

**TESTIMONY OF JAMES M. ASSEY
EXECUTIVE VICE PRESIDENT
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

on

**H.R. 5828
Universal Service Reform Act of 2010**

before the

**Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet**

**UNITED STATES HOUSE OF REPRESENTATIVES
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**EXECUTIVE VICE PRESIDENT
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Good morning, Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee. My name is James Assey, and I am the Executive Vice President of the National Cable & Telecommunications Association. Thank you for inviting me today to testify today in support of H.R. 5828, the Universal Service Reform Act of 2010.

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 universal service 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 communications policy, ensuring that all Americans have access to rapid and efficient communications services at reasonable rates – and it will remain a cornerstone of communications policy in the broadband era. As a major contributor to the federal universal service fund, the cable industry has a significant interest in universal service issues. We believe it is time 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 voice competition offers the opportunity for policymakers to make this transition.

NCTA endorses the Universal Service Reform Act of 2010 as a sound first step in modernizing the universal service program to bring it into the competitive era and refocus the program on broadband adoption and deployment where support is needed. H.R. 5828 recognizes that government subsidies are neither necessary nor appropriate in competitive areas where the marketplace is working. Building on a proposal NCTA filed last year with the Federal Communications Commission, the bill will establish a permanent mechanism for the FCC to reassess universal service support levels in competitive areas and reduce or eliminate support where adequate competition exists. The bill also recognizes the significance of resolving the difficult, but very important, issues surrounding intercarrier compensation reform.

When NCTA President Kyle McSlarrow testified on universal service reform before this Subcommittee in November 2009, he suggested that reform should encompass several elements: controlling the size of the high cost fund to ensure that it does not impose unreasonable burdens on consumers or distort competition; reducing or eliminating high cost fund support to areas where basic service can be provided without the support; providing universal service support for high-speed broadband facilities in areas that currently do not have broadband service; reforming the universal service contribution mechanism to allow assessment based on telephone numbers; and ensuring competitive neutrality in eligibility for universal service support. H.R. 5828 addresses each of these issues.

Importantly, the Universal Service Reform Act of 2010 includes a mechanism for the FCC to reduce or eliminate high cost support in competitive areas where the presence of one or more unsubsidized wireline competitors demonstrates that a universal service subsidy is no

longer necessary to support provision of services in that area. The bill reasonably defines a competitive area as a service area where more than 75 percent of households can purchase both wireline service and high-speed broadband service from a non-incumbent wireline provider, although we believe the bill should be clarified to state expressly that this test is satisfied in areas where two or more competitors combine to meet the 75 percent threshold.

This reduction mechanism permits direction of high cost support away from areas that the competitive market has shown do not need the support, helping to direct scarce funds to only those areas where voice and broadband service would truly be unavailable without subsidy. Because the bill requires the FCC to apply the mechanism on a “recurring” basis, the need for high cost support will be continually reassessed to take into account changes in competitive markets, ensuring that universal service support is always based on current needs and not historical market conditions that may no longer exist. To ensure that this mechanism fulfills its objectives, we respectfully suggest that the bill be revised to ensure that the “hold harmless” provision does not prevent the FCC from reducing or eliminating high cost support in competitive areas.

The Universal Service Reform Act of 2010 rightly brings universal service support into the 21st Century by retargeting funding to support broadband services. The National Broadband Plan declares that “[e]veryone in the United States today should have access to broadband services,” and the Universal Service Reform Act of 2010 represents a major step forward in accomplishing that laudable goal. We also applaud the bill for recognizing the special needs of tribal lands for continuing high cost support.

Significantly, the bill funds the deployment of broadband services to all Americans without requiring that broadband be classified and regulated as a Title II telecommunications

service. Spurring broadband deployment requires a regulatory climate that promotes private sector investment and innovation by providing certainty and eliminating all unnecessary regulatory burdens. Maximizing incentives for private investment in broadband will minimize the impact on consumers who ultimately contribute to the universal service fund.

As an essential corollary to providing universal service funds to support broadband, the bill clarifies that universal service mechanisms (including the assessment of contributions) should be competitively neutral, so as to neither “unfairly advantage one communications service provider over another” nor “unfairly favor nor disfavor one technology over another.” In support of competitive neutrality, the bill makes two important changes to the current universal service programs. First, it opens high cost programs to all communications service providers able to provide required services, rather than limiting participation to only telecommunications carriers. Second, it makes clear that a provider’s service area – the area where it must meet universal service eligibility requirements – is the area where the provider itself is licensed or authorized to provide services rather than the incumbent local exchange carrier’s territory. These are welcome changes that will allow the universal service program to focus on providing services to those in need, rather than on essentially irrelevant concerns about the type of provider or type of technology that brings those services.

The bill also includes provisions intended to ensure that the high cost fund is no larger than necessary. For instance, it directs the Commission not to “unreasonably increase the contribution burden on consumers” as the fund is repurposed to support broadband services. On the “demand” side, in determining the amount of high cost support a provider might need, the bill rightly gives the FCC authority to consider a provider’s net revenues from the provision of any services over its communications infrastructure. If a provider is, in essence, telling the FCC

that it must have a financial subsidy for its network to be able to provide services in a high cost area, it is only appropriate that the provider should be required to demonstrate its financial need based on all services it provides over that infrastructure. Providers should not be allowed to obtain a subsidy for providing some services over their network when the mix of all services over that network provides them with a reasonable profit even without the subsidy. Finally, the bill retains the provision in current law that focuses universal service support on services that have been subscribed to by a substantial majority of residential customers “through the operation of market choices.” This test appropriately ensures that the universal service program is focused on ensuring that consumers in rural and insular areas – particularly areas with no broadband – get access to service that is comparable to their urban and suburban counterparts.

The bill also recognizes the continuing importance of the E-rate and other universal service programs. In particular, while providing well-planned and much needed reform to the high cost programs, the bill appropriately does not alter or limit entities’ eligibility to receive universal service support for providing services to schools, libraries, rural health care facilities, or to low-income consumers. The universal service programs that assist these entities are important and deserve continuing support. The bill’s institution of new audit controls on these programs will ensure that the funds are appropriately spent.

As this Subcommittee well knows, universal service reform is a challenging issue. Any effort to address this subject is bound to require some compromises, and H.R. 5828 is no exception. For example, NCTA has long supported a cap on high cost support, but the cost model approach provided in the bill leaves open the question of the ultimate size of the high cost fund. We also believe that support for broadband deployment should be expressly limited to unserved areas. In addition, we support other legislative efforts, such as those introduced by

Representatives Matsui and Markey to modernize the Lifeline, Link Up, and E-rate programs. On balance, however, H.R. 5828 is a constructive, positive step forward in bringing much-needed reform to a universal service program that has gone too long without it, and NCTA is pleased to endorse the bill. We particularly appreciate the leadership of Chairman Boucher and Representative Terry on these important issues.

Thank you again for the opportunity to share our views with you today. We look forward to continuing to work with you as you proceed to consideration of the bill.