

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**September 14, 2010**

**To: Members and Staff of the Subcommittee on Communications, Technology, and the Internet**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Legislative Hearing on H.R. 5828, the “Universal Service Reform Act of 2010”**

On Thursday, September 16, 2010, at 10:00 a.m. in room 2322 of Rayburn House Office Building, the Subcommittee on Communications, Technology, and the Internet will hold a legislative hearing on H.R. 5828, a bill to reform the federal universal service provisions of the Communications Act of 1934.

**I. BACKGROUND**

Title I of the Communications Act of 1934 (the Act) states that it is the Nation’s policy to make communications services available “so far as possible, to all the people of the United States.”<sup>1</sup> Prior to 1996, universal service was promoted through a system of implicit subsidies by which urban consumers paid higher rates for telephone service to subsidize the rates paid by consumers in rural areas. In 1996, Congress expanded this principle of Universal Service by amending the Act to establish specific principles for universal service.<sup>2</sup>

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<sup>1</sup> 47 U.S.C. § 151.

<sup>2</sup> Section 254(b) established the following principles: (1) Quality services should be available at just, reasonable, and affordable rates; (2) All regions of the country should have access to advanced telecommunications and information services; (3) All consumers, including low-income consumers and consumers in rural, insular, and high-cost areas, should have access to telecommunications and information services, including advanced telecommunications and information services, that are reasonably comparable to that provided in urban areas and at rates that are reasonably comparable to rates in urban areas; (4) All providers of telecommunications service should contribute to the universal service fund and the assessment of the contribution should be equitable and non-discriminatory; (5) The Federal and State mechanisms for universal service should be specific, predictable, and sufficient to preserve and advance universal service;

In 1997, the Federal Communications Commission (“Commission”) established the Universal Service Fund to provide communities across the United States with affordable communications services. To provide support for the fund, most consumers pay a surcharge each month on their interstate telephone calls. This surcharge is usually reflected in a phone bill line item, typically labeled a “universal service fee.” The surcharge, also referred to as the “contribution factor,” fluctuates each quarter depending on the demands placed on the programs. For the third quarter of 2010, the contribution factor was about 13.6%.<sup>3</sup>

The Commission also established the Universal Service Administrative Company (USAC) to distribute the collected funds to the universal service programs. There are four universal service programs: (1) the high-cost program, which was created to ensure that consumers in high-cost regions of the Nation (usually rural, insular or geographically-challenging areas) have access to and pay rates for telecommunications services that are reasonably comparable to the services provided and the rates paid in urban areas; (2) the low-income program, which ensures that telecommunications services are available to low-income consumers at just, reasonable, and affordable rates; (3) the schools and libraries, or e-rate, program, which supports connectivity to telecommunications services and the Internet for schools and libraries; and (4) the rural health care program, which provides reduced rates for telecommunications services and Internet access to rural health care providers.

In 1998, total fund commitments totaled \$3.56 billion. In 2009, that amount grew to over \$7.7 billion, with approximately \$4.5 billion attributable to the high-cost program, \$897 million to the low-income program, \$2.1 billion to the schools and libraries program and \$206 million to the rural health care program.<sup>4</sup> During that same period, the contribution factor increased from approximately five percent in 1998 to 13.6 percent for the third quarter of 2010.

On March 12, 2009, the Subcommittee held a hearing examining the current high-cost universal service program administered by the Federal Communications Commission and possible reforms to the universal service program.<sup>5</sup> That hearing explored possible reforms, including expanding the contribution base to include intrastate and broadband revenues; targeting support at a more granular level; expanding the fund to support broadband service and controlling increasing amounts of support to wireless carriers serving rural areas.

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and (6) Elementary and secondary schools, libraries, and rural health care providers should have access to advanced telecommunications services.

<sup>3</sup> Federal Communications Commission, Public Notice, *Proposed Third Quarter 2010 Universal Service Contribution Factor*, CC Docket No. 96-45 (June 10, 2010) (online at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-10-1055A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-1055A1.pdf)).

<sup>4</sup> Federal Communications Commission, Contribution Factors and Quarterly Filings (online at <http://www.fcc.gov/omd/contribution-factor.html>).

<sup>5</sup> House Committee on Energy and Commerce, *Universal Service: Reforming the High-Cost Fund*, 111th Cong. (March 12, 2009) (online at [http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=1530:universal-service-reforming-the-high-cost-fund&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1530:universal-service-reforming-the-high-cost-fund&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74) ).

The Subcommittee held a hearing on the discussion draft of legislation to reform the universal service program on November 17, 2009.<sup>6</sup> The draft legislation proposed alternatives for the Commission to consider in broadening the contribution base or otherwise allow the Commission to assess contributions based on telephone numbers or connections to the network. In addition, the proposed legislation capped the size of the high-cost fund, required the Commission to target support better to high-cost areas, and provided for broadband to be included as a supported service. The hearing assessed the draft legislation and additional proposals, including eliminating or reducing high cost support where basic service can be provided without support, eliminating a revenue-based contribution system, and promoting broadband adoption without new contribution obligations.

On July 22, 2010, Subcommittee Chairman Boucher and Representative Terry introduced H.R. 5828 to reform universal service. A section-by-section analysis of H.R. 5828 is below.

## **II. SECTION-BY-SECTION ANALYSIS: H.R. 5828, THE UNIVERSAL SERVICE REFORM ACT OF 2010**

*Section 1. Short Title.* Establishes the short title as the “Universal Service Reform Act of 2010.”

*Section 2. Definitions.* Section 2 contains definitions.

### **A. Title I – Universal Service Reform.**

*Section 101. Universal Service Reform Procedures and Principles.* Directs the Federal-State Joint Board on Universal Service (consisting of Federal and State regulators) and the FCC to initiate proceedings to implement the Act.

Directs the Joint Board and the FCC to base policies for the preservation and advancement of universal service on the principles that quality services be available at just, reasonable and affordable rates; access to advanced telecommunications and information services be available throughout the United States; consumers nationwide have access to those services deemed to be universal services at reasonably comparable rates; all communications service providers make equitable contributions to the universal service fund; mechanisms to preserve universal service be explicit, specific, predictable and competitively neutral; and elementary and secondary schools and classrooms, health care providers and libraries have access to advanced telecommunications services.

Defines universal service as the services defined as universal services as of the day before the date of enactment, plus high-speed broadband service and an evolving level of telecommunications and information services to be established by the FCC. Directs the Joint Board to review the list of universal services at least once every five years.

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<sup>6</sup> House Committee on Energy and Commerce, *Legislative Hearing on a Discussion Draft of the Universal Service Reform Act of 2009*, 111th Cong. (Nov. 17, 2009) (online at [http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=1819:universal-service-reform-act-of-2009&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1819:universal-service-reform-act-of-2009&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74)).

Allows the use of universal service support for the provision, maintenance and upgrading of high-speed broadband service.

*Section 102. Universal Service Support Contributions.* Directs the FCC to determine whether to use a contribution methodology based on revenues, working telephone numbers, connections or a combination of these. If the FCC opts for a revenues approach, it may assess contributions based on revenues derived from a communications service provider's provision of intrastate, interstate and foreign communications services. Allows the FCC to limit or exempt contributions from communications service providers whose customers typically make a low volume of calls each month or whose contributions would be de minimis. If the FCC opts for a numbers-based methodology, the FCC may provide a discount for group or family pricing plans for residential customers. Directs the FCC, within 9 months of the date of enactment, to complete a study, including a cost-benefit analysis, of using a numbers or revenues-based contribution methodology and to report the study results to the House and Senate Commerce Committees.

Provides that in making the changes required by the Act, the FCC shall ensure that the contribution burden on consumers does not unreasonably increase.

Requires the FCC to establish annual reporting requirements for all communications service providers contributing to universal service support mechanisms or receiving universal service support.

*Section 103. Universal Service Support Distribution.* Provides that only eligible communications service providers may receive universal service support and that they must use that support only for the provision, maintenance and upgrading of facilities and facilities-based services for which the support is intended.

Clarifies that universal service support should be expanded to include high-speed broadband service and any other service determined by the FCC to be a universal service. Provides that an eligible communications service provider that is also an incumbent local exchange carrier may opt to have the FCC also calculate its universal service fund contributions on a forward-looking cost basis.

Gives the FCC two years to develop a new cost model for the provision of high-cost support to eligible communications service providers that takes into account the cost of providing voice service and high-speed broadband service. The new cost model will include wire center and study area components and will replace the FCC's existing calculation methodology for rural and non-rural carriers. Eligible communications service providers will be required to provide high-speed broadband service at the minimum data rate prescribed by the FCC within 3 years after implementation of the new cost model. Directs the FCC to develop and implement a mechanism that maintains rate-of-return regulation for carriers that were subject to rate-of-return regulation as of the date of enactment as part of the cost model. Directs the FCC, in determining appropriate levels of high-cost support for carriers, to consider net revenues derived from the provision of any services over supported infrastructures. Gives each rural carrier 120 days to make a one-time election to have its high-cost support calculated pursuant to the wire center component instead of the study area component.

Directs the FCC, within one year of completing the new cost model, to develop and implement a recurring mechanism for reducing or eliminating high-cost support to incumbent carriers in areas where at least 75 percent of households can purchase voice and high-speed broadband service from an unsupported, facilities-based, non-incumbent provider. An incumbent carrier whose high-cost support is reduced in a competitive area may demonstrate to the FCC how much per-line support it requires in the non-competitive parts of the service area to ensure comparable rates for supported services in the competitive and non-competitive parts of the service area. The non-incumbent provider in an area that the FCC has determined is competitive must agree to meet statutory provider of last resort requirements.

Prohibits the FCC from reducing high-cost support to tribal lands, absent a finding that such reductions are in the public interest.

Provides that for one year after the FCC implements the new cost model, no incumbent carrier shall receive less universal service support than it was receiving before implementation of the new cost model. However, the difference between what the carrier was receiving before the switch to the new cost model and after will phase out in equal increments over the next five years.

*Section 104. Eligible Recipients of Universal Service Support.* Clarifies the minimum criteria communications service providers must meet to be eligible to receive universal service support by codifying certain standards adopted by the FCC for eligible telecommunications carriers, including making universal services available throughout a service area and adhering to State carrier-of-last-resort requirements, advertising supported services and associated charges throughout a service area, advertising the availability of lifeline and link-up services to reach those most likely to qualify for those services, demonstrating the ability to remain functional in emergency situations and complying with Federal and State consumer protection and service quality standards and high-speed broadband service over one's own facilities or through resale throughout a service area. Permits the resale of satellite broadband service to satisfy the requirement that a universal service support recipient provide high-speed broadband service throughout its service territory. Universal service fund recipients must meet these requirements within one year to continue to be eligible for universal service support. Clarifies that carriers are only obligated to meet the requirements of the universal service program in areas where they receive universal service support.

Allows the FCC to waive the minimum data rate requirement for renewable periods of three years for a provider for whom offering such service would be technically infeasible or from an economic standpoint would materially impair its ability to offer local exchange service and would automatically be waived for providers that can demonstrate that their cost per line of deploying such service is at least three times the national average cost of providing high-speed broadband service or that there is insufficient satellite capacity to meet the requirement to provide high-speed broadband service.

Directs the FCC to adopt within one year and implement within 3 years a competitive bidding process to determine eligibility of mobile wireless communications service providers for universal service support in each service area, as designated by the FCC. The total amount of support the FCC awards pursuant to the competitive bidding process must be less than the amount of high cost support received by all mobile wireless communications service providers in the year before the date of enactment. To be eligible to participate in the competitive bidding

process, a mobile wireless communications service provider must be designated an eligible telecommunications carrier and establish that it is legally, technically, financially and otherwise qualified to serve a high cost area.

In areas where at least 3 mobile wireless communications service providers are eligible to participate in competitive bidding, the FCC shall issue a request for proposals identifying the area a winning bidder must serve and the minimum requirements for serving the area. The FCC shall select up to 2 winning mobile wireless communications service providers in each service area and should consider the amount of the bid and minimum proposed broadband speeds as primary factors when evaluating applications. Winning bidders shall receive a flat amount of subsidy per year for up to 10 years, as determined by the FCC.

In areas where fewer than 3 mobile wireless communications service providers are eligible to participate in competitive bidding, the FCC shall continue to provide universal service support at the per-line level in effect prior to the date of enactment.

Defines a communications service provider's "service area" for purposes of determining universal service obligations and support as the geographic area determined by the FCC as requiring USF support and used by the FCC to determine universal service obligations, and where the carrier is authorized to provide service.

Clarifies that nothing in the Act limits the FCC's authority to define payphone service as a service eligible for universal service support as such authority existed on the day before the date of enactment of the Act.

*Section 105. Removal of Impediments to Sufficient Support Mechanisms.* Eliminates the "parent trap," which provides that a carrier which acquires telephone exchanges from an unaffiliated carrier receives universal service support at the same level for which those exchanges were eligible prior to the transfer, and prohibits the FCC from reinstating it.

*Section 106. Scope of Support.* Prohibits the FCC from adopting a primary line restriction.

*Section 107. Application of Antideficiency Act; Investment of Contributions.* Permanently exempts the universal service fund from the Anti-Deficiency Act to avoid the need to renew the exemption annually.

Allows the FCC to invest contributions to the universal service fund in liquid, interest-bearing, government-backed securities until they are disbursed.

*Section 108. State Authority.* Clarifies that nothing prevents any state from establishing a state universal service fund based on any contribution mechanism, though if a state assesses contributions on a revenue basis, it may only assess on intrastate revenues.

*Section 109. Minimum Data Rate Requirements.* Directs the FCC to review the minimum data rate for high-speed broadband service every other year beginning the sixth year after the date of enactment and to make adjustments to move to higher speeds as deployment and advancement of new technology allows communications service providers to provide higher broadband speeds to end users in an economically rational manner.

**B. Title II – Accountability.**

*Section 201. Performance Measures.* Directs the FCC to within one year from the date of enactment establish and implement outcome-oriented performance goals and measures for each universal service fund program.

*Section 202. Audits.* Directs the FCC to within 9 months from the date of enactment establish rules to determine the appropriate methodology for audits of recipients of universal service support and ensure that auditors are trained in universal service fund program compliance and only audit records that universal service fund recipients are required to retain pursuant to the FCC’s rules. Provides that any appeal of a USAC finding related to an audit must be resolved by the FCC within 6 months after the date of filing.

*Section 203. Report to Congress.* Directs the FCC to report to Congress every three years concerning the availability of universal services to all Americans, including an analysis of the implementation of performance goals and measures and progress toward meeting such goals and measures.

**C. Title III – Intercarrier Compensation Reform.**

*Section 301. Intercarrier Compensation Reform.* Directs the FCC to complete a proceeding to reform intercarrier compensation within one year of the date of enactment. Allows the FCC to establish an alternative revenue recovery mechanism for intercarrier compensation to be included as high-cost support.

*Section 302. Network Traffic Identification Accountability Standards.* Requires telecommunications carriers to identify all traffic which originates on their networks so carriers that terminate traffic can seek appropriate intercarrier compensation.

*Section 303. Traffic Pumping.* Prohibits access charge recovery when an entity that has a business, financial or contractual relationship with a local exchange carrier relating to switched access revenues from such services offers a free or below cost service.

**D. Title IV – Rural Health Care Support Mechanisms.**

*Section 401. Rural Health Care Support Mechanisms.* Makes changes to the rural health care support mechanism so that support for advanced telecommunications services is based on the difference between the cost of service in an urban area and the cost in a rural area, instead of the flat percentage rate discount under current law. Clarifies which entities are eligible for support under the rural health care support mechanism. Revises the definition of “rural” for the rural health care support mechanism to among other things grandfather any community that qualified as rural under the FCC’s rules prior to December 2004.

**III. WITNESSES**

The following witnesses have been invited to testify:

**James Assey**

Executive Vice President  
National Cable & Telecommunications Association

**Shirley Bloomfield**  
Chief Executive Officer  
National Telecommunications Cooperative Association

**Steve Davis**  
Senior Vice President  
Public Policy & Government Relations  
Qwest Corporation

**Kathleen Grillo**  
Senior Vice President  
Verizon

**Carol Matthey**  
Deputy Chief  
Wireline Competition Bureau  
Federal Communications Commission

**Walter McCormick**  
President and CEO  
United States Telecom Association

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