the market realities that you point out.

Senator UDALL. Right.

Commissioner Baker.

Ms. BAKER. Senator, part of the problem, of course, as you know, is that, when implemented the 1996 Act, we used the definitions “rural” and “nonrural,” and they’re actually not based on rural or nonrural, they’re based on the size of the company. So, you have these inequities like Qwest serving rural areas, when it’s not a—when it’s a nonrural company.

I think what the plan suggests is to move to incentive-based—incentive regulation. And the reason they do that is, of course, then they’ll operate in an efficiency of operations, and that will improve the efficiency of the USF fund. And that’s something we want to do. But, of course, any of those changes in that transition have to—you know, we have to avoid disruptions. I think that’s why there’s a 10-year transition plan. We don’t want to negatively affect any of the good work that Universal Service Fund has already done. We don’t want to negatively affect the network investments that are out there that are serving consumers well.

Senator UDALL. Great. Thank you very much.

Thank you, Mr. Chairman.

Senator DORGAN. Senator Pryor.

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman. And thank you, again, for your leadership on this issue.

I think it’s very important that the FCC, and maybe even the Congress, get this right. I think broadband and the Universal Service Fund are two things that we really need to get the right policy on in this country. In fact, I’d say that, you know, back in the old days, if a community wanted to be connected to the world, they needed to be on a river. And then after that, they had to be on a railroad, and after that, maybe on the interstate. But, now, for a community to be connected to the world, it has to have broadband. And, really, if we want our country to reach its potential, we need

to connect as much of this country to the world and to each other as possible. So, I appreciate you all struggling with this and working with this and trying to get this policy right. And I appreciate you all being here today.

I really only have, you know, a couple of questions about the High-Cost Fund system. Commissioner Copps, in your statement, you said that the High-Cost Fund system is incredibly complicated and that the various categories can be mindboggling in their intricacies, applications, and exemptions. Do you believe that we need to simplify the Universal Service Fund as part of a comprehensive reform to USF?

Mr. COPPS. I think we have to both simplify and reform. I think there are some other things that we need to be doing. One of those is to tackle the intercarrier compensation question, where, if we're talking about intricacies and arbitrage opportunities and doing things the wrong way, there's a real contribution we can make right now. And, in further answer to Senator Udall's question, "What can you be doing right now?" I think the Commission can be hard at work on trying to bring some rationality into intercarrier compensation. That's something I've been pushing for since 2001. I think, now, the Commission is showing a willingness to begin stepping up and doing this. And it's something we urgently need to be doing.

Senator PRYOR. Do you know how to do that, or is there a consensus on the FCC on how to do that, or is that something that you all just need to go through a process to get that figured out?

Mr. COPPS. Well, I think each of us has ideas on intercarrier compensation, on how you begin to unify the rates, and try to get rid of some of the arbitrage opportunities that exist, and move away from permanent rates, and move toward interstate and away from intrastate. It's a very complicated thing. But, I think most of us know probably the half-dozen or so biggest things that really need to be tackled and decided by the Commission. But, it's not—you know, it's not easy slogging because each of those can mean a lot of money to a lot of different carriers. But, it's something that has just been sitting there for too long. And I don't think we can get the universal service system itself modernized for the 21st century unless we tackle and resolve intercarrier compensation.

Senator PRYOR. Yes, I actually agree with that.

Commissioners Baker and Clyburn, do you all think that the USF is incredibly complicated and that it needs to be simplified and reformed?

Ms. BAKER. It's bone-crunchingly complicated. I think the goals that Congress has set out are pretty simple: rural health care, schools and libraries, High-Cost Fund, low-income support. It is just very complex. And certainly the goal would be to simplify it.

Senator PRYOR. OK.

Ms. CLYBURN. And I don't disagree. The current framework is a patchwork of some very noble ideas and concepts. But now is the time for us to take a hard, very difficult look at current realities and current challenges inside of a current framework, a \$9-billion budget—

I think that's my sign to yield.

[Laughter.]

Senator PRYOR. No, that's something going on, on the floor.

[Laughter.]

Senator PRYOR. But, thank you for your answer.

Ms. CLYBURN. Thank you.

Senator PRYOR. And I appreciate that.

And thank you, Mr. Chairman.

Senator DORGAN. Senator Pryor, thank you very much.

I have to be at the Energy Committee that's holding a hearing.

And so, Senator Begich is going to preside.

And let us call on Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chairman Dorgan.

Thank you, to all of you, for being here.

I know that, Commissioner Clyburn, you were in Minnesota—

Ms. CLYBURN. Yes. Yes.

Senator KLOBUCHAR.—I think, a few weeks ago.

Ms. CLYBURN. Missed you.

Senator KLOBUCHAR. I know. I spoke the next day. Well, we had a few things like votes here.

[Laughter.]

Ms. CLYBURN. Oh. Oh. That's all? Yes, that was it.

Senator KLOBUCHAR. But, anyway, thank you for visiting our state.

And I'm very excited about all the work the FCC is doing, and we're finally moving ahead. I'm from a State that has a significant rural population, not as extreme rural as Senator Begich describes his State, but we've had many issues, as I've expressed before, with broadband, and I truly believe kids that grow up in the rural part of our country should be able to stay there, and a lot of the key to that is Internet access.

And we have a lot of exciting things this weekend. I'm visiting a number of our communities that are in rural areas that are working on broadband and have received some of the grants, and we're moving ahead. So, I appreciate that.

And I also understand, to meet the goals of the broadband plan, to connect 99 percent of American homes within 10 years is going to be critical to do some reform with the Universal Service Fund. And so, I actually appreciated the answers to the questions on simplification.

But, also, how are you going to look at the contributors paying into this fund? Do you think that's going to be something you're going to look at? And I know one of the things that was noted in the testimony is the broader use of economic models, employing a competitive procurement auction. And I just wondered if you could put some meat on the bones with some of these ideas that are out there.

You want to start, Commissioner Copps?

Mr. COPPS. Well, I think we're looking for market mechanisms, when you talk about procurement approaches, or reverse auctions, or things like that, to the maximum extent that we can use them. We had four commissioners who were ready, a year or so ago, to go ahead and run a pilot project on reverse auctions to see how

that would work. Frankly, I'm a little bit of a skeptic on some of the difficulties that would ensue from a reverse auction. When a provider goes in, What if the provider goes bust? Who picks up the pieces? What happens to the carrier-of-last-resort obligations that attend going in there? And what's the possibility of competition when you've already picked a winner? But, that doesn't preclude us from looking. And I think we really need to be looking at those kinds of systems.

And remind me, again—the first part?

Senator KLOBUCHAR. Well, also about the USF contributors——

Mr. COPPS. Yes. I think——

Senator KLOBUCHAR.—I'm deliberately not weighing in on these.

Mr. COPPS. We do——

Senator KLOBUCHAR. I'm just noticing some of the testimony and ideas——

Mr. COPPS. Yes.

Senator KLOBUCHAR.—that are out there.

Mr. COPPS. We do need to look at that, because broadband, in addition to being a recipient of funding, needs to be a contributor to the fund, too, in my belief. I know there are some folks who disagree with that. But, I think we have to look at that and figure out what's fair. The world has changed, so some providers are actually gaining more revenues from triple play, when they offer it, so we have to figure out how that stacks up compared to the days when they were only getting money for a subscriber line. So, yes, the contribution methodologies are highly important, just as important as the distribution methodologies.

Senator KLOBUCHAR. And what do you think the timetable will be on this to try to make the changes?

Mr. COPPS. Well, I hope the sooner the better. I've been calling for a National Broadband Plan for 9 years now, so it was music to my ears when we finally got one. But, I'm a believer that the world is not going to wait for us. Urban America doesn't wait for rural America, and the rest of the world doesn't wait for America, generally. And we're not in good shape right now. We're 15th or 16th——

Senator KLOBUCHAR. Are there analogies, speaking of that, that we can get from other countries, in terms of how they have done their Universal Service Funds, and what they've done to expand more quickly than——

Mr. COPPS. I think absolutely, absolutely. And I've been talking about that, too. And we did launch, under Chairman Genachowski's broadband team, some comparisons. And I don't think we've drawn the full lessons from that. But, there are different ways to do it. There are different models of competition, that have deployed elsewhere, that we have shied away from here.

But, we need to learn. We're a different country, a different culture, a different economy. So, it's not that we go in and pick some plan somebody else is doing, but let's learn from their successes and their failures, and our own, too. So, it's highly important to learn from those who have succeeded, even more than we have succeeded, in getting broadband out to all of their citizens.

Senator KLOBUCHAR. One of the things you mentioned, Commissioner Baker, was just the complexity of this. And when you have

such a complex system, sometimes it can lead to waste and fraud, and keen oversight and auditing is necessary to make sure the funds are distributed efficiently. What's being done now? And are there some ways that we can save money by eliminating waste and fraud from the program?

Ms. BAKER. That's a great question, Senator. Yes—yes and yes. I think since—there have been more reforms and more audits of universal service in the past year than there have been previously. As the Broadband Plan lays out, accountability and efficiency are going to help us reach the adequate fund that we need for broadband without actually raising the fund.

I think we will expand the contribution base—back to your question on timing—you know, in a phase-in way. We are looking to put out an NPRM, I think, third quarter on the Mobility Fund, and fourth quarter on the contribution base itself, on the Connect America Fund, and also on intercarrier compensation. So, I'm hopeful it won't take 9 years. I think we may actually—

Senator KLOBUCHAR. He was just looking backward, not forward.

Ms. BAKER. We may actually put it out in December. And I think the goal is to actually enact meaningful reform next year, at some point.

Senator KLOBUCHAR. All right. Well—

Ms. CLYBURN. And to augment that—

Senator KLOBUCHAR. Commissioner?

Ms. CLYBURN.—as it relates to the concentration on the waste, fraud, and abuse, and the auditing part of the equation, that it's important that we will gain so much, by way of efficiencies and increased resources, from getting that straight. Their—our office of—our managing director's office is overseeing the audit function. So, you've got more oversight; you've got more attention on that. And we're proud of that. So, all of these hopefully will gain efficiencies and give us—stretch those dollars further with more keen oversight.

Senator KLOBUCHAR. All right. Very good.

Well, we look forward to working with you. This is the first of these hearings, but I know that there will be a lot of input from many people on how this should work. But, it's clearly important to do it.

Thank you.

Senator BEGICH [presiding]. Thank you very much, to the panel. We appreciate your time here, and your willingness to come in front of us and talk about this very important issue.

You're free now—

[Laughter.]

Mr. COPPS. Thank you.

Senator BEGICH.—which is probably a relief.

[Laughter.]

Senator BEGICH. So, thank you very much.

We'll introduce the next panel, which, as they come up, I'll just go ahead and introduce them, because we are limited on time, so I don't want to burn up too much time here.

We have several people on the next panel. Jeff Gardner, CEO of Windstream Communication, from Arkansas; Mr. Delbert Wilson,

General Manager of the Hill Country Telephone Cooperative, from Texas.

As people leave, if you could hold your conversations, as we move into the next panel.

John Glockley, Vice President, Legal and Regulatory Affairs, U.S. Cellular Corporation.

Paul Waits, President of Ritter Communication; and Kyle McSlarrow, President/CEO, National Cable and Telecommunications Association.

I've heard you say "Kyle," if that's OK.

Mr. MCSLARROW. Kyle will do.

Senator BEGICH. I know. That's how I know you. So—pronounce your last name, so I hear it.

Mr. MCSLARROW. McSlarrow.

Senator BEGICH. McSlarrow. I did not do good in pronouncing my Rs in school.

We thank you all for being here. We—

VOICE. We have one more coming.

Senator BEGICH. Are we missing one?

It's a cozy environment at the table.

VOICE. Yes.

[Laughter.]

Senator BEGICH. Are we missing one person?

I think the name tags maybe need to be swapped around, here.

If you know who you are, grab your name tags.

[Laughter.]

Senator BEGICH. There we go.

If we can go right into it, I'd like to go ahead and start with your testimony. We'll go from this side over.

Mr. Gardner, if you don't mind, go ahead with your testimony. And I apologize, the first panel took a little longer.

**STATEMENT OF JEFF GARDNER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WINDSTREAM CORPORATION**

Mr. GARDNER. No problem.

Mr. Chairman, members of the Committee, thank you for soliciting our thoughts on the effort to transform universal service.

I am Jeff Gardner, president and CEO of Windstream, one of the Nation's largest providers of broadband service to rural America, operating in 23 states.

Windstream has aggressively deployed broadband, despite our rural profile and modest per-unit support from the Federal Universal Service Program.

We share your goal of universal broadband availability, and have invested accordingly, deploying broadband everywhere in our service area where we can recover our investment.

Windstream supports the National Broadband Plan's proposed framework and process for executing high-cost universal service reform. The plan provides a good framework for action. We have deployed broadband to 90 percent of our current voice customer base.

In addition, we have applied to RUS for Round 2 stimulus funding, which would expand our availability to 94 percent.

We lead the industry in consumer take-rates. We offer residential speeds from 3 to 12 megabits, and our entry price for 3-meg service

is around \$30. Within our voice customer base, more than 50 percent subscribe to broadband.

Our unserved areas are not places inside the town limits or near anchor institutions like schools or libraries. We already offer broadband to virtually every community in our footprint. This includes places like Mentone, Texas, which the *New York Times* said sits in America's emptiest county. In Mentone, more than 50 of our 61 voice customers have broadband access. To find our unserved 10 percent, you have to drive several miles or more outside of towns like Mentone, to ranches and remote homes that sit miles from their nearest neighbors.

Reaching the unserved 10 percent of our customer base is not economically feasible without additional support. This is typical for the whole industry.

Nationally, the Broadband Plan recognized that deployment to most unserved areas are money-losing projects. It would be disastrous for the government to mandate broadband deployment without also providing adequate funding.

For our company alone, the cost of deploying broadband to the last 10 percent, at the speeds recommended in the Broadband Plan, would be about \$2 billion. The investment would provide for broadband service, but would not support video offerings, thus the potential revenues come almost entirely from the monthly broadband subscriptions of around \$30.

A reformed Universal Service Program could overcome these financial barriers. The Broadband Plan concludes that a major program overhaul is necessary to sustain voice service, while also fostering broadband deployment and adoption. The existing universal service system has promoted broadband deployment in pockets of the country, but it's reached its limit. Millions of rural Americans have no access to broadband today, and they lack any realistic prospect of receiving it in the future, absent reform.

It is true that Universal Service has funded deployment of state-of-the-art fiber networks for some. But, that level of funding is available to only about 800 small companies and co-ops. Other companies receiving minimal per-line Universal Service funding actually serve the bulk of the rural customers in this country. The Broadband Plan has highlighted this, one of the most striking digital divides in the United States today, the disparity among rural areas.

Allow me to mention briefly a few ingredients necessary for successful reform. Reform should be technology-neutral, should match support levels to mandates, should not place regulatory burdens on recipients that exceed standards for the rest of the industry, and should involve some reallocation of existing Universal Service dollars, so that all rural areas are treated the same. If the fund remains substantially the same size as today, it will require reallocation.

As senior members of this committee know well, proposals to change Universal Service have often failed. Today, however, significant change is the only way to fulfill the mission called for in the Broadband Plan.

Thank you.

[The prepared statement of Mr. Gardner follows:]

PREPARED STATEMENT OF JEFF GARDNER, PRESIDENT AND CHIEF EXECUTIVE  
OFFICER, WINDSTREAM CORPORATION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee: Thank you for soliciting our thoughts on the effort to transform universal service to directly support both broadband and voice.

I am Jeff Gardner, President and CEO of Windstream, one of the Nation's largest providers of broadband service to rural America, operating in 23 states. Windstream has aggressively deployed broadband service across our footprint, despite our rural profile and modest per unit support from the Federal universal service program. Windstream shares your goal of universal broadband availability, and we have invested accordingly, deploying broadband everywhere in our service area where we can recover our investment.

Windstream has deployed broadband Internet access to 90 percent of our current voice customer base. In addition, to reach 94 percent broadband availability, we have applied to the Rural Utilities Service for \$238 million in Round 2 stimulus funding, which would be matched with \$80 million of our own capital.

Due to aggressive deployment and favorable pricing, Windstream is an industry leader in take-rate by consumers. We offer speeds of 3 to 12 megabits per second (Mbps), and our entry price for 3 Mbps broadband service is \$30 a month. Among our residential voice customers, 53 percent subscribe to Windstream broadband.

**No Rational Economic Case Exists for Extending Broadband to Most Unserved Areas**

As I noted earlier, Windstream's broadband deployment goal is aligned with this committee's goal. We want to reach the remaining 10 percent of our voice customers that do not have access to broadband service. However, the economics of achieving our shared goal are challenging. We estimate the cost of deploying broadband to the last 10 percent, at the 4 Mbps speed threshold recommended in the National Broadband Plan, to be in the range of \$1.5 billion to \$2 billion just for Windstream. Simply stated, we cannot earn an adequate return on our investment in these areas without an effective government program to bridge this gap. This is a microcosm of the problem confronted in the National Broadband Plan. Indeed, the Plan concludes that most unserved areas in the country would be money-losing projects.

When Windstream talks about its unserved 10 percent, we are not talking about places inside the town limits or near an "anchor institution" like a school or a library. Windstream already offers broadband in virtually every community in our footprint. This includes places like Mentone, Texas, which the *New York Times* said sits in "America's Emptiest County." In Mentone, more than 50 of our 61 voice customers have broadband available to them. Windstream even offers broadband in Orla, Texas, which is known as a "ghost town." To find our unserved 10 percent, you must drive several miles or more outside of places like Mentone or Orla—to ranches or remote homes that sit miles from the nearest neighbor.

Even for Windstream, one of the most efficient carriers in the industry, the cost of deploying to these areas dwarfs the potential revenues. We must account for the cost of new electronics, property easements, necessary line upgrades, and labor. These costs are often higher in rural, sparsely populated areas with fewer potential customers from which to recover investment. Our standard prices, however, are consistent throughout our entire national footprint—whether you live in the least populous county in the United States or markets such as Lincoln, Nebraska. It does not take a spreadsheet to do the math on the projects in our last 10 percent—it is not even close to being economically feasible without additional government support.

There is much casual chatter about skipping over wireline networks and instead deploying some type of "low-cost" wireless service. But with current technology, this is a fantasy. Simply put, there is no such wireless technology available in Windstream's service territory that has the range and cost characteristics to outshine our upgrades to the existing landline telephone network. Moreover, wireless networks interconnect with and use second-mile fiber networks—the very facilities that Windstream and other wireline providers lack an economic case to deploy in rural, sparsely populated areas.

**The Potential Role of Universal Service in Reaching the Unserved**

A reformed universal service program could overcome financial barriers to deployment. In particular, Windstream supports the National Broadband Plan's proposed framework and process for executing high-cost universal service reform. Although many critical details are left to decide later, the Plan concludes that a major program overhaul is necessary to pursue a more complex set of policy objectives: sustaining voice service, while also fostering broadband deployment and adoption throughout the Nation.

Most policymakers, including those at the FCC, appear to agree that all Americans should have access to high quality voice and broadband services. But the existing universal service system cannot meet that goal. Due to existing program rules, millions of rural Americans have no broadband today, and they lack any realistic prospect of receiving it in the future.

It is true that universal service has funded deployment of state-of-the-art fiber networks—some of the finest in the world. But that level of funding is available only to about 800 small companies and co-ops that together serve a fraction of all consumers in rural America. Other companies, receiving minimal per line universal service funding, actually serve the bulk of rural consumers. The National Broadband Plan quantifies the impact of this disparity: About two-thirds of all housing units without broadband are located in the service territory of larger companies like Windstream, Frontier, CenturyLink, Qwest, and AT&T. If Windstream had access to the same per line support levels as the 800 small companies and co-ops, we too would be able to deliver higher speeds and serve more of our customers with broadband.

We have heard about the fear that reform might create a rural-urban divide, but the National Broadband Plan has recognized that the *current* rules have already created a rural-rural divide. It would be unconscionable to spend millions more on upgrades to the best networks in the Nation *before* millions of others in rural America have access to *any* broadband at all. Universal service reform to bring at least 4 Mbps to all unserved rural areas, as the National Broadband Plan envisions, would make substantial progress in closing the “digital divide.”

Windstream and others stand ready to contribute significant capital to such an endeavor and believe tangible results could be produced in a relatively short time. In December, Windstream and other rural broadband providers, serving a total of 12 million customers, proposed that the FCC create a broadband investment fund within universal service, targeting the highest-cost wire centers in the Nation. The companies offered to contribute the first \$800 per household in deployment costs if universal service would assist with the balance above that level. Those five companies projected that such a program would generate 95 percent broadband availability, at speeds of 6 Mbps, within 5 years.

Given wireless providers often use wired networks to transmit traffic beyond the cell tower, such an extension of wireline facilities also would create vital backhaul fiber facilities to support 4G service in the same rural areas. In other words, driving fiber deeper into the wired network would help enable 4G wireless service in those same remote areas.

#### **Key Ingredients of Universal Service Reform**

To the extent that this committee is engaged in the reform process, I would urge attention to several aspects that will be critical to its success:

- *Ensure that funding is technology neutral.* Although these words are often repeated, the problem persists. For instance, in the stimulus program, a wireline provider had to construct a system 10 times as fast to be awarded the same number of points as an otherwise identical wireless provider with a system delivering a total of 2 Mbps upstream and downstream.
- *Match support levels to mandates.* The FCC has recognized that it will be expensive to deploy even a base level of broadband at 4 Mbps to the remaining unserved areas. Mandates and requirements raise costs. Providers cannot be expected to invest in money losing propositions. Policymakers must ensure that support amounts make it economically feasible for a company to incur the costs of complying with the requirements that accompany the support.
- *Do not place special, undue burdens on entities deploying broadband in high-cost areas.* Throughout the stimulus process, grant applicants have been asked to accept a different, tougher net neutrality standard than what is under consideration for the rest of the industry at the FCC. Windstream cannot adopt traffic management rules selectively on its network, so this has the potential to put us at a competitive disadvantage, for instance, to cable companies that are not interested in serving the highest-cost areas. In the many towns where we compete, the result would be that we would have requirements and costs that our competition would not.
- *Be willing to accept some redistribution of universal service support.* Absent direct Congressional authorization, the FCC seems likely to keep the Fund at approximately its current size. This approach has the virtue of keeping prices affordable for consumers, who pay fees that support the program, but it also means universal service funds are limited and must be allocated with care. To generate additional program outcomes, *i.e.*, universal broadband deployment,

the program will need to be reshaped, and resources will need to be preserved and redirected. For instance, the National Broadband Plan notes that rate-of-return regulation does not create incentives for recipients to become more efficient or pursue streamlining initiatives. It is likely that such entities, if pressed, can deliver the same or better service at lower costs, as larger carriers have already had to do. Ensuring all carriers are delivering voice and broadband services in the most efficient manner could alleviate pressures on the fund and allow redistribution where support is needed most.

- *Fund broadband adoption initiatives.* Rural customers tend to have lower incomes and include a higher proportion of older individuals than the Nation as a whole. In examining why consumers choose not to take broadband, the GAO has identified three key determinants, all of which are particularly challenging in rural markets: income level, education, and computer ownership. Windstream is an industry-leader in broadband adoption, yet only about half of our residential voice customers subscribe to our broadband service. Ultimately, the success of a broadband initiative depends not only on whether broadband facilities are built, but also on whether people use them.

In closing, the National Broadband Plan has helped describe and quantify one of the most striking digital divides in the United States today—the gap in broadband capabilities between one rural area and another. As the Plan says, “[w]hile the High-Cost program has made a material difference in enabling households in many high-cost areas of America to have access to affordable voice service, it will not do the same for broadband without reform of the current system.” Rather than preserve a flawed program, universal service must be reformed to direct funds more equitably and rationally across *all* of rural America. As senior members of this committee know well, changing universal service is difficult. Yet, today we have reached the point where significant change is the only way to fulfill the mission called for in the National Broadband Plan. Thank you.

Senator BEGICH. Thank you very much.  
Mr. Wilson.

**STATEMENT OF DELBERT WILSON, GENERAL MANAGER, HILL COUNTRY TELEPHONE COOPERATIVE, INGRAM, TEXAS ON BEHALF OF NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION (NTCA), ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (OPASTCO) AND WESTERN TELECOMMUNICATIONS ALLIANCE (WTA)**

Mr. WILSON. Thank you, Mr. Chairman and members of the Committee.

Am I—can you hear me? Can you hear me? Can you hear me now? OK. All right.

Thank you, Mr. Chairman and members of the Committee.

In addition to Hill Country, my remarks this morning are on behalf of NTCA, OPASTCO, and WTA. Together, we represent more than 1,100 rural rate-of-return regulated community-based providers from around the Nation. Collectively, their service territories cover more than one-third of the Nation’s landmass, yet their total subscriber base accounts for about 5 percent of the national total.

Today, American consumers are dramatically altering their communications expectations, both at work and at home. Rural telecommunications providers are responding aggressively to this challenge. We are rapidly transforming our traditional switched voice systems into powerful, dynamic, Internet protocol broadband networks. This is a natural response to us, because as rural community-based providers, we have a long history of taking our service responsibility seriously. The successful fulfillment of this mission is not without significant cost. However, we have fortunate—we are

fortunate to have a set of time-tested tools in place that ensure these costs are recoverable.

Now, I'm cutting through my testimony, down.

So, imagine our hope, when Congress and the President mandated a National Broadband Plan. Imagine our optimism when, little more than a year later, the FCC actually issued such a report. Yet, imagine our disappointment when the misaligned premise, assumptions, and objectives of this plan began to emerge and foreshadow a less-than-positive future for rural America.

Specifically, we are concerned that the Broadband Plan: one, fails to establish an environment that will yield job creation and subsequent economic development; two, fails to quickly act on expanding the contribution base of the Universal Service Program, which could ease the pressure on the contribution factor; three, discriminates against rural consumers by proposing to fund rural networks at speed standards that will render them obsolete almost as soon as they are built; four, discards proven funding mechanisms that can easily be adapted to support broadband, and proposes replacing it with inherently unpredictable and unworkable economic models and reverse auctions; five, provides inadequate funding to support build-out and maintenance of broadband services in rural provider service areas; six, severely underestimates the vital role rural carriers of last resort play in the provision of broadband services to rural Americans; and last, fails to recognize the critical nature of rate-of-return regulation, and how it yields rural infrastructure development.

We have been urging policymakers to refrain from further consideration of these unworkable approaches that will do little more than slow, or even eliminate, future broadband deployment and adoption. We are urging you and the FCC to redirect the Broadband Plan in a way that will ensure it yields meaningful job creation and economic development for all Americans. We had great hopes for the Broadband Plan and what it could mean for all Americans, yet here we are again, scrambling to fix an emerging Federal policy that fails to comprehend the rural circumstances.

In closing, I again implore you to give serious consideration to the stark realities the Broadband Plan represents for rural America, and to ask yourselves, "Is this how we should be ensuring that America reclaims its global broadband preeminence?" I cannot imagine how your answer could be anything but a resounding "no."

Thank you, Mr. Chairman. I look forward to answering any questions.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF DELBERT WILSON, GENERAL MANAGER, HILL COUNTRY TELEPHONE COOPERATIVE, INGRAM, TEXAS ON BEHALF OF NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION (NTCA), ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (OPASTCO) AND WESTERN TELECOMMUNICATIONS ALLIANCE (WTA)

#### **Executive Summary**

Today, in tandem with unprecedented technological advances, American consumers are dramatically altering their communications expectations both at work and at home. Now, more than ever, we all rely upon dynamic communications products and services to meet our national, economic, and personal security needs.

Rural communications providers throughout the country continue to respond aggressively to the challenge of meeting these communications demands by rapidly

transforming their traditional switched voice systems into powerful and dynamic Internet protocol (IP) broadband networks. This is a natural response for rural community-based providers that have a long history of taking their service responsibilities seriously. While the successful fulfillment of this mission is not without tremendous cost, today we are fortunate to have a set of time-tested tools in place that can and will ensure these costs are recoverable.

Regrettably, many Americans today are either unfamiliar with, or have forgotten, the value of these critical cost recovery mechanisms, not the least of which is universal service. Indeed, the very agency charged with carrying out our national universal service policy and managing its related program appears to be among these. While the Federal Communications Commission's (FCC's) recently released *Connecting America: The National Broadband Plan* (NBP) rightly aspires to "bringing the power and promise of broadband to us all" it unfortunately fails to comprehend the value of and manner in which existing cost recovery tools, such as the universal service fund (USF), could help ensure such vision becomes reality.

Clearly, we believe our highest priority must center on not chasing after untested alternatives, concepts and theories but rather on focusing directly on not just preserving, but strengthening the tools, such as universal service, that we already know are working. This is the manner in which we as a country will be able to proudly meet the broadband challenges of this era, and to do so in a way that restores America's communications preeminence in deed—not simply word.

### **Introduction**

Chairman Rockefeller, Ranking Member Hutchison and members of the Committee, thank you for the invitation to participate in today's hearing on "Universal Service: Transforming the High Cost Fund for the Broadband Era." My name is Delbert Wilson, and I am the General Manager of Hill Country Telephone Cooperative in Ingram, Texas. I welcome the opportunity to engage in this discussion regarding the critical importance of our Nation's universal service policy and program and how best to strengthen them for our broadband future.

My remarks today are being made on behalf of Hill Country Telephone Cooperative as well as the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Rural Telecommunications Companies (OPASTCO), and the Western Telecommunications Alliance (WTA) which collectively represent more than 1,100 rural rate-of-return (RoR) regulated community-based providers from around the Nation. Collectively, the service territories of these companies cover more than one-third (37 percent) of the Nation's land mass yet their total subscriber base accounts for about 5 percent of the national total.

### **Rural Company Dynamics**

Hill Country provides advanced telecommunications services to more than 11,000 customer members in 15 exchanges located in 14 counties. Our service area is immense; spread over 2,900 square miles of rugged terrain throughout south central Texas—equivalent to an area twice the size of Rhode Island. Our customer density is only 4.68 subscribers per square mile. We have 109 employees and our company's annual revenues are in the range of \$19 million.

By way of comparison, Windstream, who is also appearing here today, is a mid-sized carrier that operates in 23 states with a workforce of approximately 9,500 and annual revenues of about \$4 billion. U.S. Cellular, who is also testifying today, is the fifth-largest wireless service provider in the country, serving six million consumers in 26 states with a workforce of approximately 8,700 and annual revenues of about \$3.7 billion.

While Hill Country is very small in comparison to these two entities, it is important to note that even among small rural companies, it is on the higher end of the average rural company in terms of customer, employee, and revenue figures, which is due largely to its extreme geographic footprint as well as the diverse product line it offers. I point this out simply to underscore exactly what sort of cost dynamics are involved in providing state-of-the-art communications services in rural America today.

### **The Promise of Broadband**

We believe that broadband offers the promise of a better tomorrow for all Americans, but especially for those living in rural America. Broadband is the great equalizer between rural, suburban, and urban regions, because distance and location disappear. Truly, broadband capability yields the ability for rural communities and their citizens to effectively compete in the global economy. Indeed, there is simply no question that rural economic development depends on access to broadband. Last year, the United States Department of Agriculture (USDA) released a study entitled

“Broadband Internet’s Value for Rural America.” It found that “employment growth was higher and nonfarm private earnings greater in counties with a longer history of broadband availability.”

Rural local exchange carriers (RLECs) have long understood the power and the promise of broadband and advanced communications services. Today Hill Country is working hard at deploying state-of-the-art soft switches, digital loop carriers to shorten local loops for greater bandwidths, and miles of fiber optic cables. RLECs across the Nation are doing the same thing with the objective of providing an array of reliable high-quality voice, data, and video services. The future of rural communities and America as a whole increasingly rests upon the deployment of robust broadband oriented infrastructure that can simultaneously provide for the critical needs of consumers and businesses, and the myriad health, safety, civic and educational entities on which every American depends.

Considering the diverse and extreme nature of the areas Hill Country and its fellow RLECs serve, we long ago recognized the need for a coordinated comprehensive national broadband strategy that would adequately consider and respond to such dynamic changes in the communications environment.

Imagine our hope when Congress and the President developed and enacted the provisions of the America Recovery and Reinvestment Act (ARRA) that mandated a national broadband plan. Imagine our optimism when little more than a year later, after months of outreach and hard work the Federal Communications Commission (FCC) actually issued such a report. Yet, imagine our extreme disappointment as we began to read and comprehended the misaligned premise, assumptions, and objectives of this plan and what it likely means for the future of rural America.

### **The Grand Experiment**

The Communications Act contains very specific clauses that mandate with certainty the statutory right of every American to communications services of a comparable nature in terms of price and scope. That means that rural Americans residing in the far corners of Hill Country’s vast and sparsely populated service area are entitled to communications services that are comparable to those available to people, for example, living in the DC Metropolitan area.

Naturally there is a cost factor associated with that policy and through the years, legislative and Executive Branch policymakers have taken great care through a series of appropriate steps to foster building a multi-use network that enables broadband deployment through a successful cost recovery structure that ensures this long-time national statutory policy is effectively met. It is a cost recovery strategy comprised of many pieces—cost-based universal service support, RoR regulation, intercarrier compensation, and National Exchange Carrier Association (NECA) pooling. It is an approach that was developed in order to ensure that all Americans share in the benefits as well as the responsibilities associated with such a commitment.

Yet now, after years of effort, dedication, comprehension, and success, the FCC has put forth a kind of grand experiment that all signs suggest will lead to the demise of this successful structure.

Specifically, we are concerned because the NPB appears to:

- Discriminate against rural consumers, by proposing to fund rural networks at speed standards that will render them obsolete almost as soon as they are built;
- Discard proven funding mechanisms that can easily be adapted to support broadband, and proposes replacing them with inherently unpredictable and unworkable economic models and reverse auctions;
- Provide inadequate funding to support build-out and maintenance of broadband services in rural provider service areas;
- Severely underestimate the vital role rural providers play, and must continue to play, in the provision of broadband services to Americans in rural areas including their role as “carriers of last resort”; and,
- Fail to consider reasonable alternatives that could accomplish the FCC’s broadband goals without harming rural consumers.

### **Discrimination Against Rural Consumers**

On the surface, the NBP seems to say all the right things from “Broadband is the great infrastructure challenge of the early 21st century” to “The plan is in beta, and always will be.” Its underlying reality, however, lies deeper in its resounding theme that dwells on the provision of 100 megabit per second (Mbps) speeds to 100 million Americans while pursuing a minimal speed objective for non-competitive regions that is 25 times less than that. Due to the extreme costs associated with providing broadband in rural America, there is little doubt as to which end of this spec-

trum rural communities will slide. This particular issue has caused a great deal of concern among legislators to the degree that at least 22 Senators, some on this very panel, and more than 45 Representatives have signed onto letters to FCC Chairman Genachowski expressing their disapproval with these standards that will cause a digital divide between rural and urban Americans.

#### **Disregarding Proven Funding Methods**

In addition to the potential to create a permanent digital divide, the NBP contains another major flaw in its proposal to move away from the time-tested method by which rural networks are supported. It is important to point out again that the individual companies that make up the rural provider industry I am representing today are a diverse group, with occasional differences of opinion on legislative and regulatory policy matters. However, let there be no question regarding our unified opposition to the overall approach envisioned by the NBP in terms of funding rural broadband networks in the future. We are specifically alarmed at how the plan proposes to alter the universal service program and other key tools such as RoR regulation and intercarrier compensation that are so crucial to effective rural deployment.

Rural providers have already made significant progress toward accomplishing many of the NBP's goals. They have made broadband service of varying speeds available to over 95 percent of their customers. Substantial portions of their networks have already been converted to state-of-the-art, Internet protocol-based (IP-based) technologies, designed to handle traditional voice services as well as data, video, and other broadband services and applications described in the NBP. Clearly they are providing the infrastructure and services that policymakers and the public alike are demanding and they have been able to do this largely due to the regulatory structure that is in place for the rural sector of the industry today.

The FCC should abandon the NBP's attempt to force rural providers to shift away from the RoR form of regulation to a price cap-like incentive based approach. Even assuming the FCC has the legal authority to do so, which we argue is unlikely, existing RoR methods have played a key role in efficiently achieving today's levels of broadband deployment in rural provider serving areas. RoR regulation has been one of the government's most successful regulatory systems because it encourages companies to actually make investments in infrastructure that connect insular and sparsely populated areas, while allowing companies to recoup some of those costs. This system has provided for over 96 percent voice penetration and approximately 90 percent broadband availability using the FCC's current broadband definition.

Alternative incentive regulation methods such as those proposed in the NBP, in contrast, are demonstrably ineffective in encouraging carriers to extend service to areas where a profitable business case cannot be made for such deployments. And contrary to claims by some, RoR regulatory methods remain fully viable in the broadband environment.

The NBP also suggests moving away from cost-based approaches in favor of cost modeling to determine cost recovery needs. It is difficult to evaluate details of the NBP Model envisioned by the NBP because the Model itself, and the associated data used to create it, have not been made available to the public for testing, and indeed may never be testable by outside parties. And while the FCC has made perfectly clear its intent to cap and phase-out existing funding mechanisms, the NBP is remarkably vague as to exactly how new support mechanisms based on the Model will function. For example, the NBP proposes eventually to create a new Connect America Fund (CAF), but this mechanism, like the NBP Model itself, is mostly an unknown at this point. Without a clear description of how the pieces will all fit together (along with specific proposed rule language), interested parties cannot reasonably be expected to offer informed comment on individual portions of the NBP.

However, preliminary results of analyses of the NBP Model by our organizations make clear that funding available under the Model will not be sufficient to accomplish the NBP's objectives. If, for example, the Model used to determine "gap" funding were to be used to entirely replace existing funding mechanisms, and funding is limited to the \$23.5 billion over 20 years the Model estimates as necessary to fill the gap, rural provider funding would be slashed by as much as 90 percent compared to current levels, even though approximately 70 percent of rural provider service territories are currently "unserved" based on proposed speed standards. While it does not appear likely the FCC plans to use "gap" funding calculated by the Model to determine all broadband universal service support, under any scenario it appears funding cuts for rural study areas contemplated by the Model would make it impossible for RLECs to sustain existing broadband service levels. If implemented, these funding cuts would likely cause rates for both voice and broadband services to rise significantly in rural provider serving areas. Such price escalations

would, of course, dramatically reduce existing “take” rates for broadband services in rural provider serving areas if indeed such service remains available at all.

Both prior to and following the release of the NBP, many parties have put forth so-called universal service reform proposals. The reality is that most have been little more than efforts to drive support away from carriers that are committed to market-wide service in order to create an environment more beneficial to their less inclusive business plans. For example, at least one of the witnesses here today has put forth such a plan that is designed to move support out of markets that are perceived to be competitive. This type of proposal highlights a basic misunderstanding of how a ubiquitous broadband network is deployed and maintained. Limiting or eliminating support in areas where there may be competition overlooks how costs are spread over an entire network. This approach also overlooks how diminishing support in one part of the provider’s market will lead to escalating costs throughout the remainder of its service area. If the support is allowed to truly follow the costs, perhaps there would not be a problem. If, on the other hand, such a proposal attempts to preclude support from following the costs, we could very well see situations where carrier-of-last-resort (COLR) and public safety responsibilities are abandoned as more remote regions of a rural market are no longer able to sustain themselves. Clearly such outcomes are neither consistent with current public policy nor that which is evoked throughout the NBP.

#### **More Workable Alternatives**

We accordingly urge policymakers to refrain from further consideration of these unworkable approaches that will do little more than slow or even eliminate future deployment and adoption. Instead, the NBP should be redirected to consider and emphasize the specific alternatives that were suggested in the NBP development proceedings, including various “benchmark” approaches to funding end-to-end broadband services in rural areas. If adopted, these approaches could be used to encourage rural providers and others to meet FCC-established broadband deployment and adoption targets on a timely basis. Moreover, our organizations believe these alternative mechanisms could be implemented well in advance of the 10-year transition approach embraced by the NBP and in a legally-sustainable manner, which is more than could be said of many of the NBP’s parameters.

A key feature of these alternative approaches is that they would build on the success of proven support mechanisms to target broadband deployment and adoption. While the NBP dismisses such programs as outmoded “legacy” plans, today’s time-tested cost-recovery structure, including RoR regulation, NECA pooling, intercarrier compensation, and cost-based universal service support, have permitted rural providers to deploy and operate multi-use, broadband capable networks over vast portions of the Nation’s geography. The FCC should be looking to continue and improve this success story, not undermine it.

The NBP correctly notes existing universal service and intercarrier compensation cost recovery programs were created in an earlier, pre-broadband era, and must be adapted to focus on broadband service of today’s era. We agree completely and have been among the first to argue that it is long past time for reorienting these programs for the needs of tomorrow. Indeed, in recent years, our organizations have testified on this matter before this panel and its House counterpart on several occasions and laid out specific recommendations and approaches in this regard.

If adopted as described, the NBP’s funding proposals will destroy the prospects of improving broadband service in rural provider serving areas, cause dramatic reductions in existing broadband service levels, and may indeed make it impossible for rural providers to continue providing even basic voice services in many rural areas of the country.

#### **Inadequate Cost Recovery**

Just as we have been opposed to the existing regulatory cap as well as proposed statutory caps on the high-cost fund (HCF) of the universal service program, so too are we deeply troubled by the NBP’s concept of imposing an overall cap on high-cost funding as we reorient the universal service program from voice to broadband. We cannot comprehend how policymakers that propose to reestablish the United States as the undisputed globally preeminent broadband force can simultaneously give consideration to a cap on high-cost funding or new caps or freezes on other critical cost recovery streams such as Interstate Common Line Support (ICLS). Such approaches show a lack of understanding about what these mechanisms represent and how they fit together. If implemented, these concepts would immediately dampen, if not eliminate, all short-term prospects for improved broadband deployment and adoption in rural provider markets. As COLRs, Hill Country and my rural colleagues bear unique and significant cost burdens that fully justify maintaining

funding mechanisms without caps or freezes both for today's, as well as tomorrow's, communications infrastructure. Again, there are significant costs associated with building a multi-use broadband capable network in rural areas. Capping or freezing funding mechanisms will make it extremely difficult, if not nearly impossible, to meet our national policy and economic broadband goals in the future.

#### **Extending and Repaying Credit**

Refocusing USF for the broadband future must be done with extreme care and vigilance because there is great potential for shockwaves to be sent throughout the RLEC ecosystem. For instance, in part and parcel with placing caps on funding and moving away from RoR regulation, the NPB as written would quickly lead to the inability of rural providers to repay billions of dollars in loans extended by the USDA's Rural Utilities Service (RUS) as well as the rural sector's primary financiers CoBank and RTFC. Committee members should know that in a December 22, 2008 filing with the FCC, the RUS specifically laid out just how important universal service support is to the agency's massive telecommunications lending portfolio. In that document, the RUS outlined how its nearly \$4 billion tax-payer financed loan portfolio could be put at risk by proposals that would curtail universal service flows in one way or another. Then RUS Administrator Jim Andrew stated that a recent analysis of borrowers at the time showed that 53 percent of the loans outstanding at that time would not be feasible were universal service funding to be frozen. He went on to say that if toll revenues (interstate and intrastate access revenues, interstate and any intrastate universal service funding, and end-user subscriber line charges) were frozen, two-thirds of the loans would not be feasible. This stark reality was underscored again just last week when current RUS Administrator Jonathan Adelstein alluded to the importance RUS lending, universal service funding, and the need to avoid creating a digital divide between rural and urban Americans.

Of course, the importance of all these mechanisms is no secret to those of us that are involved in the industry. We are extremely concerned by the NBP proposals as we go about our efforts to try to meet our consumers' needs and otherwise plan for the future. The inability to secure financing at reasonable rates threatens our ability to continue to make upgrades to the underlying infrastructure as well as build out to the unserved areas of our service territories. Ultimately, this hurts rural consumers and those that rely on the underlying network to deliver broadband-reliant services.

Listening to the needs of rural consumers and understanding the ever growing importance of broadband in everyday life, Hill Country is actively engaged in a major outside plant modernization project. This \$57 million initiative involves the deployment of 560 miles of fiber optic cable, 280 digital loop carriers and state-of-the-art soft switches throughout a substantial portion of our market area. Why are we doing this? Quite simply because our subscribers are demanding it and we recognize that to be a part of the national and global economies, they need it.

Let me give you some examples: Strategic Oil Field Services, which does business globally, moved their office location 12 miles in order to receive Hill Country's broadband service. This connection to the world was imperative to its ongoing successful operations and ensured that much needed jobs stayed in rural America. Another business, NIA, which is an insurance fraud investigation company, recently contracted for a 100 Mbps symmetrical service link which is helping them operate more efficiently as well as increasing their employment rolls. There is also an automobile chassis parts distributor/warehouse located in Hill Country's Center Point Exchange due exclusively to the fact that we were able to offer high bandwidth for this company's catalogue mail order business. In our Leaky Exchange, we have a day-trader who was able to set up his business because of broadband connectivity. In addition, Hill Country proudly has fiber to all of its schools, enabling fast connections for all types and levels of educational learning opportunities. Clearly broadband is essential to the economic well being of rural America today.

Along with alternative approaches to broadband funding mechanisms, the FCC should consider ways to improve broadband adoption rates in rural provider areas. These tend to be low among customers in such areas due in part to the cost of obtaining middle mile transport to the Internet backbone, and the extraordinary high cost of obtaining video content, which makes it difficult for rural providers to offer attractive bundled service packages.

We have also recommended that policymakers turn their immediate attention to the urgent need to adopt universal service fund (USF) contribution reform measures, as well as address outstanding intercarrier compensation (ICC) issues including confirming application of existing access charge mechanisms to Voice over Inter-

net Protocol (VoIP) services. The failure to address these issues will further undermine prospects for accomplishing the goals of the NBP.

#### **Conclusion**

We had great hopes for the NBP and what it could mean for all Americans, yet here we are again scrambling to fix and otherwise redirect an emerging Federal policy that fails to adequately comprehend the rural circumstance as it appears crafted mostly with urban factors in mind. Here we have a plan that is almost entirely about arriving at a point in time where, largely through competition, deregulation, and private investment, some 100 million households will have affordable access to actual broadband speeds of 100 Mbps down and 50 Mbps up.

Simultaneously, it appears to have an unstated yet all too clear flawed objective of destroying a working regulatory system for economically difficult-to-service markets with the mistaken belief that competition, deregulation and unsupported private investment might somehow yield at least a minimum actual broadband speeds of 4 Mbps down and 1 Mbps up.

It is obvious this goal, which is 25 times slower than the vision for competitive areas, is the fate that awaits rural America. We have communicated these concerns to executive and legislative branch policymakers alike. Our organizations have implored these parties to reassess and redirect the NBP's overall approach to funding broadband services in rural provider serving areas before undertaking any further steps to implement the plan.

We strongly urge the FCC to not implement the specific proposals set forth in the NOI and NPRM ahead of the opportunity for the public to thoroughly evaluate, discuss, and comment on other related elements of the NBP that may not be directly addressed in these proceedings yet are crucial to their direction nonetheless.

Today, I again implore you to give serious consideration to the stark realities the NBP represents for rural America and to ask yourselves if this is how we should be going about ensuring that America as a whole reclaims its global broadband pre-eminence. I cannot imagine how your answer could be anything but a resounding "no." Thank you.

Senator BEGICH. Thank you, Mr. Wilson. It sounds like you have some issues with the plan.

[Laughter.]

Senator BEGICH. Thank you very much.

Mr. Gockley.

#### **STATEMENT OF JOHN GOCKLEY, VICE PRESIDENT, LEGAL AND REGULATORY AFFAIRS, UNITED STATES CELLULAR CORPORATION**

Mr. GOCKLEY. I believe this hearing comes at a critical juncture for our Nation's communications infrastructure. Mobility and broadband are the two must-have applications that consumers demand. And how those services will be provided to rural America hinge on the outcome of this debate.

U.S. Cellular sees an interesting challenge for policymakers. Consumer demand for mobile communications is exploding, yet the networks they need to operate on are incomplete. This is especially true in rural areas.

There are three key issues I want to highlight for your consideration. You can address the need for broadband and mobility in a reformed program. Reform should ensure that support is targeted to areas and consumers in the greatest need, and these funds must be utilized as effectively and efficiently as possible, with appropriate levels of oversight to avoid the potential for waste, fraud, and abuse.

First, and most important, now is the time to permit carriers to directly invest Universal Service funds in both broadband and mobility. Even before the exact long-term mechanics of the National Broadband Plan are completed, wireless carriers could be deploying

broadband with support they already receive, if the FCC would only give us the green light to go forward.

Second, incentives must be properly structured so as to drive investment to the highest-cost areas that need it most. The process for targeting support is underway through the National Broadband Plan, and we support the Commission's efforts to better target support.

Third, accountability and efficient distribution of the funds are key drivers to controlling fund growth, and ensuring that rural citizens see the benefit of the support received. We acknowledge that the current mechanism needs reform, and changes must be made to ensure that all carriers receive a sufficient level of support, but no more.

A market-based support mechanism is superior to one where the government selects a single marketplace winner. Rural consumers do not need a government-chosen monopoly carrier. They need the ability to choose a carrier that best suits their needs, with support only going to the carrier that wins the customer, and only for so long as the carrier retains the customer. If the support follows the consumer rather than going to a single carrier, the overall costs of the program can be controlled, while consumers can be free to determine which provider is offering the best service, terms, or coverage, just as it happens today in urban markets.

In my written testimony, you'll find maps of five States represented on this committee. While these maps show the great strides we have made over the past several years, using Universal Service support, there remain large unserved and underserved areas yet to cover, and this program is the key to achieving that goal.

How do we know that? Because we have third-party drive-test data showing that consumers using our competitors' networks that are unsupported by USF experience dropped-call rates that are as much as eight times higher than ours. So, clearly, USF is essential to achieving ubiquitous coverage in rural markets.

We also submit that the transition to new mechanisms must be equitable. The National Broadband Plan's proposal of a 5-year phase-down of support to wireless carriers but a 10-year phase-down for wireline carriers is arbitrary, at best, and discriminatory, at worst, and should be replaced with a plan to phase down both technologies over the same period. If it's 10 years for wireline, it should be 10 years for wireless.

In closing, it is now beyond dispute, citizens living in many rural high-cost areas are not going to have access to modern devices and the applications enabled by them unless there are high-quality advanced networks in place. The Universal Service Program is a key driver of high-quality networks.

Thank you for permitting me the opportunity to present here today, and I'd be pleased to answer any questions you might have.

[The prepared statement of Mr. Gockley follows:]

PREPARED STATEMENT OF JOHN GOCKLEY, VICE PRESIDENT, LEGAL AND REGULATORY AFFAIRS, UNITED STATES CELLULAR CORPORATION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, my name is John Gockley, and I am Vice President, Legal and Regulatory Affairs

for United States Cellular Corporation. Thank you for the opportunity to discuss how Congress and the FCC might consider transforming the universal service fund to be better aligned with the needs of the Nation in the era of broadband.

U.S. Cellular provides wireless service in nearly 200 markets across 26 states located in regional clusters across the country, including many of the states represented on this Committee such as Kansas, Maine, Missouri, Nebraska, Virginia, West Virginia and Washington. The overwhelming majority of the geography we serve is rural in character. Our opinions and perspectives on the Universal Service Fund are informed by our experience as an eligible telecommunications carrier (“ETC”) serving rural America.

We use Federal universal service support to build new cell sites and operate facilities in high-cost rural areas that would not otherwise have access, and we see first-hand the profound effect that access to advanced wireless service has on jobs and the quality of life of the consumers in rural America that we serve.

From our rural-centric perspective, we offer the following views on the role of universal service in a world evolving to broadband:

### **1. Providing USF Support Today for Investment in Fixed and Mobile Broadband Infrastructure is Critically Important**

This hearing comes at a critical juncture for our nation’s communications infrastructure. We have known for a long time that mobility and broadband are the two “must have” applications to enable our citizens and businesses to function in the modern world. Mobile broadband uptake is exploding, and the percentage of wireless-only households now approaches 30 percent. It has now been almost fifteen years since Congress had the wisdom to declare that rural citizens should have access to both *telecommunications and information services* that are reasonably comparable to those available in urban areas. As such, now is the time for the FCC to develop an approach that permits carriers to directly invest universal service funds in the two services that consumers desire most: broadband and mobility.

With wireless carriers poised to deploy state-of-the-art 4G networks, the timing couldn’t be better for supporting mobile broadband deployment. Access to broadband should no longer be considered a luxury—it is an absolute necessity. And any program with the goal of “preserving and advancing universal service” must make funding available to build, maintain and upgrade state-of-the-art and high-quality broadband networks throughout those areas of the country that would not otherwise attract sufficient private capital. Along with access to basic voice service, broadband, whether delivered over land line or wireless networks, has the capability to deliver an enormous array of services and applications that will grow exponentially every year.

The FCC’s National Broadband Plan identified a significant broadband investment gap in rural America and recommended that the universal service program be an essential tool to close that gap. We agree that this program can and should be a key driver of broadband investment and consumer adoption. Rural America would not have high-quality telephone service today without universal service funding and it will not have high-quality broadband services tomorrow unless this program is properly structured to provide market-based incentives to carriers who are willing to invest in rural areas.

Between 1999 and 2009, over \$31 billion of universal service support has been invested in *fixed voice service* while \$6 billion has funded *mobile voice service*.<sup>1</sup> If the FCC simply permitted eligible carriers to use the support we already receive today to build broadband infrastructure, we would begin that process immediately, and our investment would substantially narrow the broadband gap in just a few years.

We embrace the challenge of building out high-quality broadband networks, but we also know that without universal service, rural and high-cost areas are going to be left behind. Furthermore, we believe there are ways to accomplish Congressional goals while maintaining strict budgetary control over the program, guiding investment to the areas of greatest impact, and ensuring the accountability of those that utilize the funds.

*To be clear, permitting USF high cost support to be used in the deployment of fixed and mobile broadband services is the single most important action needed to accelerate access for those living in rural high-cost areas.*

### **2. Mobility is Critical to Rural Americans**

U.S. Cellular recently asked rural citizens in several states whether they would give up their mobile handset or their home connection to the Internet if they had

<sup>1</sup>2009 Federal-State Joint Board Monitoring Report at Table 3.2; <http://hraunfoss.fcc.gov/edocs/public/attachmatch/DOC-295442A5.pdf>.

to choose between them. We were not surprised when a majority said they would give up their home connection to the Internet, mostly because they viewed a mobile handset as a critical health and safety tool. Although we are building out in rural areas as quickly as possible, over 75 percent of the consumers in states where we serve such as West Virginia and Maine still experience dead zones or poor call quality while moving around the state, a clear indication that work still needs to be done to make service ubiquitous.

What may also interest the Committee is that we get very few comments from our customers concerning the universal service line item on their bills. Yet, every day we receive scores of comments identifying rural areas where service needs to be improved. Many of these comments come from prospective customers who tell us that they are leaving their old carrier because it has insufficient coverage in rural areas. In addition, policymakers often tell us where they personally experience persistent dead zones, or where their constituents have identified a lack of coverage.

The symptoms are not just dropped calls and dead zones that compromise safety. They include an inability to receive e-mail messages or access the Internet, inability to use smart phone functionalities, and batteries that die quickly because the device is constantly searching for a network.

Problems also extend to law enforcement and health workers. Awhile back, Sheriff Everett Flannery from Maine testified before this Committee about the many ways he and other first responders use mobile phones, and the frustration of attempting to deal with a domestic disturbance or talk to an undercover officer in a rural area with inadequate service.<sup>2</sup>

We have used support to aggressively fill in rural areas and want this Committee to understand that while we have come a long way, the job of delivering basic mobile wireless coverage to rural America is not done. In fact, one point I would like to highlight for you is the well-worn statistic that almost everyone has access to two or more mobile carriers. That statement says absolutely nothing about the quality of service in rural areas. For us, universal service is the difference between *some mobile service in some areas* (think "one bar" that flickers in and out) and *high-quality service (think "five bars" that remains steady as you move) everywhere that rural citizens live, work and travel*. A robust and ongoing program is needed to enable carriers to fill in coverage gaps that continue to plague rural areas, otherwise citizens will be forced to settle for service quality that is inferior to that which is available in urban areas.

In recent years, we have aggressively invested Federal universal service funds to dramatically improve coverage in rural areas. Those coverage gains are illustrated in the maps I have attached for Maine, Missouri, Nebraska, Virginia and West Virginia. In each of these states, it is easy to see that much work remains to be done to provide basic wireless coverage, and to improve that coverage to deliver seamless access where rural citizens and visitors live, work and travel. The same can be said for all of the states in which we operate as an ETC. That is, while we obviously share the goal of delivering broadband to these regions, many areas still require investment in basic network access, to enable citizens to complete a telephone call.

*Accordingly, we strongly disagree with the prior FCC's decision to cap wireless funding in areas where we need to improve service. We also disagree with the National Broadband Plan's recommendation to cut funding to wireless carriers immediately by reducing the cap in areas where Verizon and Sprint have voluntarily agreed to walk away from the program.*

We understand that the FCC is currently considering an item that would recapture all of the funds relinquished by Verizon and Sprint, contrary to its May 2008 cap order. If this item is adopted, there will be a significant and immediate reduction in wireless investment in rural areas. For example, in Maine, where Verizon Wireless has relinquished its ETC status, we estimate that the state will lose up to \$3 million per year that other eligible carriers could use to build facilities in rural areas that need improved service, without increasing the size of the fund at all.

Given the need to continue to improve coverage, as our attached maps make clear, it makes little sense to begin to decrease existing funding before there is a concrete plan in place for the disbursement of the new funds. We fear that if wireless voice support is reduced or prematurely re-directed elsewhere, then coverage that exists today may be compromised as carriers come to grips with the economic reality of how to pay for the expense of maintaining and operating existing cell sites in rural areas that never would have been built in the first place but for USF support. Ac-

<sup>2</sup>See, [http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord\\_id=37f1f667-9824-460f-a4b6-c678b6c815d0&Statement\\_id=f7e627f0-bf87-485f-9fa4-b074c3beb859&ContentType\\_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group\\_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=6&YearDisplay=2007](http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=37f1f667-9824-460f-a4b6-c678b6c815d0&Statement_id=f7e627f0-bf87-485f-9fa4-b074c3beb859&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=6&YearDisplay=2007).

cordingly, we will oppose any proposal to “recapture” funds that large carriers are walking away from.

Chairman Genachowski recently said at the D8 Tech conference: “Unleashing mobile is one of the most important, if not the most important thing we can do. There’s no doubt in my mind that the biggest opportunity over the next decade to drive innovation, to drive broadband success, to drive competition in broadband . . . is to take advantage of mobile broadband.”<sup>3</sup>

We could not agree more. In rural and high-cost areas there is not now, and will not be, enough of an infrastructure to attract and keep businesses unless the universal service mechanism effectively accelerates the construction of infrastructure that is reasonably comparable to that now present in urban areas. We must have universal service mechanisms which ensure that mobile wireless networks provide sufficient coverage to enable broadband deployment to Americans living in rural high-cost areas.

As a positive first step, the Commission should simply make broadband a supported service and allow us to use the existing streams of support to continue to fill in coverage gaps, while at the same time deploying mobile broadband over the substantial network of towers we have built with USF support. This would make for a remarkably efficient use of both USF support already provided, and support yet to come, which is vital to completion of existing voice networks and to jump start high speed 4G mobile broadband networks.

*We urge Congress to direct the FCC to develop mechanisms to provide rural Americans with access to mobile services that are reasonably comparable in quality and price to that which is available in urban areas by immediately permitting use of the high cost support that is available today for the deployment of 4G networks and including dedicated funding for mobile broadband as part of any long-term solution.*

### **3. Market-Based Mechanisms Benefit Consumers and Accelerate Investment**

The National Broadband Plan recommends the use of mechanisms that would select one winner per geographic area regardless of technology. This would mean that rural citizens would receive either fixed broadband or mobile broadband, but not both. And the government would choose which one. We disagree with this approach on a number of levels. A market-based mechanism that allows consumers to choose the carrier that provides the best service is superior to one where the government selects a single marketplace winner. Consumers benefit more when carriers fight in the market to provide better service and lower prices, rather than fighting in Washington to be awarded a dominant market position. Rural consumers also deserve a choice of providers, and the ability to access both fixed and mobile broadband, just like consumers in New York City and Chicago.

Consumers are increasingly accessing the Internet while mobile. If we fail to fund mobile broadband access in rural America, we are acquiescing in the creation of a new and more intractable digital divide. Therefore, we must have *fixed and mobile* broadband networks in rural America. We think the Broadband Plan is not bold enough here because we should be first defining goals properly and then proceeding to determine how to pay for them—not limiting our goals because of a concern that the size of the current fund may be insufficient today.

If universal service is limited to one government-selected and subsidized carrier, soon thereafter it will become dominant, limiting choices and requiring extraordinary government regulatory oversight. The FCC will be required to impose market opening measures, including regulation of rates, resale, unbundling, and interconnection, similar to the current regime set forth in Section 251 of the Telecom Act for incumbent wireline carriers. Other aspects of mobile wireless service, such as customer service, reliability of coverage, availability of advanced handsets and promotional offerings will all be very difficult and expensive to regulate. This is counterproductive and amounts to the government reconstructing the very monopoly-style system that the 1996 Act intended to break up. Universal service mechanisms were intended to work within increasingly competitive markets, not prevent the very competition that the 1996 Act intended to promote.<sup>4</sup>

Rather, we should be exploring alternative and creative ways to foster competition by encouraging multiple carriers to seek support in an area before we conclude that it is simply too expensive and turn our back on the benefits of competition. It may make sense for policymakers to consider the benefits and economies of scale that might accrue if USF recipients were required to share the expenses of common in-

<sup>3</sup>D8 Video: FCC Chairman Julius Genachowski on the Broadband Problem.

<sup>4</sup>See, e.g., Federal-State Joint Board on Universal Service, 14 FCC Rcd 8078, (1999).

infrastructure such as towers or backhaul with one another in order to maximize the USF support that is available.

U.S. Cellular has long favored mechanisms that determine an amount of support in high-cost areas, allowing carriers to gain support only when they get a customer, while losing support when they lose a customer. The incentive to get and keep a customer must be aligned with the availability of support. More important, from a budgetary basis, this kind of concept ensures that the size of the draw on the fund is controlled by the amount of subsidy available for each area. Frequent claims that the high cost fund needs to be better controlled would be addressed via mechanisms that only support the carrier that gets the customer.

We believe that the mobility fund contemplated by the FCC should fund the reasonable costs of both construction and operations for mobile broadband providers and should be expanded from just supporting 3G networks to include the coming 4G revolution which will be so vital to the future health, safety and economic growth of the Nation. If you take anything away from my testimony let it be this—rural Americans are entitled to have access to both fixed broadband and mobile broadband so that they may choose one, or even both, to satisfy their needs. Congress must provide sufficient funding for both.

With respect to determining the appropriate amount of support in a particular area, the FCC is considering a model-based approach, and we have previously testified before the Congress that models should be considered. In a recent order, the Commission explained its use of a model for some wireline carriers provides “a specific and predictable methodology for determining when non-rural carriers qualify for high-cost support.”<sup>5</sup> Computing power and mapping software have advanced the art and science of modeling light years ahead of the 1990s, when that model was developed.

A form of cost model may also be a useful tool in determining the true cost and benefits of introducing multiple competitors into a rural area. We look forward to participating in discussions with Congress and the FCC regarding the efficacy of adopting cost models to distribute USF support.

*Market-based support mechanisms that provide proper incentives to invest and require accountability for the use of funds are far superior to the government selecting one carrier for rural citizens.*

#### **4. Support Must Be More Accurately Targeted**

Support funds are not unlimited and, thus, incentives must be properly structured so as to drive investment to the high-cost areas that need it most. Today, some relatively low-cost suburban areas receive too much support while other high-cost rural areas receive too little. Models can be an effective tool for identifying high-cost areas and the amount of support that should be available to carriers serving there.

We encourage more accurate targeting of support, in large part because our internal market analysis suggests that we are making great progress in areas where support is available. For example, in drive tests we commissioned in 2009 analyzing dropped and incomplete calls in urban and rural settings for all the major carriers, independent testing confirmed that our network performance in rural areas dramatically outperformed the networks of carriers not receiving USF support. We attribute this to the additional investments we have made using universal service funds. In short, rural consumers in areas where we are investing support are receiving higher quality service as a result of our participation in the program. That said, our drive tests also showed that our networks in urban areas out performed our networks in rural areas. As I said at the outset, there is still much work to be done to bring rural areas up to a comparable level of service.

Targeting support to the areas that need it most will increase incentives for rural carriers to deploy much-needed infrastructure to the benefit of rural citizens.

#### **5. Promote Access for Low-Income Individuals**

Today, the Lifeline and Link-up programs provide low-income individuals with access telephone service, while the Schools and Libraries program enable access to broadband at anchor educational institutions. Universal service reform must include promoting access to discounted fixed and mobile broadband service for low-income households. It is not enough to provide broadband to a household if residents cannot afford to take advantage of it. Educational opportunities expand with access to broadband, as many low-income individuals cannot afford to attend traditional educational institutions.

<sup>5</sup> High-Cost Universal Service Support, Order On Remand And Memorandum Opinion And Order, FCC 10–56 (April 16, 2010) at para. 18.

*We agree with the National Broadband Plan that there needs to be a Lifeline program promoting access to broadband for low-income Americans.*

#### **6. The Transition to New Support Mechanisms Must be Measured and Orderly**

The FCC has set forth a core reform principle that there should be no “flash cuts,” so that carriers can make appropriate adjustments and prepare for significant changes. We agree with that approach. Yet the National Broadband Plan and subsequent FCC proposals contain several troubling recommendations.

For example, support to wireless carriers under the existing mechanism would be phased down over a 5-year period, yet the Commission has offered no public assurance that the new broadband funds will be phased in over a similar period. *The FCC must establish its broadband funding mechanisms first so that the timing of a phase in coincides with the phasing out of the current mechanisms.*

Just as troubling is the recommendation that support to wireline carriers be phased down over a 10-year period, despite the fact that their networks are mature, while support to wireless networks would be phased down over 5 years, even though our networks require substantial additional investment to cover rural America. The arbitrariness and inequity of differing phase downs aside, accelerating the phase down of wireless carriers only reduces the ability of carriers to construct new cell sites in remote areas. This seems counter-productive, especially given that broad swaths of rural America still require significant capital investment to be brought up to par with urban areas.

Moreover, any phase down should mirror the likely industry conversion from voice networks to all IP networks. An accelerated phase down that is not in sync with network deployment may have the unintended consequence of causing voice networks to be prematurely abandoned. We do not know what that right time-frame is yet, but a record needs to be developed before the phase down occurs.

*The transition to new support mechanisms should not be inequitable, should occur on the same schedule as contemplated for wireline carriers, and new mechanisms should replace the old in a timely fashion.*

#### **7. Reforming the Mechanism for Contributing to Federal Universal Service Must be a Priority**

Today, Federal universal is funded by an assessment that is a percentage of interstate and international revenues for telecommunications services. Revenues from information services are not assessed. States fund their universal service programs by assessments on intra-state services. The immediate problem for the Federal program is that spending on interstate telecommunications services has declined by sixteen percent from its high.<sup>6</sup>

Voice traffic is shifting to wireless and the Internet, prices are falling, and business and residential consumers are spending less on voice services as a result of the recession. As the amount of money spent on interstate and international services declines, the percentage assessment on the remaining revenue must rise. This of course is a primary cause of the recent rise in the contribution factor, not growth in funding to wireless ETCs, which have been capped.

The principle of universal service, that everyone should equitably share the burden of ensuring that the entire country has access to the services that we all need, since everyone gains from being connected to a greater network of users, is undermined when some segments of the industry bear a disproportionate share of the burden. In the case of wireless, our industry contributes roughly \$3.00 for every \$1.00 that comes back to support wireless services. This disparity harms rural citizens, who deserve high-quality mobile wireless networks.

For years, the FCC has entertained proposals for reforming the contribution mechanism so that all users of the network contribute equitably to further the universal service goals set forth in the Communications Act. U.S. Cellular has supported a hybrid approach that would assess both connections and revenues. But we are not wedded to this approach.

*Near term action is needed to reform the contribution methodology to ensure that the system is equitable and that there is sufficient funding to enable all Americans to access our telecommunications networks.*

#### **Concluding Remarks**

The Nation is deep in catch-up mode when it comes to rural broadband development. Universal service must accelerate infrastructure investment so that rural citi-

<sup>6</sup>See, FCC Quarterly Administrative Filings from 2001–2010 at <http://www.usac.org/about/governance/fcc-filings/2010/>.

zens have access to advanced services and rural communities can have the health, safety, economic development, and jobs benefits that flow from broadband infrastructure. Just as important, universal service must look well down the road, beyond the markets and devices we see today. Last week, it was predicted that tablet sales will exceed netbook sales in 2012 and desktop sales by 2013.<sup>7</sup>

Think about that—a device that made its debut just a few months ago is going to overtake the desktop computer in 3 years. What this tells us is that there will be more devices and more applications that will bring enormous change to everything, including law enforcement, health care, education, transportation, and energy management. Many of these changes require access to mobile broadband. Put simply, our citizens living in many rural high-cost areas are not going to have access to these devices and the applications enabled by them unless there are high-quality advanced networks in place.

We share your urgency concerning the need to keep rural and low-income Americans from falling further behind the information revolution and we are prepared to help the Committee confront the critical issues addressed by today's hearing. We are supportive of the goals of the National Broadband Plan and we think that with some common sense adjustments that it can provide the way forward for deployment of fixed and mobile broadband throughout rural America.

**Map Exhibits Showing U.S. Cellular Coverage**

[graphics]

Senator BEGICH. Thank you very much.

Mr. "McSlaylow—Slarrow" I'm always doing it to you, I apologize.

Mr. MC SLARROW. That's all right. Happily, my parents gave me an easier first name.

Senator BEGICH. I know, I like it, Kyle. It's easier.

[Laughter.]

**STATEMENT OF KYLE MC SLARROW, PRESIDENT AND CEO,  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Mr. MC SLARROW. Thank you, Mr. Chairman.

First, let me say, as the Commissioners did on the first panel, we agree that reform of Universal Service Fund, and particularly the High-Cost Fund, is overdue.

And there are really two massive marketplace changes that have taken place over the last few years that I think help point the way in how we might consider reform of the High-Cost Fund.

The first is, when I first took my job, only a few years ago, we had more dial-up customers in America than broadband. Now 70 percent of households are taking broadband, and, at least for my industry, we offer broadband to 92 percent of American households. It's a huge change in the marketplace.

The second is, again with my industry, only a few years ago we had very few phone customers. Now we offer a competitive phone service to 90 percent of American households. Indeed, 22 million Americans actually take a phone product from a cable company. And, of course, broadband and phone are increasingly intermingled.

In our industry's case, very few of our companies actually receive high-cost support. I think it's only 1 percent of what's estimated to be \$4.6 billion of the High-Cost Fund in 2010. And so, we would submit, as we did at the FCC last year, that as we think about reform of the High-Cost Fund, number one, it does make sense to begin to transition to broadband and away from phone. As Com-

<sup>7</sup> See, [http://blogs.forrester.com/sarahrotmanepps/10-06-17-steve\\_ballmer\\_right\\_pc\\_market\\_getting\\_bigger](http://blogs.forrester.com/sarahrotmanepps/10-06-17-steve_ballmer_right_pc_market_getting_bigger); see also, [http://www.forrester.com/rb/Research/us\\_consumer\\_pcmarket\\_in\\_2015/q/id/57210/t/2](http://www.forrester.com/rb/Research/us_consumer_pcmarket_in_2015/q/id/57210/t/2).

missioner Copps said, I think phone is highly penetrated; it's something like 98 percent in America. But, we should target those areas that don't actually have access to broadband—unserved America, which, you know, depending on your estimate, is 8 to 10 percent of households. And with scarce resources, we ought to apply those dollars to unserved America first.

The suggestion that we have, that we'd like this committee to consider, as we asked the FCC, is to think about those marketplaces where you have an unsubsidized wireline phone competitor to an incumbent phone provider. In those markets where you have an unsubsidized competitor to an incumbent that's receiving USF, we think that is clear evidence that the subsidy is not necessary. It's not a question of right or wrong, it's a question of, How do you apply those scarce resources to make the greatest impact?

So, one of the things we would submit is that some type of analysis, in law or at the FCC as part of a petition, ought to be a scrub, looking at these markets. And where we—and our suggestion is, where you have a market where 75 percent of the households have available to them a competitive unsubsidized service, that is clear evidence that those monies should be directed to unserved areas that actually need it.

And in the interests of time, Mr. Chairman, I'll stop there.

Thank you.

[The prepared statement of Mr. McSlarrow follows:]

PREPARED STATEMENT OF KYLE MCSLARROW, PRESIDENT AND CEO,  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

Good morning Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee. My name is Kyle McSlarrow and I am the President and Chief Executive Officer of the National Cable & Telecommunications Association (NCTA). Thank you for inviting me today to testify on universal service reform.

NCTA represents cable operators serving more than 90 percent of the Nation's cable television households and more than 200 cable program networks. The cable industry is the Nation's largest provider of residential high-speed Internet service, having invested more than \$161 billion since 1996 to build two-way, interactive networks with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to more than 22 million American consumers in urban, suburban, and rural markets—almost wholly without any high cost support. Cable operators are committed to expanding access to quality voice and Internet services, and the dramatic growth in cable broadband subscribers is evidence of their success in doing so.

The universal service program has long been a critical element of our Nation's communications policy, ensuring that all Americans have access to rapid and efficient communications services at reasonable rates—and it will undoubtedly remain a cornerstone of communications policy in the broadband era. As recent disasters have pointed up, many rural and remote areas of the country still lack access to the communications technologies that consumers in urban and suburban areas take for granted. It is appropriate for this committee to consider reforms to the USF high cost program so that the program most efficiently and effectively fulfills its objectives in today's environment.

As a major contributor to the Federal Universal Service fund, the cable industry has a significant interest in USF issues. We believe it is time to consider ways to transition away from a monopoly-era support program and toward a more modern, neutral, and forward-looking high cost support mechanism that focuses on bringing broadband service to unserved areas and underserved populations—and that the growth of local competition offers the opportunity for policymakers to make this transition.

The recommendations of the National Broadband Plan on universal service reform provide a welcome starting point for transforming the high cost program for the broadband era. In order to ensure that the overall size of the fund remains reasonable, the Commission has proposed to cap the high cost fund at the 2010 level and

sought comment on how to reduce the overall size of the fund. It has also proposed better targeting of high cost support to noncompetitive areas. Specifically with respect to broadband, the Commission has proposed the establishment of the Connect America Fund (CAF) that directly supports broadband without increasing the size of the USF over the current baseline projection.

Consistent with these objectives, NCTA itself has advanced a proposal for eliminating high cost support in competitive areas where it is no longer needed. Our proposal would target reductions in areas where there is unsubsidized facilities-based competition, thereby freeing up funding that can be used to support deployment of broadband in unserved areas.

We also support S. 2879, the bipartisan Broadband Opportunity and Affordability Act introduced by Chairman Rockefeller and Ranking Member Hutchison, Subcommittee Chairman Kerry, and Senators Snowe, Pryor, and Warner. This bill would authorize the FCC to create a two-year pilot program to expand the Commission's existing Lifeline program to cover broadband service. NCTA, working with a wide array of stakeholders, developed one such pilot program concept, the Adoption Plus (or "A+") program, a public-private partnership to promote broadband adoption for up to 3.5 million middle school-aged children eligible for the National School Lunch Program in approximately 1.8 million low-income households that do not currently receive broadband services.

I will address each of these issues in turn.

#### **The Local Exchange Marketplace Has Changed Substantially Since Congress Created the USF Program in 1996**

When Congress directed the FCC to create the Universal Service Fund program in 1996, incumbent local exchange carriers (ILECs) had a monopoly on the local exchange market, interexchange carriers were the only companies providing long distance service, wireless was a nascent service generally considered to be a luxury, and broadband Internet access was virtually nonexistent. Fourteen years later, the marketplace has changed completely. Cable operators today provide voice service to over 22 million voice customers, often offering it in rural areas throughout the country. Already, cable's entry into the voice market has produced billions of dollars in consumer benefits and promises even greater benefits in the future.

Notwithstanding these fundamental marketplace changes, however, the high cost program operates as if nothing has changed since 1996. Even as millions of Americans take service from facilities-based wireline competitors, and millions more decide they no longer need wireline voice services at all, the high cost fund continues to provide billions of dollars of support for wireline voice services provided by local telephone companies. And because of structural flaws in the high cost program, new entry by facilities-based competitors generally does not reduce the amount of support a local exchange carrier receives. As a result, the total size of the Federal USF program, and the resulting burden on consumers, continues to escalate at a staggering rate. The current USF program is on an unsustainable path, with the contribution factor set to remain above 13 percent beginning on July 1—down only slightly from its high of more than 15 percent earlier this year (and as compared to under 6 percent 10 years ago).

#### **USF Reform Requires a Cap on the Size of the High Cost Fund**

A critical first step in USF reform is placing a cap on the size of the high cost fund. Unless high cost support is brought within reasonable bounds, it would be imprudent to expand the high cost fund to cover broadband services. An effective cap in the size of the high cost fund is absolutely necessary to protect consumers and promote greater efficiency. Particularly if Congress or the FCC decides to bring broadband within the scope of USF, consumers should not be expected to pay any more than they do today. In its pending USF reform rulemaking proceeding, the FCC has appropriately sought comment on capping legacy high cost support provided to incumbent telephone companies at 2010 levels. NCTA strongly supports the imposition of such a cap, provided that it is implemented in a manner that ensures sufficient USF support for tribal lands, which have been persistently underserved.

#### **High Cost Support Can be Reduced or Eliminated in Areas Where Basic Service Can Be Provided Without Such Support**

One of the fundamental problems with the current high cost scheme is that it does not include any mechanism for reassessing which providers and areas should receive support. With competition now firmly entrenched in much of the United States, we believe a mechanism that directs high cost support away from areas with unsubsidized competition can and should be added to the USF framework to ensure that support is targeted to areas that require it.

Cable voice service is available to approximately 90 percent of U.S. households, all of which also have access to broadband service. The vast majority of these customers, even in rural areas, are served without any high cost support. Of the billions of dollars in high cost support distributed in 2009, NCTA members received only about 1 percent.

The presence of an unsubsidized competitor that serves the vast majority of consumers in a market is, in our view, clear evidence that universal service support is no longer necessary in that particular market. Last fall, NCTA proposed a two-step process by which the Commission would reassess the level of USF support for providers in areas experiencing unsubsidized wireline competition. With our proposal, we submitted an economic analysis demonstrating the extensive scope of unsubsidized competition for both voice and video services in rural areas. In many study areas that currently receive high cost support we demonstrated that cable operators are serving more than 95 percent of households. Based on this analysis, we are confident that the reform of the current system will enable significant savings that can be used to provide targeted support to programs that promote broadband deployment, without harming customers in areas that receive support from existing mechanisms.

The National Broadband Plan set forth a comprehensive plan for reducing the funding for the legacy high cost support mechanisms and distributing high cost support in a more efficient, targeted manner, and using those savings to further the goals of universalizing broadband without increasing the overall size of the universal service fund. As recommended in the National Broadband Plan, the Commission has proposed changes for all types of high cost support recipients, including freezing Interstate Common Line Support (ICLS) funding received by rate-of-return carriers; redirecting Interstate Access Support (IAS) funding received by price cap carriers toward broadband deployment; and phasing out the remaining legacy high cost support for competitive eligible telecommunications carriers. These initial steps would be followed in the future with more fundamental reforms of existing mechanisms and creation of a new broadband mechanism.

Provided that these steps are taken in a manner that is competitively neutral and sensitive to the needs of tribal areas, we think the FCC has laid the groundwork for meaningful high cost support reform. Competitive neutrality entails two elements. First, the high cost program should be open to all communications service providers able to provide required services, rather than limiting participation to only telecommunications carriers, as in the current program. Second, the service area of an eligible provider should be defined as the area where the provider is licensed or authorized to provide services, rather than requiring all providers to serve the area defined by an underlying incumbent local exchange carrier or seek a waiver.

#### **Universal Service Support for High-Speed Broadband**

*Broadband Deployment.* Given the importance of broadband to our economy and society and its increasingly central role as a communications medium, we agree that it is appropriate to consider changes in the high cost program to help achieve the national goal of universal access to broadband. But the history of staggering growth in the high cost program suggests that the role of USF in promoting broadband must be carefully tailored to unserved areas and populations.

At a minimum, USF support for broadband deployment should be targeted at those areas that currently do not have broadband facilities in place. Cable broadband service—which was created from billions of dollars of private investment and without any significant government subsidy—is already available today to 92 percent of U.S. households and subscribed to by more than 40 million of those households. It would be a poor use of scarce government resources to subsidize a broadband competitor in communities—including many small, rural communities—where cable operators have invested risk capital to deploy broadband services. Government subsidies for one competitor in markets already served by broadband also might discourage the existing provider from making continued investments in its network facilities.

The FCC's fresh look at universal service for the broadband era includes many of these elements. In particular, the National Broadband Plan proposes to cut inefficiencies in existing support of voice services and create a Connect America Fund (CAF) that directly supports broadband without increasing the size of the USF over the current baseline projection. As proposed by the Commission, the CAF would only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service. The CAF would also be available on a company- and technology-agnostic basis, so long as the supported broadband service provided meets the specifications set by the FCC. As I've explained, this competitive neutrality is an essential element of any reform.

The Commission has proposed that the CAF be used in unserved areas to fund broadband service with actual download speeds of at least 4 Mbps and actual upload speeds of at least 1 Mbps and an acceptable quality of service for the most common interactive applications. We believe this approach strikes an appropriate balance between the goal of extending broadband to areas that currently lack it, while ensuring that the costs of the universal service program will remain reasonable. However, it is important to note that the Commission also proposed to review and reset this target every 4 years, which would ensure that no area would be without access to broadband at speeds comparable to what is generally available through the operation of market choice.

*Broadband Adoption.* Given widespread broadband deployment, we believe that Congress should focus on promoting broadband adoption. Even in areas with one or more broadband providers, there are often barriers to broadband adoption—such as affordability, lack of a computer or other equipment to connect to the Internet, and low levels of basic “digital literacy.” Of course, any broadband adoption program must be technology- and competitively-neutral, with eligible consumers given the same choice of providers as all other consumers—either through a voucher program or by enabling all broadband providers to recoup the costs of subsidizing service provided to low-income households.

As a first step in extending USF support to broadband adoption, we strongly support the establishment of a pilot program as contemplated by the Broadband Opportunity and Affordability Act. S. 2879 would expand the existing Lifeline program to cover broadband service. For purposes of developing the pilot program, the bill appropriately directs the FCC to consider the prevailing market rate for broadband service and the prevailing speed of broadband service adopted by households—this is essential to ensure that the cost of the program remains reasonable while promoting the goal of broadband adoption. The bill also directs the FCC to ensure that the program is technology-neutral in order to promote competition from broadband service providers to qualify to participate in the program. As I noted earlier, this is a critical element of any broadband adoption program.

#### **The Adoption Plus Program**

NCTA has been at the forefront of developing a broadband adoption pilot program concept—the Adoption Plus (or “A+”) program. A+ would be a comprehensive program that includes: (1) digital media literacy training; (2) discounted computers that can access the Internet; and (3) discounted home broadband service to households that do not currently receive broadband service. Because it is one example of how a pilot program might work, if established by legislation such as S. 2879, I include some more detail on A+ below.

First, school districts, or their state equivalent, would be responsible for providing federally funded digital media literacy training to eligible students, including online safety and the responsible use of broadband. Once an eligible student is enrolled in an A+ digital media literacy program, he or she would be eligible to purchase a single discounted computer. Participating computer manufacturers would be expected to provide their own contribution to discount the cost of computers. Finally, for any household with a computer and an eligible student enrolled in an A+ digital media literacy program, participating ISPs would provide broadband service at a 50 percent discount; provide a modem at a 50 percent discount, whether purchased or rented; provide free installation of broadband service; and provide parental control software and other online safety/security tools. Participating ISPs would provide the discounted service for a period of 2 years, which would consist of its entry-level broadband tier.

The program contains three eligibility criteria: participants must be middle school students (grades 6–8 or 7–9, depending on the particular school district); participants must be eligible for free or reduced-price school lunches under the National School Lunch Program; and the participant’s household does not currently receive broadband Internet service. These criteria were chosen to target a population where the A+ program can have a significant impact. Low-income households have dramatically lower broadband adoption rates than the general population, and middle school students—with appropriate guidance and digital media literacy training—are developmentally capable of safely and effectively taking advantage of the benefits of broadband.

The goal of the A+ program is to help give millions of students the opportunity to become digital citizens of the 21st Century by driving sustainable broadband adoption and positively and materially affecting educational outcomes. Meeting this goal would not only advance the economic and social well-being of participating students, it would advance the economic and social well-being of our Nation for decades

to come. We believe this targeted approach to expanding broadband adoption is an example of how we can bring broadband to populations that cannot afford it today.

**Conclusion**

NCTA welcomes the Committee's interest in USF reform. Reform is imperative if the program is to be able to continue to meet its goals and adapt to the significant changes in technology since the program's inception. We remain committed to working cooperatively and constructively with Members of this committee and other stakeholders to address these issues. We appreciate the opportunity to share our views with you and thank you again for the opportunity to appear today.

Senator BEGICH. Mr. Waits.

**STATEMENT OF R. PAUL WAITS, PRESIDENT,  
RITTER COMMUNICATIONS**

Mr. WAITS. My name is Paul Waits, President of Ritter Communications.

I'm here also representing an ad hoc group of rural carriers, referred to as the Rural Broadband Coalition. This is a recently formed alliance of rural constituents from diverse areas, united in our common concern over the impact these policies will have on rural America. Our members are in all these industries.

I'll go right to the point of our testimony.

*Number one*, reforms to the system are needed. They are needed to preserve the goal of universal service. We are not here to try to protect the status quo, we are here to argue for responsible reform.

*Number two*, the contribution base for the Universal Service Fund fee must be expanded to restore the original intent of the program. It must be expanded to include all telecommunications service in a collection base. It must be neutral to changes in technology. All the other Universal Service Fund reforms are dependent upon this.

*Number three*, this overhaul of our Nation's rural support system must be orderly, predictable, and responsive to the thousands of unique situations that exist across the country. Not only must we avoid flash cuts, we should push the decision of eligibility and who will be the carrier of last resort at the State and local level in order to recognize these variations. A one-size-fits-all approach will not work, if we are to preserve the obligation to serve the rural public.

*Number four*, the plan relegates rural consumers to an inferior and inadequate broadband service, creating a digital divide. Current law already requires comparable rates and services between urban and rural areas.

*Number five*, the marketplace will build a broadband infrastructure in most of America. It has not, and it will not, build this infrastructure in high-cost rural areas without adequate government support.

The plan abandons some established ways of doing this, such as intercarrier compensation, and the use of actual capital costs and operating costs, and then leaves rural consumers without support that is specific, sufficient, and predictable, as the law requires.

*Number six*, bigger is not always better. Small local companies have a unique focus and commitment to rural service and can serve the high-cost areas more effectively and efficiently. But, any size provider must have reasonable and nondiscriminatory access to the connections with the outside world.

*Number seven*, this is not a choice between wireline or wireless. No one technology will fit all circumstances. The plan assumes wireless can solve all problems for all people. But, widely diverse circumstances in geography will require a combination of technologies.

In sum, we ask the Congress and the FCC to reaffirm the policies that have enabled rural Americans to receive basic services, such as electricity, telephone, and now the next frontier, broadband access. Rural America needs your support to ensure the responsible and balanced reform of the Universal Service Fund.

Thank you.

[The prepared statement of Mr. Waits follows:]

PREPARED STATEMENT OF R. PAUL WAITS, PRESIDENT, RITTER COMMUNICATIONS

### **Introduction**

Chairman Rockefeller, Ranking Member Hutchison, and distinguished members of the Committee, my name is Paul Waits, and I serve as President of Ritter Communications. I sincerely appreciate the opportunity to provide comments and appear before the Committee, and I want to commend the Committee members for their attention to the issues surrounding the development of telecommunications in general, and the future of broadband Internet services. My comments will focus on the latter as it relates to the preservation and extension of rural consumers' functional access to the Internet, offering observations, information and recommendations in reaction to the policies outlined in the Federal Communications Commission's comprehensive broadband policy blueprint, *i.e.*, the National Broadband Plan ("NBP").

I also want to commend the FCC in its thoughtful consideration of a very complex, difficult and interrelated set of issues. I believe that the NBP document includes some very sound policy recommendations, and on the whole, represents an acknowledgement and positive response to the present and emerging need for reformation of our systems of support for the national telecommunications infrastructure, especially the rural infrastructure. However, I and a growing number of rural interests, have strong concerns regarding specific elements of the plan, and believe such could have unintended and adverse consequences for rural consumers, as we digest the document and overlay its recommendations on the fabric of our diverse rural reality.

### **Who Is Ritter Communications?**

My standing in this regard includes my present responsibilities as leader of a small, diversified rural carrier in northern and northeastern Arkansas. Our company operates two independent telephone companies in two very disparate rural locales: one in the Mississippi River Delta and one across the state in the Ozark Mountains. We also operate a number of rural cable TV franchises, and actually compete with other telephone companies, providing competitive broadband access and telephone services in small towns and hamlets across northeastern Arkansas. Finally, we operate a competitive local exchange carrier ("CLEC") in a larger town not far from our rural operations, where our focus is service integration and custom solutions, as well as commodity telephone and Internet access services. I mention all this to point out that our interest in these issues is quite diverse and somewhat unusual for a smaller company, given that we have a vested interest in the outcomes affecting the customers of rural telephone companies, rural cable TV companies and urban CLECs. It forces us to be more holistic and perhaps less myopic when trying to establish our opinions and beliefs regarding appropriate government policy, as we all look for balance among competing interests.

### **The Rural Broadband Coalition**

I am also here representing an ad hoc group of rural carriers, referred to as the Rural Broadband Coalition. This is a recently-formed alliance of rural constituents from diverse areas with diverse needs and backgrounds, united under a common concern for how the imminent changes in telecommunications policy will affect rural America. Although we are members of the various rural telephone and cable TV trade associations, we are not nor intend to be a formal trade association.

### **Executive Summary**

Mr. Chairman, allow me to quickly summarize my testimony, and then elaborate on a few of the points as time permits. In summary, we believe that:

1. Reforms are needed to preserve the goal of universal telecommunications service and maintain a sustainable system of rural support. We are not here to try to protect the Status Quo; we are here to argue for *responsible reform*.
2. The solution must include restoring the contribution base for the USF fee to effectively support the original intent of what constitutes universal service, must include *all* telecommunications service in its revenue base for collections, and be neutral to changes in technology. The amount that individuals pay on their telephone bill to support universal service is simply too high and unsustainable. This is imperative to shore-up the system, economically and politically.
3. Whatever changes are made to the Nation's current rural support system must be orderly and predictable, avoiding unintended and adverse consequences that could result from "flash cuts" or approaches designed to short-circuit the market, such as reverse auctions.
4. The standard for universal service contained in present law should also apply to broadband access services, *i.e., comparable rates and services* between urban and rural constituents, in lieu of the proposed disparity in broadband service goals contained in the NBP.
5. The Federal USF is part of a larger and long-term system of rural support. History is repeating itself as the Nation re-tools the networks for an all-IP infrastructure, and we ignore it at the peril of rural customers across the Nation.
6. Because of their unique focus and commitment on rural service areas, smaller companies have an important role to play in the extension and preservation of rural broadband access, and require reasonable and real protections from discrimination in the availability and price of certain wholesale inputs.
7. There is no silver bullet or national panacea for affordable and universal broadband access. No one size or method of delivery will fit all needs. The solution lies in an on-the-ground approach that considers the widely diverse circumstances that exist among the thousands of discrete geographic pockets that collectively create the "availability gap."

With regard to the National Broadband Plan *as now proposed*, we must strongly recommend that the Committee use its very significant powers and influence to correct what we see as major deficiencies in the Plan:

1. The Plan relegates rural consumers to an inferior and inadequate broadband service standard that in the long-term will create a "digital divide;"
2. The Plan makes faulty and dangerous assumptions about the ability of wireless to solve all problems for all people;
3. The Plan assumes that in many rural areas a one-time investment in capital expenditures alone will meet rural customers' needs, although broadband network providers and the customers they serve require operational support for ongoing operating costs and maintenance, for customer care and for long-term growth in the number of broadband connections;
4. The Plan would undermine some important consumer protections enforced by the states under the obligations known as Carrier of Last Resort;
5. The Plan's implementation notice contemplates an ill-conceived Federal auction which assumes "bigger is always better." In rural America we believe very often smaller is better and more effective; and finally,
6. The Plan, as currently proposed, violates the Telecommunications Act this Congress passed that requires that USF funding be sufficient and predictable, and result in services that are comparable between urban and rural customers.

The Plan seriously fails on these issues.

We ask Congress and the FCC, as a matter of public policy and sound precedent, to reaffirm the gains we have made as a nation in extending services and technologies in rural areas, to preserve those gains to prevent harm to these groups of rural citizens, and extend a policy of expansion with the goal of reasonable comparability in rates and services among all communities.

#### **Background: How Did We Get Here?**

*The standard for Universal Telecommunications Service should be the creation and maintenance of reasonable comparability in the availability and in the financial accessibility of telecommunications services, including broadband access services, between urban and rural areas of the nation.*

The basic proposition of the National Broadband Plan ("NBP") related to universal access to broadband services is that the current regulatory mechanisms, such

as the Federal Universal Service Fund (“USF”), should be replaced with a new mechanism(s), *e.g.*, the Connect America Fund, to provide financial support for the extension of broadband access where such access is not available today, or not available at the speed or price that would meet consumers’ Internet access requirements. While this appears to create new policy, in reality, it is an extension of existing public policy at its most fundamental level, given that the goal has been for many decades the creation and maintenance of *universal telecommunications service, i.e.*, universal connectivity to the public telecommunications network.

I want to emphasize that the use of the term “telecommunications” throughout my testimony is to refer to the generic act of communicating over a distance, *e.g.*, across the street, across the state, across the world. I am not using nor do I intend to use this term as it is defined in Federal statute or FCC regulations, nor do I imply or advocate any form or degree of regulatory oversight of all or some subset of the networks, technologies or services with which humans telecommunicate.

The public network has been evolving in form and function, and whether one is electronically traversing the public switched telephone network talking to grandma, or the information superhighway doing global climate research, or merely watching the latest re-runs of *Desperate Housewives*, it is all now converging into a telecommunications infrastructure that is losing traditional distinctions, such as “voice,” “data” or “video.” When one considers the goal of universal telecommunications services, and the public’s evolving telecom needs, then one must embrace the fact that broadband access to the public Internet is emerging as the common denominator in a world where “voice” and “video” and “data” are applications riding upon this common transport infrastructure. In this sense, the NBP is on the right track in that rural support for universal service should and must shift from a myopic focus on voice services, and extend and expand to support functional and adequate (high-speed, or “broadband”) access to the public Internet.

There is a long-standing policy goal in the current statutes that codified the purpose and character of the USF. Section 254(b)(3) requires that “consumers in all regions of the nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

This policy of comparability was not created in a vacuum by Congress, which recognized and preserved a system of support that had been in existence in various forms for decades, as well as recognized that the overall economic health of the Nation, as influenced by the overall strength of its telecommunications infrastructures, was increased as connectivity increased. This national policy affirmed that the needs and uses of telecommunications services in the rural areas of the country were at least comparable, and in some contexts more vital, when compared to the needs and uses by consumers and businesses in the urban communities.

#### **A Digital Divide Cannot Be Justified**

One of the proposals of the NBP that has come under criticism by those concerned with the long-term impact on rural constituents is the disparity in the broadband access goals expressed in the plan. In particular, the plan’s goals call for a download speed of 100 megabits per second (“mbs”) service to 100 million households, presumably in more densely-populated locales, and for a minimum download speed of 4 mbs service for those else residing in more rural locales. Both of these goals appear arbitrary and lacking an assessment of functional adequacy over the life of the plan’s proposed transition period. My experience has been that we get around to re-writing these rules about once every 10 or 15 years. Although the plan suggests this standard will be reviewed and adjusted, it is more likely that economic and political inertia will prevent any meaningful reversal of this precedent. The urban market has already moved beyond download speeds of 4 mbs, so this goal already appears inadequate to fulfill a comparability standard.

We believe the FCC should instead recognize and affirm that it will be consumers and businesses, users of these services, who will determine what will be functional, economic, useful, demanded and desired. As in the past and continuing through the future, the need for more access speed will continue to evolve in ways that are difficult to fully predict. However, it can be said with relative certainty that the demand for speed will increase, and the needs of rural residents and businesses will be no less demanding or important, no less sophisticated or productive, and no less deserved or desired than the needs of their brothers and sisters residing in urban areas.

Moreover, and noted by the lawyers in this debate, such disparity clearly contradicts the controlling statute (Section 254 of the Communications Act as amended), which is crystal clear on Congress' intention to create and maintain a system of support that preserves comparable availability and financial accessibility of telecommunications services across our very geographically diverse nation. The context of this policy's intention was the Telecom Reform Act of 1996, which codified and expanded an existing system of support in direct recognition that the move toward opening local exchange telephone services to competition in the mid-1990s, and the move toward deregulation, would naturally cause a loss of support in high cost areas unless an explicit affirmation was made by government that would prevent such harm to rural consumers. It was recognized that competition would naturally drive rates to cost, absent some intervention, and such would result in extraordinary rate increases and restricted services in high cost terrains. The concern now is that the FCC appears to have essentially ignored this aspect of the law, or more importantly, appears to have abandoned the fundamental tenet that comparable services between urban and rural areas are essential to the public's collective convenience and necessity.

The arbitrary assignment of 4 mbs to the rural areas appears to imply that 4G wireless technologies can become the panacea for ubiquitous and cheap broadband access. Such does not, in our view, reflect a bona fide and responsible concern for the actual broadband access requirements of rural medical clinics, rural schools, rural government, rural businesses, rural residents working from home, rural residents taking on-line courses, and rural residents accessing high-definition television programming over the Internet, in addition to others.

Just this month, our company signed a contract to provide 50 mbs of dedicated Internet access to the Cross County School System, a consolidated rural school near Cherry Valley, Arkansas. This school is located miles from the nearest community amid farm fields, and is raising the bar in the use of computers and technologies in the classroom and in the homes of their students. With 1.2 computers per student, including laptops for home use, they indicate their Internet access needs are expected to increase to 100 mbs. Fiber optic cable is the only solution for this rural location.

Telecommunications technology inherently knows no boundaries. It does not know when you exited the interstate in a rural county, and it is by some measures of greater benefit in rural communities because of greater distances and higher cost of transportation. The very benefits that are lauded by the FCC in the NBP draft, such as extending educational opportunities, productivity of medical systems and technologies, access to global markets, etc., are arguably more intense and more prevalent in the rural communities across the Nation. A goal of limiting support to an inferior standard (*i.e.*, 4 mbs) in order to presumably favor a class of carrier, while potentially and ironically *creating* an availability gap for legitimate and pressing needs for services requiring higher bandwidths, is patently incongruent to the overarching purpose of any *national* broadband plan.

We ask Congress and the FCC, as a matter of public policy and sound precedent, to re-affirm the gains we have made as a nation in extending services and technologies in rural areas, preserve those gains to prevent harm to these groups of rural citizens, and extend a policy of expansion with the goal of reasonable comparability to all communities.

#### **USF Reform must Build Upon and Improve the Existing Marketplace**

*USF is part of a larger and long-term system of rural support. History is repeating itself as the FCC and Congress now grapple with how to rebalance the competing interests between rural and urban constituents in the wake of an emerging and growing "availability gap."*

In the decades prior to the Divestiture of AT&T in 1984, advances in long distance technologies, namely the invention of microwave communications and automatic switching systems, were bringing down the cost of long distance services. Also, during these earlier years of telephony, the goal of universal telecommunications services was still simply a goal, with the rural and low-income areas of the country without service or with very expensive service because of the high cost. There was a conscious effort and decision by the industry and the regulators to keep long distance rates high, and use the profits from this service to implicitly subsidize the rural and residential local telephone rates. In a closed and regulated system, this approach worked well, and did the job of extending services at comparable rates to the rural consumers of the Bell System, as well as to the customers of the independent telephone companies.

However, this closed system was broken open by a court decision that ruled in favor of a long distance start-up company called MCI, who had built a microwave

route from St. Louis to Chicago. This long distance facility was being marketed directly to businesses under the *Execunet* brand. AT&T took MCI to court, arguing that it had the exclusive franchise for telephone service in exchange for having its rates and services strictly regulated. In the *Execunet* decision, the court ruled in favor of MCI, and thereby opened the long distance market to competition. The market forces of competition naturally push rates toward cost, especially if such rates are being kept at an artificially-high level to fulfill a macroeconomic policy goal. Thus, the beginning of the end of this policy alliance of regulation, industry and universal service began to unravel as long distance competition put pressure on carriers to reduce the long distance rates to the actual and declining cost.

*Intercarrier compensation for long distance traffic is still an important part of rural service support.*

Prior to the Divestiture of AT&T, the independent telephone companies received their share of the long distance revenue from a process referred to as cost separations and settlements, wherein their costs were allocated to long distance using cost allocation formulas approved by the FCC. The basic premise of such cost allocations were to allocate the local network costs based on relative usage between local and long distance services. Over time, allowances were incorporated to reflect the higher unit costs associated with less densely populated, rural areas typically served by the smaller independent telephone companies.

After Divestiture in 1984, the same cost allocation principles were applied by the FCC to determine the structure and level of carrier access charges that long distance companies would pay to the local exchange carriers for access to the local network, replacing the prior system of cost settlements with tariffed carrier access rates applied to long distance minutes of use. From the moment such access charges were first created in the mid-1980s, there has been a constant push to reduce them. The push has come primarily from the long distance carriers wishing the access rates to be zero, as well as from the FCC, who through this period, wanted to reduce interstate access and long distance rates. As evidenced by the NBP, this is still a goal of the FCC.

The framework that we now refer to as the USF was created in the context of such long distance rate reform during the 1980s, and was originally referred to as the High Cost Fund. This fund was created as a supplemental source of revenue for high cost areas in the regulatory context of reducing access charges, and shifting cost recovery to the Federal subscriber line charge (local flat rate to consumers). It was and is based on the relationship of an area's average cost per connection with the national average cost. If an area's cost per connection was significantly greater than the national average, it was entitled to compensation from the high cost fund.

It cannot be overemphasized that the high cost fund then, and the universal service fund now, even as it has evolved in reaction to shifting policies and industry trends, is still a supplemental fund and does not alone provide the total support to many rural areas. There is yet a significant amount of support still being provided in the form of tariffed carrier access rates, both state and Federal, which for the smaller rural carriers are generally higher than such rates for large, urban carriers.

However, in a world of so-called "free" long distance over the Internet, and Internet traffic not being subject to such access rates, this carrier access rate disparity is not sustainable. This has led to the call at the FCC for reform in such intercarrier compensation arrangements, as this source of support continues to decline as long distance traffic migrates to wireless services and to Internet voice applications providers, or gets misclassified as such by the long distance providers to avoid the higher cost of traditional access.

#### **USF Reform must Be Multi-faceted, Inclusive, and Recognize Access Charges' Role**

This leads us to another concern we have with the NBP and its impact on rural consumers. While the plan acknowledges that much rural support comes from access rates and the need to reduce these over time to recognize the lack of sustainability of disparate rates, there is little provided in the plan to recognize the dependence some rural service areas have upon the traditional access charge system. From the perspective of the rural consumers in these areas, a loss of such support in many cases could be as great, or greater, than the loss of USF support, which would have a deleterious effect on the continued growth and availability of voice and broadband access.

The Federal USF is part of a larger, long-term and largely successful system of rural support, which also included support from carrier access charges (intercarrier compensation) that, today, are not part of the USF. Although the NBP acknowledges that intercarrier compensation has been a source of financial support for rural consumers, its treatment of the issue appears unbalanced, *i.e.*, including an affirma-

tive and unambiguous goal of reducing interstate and intrastate carrier access rates to zero, but only acknowledging the “potential” for a need to include any such loss of this type of rural support from the replacement Connect America Fund.

*History repeats itself.*

It should be noted that most rural support before the implementation of the USF was implicitly provided in the form of geographic rate averaging and value-of-service pricing by the state regulators, who historically kept residential and rural rates at a “residual” level after accounting for higher margins from long distance, urban services, and services to businesses. These regulatory decisions and approaches helped fund universal connectivity; however, their effectiveness has been diluted over time by the pressures of competition, causing many rural areas to lose the implicit support of traditional residual ratemaking. This trend is now intensified by the steady attrition in the support from both the USF and intercarrier service rates.

History is now repeating itself as the FCC grapples with the “availability gap,” analogous to the availability gap that once existed for rural telephone services, as well as the gap that once existed for electricity, transportation, education, healthcare, etc. Then, as today, the value of the network for everyone is directly related to the number of households and businesses that have access. Even as we talk about a new broadband availability gap, we should acknowledge that there are still areas of the country without commercial power or wireline telephone service, or even mobile wireless service.

For example, in Jasper, Arkansas, one of the rural towns our company serves and the county seat of Newton County, I have trouble getting a reliable cell phone signal in the parking lot in front of the courthouse located in the center of town.

The emerging and new availability gaps are mobile communications and broadband access, two distinct needs in rural America, and the redirecting and expansion of explicit support for broadband and for mobility *is the same as*, from a historical perspective, the maintenance of universal telecommunications service. Just as technology and the demands of the public evolve, so too must the focus and methods of support continue to evolve in order to keep in sync with the original policy intentions for universal telecommunications connectivity. The infrastructure for rural broadband access has been successfully supported in many, but not all rural areas and the consumers of such areas do, in many cases today, receive broadband rates and services that are reasonably comparable to urban communities. We are concerned that the NBP essentially scuttles the present system instead of building upon this long-term foundation with a holistic recognition of the various sources of support, thereby explicitly avoiding the adverse consumer impact and reactions that will be created if there is a disruption in the continuity and adequacy of support. In the words of the Act (Section 254(b)(5)), such support must be “specific, predictable and sufficient . . . to preserve and advance universal service.”

*The USF is in need of reform and retargeting in order to ensure “specific, predictable and sufficient” support.*

While we can point to areas of the USF and intercarrier compensation system where the outcomes have been positive and necessary for rural constituents and consistent with the goals of universal telecommunications service, we can also point to and acknowledge the NBP’s assertions that reforms and retargeting of the support programs are required in order to most effectively and efficiently move the Nation forward and close the availability gaps for rural broadband access.

### **The Key to USF Reform Is to Expand the Contribution Base**

First and perhaps foremost among the needed reforms, and a topic of considerable review and comment at the FCC in recent years, is the need to expand the contribution base of the USF assessment fee. Even though the FCC has capped elements of the fund, the USF fee, as a percentage of the billed revenues upon which it is assessed, has increased over time. This is largely due to the collection base declining as telecommunications traffic and associated revenues have shifted from traditional services to services that are exempt from such assessment, such as Internet access and Internet applications. Absent a restructuring and expansion of this collection base to a technology-neutral and industry-wide alternative, the fee percentage will continue to increase because of the steadily declining revenue collection base. Such expansion of this base and the stabilization of USF collections are imperative in order to sustain the system, economically and politically. The FCC has a considerable record on this issue, and acknowledges in the NBP the need for such expansion of the assessment base for the USF fee, yet delays in implementing this aspect of the plan. We strongly urge Congress or the FCC to move forward with this reform as soon as possible.

### USF Needs to Be Refined and Retargeted

In addition, the NBP rightly concludes that the USF needs to be refined and re-targeted in order to most efficiently and effectively focus the limited resources of the fund to rural areas of the country with a bona fide and festering lack of broadband availability. We agree with this basic premise, but we are concerned that the NBP makes some assumptions that understate the cost to preserve the broadband and voice services provided in presently-supported areas, while understating the cost to provide a reasonably comparable service mix in the areas that do not receive sufficient support today.

There are two historical points we believe are relevant to this discussion of USF reform. The first relates to the uneconomic consequences of the “identical support rule,” and the second relates to the systematic exclusion or limiting of support for many high cost service areas through the grandfathering and freezing of eligibility. *The identical support rule proves to be a costly option.*

When the Act was amended by Congress in 1996, the framers were focused on the introduction and promotion of local exchange competition. It was believed to be prudent policy at the time to allow new rural market entrants an opportunity to become eligible for USF support, and that such support should be identical to the support received by the incumbent carrier (*i.e.*, “ILEC,” or incumbent local exchange carrier). This has been referred to informally as the “identical support rule,” and was based on the premise that Congress should remove barriers to competition, even if this resulted in propping it up with USF support in the high-cost areas.

There are instances in certain rural service areas where aspects of this policy have worked well, especially in those areas where the ILEC was not willing or able to invest in upgraded facilities and services. A rural competitive local exchange carrier (“CLEC”) filled in this service gap, partially funded by USF and/or the identical higher intercarrier compensation rates allowed for rural carriers. Such communities now enjoy a higher standard of care and service level than would have been possible absent a mechanism(s) for non-ILEC support. Ironically, these communities are now at risk of losing this support under the NBP.

By far, the largest recipients of identical support from the USF are large mobile wireless carriers, and this has driven most of the growth in the size of the USF in recent years. While there may be some rural areas of the country where mobility and broadband access have been enhanced because of the identical support rule, such outcome is made less likely by the fact there is no assessment of these carriers’ costs, *i.e.*, there is no correlation between rural service support needed and the USF distributions received by such mobile carriers. There also is no specific accountability to ensure that the support is being used to extend rural mobility.

It has had little impact in downtown Jasper, Arkansas.

While the ILECs’ services are more tightly regulated by the state commissions to preserve quality and availability under an obligation to be the carrier of last resort, the mobile carriers have enjoyed the freedoms of regulatory forbearance in a more competitive landscape, able to pick and choose deployment and quality of service criteria that are most profitable and responsive to the competition. This has naturally limited wireless deployment to those areas where there is adequate traffic (and profit) to justify the high cost of building and maintaining towers, radio transmitters and leased transport facilities. While this is an appropriate regulatory regime for a competitive service, the payment of USF to such carriers without a concomitant commitment to extend rural services has been the greatest contributor to inefficiency in this system of rural support, and should be the first order of business for the FCC.

The cost of propping up competition in rural areas is too great, and this is an area of the NBP that is on target, *i.e.*, the move toward a single supported carrier in a given rural service area. We believe such support must be based on a financial assessment of need, considering the actual costs to provide a comparable service as generally available and expected in urban America. We agree with the NBP that the reforms to USF collection and eligibility should free-up funding, providing an opportunity to redirect some funding toward rural areas with a bona fide availability gap.

However, we disagree with the language of the NBP when it appears to conclude that such USF retargeting and reforms alone will be sufficient to create and maintain comparable service availability and rates for all rural consumers and businesses. Frankly, without a measurement of the impact of the reforms outlined above, and absent a realistic long-term standard of comparable service for rural areas, it is difficult to predict how much additional funding will be needed to affect “specific, predictable and sufficient” support.

*Where did the “availability gap” come from?*

As mentioned earlier, the forms of rural cost and rate support most prevalent in the early stages of advancing universal telecommunications services were the regulatory ratemaking practices of geographic rate averaging and value-of-service pricing. In the former, rates across the state or region of a local carrier were essentially averaged, or virtually the same across the carrier's urban and rural service areas. In the latter, local rates in the large, urban centers were actually higher than in the smaller towns and rural exchanges because of the higher perceived value to consumers in being able to call more people without a long distance charge. In addition, local rates for businesses were historically set much higher by the state regulators than residential rates to reflect the greater value associated with the necessity of telecommunications for engaging in commerce. This resulted in rates for business and for urban consumers that were greater than actual cost, and the profits from these market segments were *implicitly* used to keep rates in the rural areas at comparable or even lower levels. This, coupled with regulatory scrutiny over quality of service and service availability, was the system within which rural customers were supported.

During the rounds of access and long distance rate reductions of the 1980s and 1990s, the local carriers were forced to reduce carrier access charges paid by the long distance carriers (included in their cost to provide long distance services), with corresponding increases in local flat rates paid by consumers via the creation of a Federal subscriber line charge. Local rate averaging between the urban and rural areas of such carriers was still alive and well in the halls of the state regulatory agencies. However, smaller rural carriers typically did not and do not have any urban service areas with which to rate average, resulting in the need for financial support from external sources, such as carrier access charges and the USF, in order to ensure reasonably comparable rates and services to their rural consumers.

When local telephone service competition was mandated by Congress in 1996, perhaps one of the greatest flaws in hindsight in the implementation of this policy was the lack of recognition that competition would erode the implicit support for the rural, high cost service areas. As competition from CLECs, cable TV companies and wireless services has thrived in the urban markets, reducing retail rates and benefiting urban consumers, the implicit support provided to the rural markets has been significantly reduced as a direct result of such competition. Prudent business practice dictates that unprofitable services are not sustainable propositions, and without adequate implicit or explicit support in such high cost areas, the deployment of network upgrades and new technologies, such as those that would provide a network foundation for broadband access, have fallen behind that of the urban areas. This, and the fact that Internet access has not been explicitly included as a supported service, is the primary cause of the present availability gap.

The USF and the pooling of carrier access charges restored a portion of this support using a similar ratemaking vehicle, *i.e.*, a nationally-averaged USF assessment fee, as well as nationally-averaged carrier access rates. However, the high cost areas in these rural support programs were grandfathered by the FCC, preventing many rural and high cost areas in the country from being disaggregated and identified, and thereby were systematically excluded from eligibility. Then, as now, there were strong interests opposed to any increase in access charges or in USF support.

While urban consumers have seen their service options and value propositions improved by the natural forces of free enterprise, rural consumers face declining service options and increasing rates absent a specific, predictable and sufficient vehicle for restoring universal service support.

*Universal broadband service policy must begin with realistic assumptions about the extent and location of needs and economically efficient responses.*

Today, the FCC, Congress and the drafters of the NBP face this difficult conundrum: How to restore rate and service support to certain rural segments of society in the face of pecuniary and political pressures to limit, if not eliminate, rural support for telecommunications as currently embodied in carrier access rates and the USF.

In our view, the NBP may not be realistic in some of its conclusions, with its drafters understandably looking for a "silver bullet" amid the interrelated and inaccurate assumptions apparent in the NBP:

- an access speed for a "basic set of applications" (*i.e.*, 4 mbs) represents a realistic long-term goal for rural constituents;
- an upgrade to the mobile wireless networks will be the savior, providing an adequate, less costly and ubiquitous long-term broadband access solution;
- support is either required only for a one-time investment to chum the system, and/or can be limited to a hypothetical model inherently designed to limit support; and,

- competition for funding in the form of reverse auctions administered by the Federal Government will rid the system of waste.

Using these questionable assumptions as cornerstones of its solution to the present availability gap, the NBP appears to be heading rural broadband support down a path to a system that may be 100 yards wide, but only ½-inch deep. While such a course may appear to be the best compromise in the face of very real economic and political challenges, we submit that the net effect of such an outcome will likely be a severe disruption in support and services to rural consumers that today have access to broadband services, without an effective and functional expansion to those rural consumers who presently lack broadband access. We're about to make a lot of rural constituents really angry.

#### **Costs and Models: "Rate of Return" or "Price Caps" May No Longer Be Sufficient Options**

*Costs are what they are, and are not affected by hypothetical models or by types of regulatory control.*

Telecommunications access service, such as wireline or wireless telephone service, high speed Internet access service, or cable TV access, is a very capital-intensive business, requiring investors and lenders to be willing to make long-term investments. Capital expenditures and other costs-per-customer are much higher in rural areas than they are in urban areas. In order to attract capital to such ventures, there must be sufficient confidence in the future growth and stability of services and revenues. Uncertainty will place a chill on the investment in service extensions and technology upgrades. Continued attrition in end user, access and USF revenues will end further rural infrastructure investment in high-cost and hard-to-serve areas.

It must be recognized, too, that the provision of telecommunications services is fluid, and requires constant additions and rearrangements of plant to respond to new customer additions and movements, and in response to increasing demands of the customer base, such as the increasing penetration and usage of broadband access to the Internet. As with any other business, equipment wears out and needs to be replaced, be it a server, router, central office switch, or service truck. The cost of labor increases as employees demand and need wage increases to keep up with the pace of inflation. The price of major inputs increase as well, including the cost of wholesale access to the Internet from the large Tier I Internet transport carriers.

The idea that a long-term policy of comparable broadband rates and services can be sustained through a single injection of capital (such as a grant) and/or through the offering of a fixed support level (capped USF) is not economically responsible. For an established enterprise, a grant under certain conditions can throw a marginal, high-risk project into a more feasible position. For an operation that is relatively stable, with little growth and without increasing cost of inputs, a fixed support level may be sufficient for an extended period. However, these are more the exceptions than the rule, given that we are in a period of extensive technological and market change, and in the middle of a national need to invest and build-out the broadband infrastructure. If we truly want the benefits of broadband access to extend to the rural consumers of this country, it will take a substantial and sustained financial commitment. Such investment will deliver extraordinary returns for decades to come.

Even so, we are sensitive to the need to make sure the USF and any new system of rural support is highly targeted to the availability gap, and results in an increase in the efficiency of the system. For the system to work, though, it must provide sufficient and predictable support to create and maintain service comparability, and be predictable and specific enough to attract and sustain investment. This issue is not about forms of regulation, such as "rate of return" or "price cap," but instead about matching a reasonable and relevant measure of cost to the territory and service need. The cost of network access per customer varies considerably with customer density, terrain, geographic isolation, and service levels expected by consumers. Therefore the support required and received must also vary considerably in direct proportion to these cost variables in order to provide the amount needed to attract and sustain the capital for network build-outs and upgrades, support the on-going cost of operation and maintenance, and recognize that these are impacted over time by the increasing needs and demands of consumers.

We are not here to advocate that the FCC make no changes to the current cost allocation system determining eligible levels of USF support and intercarrier access rates. The present system is replete with regulatory tweaks from the past, making it unsustainable in the long term. However, the NBP avers that support be based on a new and different set of principles, essentially scuttling the principles of current law in Section 254 of the Act and implemented in the current USF cost allocation and recovery process. As rural operators supplying broadband services to a base

of rural consumers, it is hard for us to envision a workable system of rural support that does not provide some means for adjusting that support in direct response to variations in actual costs and consumer demands among locations and over time.

**Big, National Wireless Model Is No Panacea**

*Merely upgrading and extending a mobile 4G wireless network will not get the job done.*

In the quest to find the most cost effective path toward ubiquitous broadband, the NBP first sets a lower standard of 4 mbs as the *long-term* goal. In order for the mobile wireless infrastructure to be a potentially viable option for a total broadband solution in any service area, a lower service standard must be set because of inherent limitations of wireless. With limited radio spectrum, the total throughput of a single tower/transmitter is also limited, particularly as the number of subscribers sharing the resources of a single radio transmitter continues to increase. Even at 4 mbs, we question the assumption that such networks can sustain the load of a fixed and mobile subscriber base where Internet usage is increasing at geometric rates. The engineering response is to place more towers and transmitters and/or increase the amount of radio spectrum. Both of these are quite costly, and in some cases are not available options. New tower construction also requires the build-out of fiber optic cable to connect the tower location and transmitter to the wireless carrier's network and core routing centers. As the NBP acknowledges, there is a lack of spectrum and an explicit goal in the NBP to allocate more radio spectrum. Meanwhile, such spectrum resources remain both limited and consolidated in the control of a shrinking number of mobile carriers as the industry continues to consolidate.

As operators of rural broadband systems, we know first-hand that there are areas of this country where the cost to extend cables to remote and sparsely populated areas are prohibitive. In many such locations, the application of radio technologies, be they fixed or mobile, will be the most cost-effective solution. Being the most cost-effective, however, does not translate into cheap, as such will require the construction of towers, transmitters, fiber or microwave transport facilities, as well as the acquisition and use of radio spectrum (if one is not using the public spectrum) and the provision of whatever consumer electronics are being used by the customer, *e.g.*, a fixed receiver and wiring, smart phone, etc.

It is ironic that I, too, am a consumer that lives in an area without access to broadband. We have a house in a rural area in northwest Arkansas, specifically on Wolfe Ridge, about four miles west of Eureka Springs. This house is only about a mile or so from Highway 62, a major artery across northern Arkansas. High speed Internet is not available to the residents in this area and is not in an area our company serves. The terrain is very rugged and mountainous and cabling the area with fiber or a fiber-deep design would be expensive. We rely upon our 3G wireless service for access to e-mail, web, work applications, etc. Such service is only barely functional, and is not sufficient for a household that downloads movies on demand, video conferences with the grandkids, and passes large files to and from the corporate file server. We are the lucky ones. Some of our neighbors on the other side of the ridge cannot receive a reliable cell phone signal.

When I contemplate the future of broadband service to this location, the future upgrades of my mobile wireless service from 3G to 4G do not come to mind. I expect only a marginal improvement, with such additions to wireless capacity being quickly consumed by the mobile public's voracious appetite for mobile data applications, now proliferating on the newer touch screen phones like the Apple iPhone or the Motorola Droid. The lack of bandwidth on the mobile networks is today's news. It is much more likely that a fixed wireless solution, one that uses a radio frequency that is more forgiving in mountainous and wooded terrain, will be the most viable option in my particular case. That is, if I believe I need an access speed reasonably comparable to what I can get on the wired network in town.

I also ask myself the question of how this aspect of the NBP would help my personal situation as a rural resident and broadband consumer. Frankly, I do not have much confidence that a national, mega-carrier will have any interest in deploying a node or transmitter for a few dozen residents, which is typical of the pockets of unserved or underserved rural areas today. I also believe it would be a huge barrier to entry for a small start-up company or cooperative focused on this area to incur the legal costs and challenges that would be required to participate in a federally-administered auction. In this context, the NBP appears to leave us pretty much on our own.

My intention here is not to merely whine to the Committee about my personal situation as a consumer, but to point out that this set of circumstances is quite typical of the rural availability gap referred to in the NBP.

The conclusion that we offer in this context is that a national policy to promote and support broadband in such geographic pockets across the Nation must embrace a more realistic set of assumptions regarding the role of wireless technologies and carriers:

1. Mere expansion of the mobile wireless network into rural areas will not fill the availability gap.
2. The mega-carriers do not have the organizational focus and alignment to respond to geographically-dispersed pockets or gaps in broadband service coverage and support.
3. National policy should be agnostic about the distribution technologies used in the last mile; however, we cannot afford to be agnostic about the outcome, which will require targeting of support in a way that can adapt to unique local conditions and needs.

### **Broadband Is a Wired World**

*All broadband distribution technologies, including wireless, rely upon a deep deployment of fiber optic cable.*

There is another point that needs mentioning in the context of what will be the most economic approach to expanding and sustaining broadband access. The “last-mile” technologies, *e.g.*, cable modem over coaxial cable, digital subscriber line (DSL) over copper cable, fixed and mobile wireless, and, of course, fiber-to-the-premise, all rely upon fiber optic cables to connect and consolidate the distribution nodes or towers. A limited exception to this is point-to-point microwave to perform this function in the most remote tower or node locations, but microwave has some inherent limitations that prevent it from being the best long-term choice for intermediate transport. If it did not, we would not have been replacing it world-wide with fiber optic cables for the past thirty years. The wireless carriers depend upon the embedded wireline network for such connections. The existing networks represent a sizable investment, and it would be imprudent to implement policies that would cause degradation or an abandonment of this resource.

What is truly most cost effective depends on the current state of the local distribution network(s), and in many cases the most cost-effective option will be to build upon these existing infrastructures. This is especially true in the territories of supported carriers that provide an extensive rural coverage for broadband services today under the present rural support system. At the national policy level, we should take care not to oversimplify this issue as a choice between wireless and wireline. It is like creating a choice between having a bathtub and having the plumbing to connect it to the water supply. If you want to take a bath, you need both. Even as wireless technologies evolve and offer the promise of greater coverage in unserved areas, there must yet be a wired, fiber optic network that extends deep into these rural terrains to connect to such radio transmitters and accomplish the task of ubiquitous broadband access, *i.e.*, to re-establish and extend universal telecommunications service.

### **In Rural America, Small May Be More Effective and Efficient**

*Smaller rural carriers are specialists in rural service delivery.*

I have heard it expressed by some that the Nation does not need the small carriers and that it would be more efficient to provide support to the large carriers who presumably have greater economies of scale and can do the job better and cheaper. To the extent that there are elements of this sentiment among those herein engaged in the policy debate over rural telecommunications support, I believe it important to point out some of the theoretical assumptions underlying such a notion, and how these may not match with economic reality.

First, if a geographic area is inherently a high cost area to serve, it is so because of the factors that are repeated in this testimony, *i.e.*, households and rural businesses that are scattered across the landscape, sometimes in mountainous terrain that is difficult to cover with wire or radio and isolated from major traffic routing and switching centers resulting in a high cost to build and maintain long-distance fiber cables to connect to the outside world. If being large and having economies of scale was all there was to it, then the broadband availability gap would not be most predominant within the traditional franchise territories of the largest local exchange and wireless carriers. The economic issue most affecting rural service is not business entity scale, but the fundamental characteristics of customer density, service terrain and service level.

Another point that is often overlooked begins with the fact that any successful business venture, or any collective venture among humans in general, requires sufficient focus and a sustained commitment. The larger carriers are engaged in a com-

petitive battle for market share in the urban, suburban and exurban communities. This is good for consumers in these areas, but also consumes these carriers' focus, as well as investment capital. Such national and multi-state carriers are not as focused on rural services and rural markets, nor should they be. Business prudence and fidelity dictates that they commit their energy upon those areas with the most economic potential. It is and would be difficult for the mega-carriers to align their organizations to the unique requirements of discrete rural locales. A one-size-fits-all approach will not be the most economic response, nor will it even be capable of attacking the problem on the ground where it lays. This will require the attention of a rural specialist.

The smaller local and regional carriers are inherently more focused on the unique needs and circumstances of the rural markets they serve. This is a natural part of living, working and drinking coffee among the people that pay the bills; of being a customer of the product you provide; of being engaged and aligned with the health and vitality of the local economy, all resulting in a level of market and civic accountability that large corporate CEOs cannot feel from the captain's chair of a high-rise board room in the heart of one of our Nation's urban centers of commerce. This is not to imply that the captains of the telecommunications industry are not accountable or responsible, but to simply point out that as it relates to rural services and support, it just is not their primary job.

The small, rural carriers are specialists in the provision of rural broadband services, have the experience to do this most effectively and continue to learn through such experience what works and what does not work, and how to align an organization to serve a geographically-dispersed population. Our advice to the FCC and Congress as they wrestle with the very important issue of closing the rural broadband availability gap is to tap into this well of experience, and leverage these organizations' commitment and focus on rural infrastructure development.

To this end, we respectfully and urgently ask Congress and the FCC to pay particular attention to the unique risks faced by smaller carriers as they work to extend and preserve broadband services to rural constituents.

#### **Stuck in the Middle Mile: the Need for Non-Discriminatory Access**

In many rural locations across the country, a single large or regional carrier may own and control the only long distance fiber optic cable facility into a rural town or geographic region served by a small telephone, cable TV and/or wireless provider. In this circumstance, which is fairly common in rural regions, such small carriers are totally dependent on this single, much larger carrier (who may also be a competitor) for access to the outside world, including wholesale access to the Internet. As more consumers in the area subscribe to broadband services, and as each of these consumers increase their usage and demand for faster connections, the local rural service provider must continuously monitor and increase the capacity of their wholesale link to the Internet. The wholesale rates for such links are often much higher than the same level of Internet transport capacity in a more competitive or more urban community. In direct contrast to this, long distance companies pay the local rural carrier for access to the local network. With Internet access, the situation is reversed.

The unit cost, *i.e.*, per customer cost, for regional or "middle mile" transport into rural areas is higher because of the lower traffic densities and longer distances involved. When such transport is controlled by a single carrier at arms' length to the communities that are dependent upon this service, there is also the potential for predatory pricing. For these reasons, we believe there is a strident need for rules against discrimination, and to recognize these costs as a significant and indispensable component of providing rural broadband services.

*Who should get rural support and who is the Carrier of Last Resort?*

Of all the issues surrounding the USF reform provisions of the NBP, the determination of which carrier or entity should get support is one of the most problematic, and is interrelated with the question of who, if anyone, will retain a regulatory obligation to serve all comers. In other words, how will the plan insure a broadband (telecommunications) connection will be provided under reasonable terms and conditions for all premises within a designated geographic area, *i.e.*, who will be the carrier of last resort ("COLR")?

The obligation to serve all households and businesses is a legacy requirement of the local telephone companies, whose original telephone service franchises required compliance with state commission rules for service availability and nondiscrimination. The local telephone company's rates were regulated by the commission, and in return the regulated carrier enjoyed exclusive rights to serve a designated geographic area. Although the franchise right of service exclusivity is now essentially gone, the legacy requirement to serve all consumers in the franchise area is alive

and well, if not in the present rules and authority of a state utility commission, then in the culture of most rural telephone companies.

A rural cable TV company may have a similar obligation within the franchise agreement with a town city council or county government, but this can vary considerably in word and in practice. Retail rates and services of cable TV companies have not received the same level of regulation as those of telephone companies, but are subject to notice and review requirements. Since rural cable companies have received no rural support, they must limit their cable footprints to those areas that have enough subscriber density to make a build-out or cable extension profitable. Now that direct broadcast video providers, such as DirecTV and EchoStar (d/b/a Dish Network), have taken a substantial share of the rural video market, rural cable carriers are attempting to remain viable with the addition of high speed Internet access and telephone services. The challenges here are significant, especially in the face of persistently-rising wholesale video rates, rising pole attachment rates and limited options for wholesale connections to the Internet.

A regulatory obligation to be the carrier of last resort only exists, to the extent it exists at all, for those business entities that are or were more strictly regulated, namely the local telephone companies. The other telecommunications service providers, like satellite, wireless, wireline CLEC, or Internet-based voice providers, do not have a regulatory obligation to serve everyone in their service area, and are free to pick and choose the best customers. This is okay, because the benefits of competition have outweighed the loss of a closed system of monopoly regulation.

However, such competition has diverted revenues, profits and USF collections, thus fragmenting and diluting the economic ability of rural carriers, large or small, from fulfilling a continued rural COLR obligation, especially where rural support is eroding or non-existent. If there is to be a COLR obligation in high cost areas, where such an obligation is arguably most needed, it is imperative that financial support for these areas is truly "specific, predictable and sufficient." To do less will result in business failures, and disruption of vital services to rural communities and constituents.

*Consumers wince at the sound of a Federal auctioneer's gavel.*

Whether there is or is not a COLR obligation that survives this transition, there is still the issue of how to fairly and consistently determine the most competent and efficient service provider for a given rural service area and of how to ensure that supported broadband services meet rural consumers' needs while being affordable, both from the standpoint of the rural consumer and of the consumers nationwide that are paying a percent of their telecom bill into a rural support fund. The NBP proposes that only one service provider be eligible in any given high cost area. The FCC also suggests that an auction process should control eligibility, wherein the support funding would be awarded to the lowest bidder.

We agree with the NBP that a single, eligible provider in a given service area is the most economically efficient framework for supporting the expansion and preservation of rural broadband access. However, the idea of government-administered auctions to allocate USF support gives us serious pause for concern.

Frankly, I find myself on several sides of this issue. As leader of a company that operates a regulated telephone company that serves an extremely rural and high cost area, I am gravely concerned about the impact that a speculative bid process could have on the services provided to our customers, and how these services could be disrupted. In addition, as a leader of a company that operates rural cable TV systems in direct competition with rural telephone companies, and one who has invested in broadband network upgrades and offering broadband services to a number of small, rural towns and hamlets, I think it would be reasonable for the government to provide an economic opportunity to extend this network into the adjacent areas without broadband access. As a broadband consumer, who has a house where broadband is not available, I do not care who is picked, as long as someone with mettle, who will focus on my situation, is granted the means to make it happen.

There is no easy way to remake the rural landscape and the system of support to reflect the most economically efficient and economically relevant allocation of resources. What makes it difficult is the sheer size and diversity of the problem. There is no way to do this effectively from the Beltway without creating substantial and unintended harm, such as forcing the rural telecommunications infrastructure into a free-for-all grab for government subsidy, fueling speculative ventures and political diversions, and subjecting rural consumers to either disruption and loss of the broadband services provided today, or to create expectations left undelivered for lack of integrity in a process untailored to the local needs and circumstances.

It is almost impossible to see the trees within the national forest from a desk in Washington, D.C. Without a view on the ground, Federal Government administrators must resort to clear-cutting the landscape, in lieu of more sustainable har-

vesting practices that require a tree-by-tree assessment of maturity and suitability. We think the FCC would be prudent to share this burden with state authorities, who have a closer view of the landscape, and who are more likely to feel the sting of errors or omissions.

Above all, Congress and the FCC should resolve to do no harm to existing broadband consumers, and move forward in an incremental and orderly and judicious fashion. Auctions are messy and unpredictable, and usually are the last resort when the normal channels for buyers and sellers have not worked, or when there is not enough time for the market to find its level and one is desperate to bring closure, as in foreclosure, to a transaction. On its face, an auction process appears fraught with economic and political risks.

The current system of support establishes zones of economic reasonableness, using actual rural area costs and comparisons to national benchmarks to determine if the amount of support is appropriate. In contrast, there is no guarantee that the outcome of an auction process would be economically reasonable or sustainable. In an auction there is always the potential that a speculative and irresponsible bidder would gain eligibility, and then not able to perform because of errors in projections or because of a speculative agenda to consolidate and “flip” the funding rights.

In fact, the FCC is considering allowing a bidder to self-define the area on which it is bidding without limitation. Such a process could also have unintended and adverse consequences for rural constituents. This is because a local distribution network is designed and sized *as an interconnected system* to service and support a given area. It is not a warehouse of vending machines that can be set up or moved at will. The system is more akin to an organism, with a brain (switching center), limbs (transport facilities) and toes and fingers (distribution facilities). An auction for a portion of an existing network, without regard to the existing design and network contexts, could lop off a vital portion of this organism, the remainder of which may not be complete enough to survive without some serious life support. While the portion of the area reallocated may appear to be less costly to support a reverse auction, the cost to support the remaining consumers could be much higher, resulting in an overall increase in support required. While it is reasonable to create a process by which carriers can self-define areas where there is a bona fide interest to extend broadband service, we do not think it is reasonable to subject this to the whims of an auction. Any allocation or re-allocation of support should include a careful review of the specific circumstances and the overall impact on rural consumers in the areas affected.

In those locations where the current system of support is working, and consumers’ needs are being reasonably met, prudence would provide deference to the status quo in order to prevent unwarranted consumer disruption and confusion. In short, while aspects of the USF and intercarrier arrangements need to be updated to reflect the evolving needs of rural consumers, and to do a better job of targeting the funds, we should work just as hard to preserve the positive elements and outcomes embodied in the present support system. Moreover, there are more orderly and predictable ways, other than auctions, to determine if a dislocation exists among services, rates and rural support.

Admittedly, there is no easy or quick solution to the question of who will get the call where there are pecuniary interests competing for eligibility in the unserved and underserved areas. That is the point. Auctions are typically applied to drive a quick resolution when there is not time for the market to work. They are not the proper vehicle for managing the build-out of the Nation’s telecommunications infrastructure. If we want this process to be both efficient and targeted to the rural need, while balancing the overall needs of society, then we would do well to bring a scalpel wielded by a local surgeon, instead of forcing everyone to get in line with a hatchet and wait for the Federal auctioneer’s gavel.

*Final call to action.*

The smaller, rural carriers have long been a vital part of the telecommunications ecosystem, setting up shop and serving areas that the larger carriers of the day chose to pass by. History repeats itself. If there is to be a robust and effective long-term system for supporting a rural broadband expansion, we believe rural consumers will benefit if the smaller telephone, cable TV and wireless carriers are recognized as important and vital participants. This will require recognition of the need for focus and commitment at the local level, as well as the need to protect small business from being quashed amid the battles and maneuvers of the telecommunications titans. Rural broadband is a role best suited to rural specialists.

Finally, Congress and the FCC must wrestle with the balancing of interests among rural and urban constituents, as well as between the customers of the mega carriers and the smaller, localized or regional carriers. The current system reflects decades of compromises and such balancing of competing interests, and it would be

prudent to build upon this foundation, in lieu of tearing it completely down and starting from scratch, as proposed by certain elements of the National Broadband Plan.

Senator BEGICH. Thank you very much.

Senator Pryor, I'm going to turn to you and let you have any questions. I'm going to step out for 2 minutes. You're not allowed to take more than that.

[Laughter.]

Senator BEGICH. I'm just kidding you.

Senator PRYOR. Yes. But, I will be right back in.

Senator PRYOR. Sure. That's great. Thank you, Mr. Chairman. Thank you very much.

If I may, let me go ahead and start with you, Mr. Waits, and follow up a little bit on something you said just a moment ago. You said the Universal Service Fund is not a one-size-fits-all. You also said that some aspects of the fund are working. So, based on your experience in serving rural areas, which is pretty much what you do, what are your recommendations on the best way to target reform for the USF?

Mr. WAITS. The very first thing I think we must do is identify where it is working—and we have broadband access that is successfully being supported by the fund—and not make changes that could undermine those gains. But, we have to also be wary of assumptions—oversimplifying assumptions that assert that we can solve the problem, nationwide, merely by extending existing mobile network—mobile wireless network, through its upgrade to 4G.

A more efficient response—a more economically efficient response would be to make sure that we're leveraging the assets that are there, whether they are assets of Ritter Communications or Windstream, or anyone else, or any wireless carrier. The targeting really needs to be on the ground, where the problem is. We're skeptical that a nationally-administered reverse auction, for example, will do that effectively and efficiently.

Senator PRYOR. OK.

Mr. Gardner, let me ask you—I'm sorry, I had to step out for your opening statement—but, you did make a point that Windstream is an industry leader in take-rate by consumers. And apparently, like in our State of Arkansas—the group called Connect Arkansas, they estimate that 51 percent of Arkansas households are not subscribed to the Internet, and 29 percent of the population in our State has never used the Internet.

Given your perspective and the fact that you are an industry leader in take-rate, what's the best approach to boost the number of people who are starting to utilize broadband?

Mr. GARDNER. Well, obviously, availability is key, Senator. And, as I said in my testimony, we serve 90 percent, today. So, as our cost structure has improved, we've been able to get out to new customers. And then it's the whole issue of affordability, to make sure that, in these rural markets, you can get broadband for roughly the same price you can get in the more urban markets.

And that's really been our key to this success, is very aggressive marketing, bundling voice service with broadband at a very reasonable price for our customers. We've offered a price-for-life promotion, for the last 6 months, where customers can pay the same

price for the life of their contract with Windstream. And that has been very attractive.

So, I think it's about affordability and availability. In our network today, 67 percent of our customers can get 6 megabits and above. Virtually everybody can get 3 meg. So, that's important, as well.

Senator PRYOR. OK. And would the other three witnesses like to comment on how to increase the take-rate?

Mr. WILSON. Well, I agree, availability is definitely part of the key factor. In our telephone cooperative today, we can offer a DSL-broadband service to approximately 90 percent of our customers. We have about 5500 DSL customers. We're adding about 100 a month. We continue to increase our bandwidth capacities and our rights, and we have also worked aggressively—of course, we concur on the NECA tariff, trying to lower these prices—but, yes, there is an affordability issue with that, as well. But, I think availability is one of the key factors to it.

Mr. GOCKLEY. At the risk of being glib, I believe "If you build it, they will come." I can recall the day that I first accessed the Internet, not knowing what to quite make of it. I'm certainly not the most technically astute subscriber or user. But, if a day goes by that I don't use it 15 times a day to check my e-mails, to check the news, or to conduct commerce, I think that I've cheated myself.

One of the things that we've learned, with the explosion of data in the wireless world, is, we probably underestimated its impact. And we see what has happened with 3G technology now. We can only expect that that will exponentially grow as we roll out faster networks, with the promise of long-term evolution networks, which is the 4G—networks that you'll be seeing shortly.

Senator PRYOR. OK.

Mr. MCSLAWROW. Senator, the only thing I would add is, I think Senator Rockefeller has introduced a bill, which I believe you're a cosponsor of, which also points to another part of the take-rate problem, which is, in addition to deployment, there's a broadband adoption issue, and sets forth an idea of a pilot project within the Low-Income Fund to try to marry together the different challenges of availability, pricing, whether or not you have a computer in the home, digital literacy, which is a concept that we very much support. So, focusing USF, in part, on broadband adoption is a key part of success.

Senator PRYOR. Great.

Mr. WAITS. I have—this is a slightly different perspective.

We're also in a rural cable TV business, and we really don't have a problem with the penetration television service among households across this country. And as watching TV becomes much more prevalent, an accepted practice, over the Internet, I think the issue is going to be more about, How do we manage the bandwidth over these networks? And that's about adoption rates.

Senator PRYOR. OK.

Mr. Chairman, if I could ask just one more question to the panel.

And that is, you all sat through the earlier panel's testimony, and you heard a little bit of disagreement among the FCC Commissioners, but you also heard a little disagreement among the Senators about how much authority the Federal Communications Com-

mission has to reform the USF and to get us into the Broadband Age, like we need to be. And some members were saying that they thought that Congress should really lay out the parameters, and give more authority, and be more specific on things; and others took the position, "No, the FCC has that authority and can manage this," et cetera. Since you all sat in here and listened to that, I'd like to get you all's opinion on whether you think the FCC has the authority to do what it needs to do in this area, with regard to broadband and USF reform, or if you think that that issue should come back before the Congress, for Congress to decide.

Mr. GARDNER. At Windstream, regarding Title II, we'd be in the camp that it should go back to Congress. We really don't believe it's necessary today. I think, when you step back and look at the incredible rate at which private investment has built out broadband in this country, it's quite impressive. I know we're all focused on that last 10 percent. But, getting to the 90 percent, where the economics were justifiable, happened very quickly. And usage is increasing at incredible rates. We're able to pick that up.

What I worry about, the whole Title I/Title II issue, Senator, is this—We've got a lot of work ahead of us with this broadband plan. It's very ambitious. I think it gets to the real issue, How do we get to this last 10 percent? To the extent we spend months, and maybe years, working through Title I and Title II, I think it takes our eye off the ball. The world's not going to wait for us. So, I'd rather see us move forward quickly.

And if something is done regarding Title II, I think the most important thing that's come across in this panel is that it be neutral across technologies, because wireless and wireline are both going to be important as we think about providing broadband more deeply into the rural markets.

Senator PRYOR. Anybody else want to comment on that?

Mr. WILSON. From our rural company's perspectives, we believe the FCC has the authority to do so. For example, expanding the contribution base, where anyone that uses the network for broadband—anyone that benefits or uses—should be contributing to USF. We believe they have authority to expand that. So, yes, we think the law is pretty well adequate, in most cases, to do what needs to be done.

Senator PRYOR. Thank you.

Mr. GOCKLEY. I think that Congress, in 1996, gave the Commission the authority, under section 254, to make broadband a supported service. I think that's a fairly common sense interpretation of the section, when you look at it holistically. One of the bedrock principles that the Congress laid out for the FCC was that Universal Service be used to support advanced telecommunications and information services. I recognize that there is some tension between that and a subsection of 254 that refers to telecommunications—or, Universal Service being an evolving set of telecommunications services.

But, that same section instructed the FCC that they could change "the services" that could be supported—and they used the word "services," they didn't use "telecommunications services," they used the word "services." And that's exactly the same analysis that the FCC did, 13 years ago, when it concluded that it had the au-

thority to use the Schools and Libraries Program to support broadband deployment. I think that that was right, then, and I think that that's right today.

Mr. MCSLAW. Similarly, 254(a) and 254(b)(2) and (3) talk explicitly, in terms of advanced telecommunications and information services, as universal service principles. The combination of that, as was just mentioned—the fact that we have over 10 years of precedent of having extended information service—support to information service providers—that was upheld in the Fifth Circuit over 10 years ago. So, it suggests to me that there is a strong case that the FCC could do this.

That said, if the FCC itself concludes that it—that that authority is ambiguous, and they don't want to go down that path, it would, from my perspective, be far more preferable that Congress step in and clarify that, rather than going down the Title II path.

Mr. WAITS. It is an important issue, as far as sorting out, you know, the balance of powers. But, as a manager of a rural broadband company, I just hope it gets sorted out soon so that we can get on with our business. It's creating a lot of uncertainty in our business. And that's really our most competent response to that question.

Senator PRYOR. Good. OK.

Mr. Chairman, thank you. You've let me go 6 minutes over my time and I appreciate that. Thank you very much.

Senator BEGICH. Thank you, Senator Pryor.

I'm going to actually pick up on that. And I'm afraid to ask this question, so I might just say it, and not really ask you to respond.

[Laughter.]

Senator BEGICH. I think the answer is in the question, and, because it sounds like a lot of you want certainty, to understand the rules of the game and how you move forward. But, the phrase "to move quickly" does not really connect with the U.S. Senate.

The telecommunications business moves so rapidly. I'm more afraid of waiting for Congress to act, that you will be light years ahead of us. I'm struggling through this, listening to this panel and the last panel. I don't think anyone disagrees that the Universal Fund should be reformed. It should be fair, it should be as neutral as possible on how to deliver the system. But, there are some underserved areas that need to have clear understanding of how they deliver to it. I don't see anyone really disagreeing with a lot of that.

So, I'm going to jump to a different question. I was going to ask you about the Senate's capacity, but Senator Pryor and I will have to debate that with our colleagues at a later time. This has always my struggle with committee meetings like this; we have a panel before you, they leave, then you're here, then you leave, and then we get kind of left with all the info. My preference would have been: have you here, have them here, have you talk, us listen. A very difficult thing for the U.S. Senate to do, but that would be my hope. So, do you think you—and each one of you can answer this—do you think you have fair access to sitting with the FCC informally, of actually a working environment that exchanges ideas? Many of you had very good points. And, you know, here are your three points, seven points, whatever they were. Do you feel there is that kind of relationship, a capacity to sit down and work through this, recog-

nizing the issue of I and II is a broader thing? If we spend all our time on that, we'll never get anywhere. Do you think you have that kind of free flow of discussion, from your own respective industries and folks that you represent?

We'll start from Mr. Waits and kind of go down.

To me, without that, I'm not sure that's a good thing.

But, go ahead.

Mr. WAITS. It's a difficult set of issues, and one where there's going to be a lot of disagreement. I think the FCC has done a very commendable job of bringing in a lot of inputs and coming up with some very sound policy recommendations. And our concerns are with specific elements of that, which would be inevitable. And so, there may need to be some sort of arbiter, so to speak, outside the system, to allow those diverging views to coalesce. I think, on the whole, they've done a fair job of getting input. There are just some fundamental areas of disagreement, in terms of what we keep and how we proceed.

Senator BEGICH. Very good.

Mr. MCSLARROW. I suspect some behind you and behind me will know what I'm referring to. I've not always been a fan of the FCC processes. But, I have to say, Chairman Genachowski has set a tone for openness and transparency, and a willingness to listen. I think all four of his colleagues do the same, and the bureau chiefs do the same. So, I think everybody has a chance to make their case and articulate pretty complex issues. You know, you may win some, you may lose some, but I think that's all you can ask.

Mr. GOCKLEY. I completely agree with Mr. McSlarrow. I think that there's never always going to be a meeting of the minds, and we're not always going to agree. All we can ask for is an open forum to be heard. And I think that the FCC has fostered and created that environment, especially under the new administration.

Mr. WILSON. Being from Texas, I only get to come to Washington two or three times a year. But, I was here last November, at the—ex parte meetings, and, in March, some more ex parte meetings, and I was actually up here last week. And I'll say that we had numerous meetings with the FCC, where we were not able to get any of our questions answered, but we were able to relay our concerns to them. And I will add, in the last day or 2 I have had more conversation with them, what seemed like a willingness to open up to better understand where we're coming from on our concerns involving our rural operations and stuff. So, you know, they give us an ear now.

Senator BEGICH. Good.

Mr. GARDNER. Sure. Mr. Chairman, I think the FCC did a very good job of reaching out to the industry. And, with Windstream, we had a lot of dialogue. These are hugely important issues. We've got a team of people here focused, in Washington, on these issues. So, we work very hard to put forth our view. We also had access, I think, through our industry association, the United States Telecom Association. So, I think we did feel the FCC did a good job.

It's very complex. You're never—everybody's not going to be satisfied with the answer, but I think—as we said in our testimony, we think we have a framework here to move forward. And you said it best, I think. The key is that we move forward quickly.

Senator BEGICH. Let me ask, and just close with this question. We, as an elected body, want to jump into situations, for a variety of reasons—political, constituencies, whatever. As you’ve each described your experience, now, with FCC, it’s not always that you agree on the elements. Is the time right, now, or is the time later on, as you continue to work with the FCC? When do you think the right time is for Congress to fully intervene with those areas that may, I’ll use your words, Mr. Waits, need an arbitrator? And this may be a hard one to answer. If you can’t answer it, that’s fair. Sometimes we like to jump, because today there’s a headline, tomorrow there’s not. I hate to be so crass about it, but I think a lot of times we jump, sometimes too soon, when the process is still melding. So, who wants to start with that?

Mr. WILSON. I will.

Senator BEGICH. OK.

Mr. WILSON. I would say, this year with the latest notice of inquiry out on USF. And, as proposed in the National Broadband Plan, where the FCC would come in and freeze our local switching support and our interstate commonline support, which, at this point, would move us away from rate-return regulation, which is a form of regulation that truly works in rural America, to price-cap regulation. I would say that we may well need help from you this year, if we’re not able to alter that process, because that’s going to have very detrimental effects upon our industry. And, actually, it’s already beginning to cast a huge shadow of uncertainty with our lenders and our ability to make loan payments and continue our operation.

So, this time-frame they’ve got, that starts later this year and next year, for us, is—we’re watching it very closely, because we’re really concerned about it. So, we may need some help.

Senator BEGICH. Very good.

Who else wants to respond to that?

Mr. MCCLARROW. If I were just thinking about USF, I would say—I would urge the FCC to go ahead and use the authority we think they have. But, it’s all bound up in this Title II net neutrality, which I know you discussed in the last panel. And there, I think, we’re headed toward a train wreck. And I think this is, at least in that targeted sense, a case where there’s a need for Congress to act earlier, taking into account your admonition about how slow that is.

Senator BEGICH. But, it may be a moment that’s coming sooner than we—

Mr. MCCLARROW. Yes, sir.

Senator BEGICH.—should have, because the process could have worked itself out, maybe.

Mr. MCCLARROW. Yes, sir.

Senator BEGICH. OK. Anyone else want to comment on that?

Mr. WILSON. I would like to say one more thing. If we’re not able to alter that process—we talk about the digital divide, but I would predict we’ll see the Grand Canyon occur as rural telephone companies begin to go out of business as a result of this plan, as proposed.

Senator BEGICH. Very good.

Mr. GARDNER. And again, Chairman, we believe that it's possible to go ahead and deal with the Broadband Plan—Universal Service Reform, Intercarrier Comp Reform within the current framework, and hopefully not go to Congress in advance of that, but get moving as soon as we can.

Senator BEGICH. Very good. Anyone else, before I close—

Mr. GOCKLEY. I have just one quick comment. I've been a telecommunications attorney since before the divestiture of the Bell system, so I can make this statement without hesitation or reservation. No matter what the FCC does, or no matter what Congress does, litigation will ensue. It is just a reality.

[Laughter.]

Senator BEGICH. From Alaska, with the oil and gas industry, we understand that same phrase.

[Laughter.]

Senator BEGICH. Thank you all very much. I appreciate it, and especially want to say thank you for your very definitive testimony, in the sense of your descriptions of things that should be done. I want to thank you all for being here today.

And at this time, the meeting is adjourned.

[Whereupon, at 11:56 a.m., the hearing was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF HON. JOHN F. KERRY,  
U.S. SENATOR FROM MASSACHUSETTS

Mr. Chairman, thank you for holding this hearing. Broadband service is increasingly becoming the platform over which Americans communicate and access information. As such, some level of access to it is an increasingly essential service. And Americans should not be isolated from it due to geography, income, or disability.

To keep faith with our tradition of ensuring that all Americans have access to essential services at affordable rates, we must revisit, restructure, and reform the universal service system that today guarantees access only to traditional voice telephone service and use it to connect all Americans to each other over the Internet at broadband speeds. The National Broadband Plan presents a strong proposal from which to initiate that process.

The program must evolve to reflect an evolving level of telecommunications services in the market. And through reform, we must make sure the billions we spend to execute on that mission are spent effectively and efficiently and focused on increasing the number of Americans who receive and connect to our broadband network rather than on the size of the companies that receive the subsidy. Today very little USF support goes to Massachusetts and the reason for that has nothing to do with how well or poorly connected our households are. Broadband funding has to focus on households and how well connected they are and measure success by improving those numbers.

In their submissions of comments for the National Broadband Plan, our state experts called for a cap on high-cost support as well as an elimination of the identical support rule. The underlying principles guiding those suggestions are a commitment to financial sustainability of the program as well as more efficient and fair distribution of funds. I echo those principles.

The purpose of the High-Cost program has always been to help ensure that consumers have access to traditional telecommunications services where the cost of providing that service would otherwise be prohibitively high. These areas, typically rural areas, are the so-called “high-cost” areas. Telecommunications carriers that receive high-cost universal service support utilize this funding in order to subsidize the cost of telephone service assessed to consumers. In theory, due in part to this subsidization, consumers in rural areas have access to and pay rates for telephone services that are “reasonably comparable” to those in urban areas.

The current High-Cost program, however, is not cost-efficient. Support is provided to carriers through a patchwork of programs in which support is dependent not upon the characteristics of the area to which support is directed but instead is dependent upon the size and the regulatory classification of the carrier. Smaller, more rural carriers typically are recipients of USF high-cost funding. As a result of the current high-cost framework, in 2008 Massachusetts carriers ranked roughly 44th in the United States for the amount of high-cost support received. In contrast, Massachusetts ranks roughly 6th in total USF contributions. For instance, according to annual FCC estimates provided by the Federal-State Joint Board on Universal Service, in 2008 Massachusetts state contributions totaled roughly \$163,789,000, but Massachusetts providers received a total of \$36,467,000 in Federal USF support payments—only \$2.365 million of which went toward high-cost support (see below). Since 2006 alone, this equates to a \$5 million reduction of total USF support for Massachusetts, but an increase of contributions by over \$7 million. Since 2002, this reflects roughly a \$10 million reduction in total USF support but an approximate contribution increase of over \$25 million.

I support universal service and I am committed to the values that make it possible. Almost 95 percent of American households subscribe to telephone service today. That is because it is available to them, it delivers the voice service it promises, and it is affordable. That is the measurable success of our existing universal service system. But as we declare that significant victory over the telephone divide that would have existed without universal service, there are lessons learned that

we should apply to broadband going forward and we have to recognize that the modern communications system poses some new challenges in a time of increased fiscal constraints. And we have to make sure that we fund services with the end user in mind.

I look forward to working with you and the FCC on this challenge. It should be a top priority for the agency and for this committee. Thank you.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. MICHAEL J. COPPS

*Question 1.* Commissioner Copps, I support the use of broadcast white spaces for both fixed wireless and personal portable devices as a means for making broadband services available. When the Chairman testified in front of the Committee in April on the National Broadband Plan, he committed to me that the Commission would complete a number of open white space items by the end the third quarter this year.

One of the challenges with respect to the practical use of the whitespaces is the backhaul—both from a technical standpoint and from a business case. Do you see companies performing backhaul for broadband networks operating in the broadcast white spaces as being eligible to receive support under any broadband USF fund?

Answer. I supported the Commission's decision to allow unlicensed radio transmitters to operate in broadcast TV spectrum in so-called "white spaces" locations where the spectrum was not being used by licensed services. The goal was to make significant amounts of spectrum available for new and innovative services such as broadband. The National Broadband Plan recommends that we move expeditiously to conclude the final rules for white spaces operations to accelerate the introduction of new and innovative wireless services, and I look forward to doing just that in the very near future.

I strongly believe that if we are going to ensure that no community, no citizen, is left behind by lack of access to basic or advanced telecommunications in this new digital age, we must include broadband as part of our universal service program. The existing Universal Service Fund (USF) includes many moving parts, and we must consider them all when bringing our universal service system into the broadband age. This will require something more than merely an adaptation of the current USF programs—we must consider the broadband ecosystem and make fundamental changes. To get this done right, the Commission must launch proceedings, ask questions and make the hard decisions. It is my understanding that the Chairman will initiate such proceedings soon. Whether companies performing backhaul for broadband networks operating in the broadcast white spaces will be included as eligible to receive broadband is one of the myriad questions that we must consider when creating a wholly new program, but backhaul is a critical component of a comprehensive infrastructure that must be considered holistically.

*Question 2.* More broadly, does the fact that these networks use unlicensed devices preclude the operators from accessing any USF funds?

Answer. It is my understanding that later this year the Chairman will initiate proceedings for the Commission to consider comprehensive reform of the universal service program and bring it into the broadband age. With this complete overhaul, the Commission will be considering which and to what extent operators, services, and networks will be eligible for support. Networks using unlicensed devices will be under consideration, along with other types of operators, services and networks involved with providing broadband service.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. MICHAEL J. COPPS

*Question.* The National Broadband Plan proposes changing the Universal Service program so that broadband, in addition to traditional telephone service, will be supported without increasing the overall size of the Universal Service Fund. Do you believe that it is possible to achieve this ambitious objective without asking consumers in states like New Jersey to contribute even more than they already do to the program?

Answer. Yes, I do believe that it is possible to achieve this ambitious but much needed goal of ensuring that no community, no citizen, is left behind by lack of access to basic or advanced telecommunications in this new digital age without asking consumers in a specific state to contribute more disproportionately to the program than they do now.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
HON. MICHAEL J. COPPS

*Question 1.* Everyone agrees that the current USF program that supports telephone service was begun as a laudable program to expand phone service. Now we're looking to justifiably reform the USF and steer it toward support for broadband. I want your thoughts not on what we need to do in the next 5 years, but tell me how you see this support in 20 or 30 years. As we try to move the USF to broadband we're going to hear a lot of resistance from voice providers who rely on USF support and for serving high cost areas. I want to make sure that whatever new system that we move to will be flexible and based on real needs and not just replace an old unsustainable system with a new system that is built on an equally unsustainable set of expectations. How does the proposal in the broadband plan or other proposals get to this goal?

Answer. I certainly agree we need to think, as best we can in a fast-changing telecommunications environment, about the long-term stability and sustainability of a new universal service program. I also strongly believe that if we are going to ensure that no community, no citizen, is left behind by lack of access to basic or advanced telecommunications in this new digital age, we must bring broadband fully into the Universal Service system. The existing Universal Service Fund (USF) includes many moving parts, and we must consider them all when bringing our Universal Service system into the broadband age. This will require something more than merely an adaptation of current USF programs—we must consider the broadband ecosystem and make fundamental changes. In the near term, the Commission needs to launch a multiplicity of proceedings and expeditiously make the hard decisions that will get this done. The future of this country's communications network depends on it. And it will be no easy task to get to where we need to go. There will have to be shared sacrifice among all participants as we pursue the goal of eliminating inefficiencies in the legacy high cost program and phasing it out. At the same time, we must develop broadband and mobility funds that focus carefully on providing support at efficient levels in geographic areas where there is no private sector business case for broadband and high-quality voice service, all the while making sure to be company- and technology-agnostic. This comprehensive reform must be at the top of our agenda as we work to make sure that every American has access to 21st century communications services. In the long term, the Commission must be committed to reviewing and reconsidering the universal service program on a regular basis, to make sure that it is efficient and continues to meet the needs of consumers throughout the country.

*Question 2.* In 2007 and 2008 the USF was audited by the OIG and it showed that 3 of the 4 USF programs were "at risk." Some of the reported figures on improper payments were eye-popping. Others have stated that this may have been shoddy. Many do not believe the results of that audit and we haven't seen any subsequent results. How can we have such a large program with apparently no auditing oversight—at least no effective auditing oversight? What is being done about putting together a robust auditing program to fight waste, fraud and abuse?

Answer. Any program that distributes money faces attempts by some to engage in arbitrage schemes and, sometimes, in waste, fraud and abuse. The Universal Service Fund has been no exception. Keen oversight and effective auditing of such a program are necessary to make certain that funds are distributed efficiently and used as intended. As the Commission seeks to comprehensively reform the universal service program and bring it into the broadband age, the Commission must consider how it will oversee the program in a way that is efficient and effective, through audits, reporting and other forms of oversight. Auditing activities have increased at the FCC in recent years, but, as you know, there has been some controversy about the processes employed and the results obtained. It is important to do thorough auditing, but the process must have ongoing credibility.

*Question 3.* Moreover, should we have some type of requirement that we re-examine what areas of the country need support? We really don't have a mechanism to look at where support is actually needed—how do we ensure that unserved areas of my state and other states are getting what they deserve?

Answer. While the National Broadband Plan is thorough in its recommendations for comprehensive universal service reform and its transition to broadband, the devil will be in the details as the Commission works on implementation. I agree that it will be essential for the Commission to re-examine any universal service program on a regular basis to assess its effectiveness and efficiency, and I will certainly consider this as the Commission moves forward with reforming and updating the universal service program for the broadband age.

*Question 4.* In the past we have put the onus of certifying eligible telecommunications carriers (ETCs) on the states. Some states have been generous in certifying ETCs and we've ended up with 30 competitors being supported in the same region, while other states have been more modest. How do we move forward with choosing ETCs under the new broadband plan? Are we freezing the status quo? Are we leaving it to states? Should it be a Federal decision?

Answer. I know that all of us on the Joint Board are looking forward to more referrals from the Commission so that Federal and state Commissioners and staff may work together to transform our Universal Service system for a broadband world. Federal-state cooperation was, I believe, very much the intent of Congress when it wrote the Telecommunications Act of 1996. As the Commission moves forward with reforming and updating the USF for the broadband age, we will be considering the role of the states in promoting universal service. I do believe that a higher level of consistency and more uniform approaches should be high on the list of issues that the Joint Board should address.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
HON. MICHAEL J. COPPS

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support build-out plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. I agree that we must bring broadband fully into the Universal Service system, as recommended in the National Broadband Plan. At this time, the existing Universal Service Fund (USF) includes many moving parts, and the Commission must consider them all when bringing our Universal Service system into the broadband age. This will require something more than merely an adaptation of current USF programs—we must consider the broadband ecosystem and make fundamental changes. The Commission needs to launch a multiplicity of proceedings expeditiously. And it will be no easy task to get to where we need to go. There will have to be shared sacrifice among all participants as we pursue the goal of eliminating inefficiencies in the legacy high cost program and phasing it out. At the same time, we must develop broadband and mobility funds that focus carefully on providing support at efficient levels in geographic areas where there is no private sector business case for broadband and high-quality voice service, all the while making sure to be company- and technology-agnostic. In addition, integral to comprehensive universal service reform is reform of intercarrier compensation. The National Broadband Plan proposes a 10-year transition altogether to achieve this goal, starting with the creation of the Connect America Fund and the Mobility Fund in the next year, among other things, and ending with the elimination of the legacy high-cost programs of the existing USF. With the extent of work to be done by all stakeholders to achieve this goal, I think the proposed timeline is reasonable.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs?

Answer. The Commission has the option of making receipt of universal service funding contingent on certain requirements. I believe that recipients of universal service support should be required to meet certain broadband requirements. Periodic revisiting of what constitutes "broadband" is an important element in the proposed plan.

*Question 2a.* Are there specific metrics we should use to ensure better value for the taxpayer?

Answer. I believe the goal for a universal service program should be to ensure ubiquitous, high-speed broadband throughout the United States. Congress has provided a metric for achieving this in section 254 of the Act. Section 254(b)(3) seeks to ensure that consumers in all regions of the Nation have access to reasonably comparable services at reasonably comparable rates to those provided in urban areas.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability

ity to remain competitive in their respective markets. Is there evidence to back this claim?

Answer. The National Broadband Plan recommends transitioning the universal service program to a single-provider system. This recommendation has yet to come squarely before the Commission for consideration. I look forward to hearing from all stakeholders concerning this proposal, as well as alternatives.

*Question 3a.* If so, how can smaller market providers remain competitive?

Answer. Part of a robust broadband future depends upon robust competition. Competition has proven itself time and time again to be the most reliable tool to bring innovation, choice, value and quality to consumers. As the Commission works toward ensuring that broadband is deployed and adopted throughout this great nation, it is critical that we strive to encourage a competitive market.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

Answer. While the National Broadband Plan is thorough in its recommendations for comprehensive universal service reform and its transition to broadband, the devil will be in the details as the Commission works on implementation. The Commission has the option of making receipt of universal service funding contingent on certain requirements. I believe that recipients of universal service support should be required to meet certain broadband requirements, and a number of requirements, including physical buildout, will be under consideration by the Commission as we move forward with reforming and updating the Universal Service system for the broadband age.

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

Answer. Reform of intercarrier compensation and the various problems surrounding it—including phantom traffic and traffic stimulation—is integral to comprehensive universal service reform and must be addressed at the same time, as proposed in the National Broadband Plan.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

Answer. I agree with the National Broadband Plan's statement that both broadband and access to mobility are now essential needs, and America should have healthy fixed and mobile broadband ecosystems. However, several questions must be answered as the Commission considers what services to fund through a universal service program and whether both fixed and mobile broadband should be supported. Certainly both wireline and wireless are important components of broadband in rural America. It is my understanding that later this year the Chairman will initiate a proceeding to consider the creation and implementation of a CAF. I expect the Commission will ask and receive comments on these important questions. I look forward to full review of the record.

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?

Answer. The National Broadband Plan recommends the creation of a Mobility Fund to provide one-time support for deployment of 3G networks where 3G wireless service is lacking. It is my understanding that later this year the Chairman will initiate a proceeding to consider creating a Mobility Fund. Certainly the availability of financial resources in that fund will affect any proposed utilization or division of support as between deployment and ongoing operations. Difficult choices will have to be made based on a more comprehensive record than what is available now. I look forward to full review of this recommendation by the Commission.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. MICHAEL J. COPPS

*Question 1.* One of the rationales I have heard for the "Third Way" is the idea that we cannot move ahead providing universal service for broadband without it. But I understand there are at least seven instances where the Commission applied ancillary jurisdiction to Voice Over Internet providers to, for example, make them pay into universal service, provide 911 service etc. So if that's the case, why do you need to reclassify broadband in order to make USF payout for broadband?

Answer. I do believe it is possible for the Commission to provide universal service for broadband under Title I ancillary authority, but this would result in repeated visits to court and regulatory uncertainty which would cobble industry's ability to make sound business decisions. The Commission would have to engage in something akin to legal acrobatics to be successful in asserting Title I jurisdiction over each and every action it engages in to implement comprehensive universal service reform and include broadband Internet access as a supported service. This would likely result in a piecemeal program subject to lawsuit at the whim of any disgruntled entity that has standing. The clearest and cleanest option for the FCC to carry out all necessary duties over broadband Internet access—which includes assuring universal service, consumer protection, public safety and privacy—is for the FCC to reassert its authority under Title II. With such a decision, industry would finally have the regulatory certainty it needs to carry on its business, and consumers would be assured the protections intended by Congress in the Communications Act. I have no doubt that the Commission would face a lawsuit, as it does with most controversial decisions it makes, but this would be one single lawsuit to determine that the FCC does have jurisdiction, and then industry and consumers could carry on.

*Question 2.* If the FCC enacts the proposed Connect America Fund, how large would the fund be? How long would this fund have to exist in order to achieve the National Broadband Plan goal of 4 megabytes per second to at least 99 percent of homes by 2020?

Answer. The National Broadband Plan proposes to maintain the current size of the Universal Service Fund, with the Connect America Fund (CAF) replacing the current High Cost program. Of course, the amount of support will be a major factor in determining how quickly any broadband deployment and speed goals can be reached. It is my understanding that later this year the Chairman will initiate a proceeding to consider the creation and implementation of a CAF. I expect the Commission will ask and receive comments on these very questions. I look forward to full review of the record.

*Question 3.* Some argue that the National Broadband Plan will create new digital divide since the plan predicts broadband speeds of 100 megabytes per second for 100 million urban households and 4 megabytes per second for most rural households. Do you agree with this assessment? If the Universal Service Fund or the new Connect America Fund is going to support broadband in rural areas are the principles of "universal service" achieved when we have two different broadband standards?

Answer. I believe the goal for a universal service program should be to ensure ubiquitous, high-speed broadband throughout the United States. While the NBP provides an aspirational goal of 100 Mbps in 10 years, the NBP suggests that 4 Mbps should be the actual speed to be supported by the universal service program at this time. Universal service support for broadband speeds of at least 4 Mbps is consistent with the metric provided by Congress in section 254 of the Act. Section 254(b)(3) seeks to ensure that consumers in all regions of the Nation have access to reasonably comparable services at reasonably comparable rates to those provided in urban areas. According to the National Broadband Plan, a reasonably comparable speed for broadband service at this time is 4 Mbps. But the Plan also proposes that the Commission revisit the target broadband speed supported by the CAF on a regular basis and, upon review, consider whether the extant speed achieves reasonably comparable broadband service pursuant to the Act.

*Question 4.* The National Broadband Plan recognizes that only one broadband provider should be eligible to receive support. Under what process will the FCC use to determine who receives support? Reverse auctions? And should the awarded provider have carrier of last resort obligations?

Answer. The National Broadband Plan recommends transitioning the universal service program to a single-provider system. This recommendation has yet to come squarely before the Commission for consideration. I look forward to hearing from all stakeholders concerning this proposal, as well as alternatives.

*Question 5.* Should the contribution base of the Universal Service Fund be expanded? If so, how? Should an increase in the contribution base of the Universal Service Fund result in an increase in the overall size of the fund?

Answer. The current USF—which provides support for voice services—receives contributions based on interstate and international revenues for voice services. If the universal service program is expanded to include support for broadband services, then I believe the contribution base should include broadband services.

*Question 6.* The broadband stimulus program allocated \$7.2 billion to be used for broadband deployment. To what extent will broadband stimulus money assist in reaching the broadband deployment goals as established within the National Broadband Plan?

Answer. In February 2009, Congress passed the American Recovery and Reinvestment Act which appropriated \$7.2 billion to create the Broadband Telecommunications Opportunities Program at the U.S. Department of Commerce and the Broadband Initiatives Program at the U.S. Department of Agriculture. The Commission took no part in determining the awards under these programs, but I do expect many of the funded projects will help meet the goal of providing universal broadband access. However, the \$7.2 billion in broadband stimulus funding will not be sufficient to close the broadband availability gap.

*Question 7.* Will the FCC do any economic analysis from the perspective of small rural telephone companies with regards to moving more companies into a price-cap system rather than rate-of-return if that is the ultimate decision of the Commission?

Answer. For the purpose of a universal service system for broadband, the National Broadband Plan proposes that the Commission require rate-of-return carriers move to price cap regulation to increase efficiency and innovation. This recommendation has yet to come squarely before the Commission for consideration. I look forward to hearing from all stakeholders concerning this proposal.

*Question 8.* How can we better eliminate waste, fraud and abuse within the Universal Service Fund?

Answer. Any program that distributes money faces attempts by some to engage in arbitrage schemes and, sometimes, in waste, fraud and abuse. The Universal Service Fund has been no exception. Keen oversight and effective auditing of such a program are necessary to make certain that funds are distributed efficiently and used as intended. As the Commission seeks to comprehensively reform the universal service program and bring it into the broadband age, the Commission must consider how it will oversee the program in a way that is efficient and effective, through audits, reporting and other forms of oversight. Auditing activities have increased at the FCC in recent years, but, as you know, there has been some controversy about the processes employed and the results obtained. It is important to do thorough auditing, but the process must have ongoing credibility.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. MIGNON L. CLYBURN

*Question 1.* Commissioner Clyburn, states have a unique position as gatekeepers in the administration of the USF program. For example, states determine carrier eligibility in the program. Should the states have a similar role in determining carrier eligibility for any future broadband fund?

Answer. The National Broadband Plan states that closing the broadband availability gap and connecting the Nation will require a substantial commitment by both states and the Federal Government. It recommends that the FCC should seek input from state commissions on how to harmonize Federal and state efforts to promote broadband availability. The issue you raise concerning the states' role is an important one, and I would anticipate that this would be considered in the universal service reform proceeding that the FCC is planning to initiate later this year.

*Question 2.* The stimulus included a broadband mapping program. Should the State PUC or the FCC use the results of the broadband mapping program in its carrier eligibility determination in any future Connect America Fund?

Answer. The National Broadband Plan recommends overhauling the Universal Service Fund so that it supports both voice and broadband service in those geographic areas where there is no private sector business case to offer such service. As your question recognizes, a significant input for determining whether a geographic area needs funding is whether broadband service already is provided. As noted above, the FCC plans to initiate a proceeding later this year to consider reform of the Universal Service Fund, and I would anticipate that one of the considerations will be the information used to determine funding, including information from the state mapping efforts.

*Question 3.* Washington State has a state USF fund. As the number of intra-state long distance minutes is declining, the Fund is also declining. There is pressure to come up with new mechanisms to keep whole these typically rural exchange carriers. The National Broadband Plan is silent on state USF funds. Should states also move toward a State broadband fund or should the FCC focus on broadband while states focus on supporting the remaining voice services? Or is there another approach?

Answer. Please see response to your first question.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. MIGNON L. CLYBURN

*Question.* The National Broadband Plan proposes changing the Universal Service program so that broadband, in addition to traditional telephone service, will be supported without increasing the overall size of the Universal Service Fund. Do you believe that it is possible to achieve this ambitious objective without asking consumers in states like New Jersey to contribute even more than they already do to the program?

*Answer.* Yes, I believe it is possible that we can complete a much-needed overhaul of the Universal Service Fund so that it supports both voice and broadband service, without increasing the overall size of the Fund.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO  
HON. MIGNON L. CLYBURN

*Question 1.* Everyone agrees that the current USF program that supports telephone service was begun as a laudable program to expand phone service. Now we're looking to justifiably reform the USF and steer it toward support for broadband. I want your thoughts not on what we need to do in the next 5 years, but tell me how you see this support in 20 or 30 years. As we try to move the USF to broadband we're going to hear a lot of resistance from voice providers who rely on USF support and for serving high cost areas. I want to make sure that whatever new system that we move to will be flexible and based on real needs and not just replace an old unsustainable system with a new system that is built on an equally unsustainable set of expectations. How does the proposal in the broadband plan or other proposals get to this goal?

*Answer.* I agree with you that the Universal Service Fund has been instrumental in providing voice service to many areas of the United States that were difficult for the private sector to serve, but for assistance from the Fund. The National Broadband Plan recommends overhauling the Fund so that it supports both voice and broadband service in those geographic areas where there is no private sector business case to offer such service. The Plan offers many details for the Commission to consider in its proposed overhaul of the Universal Service Fund. For example, the Plan proposes that the initial broadband speed supported by the Fund be reevaluated on a periodic basis. The FCC plans to initiate a proceeding later this year to consider the National Broadband Plan's proposal to reform the Universal Service Fund. I would anticipate that among the issues we will consider is whether the Fund will be flexible enough to take into account technological changes in the future and the sustainability of the Fund for future generations.

*Question 2.* In 2007 and 2008 the USF was audited by the OIG and it showed that 3 of the 4 USF programs were "at risk." Some of the reported figures on improper payments were eye-popping. Others have stated that this may have been shoddy. Many do not believe the results of that audit and we haven't seen any subsequent results. How can we have such a large program with apparently no auditing oversight—at least no effective auditing oversight? What is being done about putting together a robust auditing program to fight waste, fraud and abuse?

*Answer.* The National Broadband Plan discusses a number of changes the FCC has made to provide stronger management and oversight of the universal service program in order to fight waste, fraud and abuse. First, the FCC has moved oversight of the audit program to the Office of Managing Director and has directed USAC to revise its audit approach. Second, the FCC has implemented a new Improper Payments Information Act (IPIA) assessment program that is tailored to cover all four USF disbursement programs, measure the accuracy of payments, evaluate the eligibility of applicants, test information obtained by participants, and ensure a reasonable cost while meeting IPIA requirements. Third, the FCC has implemented a new compliance audit program for all four USF disbursement mechanisms and contributors which takes into account such factors as program risk elements and size of disbursements and is conducted at a reasonable cost in relation to program disbursements, and reduces unnecessary burdens on beneficiaries. The Plan also proposes that as the FCC reforms universal service, it should build in accountability and oversight provisions in order to ensure the proper use of funds and fight waste, fraud and abuse.

*Question 3.* Moreover, should we have some type of requirement that we re-examine what areas of the country need support? We really don't have a mechanism to look at where support is actually needed—how do we ensure that unserved areas of my state and other states are getting what they deserve?

Answer. The National Broadband Plan recommends overhauling the Universal Service Fund so that it supports both voice and broadband service in those geographic areas where there is no private sector business case to offer such service. As noted above, the FCC plans to initiate a proceeding later this year to consider reform of the Universal Service Fund as proposed by the National Broadband Plan. I expect that in that proceeding we will be considering how the Commission can ensure that unserved areas are being addressed so that all Americans are served by robust broadband and voice service.

*Question 4.* In the past we have put the onus of certifying eligible telecommunications carriers (ETCs) on the states. Some states have been generous in certifying ETCs and we've ended up with 30 competitors being supported in the same region, while other states have been more modest. How do we move forward with choosing ETCs under the new broadband plan? Are we freezing the status quo? Are we leaving it to states? Should it be a Federal decision?

Answer. The National Broadband Plan states that closing the broadband availability gap and connecting the Nation will require a substantial commitment by both states and the Federal Government. It recommends that the FCC should seek input from state commissions on how to harmonize Federal and state efforts to promote broadband availability. The issue you raise concerning the states' role is an important one, and I would anticipate that this would be considered in the universal service reform proceeding that the FCC plans to initiate later this year.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
HON. MIGNON L. CLYBURN

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. The National Broadband Plan recommends a ten-year transition period that takes into account the need for FCC proceedings to reform the Universal Service Fund and allowing parties time to adjust to the reform. The FCC plans to initiate a proceeding later this year to consider the reforms proposed by the National Broadband Plan, and I would expect that the transition period would be a subject of the proceeding. I believe it is important to give parties time to adjust to the proposed changes and look forward to reviewing the record on the amount of time that would be appropriate.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs?

Answer. I agree that in our review of the proposed reforms of the Universal Service Fund, we should maintain high standards for both rural and urban areas. Section 254 directs the Commission to ensure that service in rural areas is "reasonably comparable" to urban areas. The Plan proposes that the initial broadband speed supported by the Fund be reevaluated on a periodic basis so that the standard of service supported is consistent with what most Americans are purchasing. The Plan also proposes that changes to the Fund include accountability and oversight provisions from the outset in order to ensure the proper use of funds and to fight waste, fraud and abuse.

As noted above, the FCC plans to initiate a proceeding later this year to consider the National Broadband Plan's proposals, and I would expect that the issues you raise will be fully considered in that proceeding.

*Question 2a.* Are there specific metrics we should use to ensure better value for the taxpayer?

Answer. See immediate response above.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

Answer. I have heard those concerns as well, but I believe it is too early to determine whether there is evidence to support the claims. The Commission has not initi-

ated its universal service reform proceeding, but expects to do so in the fourth quarter of this year.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

Answer. The Plan also proposes that changes to the Fund include accountability and oversight provisions from the outset in order to ensure the proper use of funds and to fight waste, fraud and abuse. I would expect these issues to be considered in the Commission's universal service reform proceeding planned for later this year.

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

Answer. The Plan proposes intercarrier compensation reform that would result in those costs being replaced by the CAF, where such support is needed. The Commission plans to initiate a proceeding specifically to address intercarrier compensation reform later this year.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

Answer. Currently, competitive eligible telecommunications carriers (CETCs) can receive universal service support for the provision of voice service, and some CETCs are offering mobile voice service. The National Broadband Plan proposes that the Commission reform the Universal Service Fund so that only one provider receives support per geographic area, where support is needed, in order to use the limited funds more efficiently. The Plan proposes a technologically neutral approach for awarding support.

The issue you raise is an important one for the Commission to consider when it is deliberating the Plan's reform proposals. Nonetheless, I do believe that it is prudent for the Commission to first ensure that there is one reasonably comparable broadband service available to all Americans.

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the Fund should also provide grants for ongoing costs? If not, why not?

Answer. I expect that the Commission will be considering the Plan's proposal for a Mobility Fund later this year and that the issue you raise will be discussed in that proceeding. I look forward to reviewing the record for any evidence that ongoing operational costs would require support from the Fund.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. MIGNON L. CLYBURN

*Question 1.* One of the rationales I have heard for the "Third Way" is the idea that we cannot move ahead providing universal service for broadband without it. But I understand there are at least seven instances where the Commission applied ancillary jurisdiction to Voice Over Internet providers to, for example, make them pay into universal service, provide 911 service etc. So if that's the case, why do you need to reclassify broadband in order to make USF payout for broadband?

Answer. Section 254(c)(1) of the Communications Act currently provides that "[u]niversal service is an evolving level of telecommunications services." As I understand the Commission's precedent, it has consistently interpreted this provision to mean that only telecommunications services can be supported for purposes of high-cost areas. (The same does not hold true for the funding of schools, libraries, and rural health care providers as the statute includes information services for universal service support to these types of entities.) Because broadband Internet access service is currently classified as an information service, it cannot be directly supported through the Universal Service Fund for high-cost areas at this time. Accordingly, if broadband is reclassified as a telecommunications service, then the statute clearly provides for it to be funded under Section 254(c)(1).

In contrast, VoIP service has not been classified either as a telecommunications service or an information service. Further, as you note, the Commission has extended certain obligations to certain VoIP providers, each time analyzing the Commission's statutory authority in the Communications Act of the subject matter at issue. For universal service contribution obligations on interconnected VoIP providers, the Commission found that interconnected VoIP providers are "providers of interstate telecommunications." Section 254(d) states that the Commission may require "[a]ny other provider of interstate telecommunications" to contribute to the

Universal Service Fund, “if the public interest so requires.” As such, the Commission found that interconnected VoIP providers are providing interstate telecommunications, and that it is in the public interest for them to contribute to the Fund.

In other words, the statute permits the Commission to seek contributions to the Universal Service Fund from any provider offering “interstate telecommunications” if it is in the public interest, whereas for the distribution of Universal Service Funds in high-cost areas, support is for “telecommunications services.”

*Question 2.* If the FCC enacts the proposed Connect America Fund, how large would the Fund be? How long would this fund have to exist in order to achieve the National Broadband Plan goal of 4 megabits per second to at least 99 percent of homes by 2020?

Answer. It is my understanding that the Plan’s recommendation to reform the Universal Service Fund does not include a proposal to grow the Fund. In fact, it states that the FCC “should proceed with measured steps to assure that as it advances the Nation’s broadband goals, it does not increase the USF contribution factor.” What’s proposed in the Plan, if adopted by the Commission, would be a sea change in the way the Fund is currently operated. Many stakeholders are involved, and this will require significant input in FCC rulemaking proceedings prior to any change being adopted by the Commission. Nonetheless, the Plan calls for a staged and measured transition to enable the industry time to prepare and adjust. As I understand it, the Plan contemplates that these proposed changes could enable the U.S. to significantly address the broadband availability gap—the goal you identify in your question—within the decade.

*Question 3.* Some argue that the National Broadband Plan will create new digital divide since the plan predicts broadband speeds of 100 megabits per second for 100 million urban households and 4 megabits per second for most rural households. Do you agree with this assessment? If the Universal Service Fund or the new Connect America Fund is going to support broadband in rural areas are the principles of “universal service” achieved when we have two different broadband standards?

Answer. I believe that we should maintain high standards for both rural and urban areas. The Plan proposes that the initial broadband speed supported by the Fund be reevaluated on a periodic basis so that the standard of broadband service supported is consistent with what most Americans are purchasing. I believe this is one way we can ensure that there is not a “digital divide” between urban and rural America. Of course, the National Broadband Plan’s proposals to reform the Universal Service Fund have not been implemented. The Commission plans to initiate proceedings later this year to fully consider those proposals, which will include input from industry, consumers, and Members of Congress. I look forward to considering that input as we decide the best path forward for ensuring that rural areas receive services that are “reasonably comparable” to urban areas as Section 254(b) currently provides.

*Question 4.* The National Broadband Plan recognizes that only one broadband provider should be eligible to receive support. Under what process will the FCC use to determine who receives support? Reverse auctions? And should the awarded provider have carrier of last resort obligations?

Answer. The Commission has not initiated its proceeding to consider the recommendations for the Connect America Fund as presented in the Plan, but it plans to do so later this year. As you know, the National Broadband Plan recommends overhauling the Universal Service Fund so that it supports both voice and broadband service in those geographic areas where there is no private sector business case to offer such service. Until the Commission seeks comment and has a record on these issues and has adopted an order, it would be premature to say what process the FCC will use to determine who receives support. The Plan recommended that we consider market-based mechanisms for making support determinations. It also recognized the need to carefully consider the carrier of last resort obligations during our reform proceedings. Through the Joint Conference on Advanced Services, the Commission is gathering information from our state colleagues about these obligations, as they vary from state to state. I believe it is critical that we understand and consider the impact of those obligations on any new regime we develop.

*Question 5.* Should the contribution base of the Universal Service Fund be expanded? If so, how? Should an increase in the contribution base of the Universal Service Fund result in an increase in the overall size of the Fund?

Answer. My understanding is that the Commission will initiate a proceeding later this year to consider contribution reform for the Universal Service Fund. If the Fund is reformed to include direct support to broadband providers (as proposed by the National Broadband Plan), then I believe it is prudent to consider whether such service providers should be contributing to the Fund. It is my understanding that

the Plan's recommendation to reform contributions does not include a proposal to grow the Fund.

*Question 6.* The broadband stimulus program allocated \$7.2 billion to be used for broadband deployment. To what extent will broadband stimulus money assist in reaching the broadband deployment goals as established within the National Broadband Plan?

*Answer.* The National Broadband Plan states that the awards under the broadband stimulus program should help meet the goal of providing universal broadband access; however, it estimates that the awards would not be sufficient to close the broadband availability gap and that other government support would be required. The Plan provides that as stimulus awards are completed, along with the completion of the state broadband maps, the FCC may be able to improve upon its knowledge of where gaps continue and where additional funding is needed. As noted above, the Commission plans to initiate proceedings later this year to consider the proposals in the Plan to reform the Universal Service Fund to include broadband. Among the issues I would expect we will be considering is how the Commission should analyze the information it gathers through periodic reports from providers, the broadband maps, and other public information in order to determine funding requirements.

*Question 7.* Will the FCC do any economic analysis from the perspective of small rural telephone companies with regards to moving more companies into a price-cap system rather than rate-of-return if that is the ultimate decision of the Commission?

*Answer.* The Commission has not instituted a proceeding to consider this part of the Plan's reform proposals to date. I would expect that our consideration of these issues will include significant input from many stakeholders, including economic analysis from multiple sources, prior to a Commission decision on this issue.

*Question 8.* How can we better eliminate waste, fraud and abuse within the Universal Service Fund?

*Answer.* The National Broadband Plan discusses a number of changes the FCC has made to provide stronger management and oversight of the universal service program in order to fight waste, fraud and abuse. First, the FCC has moved oversight of the audit program to the Office of Managing Director and has directed USAC to revise its audit approach. Second, the FCC has implemented a new Improper Payments Information Act (IPIA) assessment program that is tailored to cover all four USF disbursement programs, measure the accuracy of payments, evaluate the eligibility of applicants, test information obtained by participants, and ensure a reasonable cost while meeting IPIA requirements. Third, the FCC has implemented a new compliance audit program for all four USF disbursement mechanisms and contributors which takes into account such factors as program risk elements and size of disbursements and is conducted at a reasonable cost in relation to program disbursements, and reduces unnecessary burdens on beneficiaries. The Plan also proposes that as the FCC reforms universal service, it should build in accountability and oversight provisions in order to ensure the proper use of funds and fight waste, fraud and abuse. I agree that we must carefully consider measures that will ensure the most effective use of the limited funds, including tailoring our requirements in a way that will better eliminate waste, fraud and abuse of the Fund.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. MEREDITH A. BAKER

*Question.* Commissioner Baker, as you know, the Universal Service Fund supports the high-cost, low-income, e-rate, and rural health programs.

Title 2, Section 254(c) begins with "Universal service is an evolving level of telecommunications services." Other language in section 254 expressly associates the e-rate and rural health programs to advanced services, better known as broadband. The statutory language is more obscure when it comes to the high-cost and low-income Universal Service Funds. The high-cost fund may be tied exclusively to telecommunications services. If so, it is not clear after the Comcast decision how it can be transformed to a broadband Connect America Fund?

In your dissent on the NOI, you said "We have a proven way forward under the existing 'information services' classification by lawfully asserting our direct and ancillary authority to address universal service reform . . ." Commissioner Baker, can you share with us that proven way forward, specifically with respect to the high cost fund?

*Answer.* There is clear consensus that an overhaul of the Universal Service Fund is critical to better manage the costs of the program and help address broadband

adoption and deployment challenges. Only Congress has the ability to provide the Commission with clear jurisdictional footing to move forward to tackle the challenges of the broadband age, and I always welcome the direction that only legislation can provide. But in the alternative, I think we can and should move forward with critical reforms to the Universal Service Fund, including the high-cost component, under our existing authority. I believe the foundation of a strong national broadband policy is already in place, and we need not alter the regulatory classification of broadband Internet access services to achieve a true consensus agenda.

In 2007, the Federal-State Joint Board on Universal Service recommended that broadband Internet access service be a “supported service” under the program, and a number of parties have advocated ways to expand the Fund to support broadband based on section 254.<sup>1</sup> Title I of the Communications Act of 1934, as amended, permits the Commission to assert ancillary authority over interstate communications by wire or radio—such as broadband—when the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.”<sup>2</sup> The D.C. Circuit’s decision in *Comcast v. FCC* did not foreclose lawful assertion of ancillary authority by the Commission where it satisfies the legal standard affirmed by the Supreme Court in *Southwestern Cable*.

In my view, we can satisfy that threshold with regard to universal service reform and it is a reasonable reading of the statute to conclude that reforming the Universal Service Fund to support broadband is reasonably ancillary to our responsibilities under section 254. Specifically, section 254 speaks in terms of the “evolving level” of universal service and directs the Commission, in determining the supported services, to “tak[e] into account advances in telecommunications and information technologies and services.”<sup>3</sup> In addition, section 254 states that the Commission shall base universal service on the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”<sup>4</sup> Section 706’s directive to deploy advanced services to all Americans provides further support that this would be consistent with Congressional intent.

I recognize that section 254’s language is ambiguous and that it also describes universal service in terms of “telecommunications services.” I acknowledge that the approach I advocate is not without some legal risk but in my assessment, reclassification under Title II also carries significant litigation risk. Most significant decisions this Commission makes are tested in court. On balance, absent legislation, I believe that retaining the information service classification and asserting ancillary authority to achieve universal service reform is less risky as a legal and policy matter than reclassifying an entire sector of the Internet.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. MEREDITH A. BAKER

*Question.* The National Broadband Plan proposes changing the Universal Service program so that broadband, in addition to traditional telephone service, will be supported without increasing the overall size of the Universal Service Fund. Do you believe that it is possible to achieve this ambitious objective without asking consumers in states like New Jersey to contribute even more than they already do to the program?

*Answer.* Yes. The Universal Service Fund is not without limits. The Fund has grown from \$2.3 billion in 1998 to nearly \$9 billion this year. The universal service contribution factor has been as high as 15.3 percent. This is real money from real people—including consumers in New Jersey. I have stated often that our efforts to modernize should not lead to further growth of the overall size of the Fund and I believe that we can do that. But to achieve this, hard choices will have to be made and we will have to design a more efficient fund focused on broadband and funded in a technologically neutral manner. It is our obligation to ensure that money is

<sup>1</sup>See, e.g., Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, to Julius Genachowski, Chairman, FCC, GN Docket Nos. 09–51, 09–191, WC Docket No. 07–52 (March 1, 2010) (*NCTA USF Letter*); Letter from Gary L. Phillips, General Attorney & Associate General Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09–51, 09–47, 09–137, WC Docket Nos. 05–337, 03–109 (Jan. 29, 2010).

<sup>2</sup>*United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (*Southwestern Cable*); see also *Southwestern Cable*, 392 U.S. at 177–78; *United States v. Midwest Video Corp.*, 406 U.S. 649, 667–68 (1972); *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979).

<sup>3</sup>47 U.S.C. § 254(c)(1).

<sup>4</sup>47 U.S.C. § 254(b)(2).

spent wisely to achieve the goals set out by Congress—but without distorting the market or breaking the bank.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CLAIRE MCCASKILL TO  
HON. MEREDITH A. BAKER

*Question 1.* Everyone agrees that the current USF program that supports telephone service was begun as a laudable program to expand phone service. Now we're looking to justifiably reform the USF and steer it toward support for broadband. I want your thoughts not on what we need to do in the next 5 years, but tell me how you see this support in 20 or 30 years. As we try to move the USF to broadband we're going to hear a lot of resistance from voice providers who rely on USF support and for serving high cost areas. I want to make sure that whatever new system that we move to will be flexible and based on real needs and not just replace an old unsustainable system with a new system that is built on an equally unsustainable set of expectations. How does the proposal in the broadband plan or other proposals get to this goal?

Answer. I agree. While it is difficult to know what such a rapidly evolving communications landscape will look like in 20 or 30 years, and periodic review of any reformed mechanism is critical, comprehensive reform of universal service and inter-carrier compensation, done right, should and will be a strong foundation for long-term sustainability of universal service and ubiquitous broadband for decades to come.

To create a fund with long-term sustainability, I believe we must transition in a considered way to an explicit support mechanism that will ensure accountability, efficiency, and adequate funding in areas where market forces are not sufficient to drive broadband services to America's consumers. I believe that one of the keys to a sustainable fund will be to constrain further growth in the overall size of the Fund. The National Broadband Plan gives us helpful recommendations to begin the process of modernizing the Fund and as we consider the recommendations in detail, our broadband policy should be focused on those efforts directly tied to promoting adoption, deployment, and facilities-based competition. A sustainable fund in the long-term will be built upon the strong regulatory foundation that we have before us—harnessing private investment, taking targeted action to support deployment to the seven million unreached households, and promoting digital inclusion and literacy.

*Question 2.* In 2007 and 2008 the USF was audited by the OIG and it showed that 3 of the 4 USF programs were "at risk." Some of the reported figures on improper payments were eye-popping. Others have stated that this may have been shoddy. Many do not believe the results of that audit and we haven't seen any subsequent results. How can we have such a large program with apparently no auditing oversight—at least no effective auditing oversight? What is being done about putting together a robust auditing program to fight waste, fraud and abuse?

Answer. A reformed universal service support mechanism that is sustainable and achieves its goals must ensure efficiency and accountability, and deter waste, fraud, and abuse. This depends on a rigorous auditing program and vigilant oversight by the Commission. The Commission is not waiting to provide stronger management and oversight of the Fund and a number of changes to oversight of the existing Fund have been implemented. For example, we have implemented a new Improper Payments Information Act assessment program for all four USF disbursement programs, to measure the accuracy of payments, evaluate the eligibility of applicants, test information obtained by participants, and ensure a reasonable cost while meeting IPIA requirements. Going forward, the National Broadband Plan recommends that future enhancements to the USF have accountability and oversight provisions built in from the outset and I strongly support that approach.

*Question 3.* Moreover, should we have some type of requirement that we re-examine what areas of the country need support? We really don't have a mechanism to look at where support is actually needed—how do we ensure that unserved areas of my state and other states are getting what they deserve?

Answer. It is critical that we repurpose the nearly \$9 billion Universal Service Fund, targeted to broadband investment. We must evolve our support mechanisms into an era in which all Americans have the opportunity to benefit from broadband by ensuring adequate funding in areas where market forces are not sufficient to drive broadband services to America's consumers. The Commission's ongoing data collection efforts will help us more precisely identify unserved consumers, which will help us better target funding to unserved areas. In addition, I support periodic review to ensure that our reforms, when implemented, are initially achieving the goal

of ubiquitous broadband set out by Congress, and continue to be effective in years ahead. As we make decisions about how the new Universal Service Fund will work, we will not lose sight of the special circumstances facing rural America.

*Question 4.* In the past we have put the onus of certifying eligible telecommunications carriers (ETCs) on the states. Some states have been generous in certifying ETCs and we've ended up with 30 competitors being supported in the same region, while other states have been more modest. How do we move forward with choosing ETCs under the new broadband plan? Are we freezing the status quo? Are we leaving it to states? Should it be a Federal decision?

Answer. Before the Commission implemented an interim cap on CETC support, CETC support was a significant driver in growth of the Fund. The National Broadband Plan proposes to phaseout CETC support and shift those resources to supporting broadband. At the same time, it recommends a newly designed Mobility Fund to provide support for 3G networks. As we begin comprehensive reform, we will need to consider all parts of the program, including CETC support, to ensure efficiency, accountability, and adequate funding. I feel strongly that our ultimate decisions should be guided by the principle of technology neutrality.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK WARNER TO  
HON. MEREDITH A. BAKER

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. The National Broadband Plan recommends a ten-year transition for universal service and intercarrier compensation reform, with the Connect America Fund (CAF) beginning disbursements in 2016. The Commission's broadband team did a commendable job in compiling the findings and recommendations in the National Broadband Plan and I support many of the recommendations. I believe we must transition in a considered way to an explicit support mechanism for broadband that will ensure adequate funding in areas where market forces are not sufficient to drive broadband services to America's consumers. We must transition in a way that will constrain the size of the Fund but also avoid shock to consumers or providers that could endanger connections to the network—broadband or traditional voice services on which users depend. We will need to consider the many implementation details, and weigh the costs and benefits of proposed approaches, including the transition period, in the proceeding expected in the fourth quarter of this year.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs? Are there specific metrics we should use to ensure better value for the taxpayer?

Answer. The National Broadband Plan recommends that recipients of CAF support be accountable for its use and subject to enforceable timelines for achieving universal access, including operational and service quality requirements. I agree that recipients of universal service support must be accountable and subject to Commission oversight to ensure that the program, on an ongoing basis, is achieving the goals set out by Congress. One specific measure recommended in the Plan is to require that providers offer at least 4 Mbps down and 1 Mbps up to receive universal service support. Regardless of what minimum threshold we ultimately select, we should regularly revisit that finding so that we keep up with technology and ensure that this speed baseline is a floor not a ceiling for rural America. I look forward to considering specific proposed requirements and metrics in the course of the rule-making scheduled to begin in the fourth quarter of this year.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

Answer. I believe that consumers will benefit most from continued investment, innovation, and competition. I start with an assumption that markets work better than government intervention. To the extent that market forces are sufficient in an

area to drive broadband services to America's consumers, I see a limited role for government. But where the market does not provide sufficient incentives for businesses to deploy, the government may need to step in with carefully targeted policies to ensure the availability of critical infrastructure without foreclosing the possibility of future competition as the market and technology progress. During the rulemaking expected to begin in the fourth quarter of this year, we will need to consider carefully the costs and benefits of proposed approaches, including the effect proposals could have on competition in smaller markets.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

Answer. The National Broadband Plan recommends that recipients of CAF support be accountable for its use, including requirements for enforceable timelines for extending broadband to unserved areas. I agree that recipients of universal service support must be accountable and subject to Commission oversight to ensure that the program, on an ongoing basis, is achieving the goals set out by Congress. We will consider specific proposed requirements in the course of the rulemaking scheduled to begin in the fourth quarter of this year. To the extent that the Commission adopts buildout requirements, we should look to lessons learned from our previous experience with similar restrictions and craft requirements with a degree of flexibility to ensure successful deployments are not constrained by rigid and unnecessary regulatory burdens.

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

Answer. The National Broadband Plan recommends a framework for long-term intercarrier compensation reform that creates a glide path to eliminate per-minute charges while providing carriers an opportunity for adequate cost recovery, and establishing interim solutions to address arbitrage. I feel strongly that comprehensive universal service reform can only be successful and sustainable in the long run if universal service and intercarrier compensation are reformed together.

Network investments are paid for by some combination of user charges, intercarrier compensation, and universal service support. Many providers are heavily dependent on intercarrier compensation to support network investment and operational expenses. Regardless of the regulatory approach we ultimately adopt, we must transition in a way that avoids shock to consumers or providers that could endanger connections to the network—broadband or traditional voice services on which users depend. As we begin to consider the best policy solutions for universal service reform and intercarrier compensation reform, we need to move toward a regime that provides appropriate incentives for network investment, while addressing uneconomic arbitrage issues.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

Answer. The CAF, as recommended by the National Broadband Plan, would support only one provider of broadband per geographic area. The eligibility criteria for obtaining support would be company- and technology-agnostic. At the same time, a newly designed Mobility Fund would provide support for 3G networks. As we begin comprehensive reform, we will need to consider all parts of the program, including whether both fixed and mobile should be supported in the same area, through which universal support mechanisms, and if supported, what financial strain that could put on the overall size of the Fund. I feel strongly that our ultimate decisions should be guided by the principle of technology neutrality.

*Question 7.* I understand that the proposed Mobility Fund is a one-time grant to build a cell site. Do you think the Fund should also provide grants for ongoing costs? If not, why not?

Answer. The Mobility Fund, as recommended in the National Broadband Plan, would provide a one-time support for deployment of 3G networks, to bring all states to a minimum level of 3G (or better) mobile service availability. In the course of the rulemaking to create the Mobility Fund, I expect we will build a robust record that will likely include arguments that ongoing costs should be supported. We will need to consider carefully the costs and benefits of the proposed approach, as well as whether the Mobility Fund should be extended to ongoing costs. This debate will undoubtedly balance, among other things, any effect expanded support could have on availability of mobile broadband against the financial burden ongoing support would impose on the overall size of the Universal Service Fund.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. MEREDITH A. BAKER

*Question 1.* One of the rationales I have heard for the “Third Way” is the idea that we cannot move ahead providing universal service for broadband without it. But I understand there are at least seven instances where the Commission applied ancillary jurisdiction to Voice Over Internet providers to, for example, make them pay into universal service, provide 911 service etc. So if that’s the case, why do you need to reclassify broadband in order to make USF payout for broadband?

Answer. I do not believe that reclassifying broadband under Title II is necessary to reform the Universal Service Fund to support broadband. There is clear consensus that an overhaul of the Universal Service Fund is critical to better manage the costs of the program and help address broadband adoption and deployment challenges. I think we can and should move forward with critical reforms to the Universal Service Fund, including the high-cost component, under our existing authority. I believe the foundation of a strong national broadband policy is already in place, and we need not alter the regulatory classification of broadband Internet access services to achieve a true consensus agenda.

In 2007, the Federal-State Joint Board on Universal Service recommended that broadband Internet access service be a “supported service” under the program, and a number of parties have advocated ways to expand the Fund to support broadband based on section 254.<sup>1</sup> Title I of the Communications Act of 1934, as amended, permits the Commission to assert ancillary authority over interstate communications by wire or radio—such as broadband—when the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.”<sup>2</sup> The D.C. Circuit’s decision in *Comcast v. FCC* did not foreclose lawful assertion of ancillary authority by the Commission where it satisfies the legal standard affirmed by the Supreme Court in *Southwestern Cable*.

In my view, we can satisfy that threshold with regard to universal service reform and it is a reasonable reading of the statute to conclude that reforming the Universal Service Fund to support broadband is reasonably ancillary to our responsibilities under section 254. Specifically, section 254 speaks in terms of the “evolving level” of universal service and directs the Commission, in determining the supported services, to “tak[e] into account advances in telecommunications and information technologies and services.”<sup>3</sup> In addition, section 254 states that the Commission shall base universal service on the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”<sup>4</sup> Section 706’s directive to deploy advanced services to all Americans provides further support that this would be consistent with Congressional intent.

I recognize that section 254’s language is ambiguous and that it also describes universal service in terms of “telecommunications services.” I acknowledge that the approach I advocate is not without some legal risk but in my assessment, reclassification under Title II also carries significant litigation risk. Most significant decisions this Commission makes are tested in court. Only Congress has the ability to provide the Commission with clear jurisdictional footing to move forward to tackle the challenges of the broadband age, and I always welcome the direction that legislation can provide. On balance, absent legislation, I believe that retaining the information service classification and asserting ancillary authority to achieve universal service reform is less risky as a legal and policy matter than reclassifying an entire sector of the Internet.

*Question 2.* If the FCC enacts the proposed Connect America Fund, how large would the Fund be? How long would this Fund have to exist in order to achieve the National Broadband Plan goal of 4 megabits per second to at least 99 percent of homes by 2020?

Answer. The National Broadband Plan recommends shifting up to \$15.5 billion (present value in 2010 dollars) over the next decade from the current High-Cost program to broadband, with \$11.5 billion expressly targeted to the Connect America

<sup>1</sup>See, e.g., Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, to Julius Genachowski, Chairman, FCC, GN Docket Nos. 09–51, 09–191, WC Docket No. 07–52 (March 1, 2010) (*NCTA USF Letter*); Letter from Gary L. Phillips, General Attorney and Associate General Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09–51, 09–47, 09–137, WC Docket Nos. 05–337, 03–109 (Jan. 29, 2010).

<sup>2</sup>*United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (*Southwestern Cable*); see also *Southwestern Cable*, 392 U.S. at 177–78; *United States v. Midwest Video Corp.*, 406 U.S. 649, 667–68 (1972); *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979).

<sup>3</sup>47 U.S.C. § 254(c)(1).

<sup>4</sup>47 U.S.C. § 254(b)(2).

Fund (CAF). By 2020, the CAF would replace the existing High-Cost program and would continue to provide support in areas where there is no private sector business case to provide broadband and high-quality voice-grade service. The Plan predicts that the initial universalization target of 4 Mbps down/1 Mbps up would be reached within the ten-year projection but also recommends that the Commission review and reset this target every 4 years. I support periodic review to ensure that our reforms, when implemented, are initially achieving the goal of ubiquitous broadband set out by Congress, and continue to be effective in years ahead. As the Plan acknowledges, there could be transitional impacts that the Commission will have to consider carefully before implementing this proposal. We expect our deliberations on the proposed fund to begin in the fourth quarter of this year. As we make decisions about how the new Universal Service Fund will work, we will not lose sight of the special circumstances facing rural America.

*Question 3.* Some argue that the National Broadband Plan will create new digital divide since the plan predicts broadband speeds of 100 megabytes per second for 100 million urban households and 4 megabytes per second for most rural households. Do you agree with this assessment? If the Universal Service Fund or the new Connect America Fund is going to support broadband in rural areas are the principles of “universal service” achieved when we have two different broadband standards?

*Answer.* It is critical that we repurpose the nearly \$9 billion Universal Service Fund to target it to broadband investment. We must evolve our support mechanisms into an era in which all Americans have the opportunity to benefit from broadband by ensuring adequate funding in areas where market forces are not sufficient to drive broadband services to America’s consumers.

The National Broadband Plan recommends that we require recipients of CAF support to offer at least 4 Mbps down/1 Mbps up to receive universal service support. Regardless of what minimum threshold we ultimately select, we should regularly revisit that finding so that we keep up with technology and ensure that this speed baseline is a floor not a ceiling for rural America. I expect the Commission to examine this concern, which we have also heard from rural carriers, in depth in the course of the rulemaking scheduled to begin in the fourth quarter of this year.

*Question 4.* The National Broadband Plan recognizes that only one broadband provider should be eligible to receive support. Under what process will the FCC use to determine who receives support? Reverse auctions? And should the awarded provider have carrier of last resort obligations?

*Answer.* The National Broadband Plan recommends that the Commission identify ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine the firms that will receive CAF support, on a company- and technology-agnostic basis, and the amount of support they will receive. In the course of the rulemaking, I support exploring all options to improve efficiency and accountability, and deter waste, fraud, and abuse. I expect a fulsome discussion of reverse auctions in the record, along with other ideas, and we will need to carefully weigh the costs and benefits of all proposed approaches. The Plan also recommends that recipients of CAF support be subject to a provider-of-last-resort option to ensure that providers are accountable for the use of CAF support and that no customers are left behind in the transition to the new support mechanism.

*Question 5.* Should the contribution base of the Universal Service Fund be expanded? If so, how? Should an increase in the contribution base of the Universal Service Fund result in an increase in the overall size of the Fund?

*Answer.* The National Broadband Plan recommends that the Commission broaden the universal service contribution base. Although the Plan does not recommend a particular approach, the Commission has an extensive record on reforming the contribution methodology including proposals to broaden the base by including broadband revenues or assessing phone numbers or connections. I support reforming the contribution methodology and we will have to carefully consider the options during the course of the contributions proceeding, expected to begin in the fourth quarter of this year.

Broadening the contribution base, however, must not result in an increase in the overall size of the Fund. It has grown from \$2.3 billion in 1998 to nearly \$9 billion this year. The universal service contribution factor has been as high as 15.3 percent. I have stated often that our efforts to modernize should not lead to further growth of the overall size of the Fund and I believe that we can do that. But to achieve this, hard choices will have to be made and we will have to design a more efficient fund focused on broadband and funded in a technologically neutral manner. It is our obligation to ensure that money is spent wisely to achieve the goals set out by Congress—but without distorting the market or increasing the size of the Fund.

*Question 6.* The broadband stimulus program allocated \$7.2 billion to be used for broadband deployment. To what extent will broadband stimulus money assist in reaching the broadband deployment goals as established within the National Broadband Plan?

Answer. The American Recovery and Reinvestment Act of 2009 provided the Department of Commerce's National Telecommunications and Information Administration (NTIA) and the U.S. Department of Agriculture's Rural Utilities Service (RUS) with \$7.2 billion to expand access to broadband services in the United States. In addition, other agencies, including RUS, provide or have provided broadband-related funding.<sup>5</sup> Various Federal funding sources help fill the gaps in broadband service across the country, and USF support specifically should be targeted to areas where market forces are not sufficient to drive broadband services to America's consumers. The Plan recommends that the CAF support mechanism should take into account funding from sources, such as Recovery Act grants, and I believe that support programs should be coordinated to maximize efficiency of Federal programs and to avoid distorting the market.

*Question 7.* Will the FCC do any economic analysis from the perspective of small rural telephone companies with regards to moving more companies into a price-cap system rather than rate-of-return if that is the ultimate decision of the Commission?

Answer. The National Broadband Plan recommends that the Commission move rate-of-return carriers to incentive regulation. Price caps, and other forms of incentive regulation, are designed to promote efficiency and innovation. To the extent that recipients of universal service support become more efficient, it should allow USF dollars to go farther, reducing pressure to increase the size of the overall Fund. On April 21, 2010, we sought comment on whether the Commission should replace rate-of-return regulation with the price-cap framework recently adopted for voluntary conversions by some carriers, an alternative price-cap framework, or some other form of incentive regulation. The record is currently under review by Commission staff.

Although incentive regulation is expected to drive efficiency for carriers, consumers and the Fund, I think it is critically important that we transition USF support in a measured way that does not put services to consumers—existing or future, broadband or voice—at risk. As a result, before the Commission moves forward with proposals to modify the regulatory framework for small rural telephone companies, it is imperative that we consider carefully the affects of the proposed regulation, including economic analysis, and perhaps most importantly, potential unintended negative consequences that could outweigh any intended benefits to the detriment of rural consumers. I will ensure that, as we move forward with needed reforms, we will not lose sight of the special circumstances facing rural America.

*Question 8.* How can we better eliminate waste, fraud and abuse within the Universal Service Fund?

Answer. A reformed universal service support mechanism that is sustainable and achieves its goals must ensure efficiency and accountability, and deter waste, fraud, and abuse. This depends on a rigorous auditing program and vigilant oversight by the Commission. The Commission is not waiting to provide stronger management and oversight of the Fund and a number of changes to oversight of the existing Fund have been implemented. Going forward, the National Broadband Plan recommends that future enhancements to the USF have accountability and oversight provisions built in from the outset and I strongly support that approach.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
JEFF GARDNER

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. I share your goal of quick action on comprehensive universal service reform by the FCC and support the framework of the FCC's reform proposal. Last year, Windstream and other carriers proposed that the FCC adopt the "Broadband

<sup>5</sup> See Acting Chmn Michael J. Copps, FCC, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29, 24 FCC Rcd 12792, paras. 48-56 & App. B (2009).

Now Plan”—a series of reforms that, if enacted, would prompt immediate broadband deployment in many unserved areas. I also share the concern of Chairman Rockefeller, who recently wrote to Chairman Genachowski that there is “a pressing need for reform” so that the rural-rural divide created by existing universal service programs can be eliminated. President Obama also has expressed a sense of urgency to make broadband more widely available.

At a minimum, the FCC should act now to make more broadband available by adopting the following reforms by the end of 2010:

1. Plug the “leaky buckets.” The finances of rural broadband providers are undermined by well known problems that have been documented and debated for years. It is time to act. The FCC should address phantom traffic and definitively state that VoIP must pay the same jurisdictionalized access charges as all other voice traffic using the telephone network. Phantom traffic schemes and evasion of intercarrier compensation requirements by VoIP providers divert payments that should be made under the system in place today, thereby undermining broadband investment. Acting now would reduce financial needs that the universal service system otherwise would have to address.
2. Launch an interim fund for broadband infrastructure construction in unserved areas. This measure would enable at least some rural Americans to see quick results, even as the FCC continues work on a detailed, comprehensive, long-term broadband solution. One potential source of funds: Certain wireless carriers committed 2 years ago to surrender universal service funding as a condition of mergers, yet continue to receive this funding. The National Broadband Plan said recapturing this funding alone would free up \$3.9 billion over the next decade. In addition, public funds could be stretched farther by a requirement that companies invest some of their own funds in broadband deployment projects that are supported with universal service dollars. Universal service funding should fill, but not exceed, the gap between costs and the amount of investment companies generally would be willing to make in areas that are economic to serve.

When considering further reforms, it is vital that Congress and the FCC gain a deeper appreciation of the scope of the broadband investment gap, which will largely drive funding challenges, before locking in final decisions about the amount of total universal service support available and a timeline for meeting ubiquitous deployment goals. A prudent transition process is needed to ensure that any broadband and voice deployment requirements are sufficiently supported. Unfunded mandates could be ruinous for consumers relying on existing carriers of last resort, *i.e.*, the entities most willing and able to serve as broadband and voice providers of last resort in high-cost areas.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it’s important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs? Are there specific metrics we should use to ensure better value for the taxpayer?

*Answer.* Some critics of the National Broadband Plan say that it would lock in relatively low speeds for rural America and thus permanently hold back rural areas relative to urban areas. Windstream believes this concern is misplaced. The FCC’s approach of initially funding 4-megabit connections to every household that lacks broadband today is prudent and will pose a very significant financial challenge in its own right. In contrast, building to significantly higher performance requirements now would place an untenable burden on the universal service system: Chairman Genachowski has stated that using universal service to build 100-megabit connections to every home “could translate into a 7-fold increase in a consumer’s contribution to the universal service fund.”

As we move forward, it is important that the universal service system support deployment of scalable technology, *i.e.*, broadband platforms that can be upgraded later to reach higher speeds. A great example of this is funding for “second-mile” fiber—fiber that feeds the distribution node for a neighborhood or small group of houses. In the future, second-mile fiber offers many scalability options. For instance, it can be extended closer to the premises; outfitted with upgraded electronics to boost speeds or overall capacity; and connected to wireless towers that provide high-speed data services.

The best possible metric for assessing taxpayer value of new broadband deployment projects will be the actual experience of consumers. If the goal is to enable small businesses, it is important that the firms be able to utilize broadband to en-

hance their businesses—for example, to host websites or engage in teleconferencing. If the goal is improved educational opportunities, the government must support deployment of broadband that will enable students to view online lectures or conduct academic research. The government's focus should be on supporting a uniform performance standard—applicable both to wireline and wireless technologies—that will enable essential core broadband functions.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

*Answer.* The National Broadband Plan's proposal to fund only a single provider in an area makes sense. A high-cost area is, by definition, an area that cannot support service by even one provider absent universal service support. Scarce universal service funding should not be used to fund competition in an area that cannot even support one provider on its own.

Because the FCC appropriately intends to fund only one provider in an area, however, it is vitally important that it target universal service to providing core broadband and quality voice capabilities to consumers in granular high-cost areas, without regard to the type of company or the type of technology involved in providing the service.

Moreover, the focus of reform should be on all rural consumers, not just those served by smaller providers. In current debates over the National Broadband Plan, some recipients of universal service funding are trying to shift the conversation away from rural consumers and back to their particular financial interests. This is classic interest-group politics, but the risk is that many rural consumers will remain a secondary concern and reform will be stopped or weakened. If the agency is serious about its commitment to ensuring ubiquitous access to broadband and quality voice services, the FCC, as Chairman Rockefeller recognizes, must make changes to ensure that the universal service regime does not continue to be a "system in which support is dependent on the size and regulatory classification of the carrier."

Finally, under the National Broadband Plan's proposals, smaller carriers will remain eligible for support in high-cost areas. Certainly, for instance, they would be eligible to seek support from the new CAF.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

*Answer.* Yes. Funding should be used for sustainable networks—that is, facilities-based entities that deliver second-mile and last-mile service. That said, some areas will also require ongoing support after initial construction is complete. Windstream supports the creation of two new distribution mechanisms, one to enable deployment of broadband to unserved households where initial support is needed but operational support is not, and one to support up-front deployment costs as well as recurring operational costs in those areas that need it.

*Question 5.* Some providers have argued that the broadband plan does not take into account costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

*Answer.* Windstream has been working for years to build support for constructive reforms to the intercarrier compensation system. Constructive reform would recognize that intercarrier compensation provides a vital revenue stream for providers in high-cost areas and that reform will require transition periods and the creation of alternate revenue mechanisms. As I noted in my reply to Question 1, Windstream believes that compensation for VoIP and phantom traffic, issues within the intercarrier compensation system, can be addressed by the FCC this year. Harvesting this low-hanging fruit would reduce the price tag of comprehensive intercarrier compensation reform and make it easier for the FCC to move ahead with other reforms, including those recommended by the National Broadband Plan.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

*Answer.* The primary goal of the CAF should be to provide consumers access to core communications services in their homes and business locations. Core services would enable online video applications needed for teleconferencing and distance learning. CAF funds, which most likely will be limited, should be targeted toward delivering these core broadband services to all Americans, without emphasis on any particular technology. Both fixed and wireless providers should be eligible for funding, as long as uniform performance requirements apply equally across all technologies.

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?

Answer. There is significant pressure to hold the Universal Service Fund to about its current size. The FCC has said that doing so will help keep broadband affordable, as it will hold down the surcharge on consumers' monthly bills.

In light of funding constraints, the FCC should not dedicate ongoing support to projects focused on delivering mobility until after the agency first has fully funded deployment and ongoing support of multi-use facilities that are important for provision of both last-mile connections to homes and backhaul to wireless towers. These multi-use facilities offer the greatest "bang for the buck." Moreover, according to the National Broadband Plan, "it is not clear that government intervention will be necessary to enable a robust mobile broadband ecosystem in most parts of the country."

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
DELBERT WILSON

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. Senator Warner, my understanding is that the only portion of the NBP involving grants is the creation of the Mobility Fund (MF). This Fund will administer grants to build towers in areas of the country lacking in 3G coverage. Under the current proposed plan, the MF is in existence for 3 years.

The CAF, similar to the current USF, wouldn't be a "grant" program but would allow carriers to recover their costs after an initial capital investment was made to their network.

I, too, support the goal of nationwide ubiquitous broadband for all Americans, and also support a national policy directive that moves our country in that direction. However, under the proposed NBP we see just the contrary. Moving rural ILECs away from rate-of-return regulation, which has been a proven form of regulation that has yielded broadband infrastructure investment in rural areas of our country to price-cap or incentive regulation, will put a hold on any further investment in broadband infrastructure. It will cripple rural carriers as it takes away the ability to recover our costs to deploy networks. The NBP needs to be altered; otherwise, it will create a whole new class of "unserved" consumers as rural telcos go out of business.

To get to your specific question on the time-frame for the transition, it is vitally important that any reforms to the existing cost-recovery mechanism be done in a thoughtful manner that allows for ample time for a reasonable and sensible transition period. Policymakers need to avoid flashcuts to existing support mechanisms and allow for the gradual transition to any new system. Rural ILECs depend on stable, certain cost-recovery mechanisms to keep consumer rates reasonable and predictable, invest in infrastructure, and pay back RUS and private sector loans used for network upgrades. In theory the NBP provides a generous transition period in that it envisions its implementation over a 10-year period. The dilemma however is that the plan itself is built upon incorrect assumptions and concepts that will not transition the rural sector to workable alternatives. Rather, it proposes transitioning us to an environment of where costs can not be recovered and operations will not be sustained.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs? Are there specific metrics we should use to ensure better value for the taxpayer?

Answer. I contend it would be easy to require any carrier receiving CAF support to agree to a certain quality of service, carrier of last resort obligations, and broadband speed requirements as a condition. This way public policy goals of providing broadband to ALL Americans are met and limited support dollars are spent wisely.

Additionally, it is critically important that rural Americans not be left behind when it comes to broadband speeds. The NBP sets a worthy goal of 100 mbps to

100 million homes by 2020; however, the plan calls for the CAF to only support a floor of 4 mbps which will be the default in rural, high-cost areas of the country—leaving rural Americans with broadband speeds 25 times slower than their urban counterparts. This is unacceptable and runs counter to the Communications Act, which requires comparable services and comparable rates between urban and rural areas.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

Answer. The USF program works for serving and building infrastructure for rural America. As rural carriers, our growing dependence on USF has been a result of regulation over time removing our ability to recover costs through implicit rates and moving this cost recovery to an explicit USF mechanism. There is little doubt that under the NBP if a rural carrier loses its ability to recover costs that there will be a significant pressure to raise local rates—not to mention the mere continued existence of rural carriers. In many of the areas we serve there is no competition and in many cases never will be because of the economic realities of sparsely populated rural areas. At Hill Country Telephone Cooperative, our customer density is only 4.68 subscribers per square mile. These areas are high-cost and without rate-of-return regulation and USF support these areas wouldn't be able to support even a single carrier and consumers would never be served.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

Answer. Yes, if a carrier receives CAF support they should be required to build out the area.

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

Answer. Yes, intercarrier compensation needs to be addressed simultaneously with USF reform. In addition to USF support, rural carriers depend on intercarrier compensation to recover their costs of providing high-quality service to their customers. Pressures on this system, like phantom traffic, should be addressed by the FCC quickly.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

Answer. I contend the support based on the provider cost for both mobile and fixed broadband service for rural America is probably in the public interest.

I believe the NBP should encourage Americans living in rural areas to have access to both fixed and mobile broadband service. Consumers today rely upon the complementary nature of fixed and mobile service to meet their communications needs. Landline broadband service can offer much more robust broadband speeds and reliability, while mobile broadband service can offer broadband service that is convenient and provides accessibility and security.

Policymakers should be mindful of the past problems with the identical support rule that caused the USF high-cost fund to grow so quickly by allowing mostly wireless competitive carriers to receive USF support based on the incumbent's wireline costs instead of their own costs. This ill-advised policy should not be repeated with the CAF. Carriers should receive support based on their own costs.

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?

Answer. No, not grants, but what should be provided is a source of operating support. Most grants only provide funding for a specific project and are a one-time infusion of capital. When the grant funds run out then what? Where towers will be built will obviously be in more remote, less populated areas. It seems obvious some form of continued support based on the carrier's cost to maintain the towers and provide service would be appropriate and in the public interest, just as it should be with wireline infrastructure.

As I said before, I believe wireline and wireless broadband service to be complementary of each other. Consumers rely upon both to meet their broadband needs, and there should be recognition of such in implementing the NBP.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
KYLE MCSLARROW

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

Answer. NCTA agrees that the transition to the Connect America Fund (CAF) should proceed as expeditiously as possible in order to bring broadband to unserved areas and underserved populations. However, it is also important to ensure that the transition is managed carefully to ensure that the CAF is funded at an appropriate level and that the overall size of the universal service program does not increase above current levels. As recommended in the National Broadband Plan, the way to achieve these goals is to phaseout support from existing high cost support mechanisms and redirect it to a new broadband mechanism. These are difficult issues that the Commission should be given ample time to address. While we have not recommended a particular transition period to the Commission, we believe the Commission should be able to begin reducing support for existing mechanisms and redirecting it to the CAF in 2011.

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs?

Answer. NCTA agrees that everyone in America, including consumers in rural and remote areas of the country, should have high speed broadband service. But it is important to focus on the purpose of the USF fund—to ensure that rural consumers have service that is *comparable* to what their urban and suburban counterparts have subscribed to through the operation of market choices. The first task is to get broadband to the areas of the country—and the roughly 5 percent of American households—that have *no* broadband and to make sure rural areas have broadband that is comparable to what the rest of the country enjoys. The FCC estimates that could cost about \$24 billion. Then, as speeds throughout the country increase, the speeds that would be supported by the USF would increase, too. The FCC could periodically review the speeds that have been adopted in non-rural areas and accordingly adjust the speeds eligible for USF support.

*Question 2a.* Are there specific metrics we should use to ensure better value for the taxpayer?

Answer. See answer above.

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

Answer. Rather than using the high cost fund to support a provider in markets where there are two or more entrants, we agree with the goal set out in the National Broadband Plan of phasing out existing support to all providers and directing new broadband subsidies to unserved areas.

While providers competing to serve the same area should have the same access to subsidies in the meantime, subsidies should be eliminated or reduced in areas where the incumbent carrier receives support and a competitor has been able to enter the market and provide service without support. The introduction of unsubsidized competition in these markets strongly suggests that the incumbent no longer needs high cost support. NCTA has proposed a mechanism by which the FCC would review such markets and reduce or eliminate support there—enabling the Commission to better target high cost support to areas that need it and to at least in part repurpose these savings for the deployment of broadband in unserved areas. While losing some of the support they receive will require some adjustment on the part of current recipients, the ability of an incumbent to offer multiple services over its network provides new opportunities that should offset these reductions.

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

Answer. Yes. The purpose of the CAF should be to facilitate the extension of broadband facilities to unserved areas. Merely subsidizing over-the-top broadband access in areas that already have broadband—other than to low income house-

holds—will not serve the fundamental objective of bringing broadband platforms to areas that currently have none, nor will providing support to companies that don't actually deploy broadband facilities, as occurs under the current high cost support program.

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

Answer. The National Broadband Plan recommended reform of the intercarrier compensation regime and NCTA supports that recommendation. As the FCC recognized when it started to reform the current intercarrier compensation regime almost a decade ago, one of the main problems is that certain providers are allowed to impose termination charges far in excess of their costs, which has created significant arbitrage opportunities. In rationalizing the intercarrier compensation regime, the FCC obviously will have to take care to move forward in a way that does not jeopardize its goal of universal broadband access. In areas served by unsubsidized broadband providers, this should not be an issue. In the limited number of areas where broadband is feasible only with government subsidies, however, the FCC may need to consider the possibility of providing additional high cost support, subject to appropriate accountability requirements, to offset some portion of the revenue a provider loses due to intercarrier compensation reform.

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

Answer. Given the demand on the CAF to extend just one broadband network to unserved areas—a cost estimated by the FCC at \$24 billion—it may be unrealistic and unnecessary to support the deployment of wireline and wireless broadband to these areas. In many unserved areas, wireless broadband may be the more appropriate technology because of low population density, difficult terrain, or both.

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?

Answer. Subsidizing ongoing operational expenses creates a risk that companies will become too dependent on government support, as is the case for many providers under the existing high cost support program. Limiting any new high cost support mechanisms to the costs of infrastructure construction would prevent that result. That said, if broadband deployment in a particular area is not feasible absent some level of support for operational costs, the Commission should consider providing such support subject to appropriate accountability requirements.

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WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
JOHN GOCKLEY

[The witness did not respond to the questions below.]

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs? Are there specific metrics we should use to ensure better value for the taxpayer?

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs.

Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?

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WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
R. PAUL WAITS

[The witness did not respond to the questions below.]

*Question 1.* As an advocate for broadband funding and deployment, I believe that the goals of universal service should extend to broadband deployment to support buildout plans in rural American and in underserved areas. The FCC has proposed converting the current High-Cost Fund into a new Connect America Fund. I support the goals of the new fund, as explained in the National Broadband Plan. However, I am concerned that it may take a long time to transition to a new broadband grant funding program. How long should the transition period be?

*Question 2.* I also believe that taxpayers should receive high-value broadband. Knowing that the standard speeds we enjoy today may be seen as insufficient in just a few years, I think it's important to maintain high standards for all portions of the country, especially in rural America. How should Congress and the FCC ensure that speed and quality are maintained in buildout programs? Are there specific metrics we should use to ensure better value for the taxpayer?

*Question 3.* Some current providers have expressed concerns about their dependence on USF and their fears that a single-provider system will result in their inability to remain competitive in their respective markets. Is there evidence to back this claim? If so, how can smaller market providers remain competitive?

*Question 4.* Should broadband grant funding under the CAF be contingent upon physical buildout requirements? If not, why not?

*Question 5.* Some providers have argued that the broadband plan does not take into costs incurred through provider-to-provider transactions/reimbursement costs. Should additional costs such as intercarrier compensation, phantom traffic, etc. be factored into the costs of providing broadband service? If not, why not?

*Question 6.* Should the CAF support both fixed and mobile broadband services in rural America? If yes, do you think that the universal service mechanism should have as its goal that consumers receive access to both?

*Question 7.* I understand that the proposed mobility fund is a one-time grant to build a cell site. Do you think the fund should also provide grants for ongoing costs? If not, why not?