

**Testimony of
Philip McClelland
Senior Assistant Consumer Advocate
Pennsylvania Office of Consumer Advocate
on behalf of the
National Association of State Utility Consumer Advocates**

**Before the
Senate Commerce, Science and Transportation Committee
May 18, 2006**

**Reform of Universal Service
and The Communications, Consumer's Choice and
Broadband Deployment Act of 2006**

My name is Philip McClelland and I am a Senior Assistant Consumer Advocate with the Pennsylvania Office of Consumer Advocate. I also serve as the State Staff Chair on the Universal Service Joint Board. The Pennsylvania Office of Consumer Advocate is charged with the responsibility of representing Pennsylvania consumers in state and federal proceedings which may affect rates and service for electricity, gas, telephone and water service. My office is also a member of the National Association of State Utility Consumer Advocates (NASUCA), an organization of 44 state utility consumer advocate offices from 42 states and the District of Columbia, charged by their respective state statutes with representing utility consumers before state and federal utility commissions and before state and federal courts. I greatly appreciate the opportunity to testify at this legislative hearing on the prospects for reform of universal service in light of the

provisions of The Communications, Consumer's Choice and Broadband Deployment Act of 2006.

I. Introduction

First, I would like to commend Chairman Stevens and Senator Inouye, the members of the Committee, and your staffs for continuing discussions on these issues which have lead to the introduction of S. 2686 which takes on a number of important issues concerning universal service. I and other members of NASUCA truly appreciate your continuing efforts to seek the views of consumers on these important issues. We look forward to continuing to work with you in developing telecommunications policies and legislation that benefit all consumers and the nation as a whole. I am testifying today on behalf of NASUCA.

II. Background

The universal service provisions of the Telecommunications Act of 1996 have been in effect for more than 10 years. The federal and state universal service funds have brought a number of benefits to consumers. NASUCA and its members represent the consumers who pay for the USF and who are intended to receive the benefits as well. Federal USF outlays have now grown from \$1.8 Billion in 1997 to \$6.9 Billion in 2005.¹ We are mindful of balancing the benefits to consumers with the costs that these programs impose.

¹ Attached are various graphs and charts indicating outlays on a national and state basis as Appendices A and B.

During the course of these 10 years, issues have developed that were difficult to anticipate when the '96 Act was passed. Notably, it has become increasingly difficult to segregate revenues by jurisdiction. This has caused problems in accurately assessing federal USF fees – and for consumers to understand how their USF surcharge was calculated on the bill. There has been a general concern that assessing only interstate telecommunications services will make it more difficult to sustain the operation of the fund.

Adding to this problem has been a complicated debate concerning what services are telecommunications services and what services are information services. This definitional discussion has limited what revenues can be assessed and what services can be supported. It has been difficult to determine what role the growing market for Voice over Internet Protocol (VoIP) and other software-defined services should play related to the USF.

Further complicating the management of the USF was the decision that it should be subject to the Anti-Deficiency Act. If applied, this would effectively restrict the ability of the Universal Service Administrative Company (USAC) to fund completely the demands upon the USF based upon incoming revenues.

Particularly important, and relatively unexpected, is the growing payments to wireless carriers as Competitive Eligible Telecommunications Carriers (CETCs)².

² S. 2686 appears to change the designation of Eligible Telecommunications Carriers to Eligible

Wireless carriers received \$0.5 Million in High Cost Support in 1999 and \$637 Million in such support in 2005. The wireless industry has grown dramatically in high cost areas and now receives 16% of all federal USF high cost payments disbursed.

It is not surprising that 10 years out it is time to reexamine the statutory rules for universal service. It speaks well of the ambitious program that was passed in 1996 that it needs relatively minor repair in 2006.

NASUCA generally supports the changes proposed by S. 2686 in universal service. It is important that many of these changes, which have been long debated, be passed into law in the near future. The Bill reflects a careful consideration of many universal service issues and maintains the successful features of universal service that have served the country well over many years. NASUCA will also suggest ways in which S. 2686 may be modified to further strengthen its usefulness.

III. The Funding Base

As I mentioned earlier, it is important to recognize the growth in the telecommunications network that has taken place in the past 10 years. NASUCA has long called for an expansion of the base upon which USF funding is calculated. S. 2686 achieves that goal by drawing in all telecommunications, broadband and VoIP revenue to the funding base.

The current contribution factor announced by the FCC is 10.9% on interstate

Communications Carriers. I will use the term ECC in the remainder of this testimony.

revenues. This has grown from 5.7% in the fourth quarter of 2000. Such an increase in the factor may drive consumers from the assessed base of interstate telecommunications services toward other services. Broadening the base will ensure that all sectors of the telecommunications industry contribute to the support of universal service, and will certainly serve to limit the size of such a factor in the future.

NASUCA also recognizes and supports the provision that the FCC should adjust the contribution requirements related to low volume residential customers, family plans, and lifeline services. NASUCA is concerned that, if we migrate from the current revenue – based system to some other basis for contributions, the residential customer – particularly the low-use residential customer – may pay an unreasonable share of USF costs. For example, assessing contributions based on telephone numbers may assess two telephone lines equally, even though a business line takes a thousand calls a day, while a residential line is rarely used. We appreciate the effort to achieve fairness on these issues.

Exempting Lifeline customers from the USF assessment is a particularly important provision. Lifeline customers receive a reduction in their telephone bill so they may continue to afford service. Such customers have often been exempted from other assessments in order to maintain their service.

NASUCA recognizes that S.2686 would allow the federal USF assessment to be

applied to both intrastate and interstate revenue. We also recognize in the Bill the effort to maintain state universal service funds as well. NASUCA suggests that, if the law is changed so that the federal USF can be assessed against intrastate and interstate revenues, it would also be equitable to allow state universal service funds to enjoy the same funding base. Continuing to restrict state universal service funds to assessing only intrastate revenues will continue the jurisdictional and definitional problems I mentioned earlier, and will complicate the ability of states to sustain their important universal service programs.

IV. Broadband Support

NASUCA recognizes that S. 2686 also establishes support mechanisms related to broadband service. In this manner, the assessment against broadband revenues is balanced with support for broadband service as well. A \$500 Million fund is created to support broadband in unserved areas and a separate requirement is created that would require carriers receiving USF funds to offer broadband services within five years of enactment, subject to waiver.

Many parties have carefully considered whether the USF should be expanded to support broadband services. One of the principal concerns with such expansion of the USF has been cost. A broad determination that broadband services should be supported under existing law would trigger financial consequences that could not be easily predicted. Establishing a set \$500 million fund avoids these concerns and is a

positive way to approach this problem.

NASUCA also recognizes the importance of requiring all carriers receiving USF funding to offer broadband services as well. DSL -- based services are now deployed on a widespread basis by wireline carriers, and wireless broadband service is beginning to be rolled out. Even so, it is appropriate to encourage telecommunications carriers to offer such services throughout their service areas within five years. Often it has been a problem that when carriers begin offering broadband services in a particular service territory, it may be many years until customers located in more remote locations receive these same services, if ever.

It is not entirely clear whether S. 2686 requires all or only some portion of the carrier's customers to have access to broadband services within any period of time. NASUCA suggests that S. 2686 should be very clear that all carriers receiving USF support have an obligation to provide broadband service throughout their designated service area within a set time period.

V. Anti-Deficiency Act Exemption

Another important part of S. 2686 is the clear exemption from the Anti-Deficiency Act provisions. NASUCA has also consistently supported taking such a step.

NASUCA is concerned that the application of such restrictions would substantially interfere with USF recipients receiving the funding that they require.

Various recipients of USF funds have a number of obligations that they must meet and the application of the Anti-Deficiency Act would create a hardship in this matter. Application of the Anti-Deficiency Act also increases the amounts that must be collected from consumers to support the USF. S. 2686 appropriately resolves these issues by exempting the USF from the requirements of the Anti-Deficiency Act.

VI. Eligible Communications Carrier Restrictions

NASUCA also recognizes that S. 2686 contains requirements that would apply to new ECCs. NASUCA, as noted above, has been concerned with the growing size of the USF. NASUCA supports the new conditions to be applied to ECCs through S. 2686.

Presently, any ECC operating in a high cost area is able to receive the same per line support as the incumbent ECC in that same area. Multiple ECCs may be designated in an area and receive the same level of support as the incumbent. The cost of universal service in that area and the overall size of the USF will increase accordingly. This is the effect of having multiple supported ECCs in high cost areas.

NASUCA recognizes that competition is good for consumers. However, NASUCA is concerned about the level of competition subsidy that should be applied in high cost areas. Having multiple ECCs in any area competing for consumer business – all supported by the USF – creates an advantage for consumers in that area, but creates a huge burden on the overall fund which must be paid for by all consumers

in the nation. NASUCA cautions that USF support to multiple networks and lines within a high cost area may not be a wise use of USF resources. Adding the statutory ECC conditions listed in S. 2686 will be helpful, but NASUCA suggests that it may be necessary to safeguard the USF through other limitations on high cost support as well.

S. 2686 has broadened the base from which contributions will now be recovered. It may also be helpful to recognize the need for other methods to be applied on the distribution side as well. Throughout the 10 years of the USF various changes have occurred that have increased the size of the fund. In order to anticipate the needs of the future, it may be necessary to facilitate other regulatory actions to limit the size of the USF as well. Accordingly, S.2686 should not limit the tools available to the FCC and Joint Board in fashioning appropriate responses to future distribution challenges faced by the USF.

VII. Broadband Support and Network Neutrality

As indicated above, NASUCA recognizes the importance of offering broadband to consumers. The broadband support requirements in S. 2686 are reasonable methods for encouraging the deployment of broadband to all consumers in the United States.

In order to realize the full benefit of broadband networks, NASUCA believes it is important that consumers maintain the right to use broadband services in a network that is open and neutral to consumers and content providers. It would be unfortunate

if the broadband deployment supported by the bill, and broadband services in general, were restricted in a manner that would lessen the great benefit the Internet has brought to consumers. While the broad topic of network neutrality may be best left to another hearing, NASUCA wishes to raise this issue in the context of universal service as well.

*88791