



September 19, 2014

The Honorable Fred Upton, Chairman  
The Honorable Henry Waxman, Ranking Member  
Committee on Energy and Commerce  
2125 Rayburn HOB, 2322A Rayburn HOB  
Washington, D.C. 20515

The Honorable Greg Walden, Chairman  
The Honorable Anna Eshoo, Ranking Member  
Subcommittee on Communications, Communications Technology & the Internet  
2125 Rayburn HOB, 2322A Rayburn HOB  
Washington, D.C. 20515 Washington, D.C. 20515

Dear Chairmen Upton and Walden and Ranking Members Waxman and Eshoo:

Enclosed are the National Association of State Utility Consumer Advocates ("NASUCA") comments on the Committee's White Paper #5 on universal service policy. These were e-mailed on September 19, 2014 and we are now sending a hard copy to the committee.

Sincerely,

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August 8, 2014

RESPONSE TO HOUSE COMMITTEE ON ENERGY AND COMMERCE  
FIFTH WHITE PAPER, ON UNIVERSAL SERVICE POLICY

NASUCA<sup>1</sup> submits these comments to the House Committee on Energy and Commerce (“Committee”) in response to the Committee’s request. NASUCA very much appreciates the opportunity to comment on each of the eight “Questions for Stakeholder Comment” on “Universal Service Policy and the Role of the Federal Communications Commission.”

The assurance of universal service was a bulwark of the 1934 Communications Act, and was enlarged, enhanced and refined in the 1996 Telecom Act.<sup>2</sup> And the need for service to rural, insular and high cost areas, as well as to low-income customers, was for the customers of large carriers (that were a part of the original AT&T) and customers of the smaller carriers that served where AT&T would not. Since its formation in 1979, NASUCA – whose members represent both the customers intended to benefit from universal service programs and the customers who pay for the programs □ has been intimately involved with universal service issues.<sup>3</sup>

As White Paper #5 states, “The rapid change in communications technologies, shifts in consumer preferences, and their impact on competition raise fundamental questions for universal service policy.” The current environment shows the need for affordable broadband Internet access service (“broadband”) throughout the Nation, and the tremendous economic and other benefits that would result. So the need for a universal service fund (“USF”) that supports broadband along with traditional robust voice service is clear

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<sup>1</sup> NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

<sup>2</sup> See 47 U.S.C. §§254, 241(e).

<sup>3</sup> A NASUCA member – currently Elin Katz, Connecticut Consumer Counsel – is a member of the Federal-State Joint Board on universal service. 47 U.S.C. § 254(a)(1).

## QUESTIONS FOR STAKEHOLDER COMMENT

*1. How should Congress define the goals of the Universal Service Fund? Should Congress alter or eliminate any of the six statutory principles, codify either of the principles adopted by the FCC, or add any new principles in response to changes in technology and consumer behavior?*

Congress has already defined the goals of the USF, in § 254(b) and (c)(1). None of the six statutory principles need be altered. The two FCC-created principles are adequate, although NASUCA would note that the eighth principle (“Universal service support should be directed where possible to networks that provide advanced serviced as well as voice services”) would have been much better effectuated if the Commission had not classified broadband as an information service. NASUCA has urged the FCC to perform the reclassification for this and other reasons.<sup>4</sup>

These principles, which represent the core of the “enduring values” referred to by the FCC, need not be added to, in response to the changes in technology and industry structure or in response to the resultant consumer behavior.

*2. Universal service was created to fund buildout in areas incapable of economically supporting network investment. How should our policies address the existence of multiple privately funded networks in many parts of the country that currently receive support?*

The premise of this question is incorrect: Universal service was created to ensure that consumers in rural, insular and high cost areas, as well as low-income customers, had access to services reasonably comparable to those in urban areas.<sup>5</sup> So buildout is only one part of universal service; ongoing service responsibilities are paramount.

The networks that sometimes overlies portions of the service area of eligible telecommunications carriers (“ETCs”) do not receive federal universal service funds. But those typically cable company networks are not required to serve all consumers, especially those in the rural areas where the supported telephone company is required to serve.<sup>6</sup> The carrier of last resort (“COLR”) obligation cannot be lightly dismissed.

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<sup>4</sup> FCC GN Docket No. 14-28, et al., NASUCA Comments (July 15, 2015), accessible at <http://apps.fcc.gov/ecfs/document/view?id=7521480682>; and Reply Comments (September 15, 2014), accessible at <http://nasuca.org/nwp/wp-content/uploads/2014/02/14-28-NASUCA-Reply-9-15-14.pdf>.

<sup>5</sup> 47 U.S.C. § 254(b)(3).

<sup>6</sup> In New York and California, Time Warner Cable requested ETC status for the purpose of serving Lifeline customers. See Order Designating Competitive Local Exchange Carriers as Eligible Telecommunications Carriers, Service Areas, and Granting Waivers, NYPSC Case No. 940-C-00095 (Dec. 24, 1997); Decision Granting Request for Eligible Telecommunications Carrier Status, CPUC Docket No. A.13-10-019 (March 27, 2014).

*3. What is the appropriate role of states and state commissions with respect to universal service policy?*

Both the federal government (though the FCC and other efforts<sup>7</sup>) and the states have responsibility for universal service. State commissions will have the roles determined by state law, just as the federal universal service program is determined by Congress. This principle is fundamental to 47 U.S.C. § 254 and should remain there. States are both literally and figuratively closer to their consumers than officials in D.C.

*4. What is the appropriate role of the Federal-State Joint Board on Universal Service in a broadband, IP-enabled, largely interstate world? What is the appropriate role of related joint boards, such as the Federal-State Joint Board on Separations or the Federal-State Conference on Advanced Services?*

The role of the Joint Board on Universal Service should be enhanced, to ensure that it acts less at the behest of the FCC, and thus can be more effective in bringing state viewpoints to the Commission's attention.

Yet NASUCA must respectfully differ from the description of the transitioned network as "largely interstate." Regardless of the medium or mode (wireline or wireless, POTS or broadband) over which communication is transmitted, a call that begins in one state and ends in the same state is intrastate.

The roles of the other Joint Boards should also continue, with the same enhanced authority. A consumer representative from among NASUCA members should be authorized to serve on such FCC-State Joint Boards.

*5. The Universal Service Fund is one of several federal programs that support buildout of communications facilities. Are current programs at other federal agencies, like the National Telecommunications and Information Administration (which oversaw the Broadband Technology Opportunities Program) or the Rural Utility Service (which oversees lending programs and oversaw the Broadband Initiatives Program) necessary?*

Each of these other programs follows its individual statutory directives. A single federal agency should not be given the responsibility for all national universal service efforts.

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<sup>7</sup> E.g., Rural Utility Service ("RUS") loans, NTIA grants (see question 5).

*6. How can we ensure that the Universal Service Fund is sufficiently funded to meet its stated goals without growing the fund beyond fiscally responsible levels of spending?*

An inequity in the current program is that despite the program's support for broadband networks,<sup>8</sup> all contributions come from telecom networks. Broadening the contribution base so that broadband services contribute to support for broadband in underserved and unserved areas is consistent with the concept of the 1996 Act's mechanism, which supported only telecommunications at that point.

A more broad-based contribution mechanism would ease the burden on current telecom services. A broader base would ease worries about "fiscally responsible" levels of spending.

That said, it remains to be seen what the full extent of the fallout will be from the Commission's 2011 "Global Transformation Order." There are likely efficiencies to be gotten from each of the four current programs,<sup>9</sup> but Congressional intervention does not appear necessary at this time.

*7. Are all of the funds and mechanisms of the current Universal Service Fund necessary in the modern communications marketplace?*

The four funds conform to the statute. Each is, therefore, necessary.

There needs to be a "high cost" fund, to ensure that rates and services in rural, insular and high-cost areas are reasonably comparable to those in urban areas. There needs to be a low-income fund, to extend such protections to low-income consumers. The schools and library program and the rural telemedicine program both provide benefits: the S&L fund to broaden the public broadband infrastructure, and the rural fund to address a chronically-underserved market of great public interest. The programs should remain in place.

*8. In lieu of the current support mechanisms, could any of the programs be better managed or made more efficient by conversion to:*

- a. A state block grant program;*
- b. A consumer-focused voucher program;*
- c. A technology-neutral reverse auction; or,*
- d. Any other mechanism.*

The current mechanisms have served the public. At this point, more than fifteen years after the four funds were created,<sup>10</sup> a massive rejiggering of any of the four would likely cost more to

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<sup>8</sup> *In re FCC 11-161* (10<sup>th</sup> Cir. May 22, 2014).

<sup>9</sup> *Id.*

<sup>10</sup> FCC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997).

develop and transition than would be gained on an annual basis. NASUCA has, however, frequently commented on the shortcomings of reverse auctions.<sup>11</sup>

## Conclusion

NASUCA again appreciates the opportunity to provide comments to the Committee, particularly on this issue, perhaps the most crucial for American telephone and broadband consumers. As NASUCA has stated in many previous contexts, the public interest is best served when policy-makers are not swayed by the business plans and pecuniary interests of particular companies - or indeed, particular industries. A balanced approach that considers the interests of consumers is best.

Respectfully,

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<sup>11</sup> See FCC WC Docket No. 05-337, et al., NASUCA Comments (October 10, 2006), accessible at <http://apps.fcc.gov/ecfs/document/view?id=6518525893>.