

Statement of

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on behalf of

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Mr. Chairman, thank you for the opportunity to provide the perspective of Ritter Communications and the nearly 900 similarly situated small rural communications providers from around the nation that are represented by NTCA-The Rural Broadband Association and about 850 small cable providers represented by the American Cable Association.

Companies such as Ritter have been, and remain, essential to ensure that we are an interconnected nation. We serve the nation's highest cost rural areas where others would not. We hold the responsibilities of consumer protection, public safety, equitable competition and universal service in the highest regard. Today most of us are anything but plain old telephone companies, offering state-of-the-art broadband services capable of providing for our customer's varied data, video, and voice needs. Many, such as Ritter, are also involved in other lines of business such as video services and transport and wholesale internet services to sustain ourselves and our communities in a challenging era of economic and technological transition.

Rural telcos are responsible for sustaining 70,700 jobs nationwide directly or indirectly. They contribute nearly \$15 billion to the economies of the states in which they operate. But here is the really interesting fact – nearly two thirds of this economic activity, almost \$10 billion, benefits urban areas. This underscores the value – the payback – of an interconnected nation, and shows how a mix of entrepreneurial can-do spirit and reasonable public policies contribute to the greater well-being of our nation.

For all of these successes in the face of great challenges, rural telecom today faces perhaps greater challenges than ever. Technology's endless rapid evolution repeatedly forces all of us to adapt quickly. Globalization routinely introduces new twists to be acknowledged and understood. Customer allegiance is no longer a given even when superior performance is delivered. And, perhaps most importantly, our nation's commitment to universal service – which is embodied in federal law – is called into question as changes to policies (and the threat of more to come) make it harder for companies to plan to carry out that mission.

The low-density, high-cost areas that are served by Ritter and its rural industry colleagues represent special places. They contribute to our nation's well-being through activities like food production, supply of natural resources, and a home for outdoor activities and enthusiasts from across the country and the world. But they are also special in that they are not easy markets to serve, and policies and experiments that might work in more densely populated areas can undermine critical connections in these areas if not fully thought through in advance and carefully calibrated.

### **IP Evolution and the Need for “Rules of the Road”**

A case in point comes in the raging debate surrounding the telecommunications industry's Time-Division Multiplexing (TDM) to Internet Protocol (IP) transition. Many suggest that if they were merely relieved of today's regulatory shackles they would quickly begin to more actively participate in this evolution. Others appear focused on maintaining the

status quo and old rules regardless of changes in technology, consumer preference, or competition. By contrast, our position is that this technological transformation is already well underway independent of the existing regulatory framework or any potential regulatory changes. But at the same time, we believe there is a need for a thoughtful evaluation of whether existing rules should be modified or eliminated as technologies evolve. It is important, however, that this evaluation always hearken back to key public policy cornerstones of universal service, consumer protection, and equitable competition. Particularly in fragile rural markets, once again, discarding proven “rules of the road” that helped to provide certainty and justify investments on the mere basis that network technologies have evolved would be ill-advised and could lead to serious harm for consumers.

Indeed, the epidemic of call completion failures that currently plagues our nation provides perhaps the best early indicator of what happens when technological or competitive changes are used to justify avoiding basic “rules of the road” that keep customers connected. Multiple surveys conducted by NTCA-The Rural Broadband Association and others have revealed that, despite statutory and regulatory mandates designed to ensure telephone calls are successfully completed, consumers in rural markets continue to find themselves cut off from calls from other areas. While there are rules on the books that should preclude such behavior, some have taken the view that they are not responsible for self-declared “unregulated” providers in the middle of such calls, and the lack of clarity surrounding what rules may govern these self-declared “unregulated”

providers has only made it harder to get to the root of the problem. In the meantime, rural America suffers.

For this reason, I would like to acknowledge your co-sponsorship of Senate Resolution 157 which recognizes the public safety, economic, and national security implications of this situation and calls upon the FCC to take every possible step to satisfactorily resolve the issue. This resolution provides an example of how common-sense oversight is essential to address market failures, and shows the chaos that can ensue in the absence of a lack of clear “rules of the road.” Thank you also for your role in ensuring this bill was recently marked up by the full committee. We look forward to its approval by the full Senate as soon as possible.

### **Universal Service in High-Cost Areas**

Of course, universal service policy remains a linchpin of helping to ensure high-cost areas can stay connected to the rest of America and the world – and another example of how uncertainty can undermine the ability to serve rural areas.

Many in the rural telecom industry continue to struggle with the aftermath of the FCC’s Universal Service Fund (USF) and Intercarrier Compensation (ICC) “Transformation” Order. In that order, the FCC’s reforms for smaller companies like Ritter largely consisted to cuts, caps and constraints to existing USF mechanisms and an ultimate destination of zero for ICC

revenues that we can receive from the larger companies that use rural networks.

Our companies and the associations that represent us visit with the FCC and congressional offices frequently to see if improvements can be made to the new USF caps. The most significant concern is that some of these caps have injected substantial regulatory uncertainty into rural telecom investment, to the point where even companies that are not affected by the caps today are deciding against network upgrades simply for fear of becoming “the next to be capped.” In fact, NTCA conducted a study earlier this year that found nearly 7 in 10 small rural companies had postponed or cancelled broadband investments precisely because of uncertainty arising out of the FCC reforms.

Exacerbating this overhang of regulatory uncertainty, the FCC is considering imposing additional cuts, caps, and constraints atop those already adopted. At a time when everyone is still implementing the cuts already made and evaluating the effects of those on consumers and broadband investment, it seems rash to plow forward with yet more changes that would reduce USF support and ICC revenues for responsible companies like Ritter. Yet that is precisely what the FCC is considering in the form of a Further Notice of Proposed Rulemaking.

Thanks to your efforts and the efforts of many of your colleagues, we are seeing incremental progress in the effort to create regulatory certainty and build a broadband future through more sensible changes and updates to

the USF and ICC mechanisms. The FCC has adopted “phase-ins” to the caps as a result of congressional attention and industry pressure, and we have also seen the Government Accountability Office commit to Congress that it will undertake an evaluation of the effects of the USF and ICC reforms on key issues like consumer rates and broadband deployment. But real long-term fixes to the caps and the creation of regulatory certainty for network investments that can only be recovered over several decades still seems many steps away. In short, we still have a ways to go to create regulatory certainty – and your continuing help will be essential in that effort.

Even as we need to obtain some greater degree of regulatory certainty to facilitate investment and lending in the rural telecom space, there is just as great a need to do what hasn’t yet been done – reposition USF for smaller carriers to accommodate an IP-enabled, broadband-capable world. Today, when a small carrier of last resort like Ritter sells voice telephone service, we get some USF support to ensure that service is affordable for the consumer. But if the same consumer decides later that he or she only wants to take broadband and drop voice telephone service – a natural part of the “IP evolution” – small carriers lose USF support on that line, meaning that the rates often quickly become unaffordable. We still need a targeted Connect America Fund that provides sufficient and predictable support for smaller carriers like Ritter and facilitates giving consumers the services they want rather than compelling them to take legacy services to get affordable rates. Resolving this issue in short order must be seen as both

critical to the FCC's IP Evolution agenda and the success of its USF policies.

### **Other Universal Service Concerns**

Even as it has taken some steps to modify USF distribution rules, the FCC has yet to tackle in any meaningful way the question of USF contribution reform. Just as in the past, when those benefiting the most from a nationwide integrated voice network contributed to the USF to help sustain that network, in today's broadband era, so too must broadband network operators, all kinds of VoIP providers, and Web-based enterprises contribute to a funding mechanism that ensures the availability and affordability of broadband-capable networks nationwide. Expanding the base of USF contributors will ease pressure on the fund as well as all of its contributors, and ensure that the USF program can effectively help promote the universal availability and adoption of advanced communications services.

Ultimately, it is important to "size" the USF for the jobs that need to be done. The fact is that the high-cost fund, even as it was placed "on a budget" in 2011, had not been growing materially for years once controls were placed on wireless identical support. Yet there is much more to do in high-cost areas, with the National Broadband Plan identifying a "broadband availability gap" that stimulus programs and existing high-cost support levels could only hope to dent. And even beyond making service available in the first place, there is the need to keep that service affordable and of



reasonable quality over time (so consumers can actually make use of it). Even in a “capped fund,” for example, the reality is that labor costs associated with deploying and upgrading networks increase over time, and as with certain portions of the USF, there should be some recognition that inflationary adjustments at the very least are needed within any USF “budget.”

One area of the USF that is attracting significant attention right now is the USF Schools and Libraries (E-Rate) program. As a result of the administration’s emerging ConnectEd initiative and the FCC’s push to “modernize” the program, the E-Rate program will be a key focus of universal service policy for the rest of this year.

Rural providers recognize the important of E-Rate as part of a comprehensive USF program. Smaller carriers, facing the challenges of distance, were early adopters of distance learning concepts and technology and the communities they serve have benefitted from their focus and this program. Yet, as with any other potential USF reforms, these issues are too important to gamble on through experiments or sound-bite driven reforms. In particular, we believe it is essential to coordinate any E-Rate reforms with other portions of the broader USF umbrella so that any expansion of E-Rate, to the extent policymakers deem it appropriate, does not come at the expense of other important programs like the already-budgeted high-cost fund.

Similarly, the current national focus on First-Net is also one that presents both opportunities and challenges for the rural telecom industry. Certainly we should be doing everything possible to ensure the development of a robust nation-wide mobile first-responders communications network. But again, we must guard against wasteful duplication. Especially, given the need to ensure FirstNet dollars go as far as possible in covering various jurisdictions, FirstNet must give all due consideration to leveraging existing infrastructure where possible.

### **Other Key Competitiveness Issues**

The success of the FirstNet initiative of course depends in significant part upon auctions of spectrum that will facilitate and finance network deployment. It will be particularly difficult to set a stage that ensures widespread carrier participation in such auctions, but we must live up to this challenge.

To meet this challenge, the 600 Mega Hertz block of spectrum that is the subject of the auctions should be licensed according to Cellular Market Areas (CMAs). A CMA-based licensing structure will best ensure that a variety of providers, large and small, are able to effectively participate in the auction. This will also provide the best chance of ensuring that rural areas see meaningful deployment of this valuable spectrum, rather than being an afterthought in a larger provider's deployment. Finally, we must build upon the lessons learned from the 700 Mega Hertz deployments and ensure the

FCC adopts fair data roaming and interoperability provisions in conjunction with the distribution of this spectrum.

Much like wireless services, video products could be a promising way for smaller companies to diversify their offerings, be more responsive to consumer needs, and stimulate broadband adoption. But today's small rural multichannel video programming distributors (MVPDs) face an array of obstacles arising from outdated, decades-old rules that do not reflect the programming markets of today.

This has been a troubling issue for small rural providers for years, but it has become a major problem for the entire MVPD industry of late. Perhaps the most notable (or notorious) example right now comes in the recent negotiations between CBS and Time Warner Cable, Inc. As a result of market failures in those negotiations and a lack once again of clear "rules of the road" that put consumers first, Time Warner Cable and Bright House Network customers do not have access to local CBS broadcast programming. Equally alarming is that CBS has also limited access to its online content by Time Warner Cable and Bright House broadband customers. CBS' Internet blackout even affects these cable operators' broadband customers who receive their television service from other service providers, like DirecTV or DISH, and customers who get their television over-the-air.

Examples such as these underscore the problems with the retransmission market, with negotiations often leading instead to "take it or leave it"

choices, particularly with regard to smaller operators, and brinksmanship over rapidly escalating and unaffordable fees – and, in more and more cases, leading to programming blackouts.

Whether viewed individually or as a whole, these tactics are anticompetitive, inflate consumer costs and lead to market failure. Congress and the FCC must act to fix the old laws that govern access to content and programming to reflect today’s video marketplace.

Ritter Communications and nearly all other pay television providers in Arkansas and around the country are well aware that renewing the 2010 Satellite Television Extension and Localism Act (STELA) is one of the things that your committee must accomplish before the end of next year. Notwithstanding the rising number of retransmission consent disputes, and their impact on consumers, some lawmakers have already concluded, and stated publicly, that they want a “clean reauthorization” of this bill—that is, do nothing more than change a few dates in the existing law. Many in the industry have interpreted lawmakers who make such a declaration as taking a position that they will not address any other issues related to the pay television industry, regardless of the merit, need or circumstances. As Chairman of the Commerce, Science and Transportation Subcommittee on Communications, Technology and the Internet, we hope you would keep an open mind regarding the issues that should be considered as part of the STELA reauthorization, which is the most germane bill that will pass out of your committee in the foreseeable future.

## **Additional Challenges Faced by Small Businesses**

Our diverse industry is confronting other, less obvious challenges as well. Increasingly, small rural communications providers have become targets of patent infringement claims levied by patent assertion entities (PAEs). Typically these PAEs purchase already existing patents merely for the purpose of enforcing them for financial gain, with the knowledge that small businesses often lack the resources to investigate and defend against such claims. PAEs are targeting the users or purchasers of the patented technologies rather than their manufacturers or creators, and PAEs also seem to focus on patents tied to established technologies and processes upon which small businesses rely.

Many in Congress and the administration alike are concerned about the effects of PAEs on innovation and technology deployment. The President has gone so far as to note concerns about parties that fail to actually produce or invent anything and yet look for a payout. The small rural communications sector urges the Administration and Congress to work together to identify solutions that will protect unwitting small businesses from this spurious practice.

Cybersecurity and privacy have also consumed the attention of policymakers and the public alike over the course of recent months. Secure critical infrastructure is crucial to America's national and economic security. Yet care must be taken to ensure our response to these threats

does not create new unfunded mandates on small businesses, such as community-based carriers operating in rural areas.

We were pleased to see that the leadership of the Senate Commerce, Science and Transportation Committee recently introduced an updated cyber security package that more closely aligns with a “voluntary” industry approach advocated by the proposals put forth by the House of Representatives and the President’s recent executive actions.

Rural providers take cybersecurity responsibilities seriously, and have been deploying cyber defenses tailored to the needs and vulnerabilities of their networks. NTCA has been providing training to members and serving on the Communications Sector Coordinating Council which facilitates the exchange of information on this subject.

We believe that we can best achieve the twin aims of developing secure networks and robust economic growth by encouraging government and industry sectors to work together to identify and respond to cyber threats.

## **Conclusion**

While I have attempted to describe in reasonable detail the many opportunities that rural telecom providers are seeking and the challenges they face in doing so, there are of course any number of other issues that could be covered in this sort of hearing. The upshot, however, is that the rural telecommunications industry is committed to its consumers and the

communities in which these small rural providers live and serve. Companies like Ritter are making every stride to respond to the challenges they face, to deliver high-quality and affordable services to their consumers, and to fulfill the national mission of universal service through the responsible and effective deployment of cutting-edge communications infrastructure. Adopting and retaining sensible “rules of the road” that create regulatory certainty and help build a broadband future will be essential to the success of these efforts. We look forward to ongoing efforts between the rural telecom industry and committed lawmakers such as those on this subcommittee to realize these objectives.