



Statement by

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On behalf of the

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In the Matter of

Universal Service Reform Act of 2009

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Introduction

Chairman Boucher, Ranking Member Stearns, members of the Subcommittee, good morning and thank you for the invitation to participate in today's discussion regarding the Universal Service Reform Act of 2009, which was recently drafted by Chairman Boucher and Rep. Terry. I would like to take this opportunity to also thank Rep. Gordon and Rep. Blackburn from my home state of Tennessee for their tremendous work on this Subcommittee.

My name is Leslie Greer. I serve as the CEO of DTC Communications in Alexandria, Tennessee. My remarks today are on behalf of DTC Communications, as well as NTCA and its other 580 plus community-based members that serve rural areas throughout the nation. DTC's top priority has always been to provide every one of its consumers with the very best telecommunications and customer service possible. DTC serves 18,235 access lines across its 759 square mile rural service area that is entirely encompassed in one isolated region of one state. This is about 24 lines per square mile. DTC employs a total of 111 people and our annual revenue is \$18.5 million.

Universal service continues to be the cornerstone of our nation's communications policy and ensures our customers in rural Tennessee and those living in other rural areas of the country receive telecommunication services at a rate comparable to those living in more urban areas. Over the course of decades, our national commitment to the concept of universal service has steadily transformed. We encouraged this transformation as both citizens and policymakers to ensure that all Americans have the opportunity to experience the benefits that are offered by a nationwide integrated advanced communications network.

Therefore, as part of this evolution in communications, NTCA would like to thank Chairman Boucher and Rep. Terry for their long-standing focus and understanding of the critical need for continued universal service support for our nation's telecommunications network, which will help usher in the new era of advanced communications. The Universal Service Reform Act of 2009 contains many program modifications we have advocated for years. Among those modifications, the bill:

- Defines universal service to include high speed broadband service and sets build out targets to move the nation in that direction
- Assesses a wider range of providers, which includes all broadband providers
- Eliminates the identical support rule and bases support to providers upon their own costs
- Requires FCC to act on intercarrier compensation in the near term and allows the universal service fund growth factor to accommodate any intercarrier flows directed to it
- Addresses phantom traffic by mandating identification of traffic
- Addresses the traffic pumping issue by clarifying it is a prohibited practice
- Prohibits implementation of a primary line restriction
- Permanently exempts universal service programs from the Anti-Deficiency Act
- Includes performance measurement language and other requirements to ensure the audit process is fair
- Strengthens the eligibility requirements for receiving support and controls the unprecedented growth in support that has flowed to wireless/competitive entities
- Eliminates the so-called parent trap so that providers acquiring exchanges are not stymied from investing in such markets

It could be argued that in many ways our national universal service policy has become the victim of its own success. Too often regulators and competitors alike have viewed the program as little more than a means of inciting artificial competition rather than serving as a cost recovery mechanism for those with a genuine commitment to high-cost markets. Likewise, others have misinterpreted the fact that the program has helped achieve high levels of connectivity as suggesting that the program is no longer necessary. Yet nothing could be further from the truth.

Today, we exist in a global environment where highly advanced communications infrastructure and services intricately intertwine all of the world's citizens, governments and economies. The technological advances and demands by the public that accompany them suggest that the need for this program has never been stronger. Our highest priority must center on crafting policies

that will fully reestablish the value of this program for all consumers and simultaneously restore America's communications preeminence.

Unfortunately, some believe in the elimination or reduction of this support mechanism. This would have dramatic and immediate consequences for NTCA's member companies and the rural communities they serve. Without USF, retail prices would rise - putting telecommunication services out of reach of many Americans. In addition, service quality would drop as carriers would no longer be able to afford necessary upgrades and maintenance. Even worse, some companies would no longer be able to offer service at all – eliminating communication services for those Americans that live in the most rural regions of our country. Everyday these citizens serve as the backbone of our country by growing the food we feed our families, fueling our country with a large variety of traditional and renewable energy resources needed to run our economy, and supplying our military with a disproportionately large number of young men and women in uniform. While the majority of Americans no longer live in rural areas, everyone of us still depends on them. Much like the interstate highway system has done, providing these rural areas with affordable, advanced communication services strengthens our connectivity to each other and benefits the nation as a whole.

The universal service program is not perfect, if it was, we wouldn't be here today discussing the best way to reform it. However, even its detractors cannot deny that the program is a shining example of successful national policy. This program is largely responsible for the extremely high communications connectivity our nation enjoys today. It is due to universal service support that virtually any American that wishes to have voice connectivity is able to. Likewise, it is solely due to this program that such connectivity is uniform in price and scope throughout the nation.

Universal Service Reform Act of 2009

Today, the universal service system is more critical than ever as the nation continues its pursuit of ubiquitous advanced communications systems. While rural telecommunication carriers have

worked hard to increase infrastructure deployment, there is much more that remains to be done to meet our national communication goals.

With the FCC hard at work developing a national broadband plan that will be completed in February 2010, this compromise legislation serves as an important piece of the puzzle as we work to ensure that our commitment to advanced communication services are met. The Universal Service Reform Act gives appropriate recognition to the need for reform by calling for major program modifications which have been sought by the industry for many years, while simultaneously recognizing the concerns of those who have not always advocated on behalf of the program.

Broadband Deployment

Government policies and programs, including universal service, are instrumental in the realization of affordable and comparable telephone service for all. The United States public switched telecommunications network remains the envy of the world. The same should be true for the United States national broadband network. The Universal Service Reform Act takes many important steps toward making this a reality by, among other things, declaring broadband to be a universal service, expanding the contribution base, and by directing the FCC to complete a proceeding to reform intercarrier compensation within one year.

While technological advances are helping to reduce the cost associated with broadband deployment, it is still always going to be more expensive to serve rural America due to low population density, expansive distances, and often-rugged terrain. Without federal policies that put in place additional cost recovery mechanisms, our national goal of universal broadband access may never be realized. To underscore the sizable commitment that will be needed to achieve ubiquitous broadband, according to a recent FCC task force study, preliminary estimates indicate that investments in the range of \$20 billion to \$350 billion may be needed, depending on the speed of service hoped to be achieved. To overcome these financial barriers, NTCA looks forward to continue working with this Subcommittee and the FCC to develop a national broadband plan to meet the needs of broadband networks in high-cost, rural areas throughout the

country to ensure Americans living in these areas are not denied the opportunity to realize the full promise of the broadband era ahead.

Intercarrier Compensation

The solution for intercarrier compensation is a simple one, if any service provider uses another provider's network that service provider must compensate the other provider for the use of their facilities at an appropriate rate. Carriers that invest millions in network infrastructure should receive compensation from those that utilize it in lieu of building their own network. Today, our industry confronts a situation where more and more entities that need and utilize our networks are refusing to pay for such use. This would be tantamount to my asking you Mr. Chairman, if I could have permanent access to your car, to drive around as I please without compensating you for doing so, and all the while, insisting that you have it tuned up and filled with gas. As ridiculous as that sounds, that is exactly the situation our segment of the communications industry confronts today. Therefore, NTCA fully supports the inclusion of intercarrier compensation reform provisions within the bill. As part of the required proceeding, the FCC should determine the regulatory treatment of interconnected voice over the internet protocol (VOIP) technologies. Since interconnected VOIP is a direct substitute for traditional voice telephone service, it should be treated as such and VOIP providers should pay applicable access charges. We also support the inclusion of a one year deadline placed on the FCC to complete the proceeding to reform intercarrier compensation. This enactment time limit will ensure reform of this important cost recovery mechanism is not further delayed.

Traffic Identification

The Universal Service Reform Act requires carriers to identify all traffic on their networks and requires all carriers to pass through that identification. NTCA supports this provision to eliminate "phantom traffic," which has become one of the most pervasive problems facing the telecommunications industry today. The decline in revenue that phantom traffic now yields for carriers has reached a crucial point and is destabilizing our industry. We have been amazed by the laissez-faire attitude that surrounds the issue of phantom traffic, which is similar to a person

receiving cable television signals without paying for them. While tools are beginning to emerge to help verify the identity of traffic, the fact of the matter is that, for the most part, small, rural carriers are generally at the mercy of others with regard to traffic identification. We believe the time has arrived for policymakers to act on this matter in order to stem any further hemorrhaging of lost access and intercarrier compensation due to the insatiable growth of phantom traffic.

Contribution Expansion

The bill would assess contributions on any entity that currently pays into the USF; any provider of a service that uses telephone numbers or IP addresses to provide voice communications; and any provider that offers a network connection to the public. NTCA supports this change and believes all broadband internet access providers should contribute to the USF. Expanding current USF programs to include broadband without assessing broadband services to contribute to the USF will not provide sufficient levels of support to achieve the goal of affordable Internet access service to all Americans. Therefore, NTCA believes all broadband providers should contribute to future broadband USF support mechanisms.

Contribution Methodology

The bill gives the FCC the authority to determine whether to use a contribution methodology based on revenues, numbers, or a combination of the two. Since telephone numbers have nothing to do with broadband Internet access service, which will be the basis for all communications in the future, NTCA believes that revenues, not numbers, should be assessed for future USF contributions. If USF contributions are limited to traditional voice services, the inevitable migration away from these services will eliminate all future universal service funding.

We believe the contributions assessment methodology must be forward looking. AT&T first proposed a numbers based methodology largely to shift this responsibility away from itself and its interexchange counterparts. Now, several years later, at a time when policymakers and the public alike are demanding that we migrate to a fully broadband and advanced services capable infrastructure, variations of the AT&T numbers concept continue to receive consideration, both

in Congress and at the FCC, despite the concept's backward looking approach to assessing a limited segment of the overall communications industry. The revenues assessment methodology is known, tested, operational, and superior. We should stick with it, and are confident that the study your legislation requires on this subject will show this is the only responsible response to this issue.

Audits

The Universal Service Reform Act directs the FCC to use appropriate audit methodology, using auditors trained in universal service fund program compliance. NTCA recognizes the fundamental role audits can play in the oversight of policies and programs if they are conducted appropriately. Unfortunately, the audit process, which has been underway by the FCC OIG for several years, has been mostly a failure and done little more than lead the program's detractors to cite misleading examples of perceived program weaknesses. This failure was outlined by the February 12, 2009 report from the Universal Service Administrative Company (USAC) that explained the audit's shortcomings in terms of costs, approach, findings, and reporting. The USAC report noted how over the course of approximately three years, tens of millions of USF dollars have been diverted from universal service program objectives to conduct more than 1000 separate audits. Yet even more telling is that all these dollars later, the OIG audit reports have identified no instances of fraud or gross non-compliance with the high-cost portion of the program.

We support the efforts of this Subcommittee, and the provisions included in this bill, to ensure the FCC uses appropriate audit methodologies and processes, and reports factual program information to Congress and the public in the future.

Traffic Pumping

The Universal Service Reform Act prohibits access charge recovery when an entity that has an agreement with a local exchange carrier relating to switched access revenues from such services offers a free or below cost service. NTCA will continue to support narrowly tailored approaches,

such as the approach offered in this bill, to handling allegations of traffic pumping that do not interfere with legitimate business activity.

Parent Trap

NTCA supports the elimination of the FCC's parent trap rule that forces carriers acquiring exchanges to receive support based on the level of support, if any, that the previous owner/carrier received. Elimination of the parent trap may make it more cost effective for carriers, in particular, small, rural carriers to acquire and improve service to areas where quality service is currently not available. As most of us know, the parent trap evolved out of a regulatory realm from several years ago. During that time, the FCC attempted to limit the flow of universal service support related to a number of industry acquisitions involving smaller carriers purchasing exchanges from larger carriers, which were badly in need of upgrading. Today, as we move in a direction that envisions the ubiquitous deployment of a fully advanced capable communications infrastructure, it is appropriate this regulatory hurdle be removed to ensure all Americans are able to partake in the broadband promise of the future.

Permanent Anti-Deficiency Act Exemption:

Prior to 1995, the universal service system was never considered a part of the federal budget because it had always involved transactions of private monies between private sector parties. The only reason it became part of the budget was because the Congressional Budget Office and the Office of Management and Budget made assumptions and interpretations that the flow of support was somehow federally oriented. They made this misinterpretation based on the opinion that following the enactment of the Telecommunications Act of 1996 the statutory directives on contributions and distributions gave an implied suggestion that these were federal associated amounts. Yet the fact of the matter is these monies are still private monies, not funds that are being appropriated from the federal Treasury. Therefore, NTCA supports the bill's provision to explicitly remove the program from the Anti-Deficiency Act to avoid the struggle to renew the annual exemption.

Primary Line Restriction

NTCA supports the bill's prohibition on regulatory attempts to restrict universal service support only to a primary line connection. Limiting universal service support to primary lines is a concept the FCC has rejected on several occasions because it is simply inconsistent with the underlying reality that we are building and maintaining a network – not a patchwork of singular lines and connections. There is an overall cost to building a network, and limiting cost recovery to only a few singular elements of the overall infrastructure would grossly underestimate the actual cost of deployment - leaving carriers and their consumers to make up the dramatic difference.

In rural areas, in particular, such a restriction would preclude second lines and cellular phones from eligibility for USF support. Therefore, rural customers would have the right to only one phone line at the reasonable costs offered to their urban counterparts, while their second and cellular lines would be charged exorbitant rates.

Rural small businesses would be particularly vulnerable to such regulation. Because these businesses generally have fewer than five lines, a primary line restriction would result in exceptionally higher operational costs because of the high cost of providing telecommunications services in rural areas. This puts rural businesses at a distinct disadvantage to their urban counterparts and is unfair to residential consumers as well.

Rural wire line and wireless carriers rely on this support, and the restriction would dramatically reduce incentives for the deployment and upgrade of facilities in rural areas. Not only would such a restriction hinder future deployment, but it could also jeopardize the ability of rural carriers to service debt for already constructed plant facilities.

Eliminating the Identical Support Rule

The FCC's longstanding, arcane and nonsensical "identical support rule," which was put in place all in the name of competitive neutrality, allows a competitor in a given market to receive

support based on the incumbent's imbedded costs – even though the competitor's costs are usually far less because they have not been required to serve customers throughout the market area as incumbents must do. Perhaps the most vexing aspect of this rule is how it motivates competitors to zero in on markets where there is the most money rather than markets where there is the most need.

This happens because, without a requirement to serve the entire market area, and with a rule that says competitors will receive support based on the incumbent's costs, competitors target markets where universal service support is high because rural incumbents have been working hard to deploy services. Meanwhile the same competitors overlook the rural markets of the large carriers where deployment has typically not been widespread and where, for this and other reasons, universal service dollars are not flowing and thus would not flow under the identical support rule. Obviously, this conundrum is not in the public interest and we are pleased the legislation before us today would eliminate the identical support rule.

Conclusion

Finally, as I alluded to earlier in the testimony, the FCC's National Broadband Task Force recently released a study that confirmed there will be an extremely high cost to achieve ubiquitous broadband deployment. NTCA's work before the FCC, in conjunction with the National Broadband Plan, which will be provided to Congress in February 2010, attempts to appropriately respond to these realities by identifying ways to achieve our national universal service policy objectives – in particular for those challenging rural areas that have for too long been ignored by larger providers that continue to gravitate toward higher-paying urban markets and away from their customer base located in less densely populated markets.

To identify the appropriate solutions that will address these issues and fulfill the broadband promise so many are talking of today, we look forward to working with this Subcommittee, your

House colleagues, your Senate counterparts, and the FCC on long-term solutions to our nation's broadband challenges.

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

I look forward to answering any questions you or your colleagues might have.