

**Before the United States Senate
Commerce, Science and Transportation Committee
Hearing on Universal Service Contributions**

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Mr. Chairman, Mr. Co-Chairman Inouye and distinguished Members of the Committee, I want to begin by commending your leadership in convening today's hearing on the crucial topic of universal service contributions and for inviting me to testify before you. This means, first and foremost, singling out Chairman Stevens for his unwavering leadership on universal service issues. On many occasions, your personal intervention, Mr. Chairman, has literally made the difference in upholding this program to the benefit of all Americans. I also would like to thank Senators Burns and Dorgan, whose universal service summits in 2003 first focused our attention on the critical subject of reforming the contribution mechanism, and whose legislative leadership continues to help guide the way. As I will describe, preserving and advancing universal service is critical to broader telecommunications reform, and repairing the contribution system is the lynchpin of universal service.

I. INTRODUCTION

CenturyTel is a *telecommunications* company, a rural *infrastructure* company, and in most of our communities is the largest *technology* company. Building robust networks is an evolving process and is capital-intensive. Wherever we serve, we are at the center of economic and community development. None of this would be possible without sufficient, predictable high cost fund support.

CenturyTel is in the business of providing its communities with a complete menu of telecommunications services. We are investing in high quality networks for rural and small urban markets in 26 states. Our network is essential to delivering new services and technologies to more than 2 million mostly rural consumers. Our network evolves with technology and demand. Once they were analog, then digital and now increasingly IP based. There are no VoIP applications without a robust, high speed, IP capable network. My job is to build and maintain that network for the customers we serve now, and for rural areas we may serve in the future. It is important that you understand that for rural Americans, universal service dollars are not as much for the networks of the past as they are for the networks and applications of the future.

I am here as the CEO of a company that specializes in serving rural America. I grew up in rural America. I live in rural America. All of us here today who live in, work in, or have ties to rural America should be motivated to help stabilize the universal service system, and to get it done quickly.

I am also here representing the Independent Telephone and Telecommunications Alliance (ITTA), an association of midsize carriers that collectively serve approximately five million lines, principally in rural America. Additionally, I am speaking on behalf of the Coalition to Keep America Connected, a broad coalition that supports fair and affordable access to communications services for all Americans.

Your attention to contributions issues today will create a renewed sense of urgency about the national commitment to both universal service and competition as fundamental principles of the 1996 Act. These same principles are intricately linked with the promise of bringing new applications and technologies to rural markets. These hearings will also sharpen our focus on specific, actionable recommendations to strengthen preserve, and advance universal service for all Americans.

Before addressing specific reform principles, I will highlight the positive changes that have taken place since members of this Committee wrote and helped pass the 1996 Telecommunications Act. Consumers are driving our industry like never before. In all markets the demand for applications and services is increasing. Much of that demand is driven by the need for affordable broadband. Increased broadband availability is made possible by shorter loops, increased fiber deployment and additional capacity and electronics which are all part of network investment and deployment.

In CenturyTel's markets, 73 percent of our customers have access to our broadband services. A CenturyTel broadband connection provides rural citizens access to the world: choices ranging from video to IP voice service and everything in between.

In some communities, broadband availability means the difference between success and failure. Forks, Washington, a rural logging community in northwest Washington State owes much of its growth today to a community and company partnership that provided redundant fiber and advanced services that now benefits several thousand people throughout a broad area of isolated rural communities. That fiber investment brought jobs and business opportunities to a community that was dying due to a lack of economic development.

In Montana, the Kalispell Regional Medical Center required a customized telecommunications solution that eliminated vast geographic distances to address a growing population in a large state. Gigabit Ethernet makes the medical center an important resource hub for other hospitals in a 100-mile radius. Full telemedicine applications provided by CenturyTel allow patients and their doctors in other towns to view scans and perform consults with physicians at Kalispell which saves time, money and lives.

Along the Gulf Coast of Alabama, there is a small coastal community known as Bayou La Batre. Hurricane Katrina just about took it off the map. The destruction was tremendous but recovery is underway. By May 1st of this year, that community will have full DSL availability from our company which will allow seafood companies, charter fishermen, bed and breakfast owners, restaurants and other businesses to rebuild and reach potential customers all over the world.

For consumers who live in the most rural parts of America, universal service reform must include a contribution methodology that results in sufficient, stable and predictable support even in today's unpredictable and highly dynamic telecommunications environment. Chairman Martin and his colleagues at the FCC are committed to timely reform but are constrained by court decisions applying the 1996 Act. Your first goal should be to give the Commission the tools it needs to do the job you expect of it.

I must emphasize that while the universal service fund has grown, that growth does not translate into additional dollars for all wireline carriers. CenturyTel and other ILECs have generally received little or no increased support in recent years. Indeed, our support is now going down, and the number of our study areas receiving support is dropping dramatically. This has contributed to the worst possible environment in which to invest in rural networks or consider expanding our service to areas that are not currently as well served.

II. THE NATION'S COMMITMENT TO UNIVERSAL SERVICE

Universal service contribution policies can only be realistically assessed by asking how well the policies serve the nation's fundamental commitment to provide universal service – fair and affordable access to the benefits of telecommunications services – for all Americans.

The Telecommunications Act of 1996 provided a comprehensive statutory foundation to effectuate the national commitment to universal service. Section 254 of the Act sets forth principles that require that all Americans have access to quality services at affordable rates; that all Americans have access to advanced telecommunications and information services; that all Americans have access to services and rates comparable to those available in urban areas, regardless of where they live; and that universal service support mechanisms be “sufficient, predictable and specific” to preserve and advance universal service.

The nation's commitment to universal service has resulted in tangible benefits for millions of Americans across the country. Multi-party lines have long ago been converted to single party lines. Analog switches have universally converted to digital switches. And low capacity dial-up services are now being converted to high capacity broadband. IP soft switches and fiber are the next iteration of an evolving network architecture that is successful because it has kept pace with both technology and consumer demand. The evidence is clear: our nation's universal service policies have

succeeded in ensuring that consumers in rural communities, regardless of technological change, have largely kept pace with urban consumers in terms of their access to affordable and comparable telecommunications services.

The nation's commitment to universal service is also seen by some as an important tool in expanding rural consumers' access to broadband service. Voices as disparate as President Bush and former FCC Chairman Reed Hundt have called for universal broadband availability as soon as next year. While universal service does not support broadband service, it is nevertheless undeniable that consumers' access to telecommunications services remains a vital component in assuring America's global competitiveness in the 21st century even as it has over the last century.

Unfortunately, the universal service contributions policies established under the 1996 Act are being increasingly undermined by the decline in the very interstate telecommunications revenues that were originally intended to provide the lifeblood of the fund. Left unchecked, this trend threatens to undercut the nation's fundamental universal service commitment .

Reform of universal service contributions policies is a baseline issue that must be addressed before other USF issues are addressed.

III. THE NEED FOR PROMPT CONTRIBUTIONS REFORM

Section 254 states that all consumers, no matter where they live, are entitled to telephone service that is "just, reasonable and affordable." However, there is broad agreement throughout most of the industry that the reliance on today's system is fundamentally unstable. The current contribution mechanism relies on a patchwork of arbitrary distinctions between and among different communications providers that is distorting the market. Today's universal service contribution rules are based on the amount of a carrier's revenues derived from interstate and/or international

telecommunications services.¹ In reality however, the distinctions between “interstate” and “intrastate” services and between “telecommunications services” and “information services” are becoming increasingly hard to make. Packages offering voice, video and data as well as flat rated service, all-you-can-eat mobile wireless calling plans, and IP-based services are impeding the ability of policymakers to determine the proper jurisdiction and classification of these services.²

Industry trends are progressively undermining the long term stability of the universal service contributions system. Competitive and technological inequities and inconsistencies inherent in today’s system are eroding the funding base, Policymaker’s continued reliance on current classifications is encouraging a vicious cycle where consumers are being asked to shoulder more and more of the universal service funding responsibility while new providers or unclassified providers and services escape the obligation, even though they continue to use the public telephone network for their offerings. In the end, it is the consumer that suffers the most because the growing obligation is ultimately passed on to their monthly bills.

This legal and regulatory uncertainty coupled with technological and competitive dynamics is causing the current contributions base to shrink. As more customers move away from traditional long distance services and toward non-contributing competitive alternatives the contributions base will continue to decline. In the first quarter of 2002 the universal service fund base was approximately \$20 billion. Over the past three years, however, the base has shrunk to just over \$16 billion, resulting in a negative compounded annual growth rate of -6.7%. There’s little doubt that the current system is unsustainable in the long-term.

¹ See, e.g., 47 C.F.R. § 54.709(a).

² See, e.g., Report and Order and Second Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 24952, 24955 ¶ 3 (2002).

The inverse relationship between the contribution base and the contribution factor requires the assessment to increase as the contribution base continues to decline. In the first quarter of 2002, the contribution factor was 6.8%. Three years later the factor stands at 10.2%, down slightly from a high of 10.9% in the second quarter of 2005. As the contributions factor increases, the average consumer's monthly bill will also increase.

Section 254(d) states that all providers of telecommunications services shall make an "equitable and non-discriminatory" contribution to the preservation and advancement of universal service. Congress correctly understood that without an "equitable and non-discriminatory" standard, some providers would avoid contributing, ultimately shifting responsibility to a narrowing class of carriers. Yet the current system fails to meet the statutory standard of "equitable and non-discriminatory" as defined in the 1996 Act.

The current regulatory and legal morass is creating an unsustainable universal service fund incapable of meeting the statutory requirements contained in Section 254. Different types of carriers providing essentially the same service are being regulated differently. Cable providers offering switched telephone service are paying into the fund; however, a similar service provided by the same company but over its broadband network is excluded. The same will hold true for telecommunications carriers who today pay into the fund for services provided over their circuit-switched. However, in a few months, the service delivered over the same carrier's broadband network will escape universal service obligations.

The lack of regulatory clarity also has created uncertainty whether newer service offerings are obligated to pay into the fund. For example, today it remains unclear whether service offerings provided by voice over internet protocol (VoIP) providers are contributing to the universal service fund. On the horizon, broadband over power line providers will offer voice service over its transmission and distribution systems. The FCC is currently looking into whether these newer services are obligated to pay into the fund. It is apparent, however, that if these newer service offerings with growing revenue

streams escape their obligation to contribute to universal service, the fee on consumers' bills is virtually assured to increase.

Even the existing requirements on carriers that are currently assessed endanger the long-term viability of the fund because their contribution obligation remains below what similar providers contribute. For example, over two-thirds of wireless carriers' revenues are currently shielded from any contribution obligation, an anomaly hardly envisioned by the 1996 Act.

Recent decisions by the FCC regarding the assessment of DSL broadband services provide another source of uncertainty for the industry. The decision by the FCC to relieve DSL broadband providers from the obligation to contribute to the universal service fund (after the 270 day transition period) provides the most immediate threat to the stability of the fund. Importantly, at the time Chairman Martin clearly acknowledged the need to avoid any disruption of the stability of the contribution base following that period of time. This Committee should support him in this commitment.

Eliminating the assessments on DSL could have a profound effect on the sustainability of the fund. In a recent presentation to the Federal Communications Bar Association, Balhoff & Rowe estimated that removing DSL from the contributions base, would cause the contribution factor to increase 13%, from 10.2% to 11.5%. Alarming as that increase may seem, as customers move to broadband – either through cable or DSL - the long term effects of relieving both from the assessment pool could prove devastating to the consumers left paying for the fund.

Additionally, intercarrier compensation reform proposals that are currently being discussed could shift billions of dollars into the universal service fund and threaten its viability. The universal service fund was never intended to be a revenue replacement collection mechanism for the reduction of intercarrier compensation payments. However, certain proposals before the FCC would do just that.

The patchwork of inconsistent contribution obligations is fundamentally inconsistent with the Congressional intent of the Section 254(d) principle that contributions should be “equitable and non-discriminatory” Any contribution mechanism must be both technologically and competitively neutral so as to not favor one group of providers or services over another. Disparate rules produce the distortions and perverse incentives that exist under today’s system. Contribution avoidance is accelerating within the industry and carriers are feeling compelled to devise new means of avoiding or reducing their contributions exposure. Carriers will seek to limit their exposure by using preferred technologies, complex service configurations and intricate network architecture. In the end, the pressure to sustain the fund will continue to shift to a smaller set of customers while the non-contributing carriers and services continue to escape paying their fair share.

The FCC is theoretically able to address some of these inequities and inconsistencies; however the chairman of the agency has continually stated that the FCC does not have sufficient legal discretion under existing law to undertake the comprehensive reform needed to fix the system. Congressional action is therefore needed to provide the FCC the necessary authority to address these inequities that will ultimately shore up the existing system.

IV. LEGISLATIVE RECOMMENDATIONS

As the Committee and Congress in general move to resolve current problems with current contributions system, CenturyTel recommends taking the following three steps:

1. Broaden the Base

First, Congress should broaden the contribution base so that the responsibility for supporting this nation’s universal service program is appropriately shared across all sectors of the industry. Only a broad-based mechanism will provide long-term stability for universal service and minimize the impact on individual consumers. Conversely,

mandating a narrower contribution base will invite further arbitrage and will fail to reverse the deterioration of the contribution base.

Congress should mandate that the base of contributions be expanded to include all voice, all broadband and all telecommunications. Specifically, the assessment of all broadband services is particularly important to the long-term stability of the universal service fund since broadband is one of the fastest growing segments of the telecommunications industry. Including assessments on broadband will mean that the contribution base will continue to grow for the foreseeable future. Conversely, excluding such assessments will pose an increasing risk to the stability of the fund.

2. Make Technologically and Competitively Neutral

Second, in addition to being equitable and non-discriminatory as currently required by the 1996 Act, any contributions methodology should also be technologically and competitively neutral. Congress would thereby ensure that that no one technology or service would be favored over another and would eliminate the inequities that have emerged in recent years. yet remain flexible enough to change with market dynamics.

3. Allow Flexibility in Implementation

Third, Congress should empower the Commission to utilize any of the contribution methodologies currently available – all revenues, numbers, including successor identifiers, connections or any combination of these methodologies.

Congress should mandate that the Commission employ a methodology or combination of methodologies that will best effectuate the principles articulated above. No one methodology is sufficiently robust and resilient to provide the long-term stability that is necessary for universal service. Locking the Commission into a single methodology or even a single combination of methodologies would be short-sighted. The pace of technological change is rapid enough that any attempt to prejudge a specific methodology at this or any point in time is almost certainly doomed to obsolescence. A broader, non-prescriptive framework will provide the Commission maximum flexibility

to evolve contributions mechanisms to adapt to developing technologies and services. Allowing the Commission flexibility in choosing combinations of methodologies will also enable the Commission to preclude the arbitrage that any single methodology, in isolation, would be subject to.

The foundation for implementing these three recommendations has largely been laid. Chairman Stevens has made a number of public statements regarding similar reforms to the contribution mechanism. Also, Senator Burns and Senators Smith and Dorgan have already proposed bills that broadly embrace these three recommendations. These proposals offer the Committee and Congress an appropriate framework from which to structure a durable solution to the current crisis.

V. CONCLUSION

For most of a century, because of the nation's strong commitment to universal service has succeeded in ensuring that all consumers, regardless of where they live, continue to realize the tangible benefits that telecommunications services provide every day. Solving the problems with the current contributions system is essential to fulfilling this commitment. We cannot afford to delay these reforms any longer while waiting for a comprehensive rewrite of the Communications Act. Immediate action is needed to stabilize the fund. We encourage the Commerce Committee to move directly from today's hearing to enact forward-looking, technologically and competitively neutral legislation that benefits consumers and encourages investment in networks.

Mr. Chairman, on behalf of CenturyTel, ITTA and the Coalition to Keep America Connected, I want to thank you again for allowing me to testify today. We welcome the opportunity to continue to work with you and the rest of the Committee to fashion legislation to effectively address the inequities and inconsistencies of the current system and put the universal service program on solid footing for many years to come.