

Statement of

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“The State of Wireline Communications”

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Chairman Pryor, Ranking Member Wicker, thank you for the invitation to testify at the “State of Wireline” hearing. I am Chief Executive Officer of NTCA–The Rural Broadband Association which represents nearly 900 small, rural telecommunications providers across the country from the North Slope of Alaska to the Everglades National Park in Florida. These companies serve areas long ago left behind by larger providers because the markets were too high-cost – too sparsely populated, too far from larger towns and cities, and/or just too challenging in terms of topography or terrain. As community-based operators, our members hold a deep commitment to their consumers. These small businesses create jobs, fuel the economy, and connect rural Americans to the world. I was last before this committee days before the Federal Communications Commission (FCC) released its Universal Service Transformation order. I am grateful for the opportunity to address where the reforms have led, for better and for worse. I will review where rural carriers stand after Universal Service Fund (USF) and intercarrier compensation (ICC) reform, discuss the challenges and opportunities presented by technological evolution, and address lingering concerns regarding access to content and meaningful wireless competition.

UNIVERSAL SERVICE REFORM

As our nation has understood for more than a century, and as Congress recognized by law in 1996, when we speak of universal service, we are really talking about the foundation of a universal economy and a better connected nation. The USF program helps to ensure that all American citizens and businesses, regardless of who they are or where they live, have a reasonable opportunity to participate in our increasingly interconnected and online world. The Hudson Institute, for example, has found that investment in rural telecommunications delivers real payback for our entire nation, generating \$14.5 billion annually in economic activity – \$9.6 billion of which accrued to the benefit of *urban* areas where equipment manufacturers, contractors, and other service providers reside.¹ As the foundation of telecom investment and operations in many hard-to-serve, high-cost areas, and the solution that promotes affordable rates

¹ The Hudson Institute study is available through the following link:
<http://www.hudson.org/files/publications/RuralTelecomOct2011.pdf>

to facilitate adoption by rural consumers, the USF program has therefore been a terrific success story for both those rural areas and for our nation as a whole.

Now, all stakeholders agreed that the USF program needed modernization and common sense measures to adapt to a broadband world and to make it more sustainable over time.

Unfortunately, rather than building upon what had worked to update the USF program for a broadband age, the reforms put into place by the FCC in 2011 have caused a significant amount of regulatory uncertainty, have frustrated access to capital for network deployment, and have resulted in what might be called at least one “lost year” in broadband deployment by small rural carriers with the threat of more to follow. Indeed, several surveys and other data points confirm that broadband investment by small rural carriers has all but ground to a halt in the wake of the 2011 reforms. For example, a recent survey conducted by NTCA–The Rural Broadband Association² underscores just how real the impacts have been. Out of 185 small carrier respondents, 127 indicated they have either postponed or cancelled plans to upgrade their network infrastructure due to lingering regulatory uncertainty. One-hundred and one of these respondents indicated that the combined value of the projects put on hold equaled more than \$492 million.

A publicly filed summary of a meeting between U. S. Department of Agriculture (USDA) Secretary Thomas Vilsack and then-FCC Chairman Julius Genachowski further highlights how the 2011 USF changes have chilled network investment.³ Even as that filing explained how the economic stability of rural areas depends on the availability of resilient robust communications infrastructure financed in significant part by USDA programs, the letter also reported that, in Fiscal Year 2012, carriers were able to draw down only 37 percent of the telecom infrastructure financing made available by USDA. USDA expressly noted that current and prospective borrowers of the program cited uncertainty arising out of the FCC’s changes in declining to move forward with planned construction efforts, and the threat of more changes to come only

² This survey can be found through the following link: <http://www.ntca.org/2013-press-releases/survey-shows-rural-telecommunications-carriers-postponing-delaying-network-upgrades-because-of-regulatory-uncertainty.html>.

³ See Ex Parte letter filed on 2/15/13 by Acting Administrator Padalino which can be accessed here: <http://apps.fcc.gov/ecfs/document/view?id=7022122079>

exacerbates such concerns. CoBank, one of the few other lenders to small rural carriers for network deployment capital, has also apparently severely cut back its lending in this space,⁴ and the bank recently made a filing at the FCC explaining how regulatory uncertainty surrounding the USF program was challenging its ability to advance capital in support of rural telecom investment.⁵

It is not as if demand by carriers and consumers is not there – to the contrary, it is quite clear that consumers across the country are seeking increased levels of broadband, and as always, rural telcos are willing and eager to serve them. Moreover, our companies *only* serve these rural markets, meaning that it is not as if they would rather divert resources to invest and provide cutting-edge services only in larger addressable markets. Similarly, it is not as if lenders are disinterested in the space – to the contrary, USDA and firms like CoBank and the Rural Telephone Finance Cooperative have long stood ready to help with the deployment of advanced communications networks in rural areas. Rather, the concerns that have reduced loan demand and availability arise specifically out of whether regulatory changes now being implemented – and the threat of further changes perhaps still to come – will preclude the payback of loans taken out to advance deployment of broadband-capable networks to the benefit of consumers and businesses in rural areas.

In the face of this presumably unintended uncertainty, NTCA has made every effort to work with the FCC and our member companies to create a more sustainable and predictable path for USF reform. We have devoted hundreds of hours to meetings with the FCC, other policymakers, and stakeholders aimed at identifying a better path forward that creates regulatory certainty and builds a broadband future for rural consumers even while working within broader reform objectives. We have proposed a number of commonsense solutions to facilitate the transition from a legacy USF regime to a true and effective “Connect America Fund” for all rural areas, while sustaining important accountability measures and recognizing the need to promote the fiscal sustainability of the program. Specifically, NTCA has suggested time and again over the

⁴ See “State USF White Paper: New Rural Investment Challenges” by Michael J. Balhoff and Bradley P. Williams, June 2013, accessed here: <http://www.balhoffrowe.com/pdf/BW%20State%20USF%20White%20Paper%20June%202013.pdf>

⁵ See Comments of CoBank filed June 21, 2013, WC Docket No. 10-90, pages 4-5

last eighteen months four essential, straightforward steps that can and must be taken to overcome the current regulatory uncertainty and to develop a sufficient, predictable, and sustainable USF program for a broadband era. We have made some progress on some of these steps, but we also have a good, long way to go – and we remain hopeful that the FCC, or Congress to the extent necessary, will help in achieving these four essential objectives.

First, there is a need for greater transparency, accuracy, and predictability in the USF system, post-reform. As one example of several retroactive cuts on support, the FCC’s new “Quantile Regression Analysis” (or “QRA”) model to cap USF support for small carriers has created rampant uncertainty in the rural telecom marketplace. For those unfamiliar with the QRA model and its caps, I would urge you to take a look at how this incredibly complex system operates. If you thought the old ICC system with access charges was complicated, the QRA effectively requires a degree in statistics to understand.

In short, the QRA model takes data from the investments and operations of hundreds of small carriers in the United States from two years in the past and then, on the basis of over a dozen different variables, runs through a formula that creates caps to govern each carrier’s USF support for a given year. This system is then re-run each year and new caps are generated, always based upon what hundreds of other carriers did years before. NTCA and others have filed hundreds of pages over the past eighteen months showing how the model’s complexity and its opaque nature are creating regulatory uncertainty. NTCA and others have also made many filings showing that errors in the models run the real risk of creating misplaced or unjustified caps, and it has been clear at least in early 2012 that the service area maps included in the QRA model are not accurate. Despite these obvious flaws, this model is still being used to generate caps every year to limit USF support, and no carrier can know whether its investments or operations today might trip the caps two years from now. This is an unsustainable approach to universal service and it runs directly contrary to the congressional mandate that USF be predictable; the errors in capturing actual costs used and useful in providing universal service also mean the QRA model does not satisfy the congressional mandate that USF be sufficient.

NTCA and many other stakeholders therefore believe the QRA-based caps should be eliminated altogether and replaced with other mechanisms that would provide more clear and transparent limits on support. We proposed such a mechanism in 2011, and we continue to believe that proposal would provide greater visibility into how any limits would apply to prospective investments. Yet at the same time, since the QRA-based caps are already in effect, we have worked in good faith with the FCC to at least try to improve them. The FCC took some welcome interim steps last year to cushion the impact of the caps for 2013, and it also directed the commission staff to take further steps to improve the caps predictability. But we are now mid-way through 2013, and we have no better idea than we did on January 1 of this year what will be done to actually make that happen. If the model and resulting caps will not be eliminated or cannot be substantially improved very soon, the caps should then be used only as a “trigger” that flags a given carrier for additional review, rather than serving as an automatic disqualifier of recovery of certain costs. Alternatively, if they will continue to apply as true caps, their impacts should at least be phased-in over a longer period of time as the problems in the system are further analyzed and hopefully resolved. But in the absence of either immediate steps to address the uncertainty caused by the ever-shifting QRA caps or some other relief, we run the risk of 2014 becoming yet another “lost year” of rural broadband investment.

Second, the FCC should follow through with the promises made in its Fifth Order of Reconsideration to create a clear, simple process for carriers who need waivers from the FCC reforms. The FCC has touted the waiver process as an important safety valve where the reforms are having the effect of undermining, rather than promoting, universal service. The Fifth Order on Reconsideration attempted to tie the standards for a waiver more faithfully back to the universal service provisions in the statute, and we were hopeful in the wake of that decision that better progress might be made on this safety valve mechanism. Unfortunately, we continue to see waivers take incredibly long periods of time to address, cost carriers large amounts of money to seek, and, to date, we have seen little, if any, improvement in the process. If the waiver process is to be cited as the last line of defense for universal service, it needs improvement.

Third, consistent with its commitment to a “data-driven” approach, the FCC should not proceed with additional cuts, caps, or constraints on USF support and ICC cost recovery until it has

evaluated the impact of changes already adopted and just now being implemented on consumers and core statutory objectives. A number of the reforms contemplate rate increases on rural consumers and are having the presumably unintended effect of slowing down broadband investment as already noted. Before undertaking additional changes that may only exacerbate these concerns and perpetuate regulatory uncertainty, good policymaking would dictate taking stock of the effects of the existing reforms on broadband deployment, broadband adoption, and end-user rates through a data-driven analysis. For example, we appreciate the interest of many Members of Congress in asking the Government Accountability Office to assess such effects starting later this year, and reviewing such data over the course of several years as the reforms already adopted continue to be implemented will be essential in determining what to do next – and, just as importantly, in determining whether any “course corrections” are needed for reforms already adopted.

Fourth, but hardly last in importance, the FCC needs to define a path forward for a sustainable broadband future for consumers in areas served by smaller carriers. The FCC created a Connect America Fund for larger carriers that will support broadband-capable networks, but, as discussed earlier, it has not yet taken such steps for consumers in areas served by smaller companies. Instead, it left in place legacy USF programs for smaller carriers with changes that reflect, on the whole, reductions in USF and ICC revenues. And the irony is that this legacy system, while it has worked well and should form the foundation of informed next steps, *still* needs updating to serve the objective of universal service in a broadband-enabled world. Today, if the customer of a small rural carrier wants to stop buying plain old telephone service and just wants broadband service alone, that customer’s broadband rates would increase because the legacy rules eliminate USF support on such a line. It is essential that the FCC update its USF mechanisms to avoid this result – it can and should create a targeted and tailored Connect America Fund for areas served by smaller rural carriers by providing sufficient support for the networks (both last-mile and transport) that enable the availability of advanced services of all kind in rural markets, regardless of whether each customer chooses to buy just plain old telephone service on those networks. This does not require massive changes or substantial reworking of the existing mechanisms along the lines of the Connect America Fund that is still in its second year of development for larger carriers. Instead, such a program can build upon the existing mechanism, with technical fixes to

the existing rules helping to achieve the FCC’s modernization objectives and serve the interests of rural consumers and businesses.

IP Technology Evolution

There has been a great deal of talk in telecom circles recently about the “IP transition.” It is true that an evolution of network technologies is important both to provide increasingly attractive services to consumers and to enable carriers to achieve greater functionality and efficiency in their networks. But this is not some “switch to be flipped,” or “flash-cut” in moving from one type of network to another. To the contrary, while this evolution promises exciting things for our nation, it is not all that different *in concept* from when party-line services in rural areas were eliminated or when analog switches were replaced by digital switches. In fact, the IP evolution is already upon us – it is occurring today as communications networks and consumer demands adapt to new technologies and services.

Rural network operators have been at forefront of this evolution for years. Small rural carriers are no longer interested in just being telephone companies. They have been and remain innovators who have been making every effort to deploy advanced networks that respond to consumers and businesses for cutting-edge services. A recent NTCA survey found that our entire membership now delivers broadband.⁶ Another study a few years ago by the National Exchange Carrier Association (NECA) indicated that smaller rural carriers were already delivering at least basic levels of broadband to 92% of their customers as of 2010, and more than half of them had already deployed or had plans to deploy next-generation, IP-enabled switching and routing technology in place of legacy telephone switches within the next year.⁷

NTCA and its members have been considering for some time how best to promote and sustain this evolution to next-generation network technologies. Above all else, we believe that core

⁶ This survey can be found through the following link:
<http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2012ntcabroadbandsurveyreport.pdf>.

⁷ This survey can be found through the following link:
https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=100.

statutory principles relating to protection of consumers, promotion of competition, and assurance of universal service apply by law to all communications, regardless of the technology used within underlying networks. As we migrate to newer network technologies and the services they enable, this backdrop must not be lost. Instead, consumers and businesses will only benefit if these principles in the statute remain our collective guidepost.

To help facilitate such a dialogue in policy circles and to shine a light on the need for thoughtful consideration of these principles in connection with the IP evolution, NTCA filed a petition at the FCC in late 2012. In that petition, we suggested that policymakers can best serve these important public policy objectives if they do not prejudge the value or inapplicability of specific rules or a broader regulatory framework. Specifically, NTCA contended that policymakers should not dismantle the current regulatory framework simply because underlying network technologies shift, while at the same time urging the FCC to also avoid leaving existing rules in place merely because they once made sense in an era when consumer preferences, technologies, and competition were different. We therefore urged the FCC to help promote and sustain the ongoing IP evolution by looking at existing rules to see whether each rule still has value in serving the statutory goals of consumer protection, promotion of competition, and universal service. Finally, we noted that by starting from a well-known regulatory framework and then looking to improve, enhance, modify, or eliminate parts of it based upon a surgical review, this would give greater certainty to consumers, investors, lenders, and the industry than either a regulatory vacuum or maintaining the status quo.

NTCA's petition also focused on a number of incentive-based measures which would help accelerate the technology transition. The first measure is one I have already mentioned – cleaning up legacy rules that compel consumers of small rural carriers to take “plain old telephone service” in order to obtain affordable broadband services in rural areas. The FCC resolved this issue for larger carriers serving rural areas in deciding to set up a Connect America Fund for them, and it has finally started moving forward on this issue for smaller carriers by seeking comments on a concept proposed by NTCA and other rural associations. In fact, the record before the FCC shows overwhelming support for our proposal. It is therefore our hope

that the FCC will move to make the technical rule fixes needed to address this issue in the near future.

Another measure identified in the NTCA IP Evolution petition was the establishment of a sufficient “middle-mile” USF support for rural carriers. Here again, the FCC is in the process of resolving this issue for larger carriers as part of their “Connect America Fund,” but there is no Connect America Fund program yet for smaller companies serving exclusively rural areas. One of the most costly parts of providing broadband service to rural consumers is the so-called middle mile network required to connect rural consumers to the Internet on-ramps located in distant cities. The only way to ensure broadband service will be robust and affordable for rural consumers and businesses over time is to make sure sufficient middle mile support will be available for high-cost rural areas.

Finally, the NTCA IP Evolution petition noted that the FCC has yet to address how carriers can interconnect with one another in an IP-enabled world. Even if IP networks are more efficient, there are still real and substantial network costs associated with the underlying transport of data from point A to point Z. It is not as if all of that data floats on free “pixie dust” – there are real networks with real construction and operating costs that must be designed to handle the increasing amounts of traffic we all see on our networks, regardless of whether that data is IP or otherwise. Clear “rules of the road” for interconnection in an IP-enabled world will be essential to ensuring that certain consumers and businesses are not left behind, and to ensure the seamless transmittal of data in accordance with customer expectations

CALL COMPLETION

There is perhaps no more pertinent example of why clear “rules of the road” are important than the call completion epidemic that continues to plague rural areas. After more than two years since this issue was first brought to the attention of regulators, rural consumers and the carriers that serve them are losing faith in the reliability of critical communications networks and the ability of regulators to help manage them. Increasingly over the past few years, calls do not get through to rural areas – or when they do, they often have quality problems. This widespread

problem is seriously and negatively affecting not only consumers, but also public safety and the viability of businesses located in rural areas.

The problem often appears to stem from choices made by originating long distance carriers to use the cheapest possible route to transmit calls to rural areas – with the apparent sense that, if the calls should happen not to get there because a contractor in the middle (often called a “least-cost router” in the telecom industry) fails to deliver the call, there is little regulatory or economic consequence (if any) for such failures. The solution to this problem would require the originating long distance carriers to better police their service quality and the contractors they use. Greater transparency into the least-cost routing market would also help, but unfortunately scant information is available regarding who provides such services and when and where they do so.

This is not to say that the FCC has done nothing to address this – we just need the agency to do more in terms of enforcement, and do so quickly. Congress has sent a number of letters to the FCC already urging quick action. The FCC released a Declaratory Ruling in February 2012 putting originating long distance carriers on notice that they are liable for call failures, even where the cause of the call failure is an underlying contractor or least-cost router in the middle. Then just last week the FCC reiterated this directive in a sternly worded “Enforcement Advisory” giving startling examples of how cavalierly some carriers and least-cost routers have taken enforcement efforts to date. The FCC also released a Notice of Proposed Rulemaking earlier this year which would force carriers to retain information so that the scope of the problem could be ascertained on a company-by-company basis and enforcement action could be pursued. While having access to such data would be an important step forward, complaints of calls failing to reach rural America continue, and we are begging the FCC to do more now to send a message that such conduct is unlawful.

The FCC did take action earlier this year, announcing a “Consent Decree” with Level 3 Communications, in which the carrier paid a “voluntary contribution,” to monitor its call completion performance, and to pay additional amounts if its performance failed to satisfy certain metrics. But more enforcement is needed, as a one-time enforcement action two years

after the problem was first brought to light and when unknown numbers of calls are still failing on unknown number of networks across America won't do the job. As one state regulator put it, it is time for the FCC to "drop the hammer" – in fact, it's more than time to do just that.

VIDEO ISSUES

Small carriers have been providing video service to their consumers for many years. In limited areas this may be done in direct competition with large cable companies, enhancing consumer choice. In more remote places where over-the-air signals may be weak and unreliable and/or the small carrier is the only local provider available, this is a critical service to customers who need access to local news and weather reports.

Video provision is also a broadband issue, as small carriers frequently use the same infrastructure to deliver both video and broadband services. In fact, the FCC has found that these services are intrinsically linked.⁸ When small carriers are able to offer video and broadband services together, data shows that broadband adoption goes up 24 percent,⁹ which makes it more feasible to invest in broadband networks. However, small carriers' ability to deliver video and broadband services are impeded by outdated program access rules that make the business case increasingly difficult even for the nation's largest cable companies.

Retransmission consent rules that are now over twenty years old – and thus reflect a very different video marketplace – give programmers a stranglehold over video content and prevent small providers from negotiating market-based rates for programming. Increasingly, customers are facing blackouts of channels due to programmers' "take it or leave it" tactics, which are technically prohibited but occur frequently. In addition, evidence suggests that small and medium video providers pay up to twice the rates that large companies do for the same programming. And some types of content that is necessary for a viable service offering, notably sports programming, may be subject to even higher rates if it is available at all.

⁸ MB Docket No. 05-311, 22 FCC Rcd 5101, 5132-33, ¶62 (2007).

⁹ See NECA comments, GN Docket Nos. 09-47, 09-51, 09-137 (filed Dec. 7, 2009), p. 6.

In addition, recent years have seen a spike in instances where separately owned stations within the same market coordinate their retransmission consent negotiations. Such “coordination” has enabled separately-owned broadcasters to command retransmission consent prices that are 21 percent to 161 percent higher than each station negotiating on its own behalf could command on its own.¹⁰ These high rates are in turn passed on to consumers and decrease competition in the local television market.

Customers must also pay ever-higher prices for video programming they do not even want because programmers force providers to buy multiple unwanted channels, and place them in basic service tiers, in order to have access to channels that customers demand. This “forced tying” prevents small providers from offering more affordable packages of channels, and is raising prices to unsustainable levels.

Technology and the video marketplace have changed drastically since the current program access regime was enacted over 20 years ago. Just as we are talking about the need to re-evaluate rules in the context of an IP evolution in communications networks, it is far past time for policy makers to reform these outdated rules and encourage, rather than impede, video competition and broadband deployment.

WIRELESS ISSUES

Rural consumers require access to a strong and reliable wireless network and rural carriers are attempting to meet that demand despite monumental challenges. Essential to a robust wireless market is an interconnected wireline network. The demand for high capacity fixed wireline broadband to support wireless networks will only increase as usage of handheld devices grows. But rural carriers must also know they will be able to fully compete in the wireless marketplace before they will attempt to continue to expand their networks through effective use of spectrum. A lack of interoperability across the 700 MHz spectrum may lead to spectrum lying fallow or islands of rural service with devices that cannot be used outside of a customer’s home service

¹⁰ See ACA comments, MB Docket Nos. 09-182 and 07-294 (fil. Mar. 5, 2012), p. 9

area. A lack of fair and reasonable data roaming agreements with large carriers compounds the problem, creating barriers even when spectrum is interoperable. Furthermore, rural carriers often lack access to the equipment and handsets that are available to larger carriers. At a time when carriers are trying to diversify and make good use of spectrum assets, the lack once again of clear “rules of the road” leaves smaller operators largely at the mercy of larger carriers.

Finally, as the FCC moves forward with the upcoming 600 MHz auction plan it is essential that the agency allow meaningful participation by small rural and regional carriers. Most importantly, the FCC should allow carriers to bid on small license areas which will promote competition throughout the country.

CONCLUSION

NTCA’s membership wants to continue and build upon the success story of rural broadband deployment in their hard-to-serve territories, but they will only be able to do so once regulatory certainty is returned to their operations and if there is sufficient and predictable USF support that has been reoriented for a broadband world. We look forward to continuing to work with Congress and the FCC to get it right. Our nation’s economic success – its access to natural resources, energy production, and food production, for example – depends on getting this right.