

Universal Service Fund: Background and Options for Reform

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Summary

The concept that all Americans should be able to afford access to the telecommunications network, commonly called the "universal service concept" can trace its origins back to the 1934 Communications Act. Since then, the preservation and advancement of universal service has been a basic tenet of federal communications policy, and Congress has historically played an active role in helping to preserve and advance universal service goals. The passage of the Telecommunications Act of 1996 (P.L. 104-104) not only codified the universal service concept, but also led to the establishment, in 1997, of a federal Universal Service Fund (USF or Fund) to meet the universal service objectives and principles contained in the 1996 act. According to Fund administrators, from 1998 through end of year 2010, $73.7 billion was distributed, or committed, by the USF, with all 50 states, the District of Columbia, and all territories receiving some benefit.

The Federal Communications Commission (FCC) is required to ensure that there be "specific, predictable and sufficient ... mechanisms to preserve and advance universal service." However, changes in telecommunications technology and the marketplace, while often leading to positive benefits for consumers and providers, have had a negative impact on the health and viability of the USF, as presently designed. These changes have led to a growing imbalance between the entities and revenue stream contributing to the fund and the growth in the entities and programs eligible to receive funding. The desire to expand access to broadband and address what some perceive as a "digital divide" has also placed focus on what role, if any, the USF should take to address this issue. The FCC's national broadband plan, *Connecting America: The National Broadband Plan,* calls for a major restructuring of the USF to enable it to take a major role in achieving the goal of nationwide broadband access and adoption. The FCC has initiated a series of proceedings to achieve this goal.

There is a growing consensus among policy makers, including some in Congress, that significant action is needed not only to ensure the viability and stability of the USF, but also to address the numerous issues surrounding its appropriate role in a changing marketplace. How this concept should be defined, how these policies should be funded, who should receive the funding, and how to ensure proper management and oversight of the Fund are among the issues framing the debate.

The current policy debate has focused on five concerns: the scope of the program; who should contribute and what methodology should be used to fund the program; eligibility criteria for benefits; concerns over possible program fraud, waste, and abuse; and the impact of the Antideficiency Act (ADA) on the USF.

It is anticipated that Universal Service Fund reform will continue to be a topic of congressional interest. The House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee have included USF reform on their agendas of issues for consideration and oversight. Three stand-alone measures (H.R. 2163, H.R. 3118, S. 297) relating to USF have been introduced to date.

This report will be updated as events warrant.

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Introduction

The concept that all Americans should be able to afford access to the telecommunications network is commonly called the "universal service concept." This concept can trace its origins back to the 1934 Communications Act.[1] Since then the preservation and advancement of universal service has been a basic tenet of federal communications policy, and Congress has historically played an active role in helping to preserve and advance universal service goals. In 1996 Congress passed the Telecommunications Act of 1996 (P.L. 104-104), which not only codified the universal service concept, but also led to the establishment of a federal Universal Service Fund (USF or the Fund) to meet the universal service objectives and principles contained in the 1996 act. According to Fund administrators, since 1998 almost $73.7 billion in support has been disbursed by the USF, with all 50 states, the District of Columbia, and all territories receiving some benefit.[2]

Over the past decade the telecommunications sector has undergone a vast transformation fueled by rapid technological growth and subsequent evolution of the marketplace. A wide range of new services have become available, offered by a growing list of traditional as well as nontraditional providers. One of the results of this transformation is that the nation's expectations for communications services have also grown. In the past, access to the public switched network through a single wireline connection, enabling voice service, was the standard of communications. Today the desire for simple voice connectivity has been replaced by the demand, on the part of consumers, business, and government, for access to a vast array of multifaceted fixed and mobile services. Consumers are also demanding greater flexibility and may choose to gain access to the same content over a variety of technologies, whether it be a computer, a television, or a mobile telephone. The trend towards sharing information, such as music, movies, or photographs, is also growing, making it necessary to ensure that network upload speeds match download capabilities. These advances require that networks transition into converged next-generation wireline and wireless broadband networks capable of meeting these demands. One of the challenges facing this transition is the desire to ensure that all citizens have access to an affordable and advanced telecommunications infrastructure so that all members of American society may derive the benefits.[3]

Technological advances such as the ability of the Internet to provide data, voice, and video, the bundling of service offerings, the advancement of wireless services, and the growing convergence of the telecommunications sector have, according to many policy makers, made it necessary to reexamine traditional policy goals such as the advancement of universal service mandates. These changes in technology and the marketplace, a declining funding base, and significant increases in the amount of support disbursed by the Fund, have led to concerns that the USF is in need of reform. There is a growing consensus among policy makers, including some in Congress, that significant action is needed not only to ensure the viability and stability of the USF, but also to address the numerous issues surrounding such reform. How this concept should be defined, how

[1] Communications Act of 1934, as amended [47 U.S.C.151 *et seq*.].

[2] See http://www.usac.org/about/universal-service/fund-facts/fund-facts.aspx.

[3] For a discussion of issues relating to broadband deployment, access, and regulation see CRS Report R40230, *The Evolving Broadband Infrastructure: Expansion, Applications, and Regulation*, by Patricia Moloney Figliola, Angele A. Gilroy, and Lennard G. Kruger.

these policies should be funded, who should receive the funding, and how to ensure proper management and oversight of the Fund are among the issues expected to frame the policy debate.

The Universal Service Concept

Since its creation in 1934 the Federal Communications Commission (FCC, or Commission) has been tasked with "mak[ing] available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges."[4] This mandate led to the development of what has come to be known as the universal service concept.

The universal service concept, as originally designed, called for the establishment of policies to ensure that telecommunications services are available to all Americans, including those in rural, insular and high cost areas, by ensuring that rates remain affordable. During the 20th century, government and industry efforts to expand telephone service led to the development of a complex system of cross subsidies to expand the network and address universal service goals. The underlying goal of the cross-subsidization policy was to increase the number of subscribers to the network by shifting costs among network providers and subscribers. Profits from more densely populated, lower cost urbanized areas helped to subsidize wiring and operation costs for the less populous, higher cost rural areas. Higher rates and equipment charges for business and long distance customers helped to subsidize the charges for residential local calling. The funding for universal service objectives was built into the rate structure, and effectively most telephone subscribers have contributed to universal service goals for decades.[5]

With the advent of competition and the breakup of the Bell System, the complex system of cross subsidies that evolved to support universal service goals was no longer tenable. The Telecommunications Act of 1996 (P.L. 104-104; 47 USC) codified the long-standing commitment by U.S. policymakers to ensure universal service in the provision of telecommunications services (§254). The 1996 act also required that every telecommunications carrier that provides interstate telecommunications services be responsible for universal service support [§254(d)] and that such charges be made explicit [§254(e)].[6] The 1996 act also expanded the concept of universal service to include, among other principles, that elementary and secondary schools and classrooms, libraries, and rural health care providers have access to telecommunications services for specific purposes at discounted rates [§254(b)(6) and 254(h).]

The Federal Universal Service Fund

Over the years this concept fostered the development of various FCC policies and programs to meet this goal. A new federal Universal Service Fund (USF or Fund) was established in 1997 to meet the specific objectives and principles contained in the 1996 act. The USF is administered by the Universal Service Administrative Company (USAC), an independent-not-for-profit

[4] Communications Act of 1934, as amended, Title I §1[47 U.S.C. 151].

[5] Specific federal programs such as the Rural Telephone Bank and Rural Utilities Service loan programs were also developed to assist high cost rural areas.

[6] Section 254 (d) also states that other providers of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if it is in the public interest.

organization, under the direction of the FCC. The FCC, through the USF, offers universal service support through a number of direct mechanisms that target both providers of and subscribers to telecommunications services.[7] The USF provides support and discounts for providers and subscribers through four programs: high-cost support; low-income support; schools and libraries support; and rural health care support.[8]

High-Cost Program

High-cost support, provided through the high cost program, is an example of provider-targeted support. Under the high cost program, eligible telecommunications carriers, usually those serving rural, insular, and high cost areas, are able to obtain funds to help offset the higher than average costs of providing telephone service.[9] This mechanism has been particularly important to rural America where the lack of subscriber density leads to significant costs.

Low-Income Program

FCC universal service policies have been expanded to target low-income subscribers. Two income-based programs, Lifeline and Link Up, established in the mid-1980s, were developed to assist economically needy individuals. The Link Up program, established in 1987, assists low-income subscribers pay the costs associated with the initiation of telephone service, and the Lifeline program, established in 1984, assists low-income subscribers pay the recurring monthly service charges incurred by telephone subscribers.[10] Discounts are eligible for one connection, either wired or wireless, per household.

Schools and Libraries or "E-Rate" Program

Under universal service provisions contained in the 1996 act, elementary and secondary schools and classrooms, and libraries are designated as beneficiaries of universal service discounts. Universal service principles detailed in Section 254(b)(6) state that "Elementary and secondary schools and classrooms ... and libraries should have access to advanced telecommunications services." The act further requires in Section 254(h)(1)(B) that services within the definition of universal service be provided to elementary and secondary schools and libraries for education purposes at discounts, that is at "rates less than the amounts charged for similar services to other parties."

The FCC established the Schools and Libraries Division within the Universal Service Administrative Company (USAC) to administer the schools and libraries or "E (education)-rate" program to comply with these provisions. Under this program, which became effective, January 1, 1998, eligible schools and libraries receive discounts ranging from 20% to 90% for

[7] Many states participate in or have programs that mirror FCC universal service mechanisms to help promote universal service goals within their individual states.

[8] For further information on the FCC's universal service support mechanisms see http://www.fcc.gov/cgb/consumerfacts/universalservice.html.

[9] The High-Cost Fund consists of five sub-funds which address specific needs: High-Cost Loop Support; High-Cost Model Support; Local Switching Support; Interstate Common Line Support; and Interstate Access Support.

[10] Support is not given directly to the subscriber but to their designated telecommunications service provider, who in turn charge these subscribers lower rates, or in the case of some wireless options no charge for the basic package.

telecommunications services depending on the poverty level of the school's (or school district's) population and its location in a high cost telecommunications area. Three categories of services are eligible for discounts: internal connections (e.g., wiring, routers and servers); Internet access; and telecommunications and dedicated services, with the third category receiving funding priority. Unlike the high-cost and low-income programs, the FCC established a yearly ceiling, or cap, of $2.25 billion, adjusted for inflation prospectively beginning with funding year 2010, for this program.[11]

Rural Health Care Program

Section 254(h) of the 1996 act requires that public and non-profit rural health care providers have access to telecommunications services necessary for the provision of health care services at rates comparable to those paid for similar services in urban areas. Subsection 254(h)(1) further specifies that "to the extent technically feasible and economically reasonable" health care providers should have access to advanced telecommunications and information services. The FCC established the Rural Health Care Division (RHCD) within the USAC to administer the universal support program to comply with these provisions. Under FCC-established rules only public or non-profit health care providers are eligible to receive funding. Eligible health care providers, with the exception of those requesting only access to the Internet, must also be located in a rural area.[12] Similar to the Schools and Libraries program, this support program went into effect on January 1, 1998, and a funding ceiling, or cap, was established, in this case at $400 million annually. The primary use of the funding is to provide reduced rates for telecommunications and information services necessary for the provision of health care. In addition, in 2007 the FCC established the "Rural Health Care Pilot Program" to help public and non-profit health care providers build state and region-wide broadband networks dedicated to the provision of health care services.[13]

Funding

The USF receives no federal monies but is funded by mandatory contributions from telecommunications carriers that provide interstate service.[14] Under current rules, a carrier's contributions are assessed based on a percentage of its interstate and international end-user telecommunications revenues. This percentage is called the contribution factor. The FCC calculates the contribution factor based on anticipated funding needs of the USF in the upcoming quarter. This information is submitted quarterly, to the FCC, by USAC's universal service

[11] In a September 23, 2010, order modifying the E-rate program the FCC included among its modifications the indexing of the $2.25 billion cap of the program to account for inflation starting with funding year 2010 of the program; during periods of deflation the funding cap will remain at the level from the previous funding year. *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, CC Docket No. 02-6; GN Docket No. 09-51 (paras. 34-40). Available at http://hraunfoss.fcc.gov/edocs-public/attachmatch/FCC-10-175A1.pdf.

[12] Any health care provider that does not have toll-free access to the Internet can receive support. Support is available for limited long distance charges for accessing the Internet. This has become an increasingly rare occurrence, however, and the last time such support was given was in 2001.

[13] For additional information on this program, including funding commitments, see the RHCD website: http://www.universalservice.org/rhc/.

[14] These companies include wireline telephone companies, wireless telephone companies, paging service providers and interconnected Voice over Internet Protocol (VoIP) providers.

administrator. The contribution factor is calculated four times a year, on a quarterly basis, and may increase, decrease, or remain the same depending on the needs of the universal service programs drawing on the USF. The FCC's Wireline Competition Bureau releases a public notice stating the proposed factor. After 14 days, absent any FCC action, the factor becomes final. As shown in **Table A-1**, from 2003 to the first half of 2005 the contribution factor generally saw a steady increase. During that period the contribution factor varied from a low of 7.3% in the first quarter of 2003 to a high of 11.1% in the second quarter of 2005. Since reaching that high, the factor had begun to moderate; however, the contribution factors for the second and third quarters of 2007, at 11.7% and 11.3% respectively, were a strong reversal of this trend, resulting in a significant increase from the first quarter 2007 contribution factor of 9.7%. Since reaching a high of 11.7% the contribution factor began to moderate with a first quarter 2008 factor of 10.2%. The contribution factor once again began to climb and reached an historic high of 15.5% for the first quarter of 2011. The contribution factor for the second quarter of 2011 at 14.9% and the third quarter at 14.4% represented a slight moderate downward trend. The contribution factor for the fourth quarter of 2011, however, had a significant increase to 15.3 % and represents the second highest rate on record. The overall growth in the factor over this decade remains a significant policy concern. (See "Policy Options" section, below, for a discussion of some of the reasons attributed to this increase.)

There are some exceptions to this funding process. Under the FCC's rules telecommunications providers are not required to contribute in a given year to universal service if their annual contributions to the program would be de minimis, that is less than $10,000 in that year, or if they provide only international services. Filers are also not required to contribute based on international revenues if their interstate end-user revenues meet the 12% rule, that is, if their interstate end-user revenues represent less than 12% of their combined interstate and international end-user revenues. In other cases the FCC has determined that selected categories of providers, for example, wireless carriers and interconnected VoIP providers, may, but are not required to, base their contributions on an FCC-established revenue percentage, or "safe harbor," that attempts to estimate the percentage of the provider's total revenues that are interstate and international end-user revenues.[15] The current (effective June 2006) safe harbor for wireless carriers and VoIP providers is set at 37.1% and 64.9% of total revenues, respectively.[16]

Many assessed providers have chosen, but are not required, to recover USF contributions directly from their customers. They pass through universal service payments directly to consumers and earmark a universal service charge on subscriber's bills. This is legal and a common industry practice. However, if an assessed provider does choose to collect USF fees directly from their customers the provider is not permitted to recover, through a federal universal service line item on a customer's bill, an amount that exceeds the universal service charge contribution factor.[17]

[15]These providers have expressed concern over their inability to distinguish between their interstate and intrastate revenues. However, in lieu of using the safe harbor percentage they do have the option to submit traffic study data to show that they should contribute less.

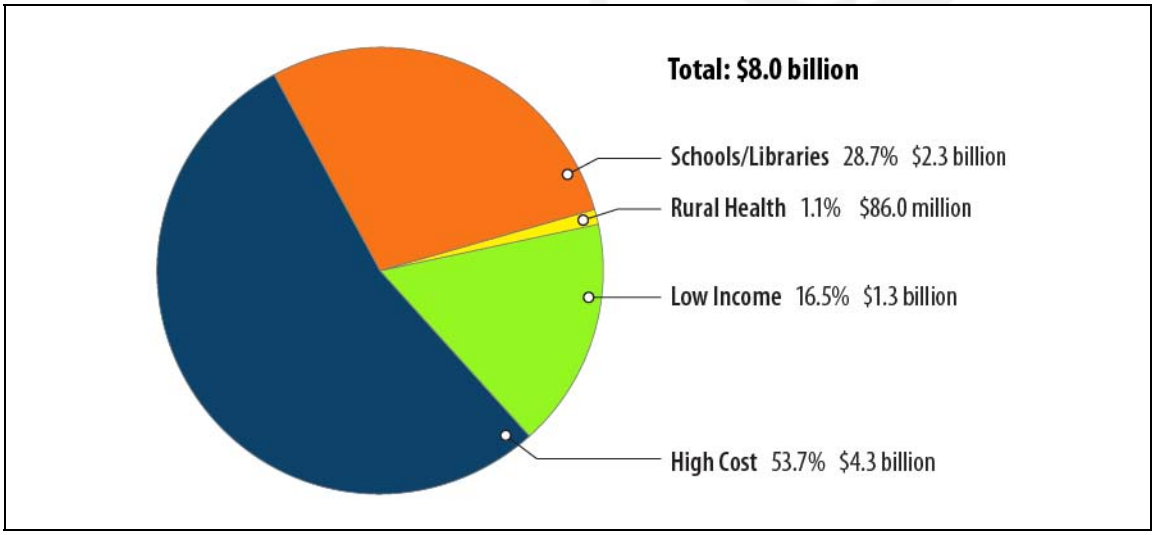
[16] *FCC Updates Approach for Assessing Contributions to the Federal Universal Service Fund*. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266030A1.pdf.

[17] It should also be noted that an assessed provider is not permitted to collect any fees from a lifeline or link-up subscriber, unless that subscriber has incurred long-distance charges.

Disbursements

According to USAC, universal service support disbursements for calendar year 2010 totaled $8.0 billion.[18] **Figure 1**, below, shows the breakdown of calendar year 2010 USF disbursements as a percentage by individual program. High Cost support accounted for 53.7% of total disbursements, or $4.3 billion. Schools and Libraries support represented 28.7% of disbursements, totaling $2.3 billion. Low Income support was 16.5% of disbursements, totaling $1.3 billion. Disbursements for Rural Health Care support were $86.0 million, or 1.1% of disbursements. (It should be noted that "commitments" for the schools and libraries support program and the rural health care program are not the same as "disbursements." Commitments authorize beneficiaries to spend up to a total dollar figure of USF money committed for procuring telecommunications services, while disbursements pay for specific activities actually carried out and for which beneficiaries have received "commitments" of USF support. In the aggregate, applicants end up spending less than the total amounts of dollars committed. Commitments operate on a school year calendar, July 1-June 30, and disbursements are reported on a calendar year basis.) Although subscribers benefit from the USF, only companies that provide the services draw money directly from the fund.

Figure 1. USF Disbursements by Program 2010



Source: Data from USAC 2010 Annual Report (unaudited data).

Table A-2 provides data on USF payments and contributions broken down by state and program for 2009. The data show that service providers (and their subscribers) in every state, territory, and commonwealth received, to varying degrees, some 2009 USF payments. For example, all received at least some payments from the Low Income program, all received support from the Schools and Libraries program, and all with the exception of the District of Columbia and Connecticut received payments from the High Cost program. Payments from the Rural Health Care program were received by 45 states and 3 territories. The allocation of benefits varies

[18] These figures are based on USAC 2009 unaudited financial data. Detailed data, including state-specific information, on USF support can be found in the Universal Service Company 2009 Annual Report at http://www.usac.org/_res/documents/about/pdf/USAC-annual-report-2009.pdf.

depending on which individual program is examined. However, when overall net dollar flow[19] is examined 25 states and the District of Columbia were net contributors to the 2009 USF program as a whole. The service providers in the remaining 25 states and 5 territories were net receivers, that is they received more payments from the USF, for 2009, than estimated contributions. Although there is some variation within programs and among states in any given year, on the whole whether a particular state is a net receiver of, or contributor to, the USF program, is a fairly stable pattern.[20] In general, rural states with low population density typically tend to benefit most as they receive significant funding from the High Cost program, but tend to contribute less to the USF program overall, since they tend to generate lower telecommunications revenues.

Policy Options

The FCC is required to ensure that there be "specific, predictable and sufficient ... mechanisms to preserve and advance universal service."[21] However, changes in telecommunications technology and the marketplace, while often leading to positive benefits for consumers and providers, have had a negative impact on the health and viability of the USF, as presently designed. These changes have led to a growing imbalance between the entities and revenue stream contributing to the fund and the growth in the entities and programs eligible to receive funding. The desire to expand access to broadband and address what some perceive as a "digital divide" has also placed focus on what role, if any, the USF should take to address this issue.[22]

The current policy debate surrounding USF reform has focused on four major concerns: the scope of the program; who should contribute and what methodology should be used to fund the program; eligibility criteria for benefits; and concerns over possible program fraud, waste, and abuse. A separate and more narrowly focused issue, the impact of the Antideficiency Act (ADA) on the USF, also has become an issue of concern.

Program Scope

One of the major policy debates surrounding universal service is whether access to advanced telecommunications services (i.e., broadband) should be incorporated into universal service objectives. The term universal service, when applied to telecommunications, refers to the ability to make available a basket of telecommunications services to the public, across the nation, at a reasonable price. As directed in the 1996 Telecommunications Act [Section 254(c)], a federal-state Joint Board was tasked with defining the services which should be included in the basket of services to be eligible for federal universal service support; in effect using and defining the term "universal service" for the first time. The Joint Board's recommendation, which was subsequently adopted by the FCC in May 1997, included the following in its universal services package: voice grade access to, and some usage of, the public switched network; single line service; dual tone

[19] Contribution allocation among states is an FCC staff estimate. Net dollar flow is annual payments minus estimated contributions.

[20] For a breakdown of USF distributions and contributions by state for previous years see Table 1.12 of the FCC's Universal Service Monitoring Report. Monitoring reports issued since 1991 are available at http://www.fcc.gov/wcb/iatd/monitor.html.

[21] 47 U.S.C. §254 (b)(5).

[22] For a discussion of the issues surrounding the "digital divide" see CRS Report RL30719, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, by Lennard G. Kruger and Angele A. Gilroy.

signaling; access to directory assistance; emergency service such as 911; operator services; access and interexchange (long distance) service.

Some policy makers have expressed concern that the FCC-adopted definition is too limited and does not take into consideration the importance and growing acceptance of advanced services such as broadband and Internet access. They point to a number of provisions contained in the Universal Service section of the 1996 act to support their claim. Universal service principles contained in Section 254(b)(2) state that "Access to advanced telecommunications services should be provided to all regions of the Nation." The subsequent principle (b)(3) calls for consumers in all regions of the Nation including "low-income" and those in "rural, insular, and high cost areas" to have access to telecommunications and information services including "advanced services" at a comparable level and a comparable rate charged for similar services in urban areas. Such provisions, they state, dictate that the FCC expand its universal service definition.

The 1996 act does take into consideration the changing nature of the telecommunications sector and allows for the universal service definition to be modified if future conditions warrant. Section 254(c) of the act states that "universal service is an evolving level of telecommunications services" and the FCC is tasked with "periodically" reevaluating this definition "taking into account advances in telecommunications and information technologies and services." Furthermore, the Joint Board is given specific authority to recommend "from time to time" to the FCC modification of the definition of the services to be included for federal universal service support. The Joint Board, in July 2002, concluded such an inquiry and recommended that at that time no changes be made in the list of services eligible for universal service support. The FCC, in a July 10, 2003, order (FCC 03-170) adopted the Joint Board's recommendation, thereby leaving unchanged the list of services supported by Federal universal service. More recently, however, the Joint Board was once again called upon to reexamine this issue and came up with a different conclusion. The Joint Board, on November 19, 2007, recommended that the FCC change the mix of services eligible for universal service support and concluded that "the universal availability of broadband Internet services" be included in the Nation's communications goals and hence be supported by Federal universal service funds.[23] The FCC in its national broadband plan, *Connecting America: the National Broadband Plan*, released March 16, 2010, to Congress, has recommended that access to and adoption of broadband be a national goal and has proposed that the USF be restructured to become a vehicle to help reach this goal. (See the "FCC National Broadband Plan" section of this report, below, for more details on how the USF could be transformed to help achieve this recommendation.)

Other policy makers caution that a more modest approach is appropriate given the "universal mandate" associated with this definition. Also at issue is the uncertainty and costs associated with mandating nationwide deployment of such advanced services as a universal service policy goal. Some have expressed concern that given the pressures currently facing the Fund, and their impact on the contribution factor, the inclusion of broadband services, at this time, is taking on too large a mandate. Current policy concerns regarding both the contribution and distribution mechanisms should be addressed first, they state, prior to any expansion of the USF definition. Furthermore, they state, the USF has already taken on limited broadband deployment responsibilities through the E-rate and Rural Health Care programs, and indirectly through the High Cost program, as

[23] For a summary of the Joint Board's recommendations see http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07J-4A1.pdf.

funding is used to upgrade existing telephone networks. If ubiquitous broadband deployment is a national policy goal, they state, policymakers should not place further stress on the USF program but should seek out other means of achieving this goal which may be more effective, such as providing economic incentives, easing economic regulation, encouraging municipal ownership, expanding other existing programs or establishing a new program.[24]

Contribution Methodology

One of the major policy questions surrounding USF reform is to what degree, if any, there should be a change in the way the program is funded. A consensus has been forming that some reform to broaden the contribution base is needed. How this should be accomplished, however, remains open to debate. Proposals range from modest options to expand the existing funding base, to broadening the base to include *intrastate* revenues, to calling for a complete restructuring of the contribution methodology.

Expanding the Base

One option is to broaden the base of entities that must contribute to the Fund, by calling for technology neutral funding. The FCC has taken a number of actions, over the years, to expand the pool of contributors, thereby broadening the base of entities supporting the Fund.[25] For example, in 1998 the FCC established a revenue percentage, or safe harbor, of 15% of revenues for determining the USF contribution for wireless carriers. That percentage has been increased twice since and is currently set at 37.1%. In a June 2006 decision, the FCC further expanded the pool of contributors by requiring that providers of interconnected VoIP contribute to the USF and established a safe harbor of 64.9%.[26] Some policy makers have recommended that the list of providers be expanded to include broadband providers which were removed from the base when the FCC ruled that Internet access services are information services, not telecommunications services. However, they generally recommend that this expansion be contingent on the understanding that USF support be used to upgrade the telecommunications infrastructure to include broadband capabilities.

Intrastate Revenues

Another proposal calls for broadening the revenue base by assessing fees on *intrastate* as well as interstate/international revenues. Although this would provide an additional source for USF funds, many state that this option may not be available absent congressional action to specifically designate intrastate revenues as a source for federal USF contributions. The recommendation for

[24] For example, provisions contained in the American Recovery and Reinvestment Act (P.L. 111-5) call for the disbursement of $7.2 billion in broadband funding, and the USDA's Rural Utilities Service has a broadband loan and grant program for rural areas. For information on these programs see CRS Report R40436, *Broadband Infrastructure Programs in the American Recovery and Reinvestment Act*, by Lennard G. Kruger, CRS Report R41164, *Distribution of Broadband Stimulus Grants and Loans: Applications and Awards*, by Lennard G. Kruger, and CRS Report RL33816, *Broadband Loan and Grant Programs in the USDA's Rural Utilities Service*, by Lennard G. Kruger.

[25] However, it should be noted that in a reversal of this trend, the FCC, in an August 2005 decision, exempted digital subscriber line (DSL) service from USF assessments on the basis of its August 2005 "information service" classification.

[26] See *FCC Updates Approach For Assessing Contributions To The Federal Universal Service Fund*, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266030A1.pdf.

specific congressional clarification is based, to a large part, on a successful court challenge of an earlier attempt by the FCC to collect support for the E-rate program based on combined interstate and intrastate revenues. In the case of *Texas Office of Public Utility Counsel v. FCC* (183F.3d; 393;1999) the United States Court of Appeals, 5th Circuit concluded that "the agency (FCC) exceeded its jurisdictional authority when it assessed contributions for Section 254(h), 'schools and libraries' programs based on combined intrastate and interstate revenues of interstate telecommunications providers and when it asserted its jurisdictional authority to do the same on behalf of high-cost support." Proponents of including intrastate revenues cite technological and marketplace changes which have eroded the distinction between interstate and intrastate services as well as the growth of combined calling plans in support of such action. Some, however, have expressed concern over the potential negative impact that the inclusion of intrastate revenues may have on state-supported USF programs since many are funded by intrastate telecommunications revenues.

Numbers or Connections

Another proposal calls for a shift in the basis of support away from revenues to a completely new methodology based on working numbers or connections. Under this proposal contributions for USF would be assessed based on a monthly flat fee, or charge, per working telephone number. Since users need a discrete number to connect to the public switched network, supporters claim this proposal would lead to a more stable assessment, would be technologically neutral, would spread contributions over a broader base, and would be easier to administer.[27] Opponents, however, state that using a numbers-based approach shifts the burden of USF from high volume users directly to all subscribers as a regressive fixed charge. This, they state, not only adds a financial burden on low volume subscribers, who may be elderly, and/or on low and fixed incomes, but could possibly lead to subscriber drop-off, thereby defeating the purpose of the USF program.[28]

Distribution Methodology

Another major issue facing USF reform concerns the eligibility criteria used to distribute USF funds. Over the past 12 years (1998-2010) annual USF receipts have grown from $2.3 billion to an estimated $8.0 billion and the contribution factor needed to support this growth has almost tripled to reach an all time high of 15.5% for the first quarter of 2011. While this factor had experienced a slight moderation the current (fourth quarter 2011) contribution factor is 15.3%,the second highest rate on record. This significant rise in the funding level, and subsequently the contribution factor, has led to an examination of the Fund's eligibility criteria and distribution methodology. More specifically concerns have been voiced over the long-term sustainability of the Fund and the cost burden it imposes on contributors.

Examination of USF program revenue flows, since 2003, shows that three of the four programs—Low Income, Schools and Libraries, and Rural Health Care—have been relatively stable.

[27] For a more detailed discussion supporting this proposal see The USF by the Numbers Coalition, *The Benefits of a Numbers-Based Collection for Universal Service*. Available at http://files.ctia.org/pdf/PositionPaper_numberscoalition_USF.pdf.

[28] For a more detailed discussion opposing a numbers-based proposal see *Losing Numbers: How America's Most Vulnerable Consumers Could Suffer Under Universal Service Fund Reform.* Available at http://keepusffair.org/KeepUSFFair/resources.html.

However, the High Cost program has experienced significant growth (30.4%), with disbursements increasing from $3,273.2 million to $4,267.7 million over the most recent seven year (2003-2010) period; and as a result, is the major factor contributing to the USF's recent overall growth. Within the High Cost program the growth can be traced to support given to competitive eligible telecommunications carriers. For example, payments for competitive eligible telecommunications carriers, which are largely wireless carriers, increased from $1 million in 2000 to $126.7 million in 2003, but are estimated by USAC to total slightly more than $1.2 billion for 2010. On the other hand, while incumbent eligible telecommunications carriers still receive a significant majority of funds from the High Cost program, revenues disbursed in 2003 and 2010 decreased from $3.2 billion to $3.1 billion.[29] The FCC's May 2008 decision to place an interim cap on High Cost payments to competitive eligible telecommunications carriers has helped to mitigate this trend. (See "Capping" section, below, for a further discussion.) A more recent trend which has added to the overall increase in the USF has been the growth, after years of relative stability, in the Low Income program. Disbursements to the Low Income program have increased from $822 million in 2008 to an estimated $1.3 billion in 2010. This recent growth can be attributed, to some degree, to the entrance of pre-paid wireless providers to the Lifeline program. According to the FCC, pre-paid wireless eligible telecommunications carriers now account for one-third of all Lifeline reimbursements.[30] An increase in eligible households, due to the recession, is also a likely contributing factor. Whether this will become a growing trend, placing further pressure on the Lifeline program, or is a limited uptick, is yet to be determined.

Hence, most policy discussions regarding the distribution methodology focus on proposals to stem the growth of the High Cost Program by limiting eligibility criteria and/or controlling the amount of funding disbursed. A variety of proposals, to be used on their own or in combination, are being discussed including limiting USF support to a single line per household, eliminating the "identical support rule," using reverse auctions to determine eligibility, placing a cap (or ceiling) on funds, and improving targeting. Improving management of all four funds to eliminate any fraud, waste, or abuse, has also been a focus of reform efforts.

Primary or Single Line Limitation

As presently designed, USF support is available to multiple lines per household. Some policy makers have proposed that one way to curb the increase in funding requirements is to limit eligibility criteria. USF funding, they state, should be limited to a single or primary line, not multiple access.[31] The universal service mandate, they claim, is not to artificially construct a competitive marketplace with multiple carriers in areas that are not able to support a single carrier, but to ensure that high cost areas receive service at a reasonable rate. The use of USF funds to support multiple carriers in high cost areas, they claim, is an abuse of funds and places

[29] More specifically, High Cost program revenues disbursed between 2003 and 2010 to incumbents decreased from $3,234.9 million to $3,055.1 million. USF fund data taken from USAC annual reports available at http://www.usac.org/about/governance/annual-reports/.

[30] *In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*. WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking, released March 4, 2011,(para 27). Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC 11-32A1.pdf.

[31] It should be noted, however, that the 109th, 110th, and 111th Congresses enacted legislation prohibiting the FCC from using any of its appropriated funds to change its rules, or regulations, to limit USF support payments to a single connection, or primary line (P.L. 109-108, Title VI, §622; P.L. 110-161, Title V, §511; P.L. 111-8, Title V, §502; and P.L. 111-117, Division C, Title V §502).

unnecessary strain on those supporting the program. Others, however, have argued that limiting USF support to a single provider relegates those areas to a lower standard, which does not fulfill the universal service principle to afford consumers in rural, insular and high cost areas, access to telecommunications and information services that are "reasonably comparable to those services provided in urban areas" (§254 [b] [3]). High cost areas, they state, should have the benefits and choices of competition and the opportunity to select from a variety of providers just like other regions of the nation. Line limitations, opponents state, will only discourage investment in rural infrastructure.

Reverse Auctions

One proposal under consideration for selecting an eligible carrier is the use of reverse auctions, or competitive bidding. Under this method a geographic area would be designated as high cost, providers interested in offering service would be asked how little universal service support they would need to provide service and the provider that submits the *lowest* bid, all else equal, would receive the funds.[32] This approach, in theory, would result in a decrease in funding for High Cost support since it would be based on low bids submitted by providers instead of on the current method that is based on the embedded costs of the incumbent telecommunications provider in the area. This, supporters claim, will lead to the use of the most efficient technology and will relieve the growing pressure on USF funds. However, there is no single methodology that must be used and the reverse auction concept could be designed in a number of ways and impose a variety of requirements and obligations. For example, some support a phased-in approach to reverse auctions where it is used solely to select a competitive carrier for an area while the designated incumbent eligible telecommunications carrier remains under the present system indefinitely, or for a specific time period. Others suggest that an auction system could reward the lowest bidder with the most support, but still give other participants some limited support. Still others suggest the establishment of a pilot program to test for successes and/or unintended consequences. On the other hand, others have expressed reservations about adopting reverse auctions stating that many questions remain about how to implement reverse auctions, how to administer the costs associated with their adoption, and the long-term impact they would have on consumers as well as providers. Concerns were also expressed that a reverse auction would not create a favorable environment for network investment possibly resulting in stranded investment, erratic funding, and ultimately inferior networks.

Identical Support Rule

The criteria used for the distribution of funds for the High Cost program has also come under scrutiny. High Cost program fund distribution is based on what is known as the "identical support rule." Under this rule funds are distributed to competitive eligible telecommunications carriers based on the embedded costs, or per line support, of the incumbent carrier. Typically the incumbent carrier is a wireline carrier while the competitive carrier is a wireless carrier. The infrastructure costs associated with the investment and maintenance of a wireline system are generally significantly higher than those associated with a wireless system. Therefore some have questioned whether basing funding levels on the incumbent carrier's costs, particularly when

[32] The provider would be required to meet certain "carrier of last resort" obligations, which would be detailed when the bids are solicited. For example, the carrier would be required to offer a specific package of services and provide that service to the entire designated service area (regardless of cost), and would have to meet interconnection mandates.

support is based on a more expensive infrastructure, is reasonable, or even fair. Switching to a more refined distribution methodology, more reflective of a carrier's actual costs they claim, would help to alleviate some of the pressure facing funding of the High Cost program. Furthermore they state, it is anticipated that the growth in competitive eligible telecommunications carriers will be increasing based on the number of applications pending at the FCC, and that therefore addressing this issue is of growing significance.

Capping

Some have also proposed placing a cap, as a temporary or permanent measure, on the funds available for distribution to competitive eligible telecommunications carriers through the High Cost program. Supporters of capping claim that it will prevent the uncontrolled growth of this part of the High Cost program, which is the major contributor to the overall growth in the USF. In turn, they state, this will bring stability to the Fund and the USF contribution factor. They note that both the E-rate and the Rural Health Care programs operate under yearly caps, and with the exception of the Low Income program which has been relatively stable, the High Cost program is the only program with no built-in restraints on its growth. Others, however, are opposed to implementing a cap. They point out that placing a cap on an existing program, such as the High Cost program, could lead to confusion and be very disruptive. The dynamic, they state, is very different than capping programs, such as the E-rate and Rural Health Care, at their inception. The High Cost program, they claim, is an ongoing program responsible for providing basic voice service and connection to the network, a fundamental tenet of the universal service mandate. The placing of a cap on this program, they claim, could have significant unintended consequences which could undermine universal service goals.

The federal-state Joint Board recommended that the FCC immediately impose an interim cap on a portion of the high cost fund.[33] More specifically the Joint Board, in a May 1, 2007, action, issued a recommendation that the FCC place an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers receive for each state from the High Cost program. The Joint Board recommended that the support be based on the average level of competitive eligible telecommunications carrier support distributed in that state in 2006 and that the interim cap apply until one year from the date that it makes its recommendation regarding comprehensive USF reform. This is seen as a temporary measure to curb the growth of the High Cost program until more permanent action can be taken to reform the USF. The FCC, in a May 11, 2007, action, adopted a notice of proposed rulemaking[34] seeking comment on this recommendation; comments and reply comments were received in June 2007.

On May 1, 2008, the FCC adopted, by a 3-2 vote, an interim cap on payments to competitive eligible telecommunications carriers to the High Cost fund. Total annual support is capped, with some limited exceptions,[35] at the level of support received in each state, during March 2008, on

[33] *Joint Board Recommends Cap On High-Cost Fund*. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-272806A1.pdf.

[34] *In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, released May 14, 2007. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-88A1.pdf.

[35] Competitive eligible telecommunications carriers that serve tribal lands or Alaska Native regions and competitive telecommunications carriers that file their own cost data will not be subject to a cap.

an annualized basis. The decision went into effect August 1, 2008, and will remain in place only until the FCC adopts comprehensive high cost universal service reform.[36]

Improved Targeting

An additional proposal calls for making a better effort to target areas of need by using better mapping technology (geographic information systems or GIS) or modeling to determine support for eligible telecommunications carriers. Some claim that the designated areas for support are too large and cover areas which might not be in need of USF support. Designating areas for USF support that do not need such subsidies only encourages the influx of eligible carriers into areas that they might choose to enter absent such support, they claim, and leads to the use of funds which may be more appropriately used elsewhere. Taking a more refined and precise approach, they state, will result in using funds more effectively in areas that truly need support. While most support such efforts, and see such proposals to be more long-term efforts, progress is being made. Provisions in the American Recovery and Reinvestment Act (P.L. 111-5) called for the development and maintenance of a national broadband inventory map, which was released in February 2011, and additional efforts are also underway to improve and refine data collection.[37]

Fraud, Waste, and Abuse

Directly related to the funding issue are concerns expressed by policy makers over the potential for possible fraud, waste, or abuse of the program. While all USF programs have the potential for mismanagement, the E-rate program, "due to its materiality and an initial assessment of its potential for waste, fraud, and abuse,"[38] was initially singled out for particular attention. The ability to ensure that only eligible services are funded, that funding is disbursed at the proper level of discount, that alleged services have been received, and the integrity of the competitive bidding process is upheld have been questioned. A series of Government Accountability Office (GAO) reports raising concerns about the financial oversight of the E-rate program prompted additional congressional scrutiny.[39] The USAC, as the administrator responsible for the management and oversight of the USF, initiated a number of measures to address specific E-rate concerns and extended them to all USF programs. These measures include establishing a whistleblower hotline to report violations and conducting random and targeted audits of USF program participants and contributors.

In August 2007 the FCC adopted a series of measures to safeguard the USF to deter fraud, waste, and abuse. Included in the measures taken are those that extend the debarment rules (three years)

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[36] For further information see the FCC's adopted order available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-122A1.pdf. For a summary and discussion of this order see *Federal Register*, Vol. 73, No. 128, July 2, 2008, p. 37882.

[37] For information on broadband mapping and data collection efforts see CRS Report RL30719, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, by Lennard G. Kruger and Angele A. Gilroy.

[38] Federal Communications Commission Office of the Inspector General, Semiannual Report to Congress, April 1, 2006—September 30, 2006, p.8. Available at http://www.fcc.gov/oig/oigreportssemiannual.html.

[39] For example, see *Schools and Libraries Program: Actions Taken to Improve Operational Procedures Prior to Committing Funds* (March 1999) GAO/RCED-99-51; *Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening* (December 2000) GAO-01-105; *Schools and Libraries Program: Update on E-Rate Funding* (May 2001) GAO-01-672; *Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program* (February 2005) GAO-05-151. Available at http://www.gao.gov/docsearch/topic.php.

and sanctions for criminal and civil violations beyond the Schools and Libraries Program to cover all four programs; tighten rules requiring timely payments and assessing penalties or interest for late payments on USF contributors; and increase record keeping requirements for both contributors and beneficiaries. In addition the FCC, as recommended by the GAO, adopted performance measures, for all four programs and for USAC.[40]

A GAO report focusing on the USF's High Cost Program was released in July 2008. The report, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, noted that the "FCC has not established performance goals or measures [for the Program]." Furthermore, the GAO stated "In the absence of performance goals and measures, the Congress and the FCC are limited in their ability to make informed decisions about the future of the high-cost program." Although the GAO acknowledged that "the FCC has begun preliminary efforts to address these shortcomings," problems with these efforts still exist.[41]

The FCC, in an August 15, 2008, action, adopted a Notice of Inquiry (NOI) seeking public "comment on ways to further strengthen management, administration, and oversight of the USF ... define more clearly the goals of the USF ... identify any additional quantifiable performance measures" and "comment on whether, and if so, to what extent the Commission's oversight of the USF can be improved."[42] Citing the steps the FCC has already taken to strengthen its oversight and management of the Fund, and the recent benefits and improvements that have been made, the FCC, however, acknowledged both the demand for "constant scrutiny and assessment of the Commission's oversight efforts" as well as the GAO's July 2008 recommendation that the FCC take steps to improve its oversight of the USF. This NOI has been initiated, according to the FCC, to continue to assess and solicit public input to develop additional rules and safeguards to protect the Fund.

The FCC's Office of the Inspector General (OIG) has also been active in pursuing oversight of the USF focusing initially on the E-rate program. Since 2002 the OIG has included in its semi-annual reports coverage of its specific efforts to oversee E-rate program activity, including audits, to ensure program integrity.[43] More recently, however, the OIG has also expanded its audit efforts to include the remaining three USF programs and audits of USF contributors.

In 2006, USAC took additional action by initiating with the OIG "a large-scale beneficiary audit program" covering all four USF programs and planned to "conduct more than 450 audits of program beneficiaries and contributors."[44] The result of this audit, which was comprised of 459 audits of USF program participants for beneficiaries of all four programs and contributors to the USF, was released by the OIG in October 2007. According to the preliminary OIG analysis of the audits, using estimates extrapolated from incomplete audits which covered beneficiaries of all four programs as well as contributors,

[40] For a summary of this final rule see *Federal Register*, Vol. 72, No.184, September 24, 2007, p. 54214.

[41] This report is available at http://www.gao.gov/new.items/do8633.pdf.

[42] See *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, released on September 12, 2008, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-189A1.pdf.

[43] Semiannual Reports issued by the FCC's OIG are available at http://www.fcc.gov/oig/oigreportssemiannual.html.

[44] USAC 2006 Annual Report, p.11. Available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2006.pdf.

> in general the audits indicated compliance with the [FCC's] rules, although erroneous payment rates exceeded 9% in most USF program segments. The audit resulted in the following erroneous payment rates: contributors payments, 5.5% ($385,000,000); Low Income, 9.5% ($75,500,000); Schools and Libraries, 12.9% ($210,000,000); High Cost, 16.6% ($618,000,000) and Rural Health Care, 20.6% ($4,450,000).[45]

USAC has completed all the audit work left unfinished in the first three rounds of the OIG USF audits and found that the actual improper payment rate was significantly lower than early estimates. For example, the "improper" payment rate in the High Cost Program dropped to 2.7% from the earlier reported 16.6% and the Schools and Libraries Program improper payment rate dropped to 8.6% form the earlier estimate of 12.8%.[46] It should also be noted that an "erroneous payment" as defined by OMB, is "any payment that should not have been made or that was made in an incorrect amount," which includes overpayments, underpayments, and the inappropriate denial of a payment or service.[47]

Despite this activity, however, the OIG continues to cite the need for additional resources, stating that "Although we have made progress in achieving the goal of establishing a more effective oversight program, we need significant increases in audit, investigative, and legal resources to achieve the goal of having a truly effective oversight program."[48] The FCC's Enforcement Bureau is the primary entity within the FCC tasked with enforcing the provisions of the Communications Act, including those related to Section 254 (universal service). The Enforcement Bureau pursues violators and initiates enforcement actions including notices of liability, suspensions, consent decrees, and debarments.[49]

The Department of Justice (DOJ) has also taken an active role in pursuing instances of deliberate fraud related, in particular, to the E-rate program. The Antitrust Division of the DOJ has established a task force to investigate E-rate fraud and has prosecuted a number of individuals and companies leading to fines, restitution, program debarments, and imprisonment.[50]

As was the case in the 110th and 111th Congresses, the 112th Congress is expected to continue its review of the USF, and all four of the programs will be subject to oversight to prevent any fraud, waste, or abuse. (See "Congressional Activity," below, for a discussion of congressional oversight activities.) Concerns about fraud and abuse are shared by both critics and supporters of the program. For example, critics of the E-rate program have used examples of fraud, waste, and

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[45] FCC Office of the Inspector General Semiannual Report to Congress, April 1, 2007 -September 30, 2007, p. 17. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278589A1.pdf. For a detailed analysis of the OIG audit see FCC Office of the Inspector General, *Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits*, October 3, 2007. Available at http://www.fcc.gov/oig/ under release date October 3, 2007.

[46] USAC 2009 Annual Report, pp.2, 6, 12. Available at http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2009.pdf.

[47] See p. 17, OIG Semiannual Report to Congress, April 1, 2007-September 30, 2007, for the full OMB definition of an "erroneous payment" Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278589A1.pdf.

[48] FCC Office of the Inspector General Semiannual Report to Congress, April 1, 2007 -September 30, 2007, p. 16. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278589A1.pdf.

[49] A brief overview of the Enforcement Bureau's USF enforcement responsibilities and a list of recent enforcement actions is available at http://www.fcc.gov/eb/usfc/.

[50] For example, see *Six Corporations And Five Individuals Indicted In Connection With Schemes To Defraud The Federal E-Rate Program*. Available at http://www.usdoj.gov/opa/pr/2005/April/05_at_169.htm; and *Two New Jersey Executives Agree to Plead Guilty in Nationwide Scheme to Defraud the Federal E-Rate Program*. Available at http://www.usdoj.gov/opa/pr/2008/April/08_at_334.html.

abuse to call for a halt to the program or at a minimum, its suspension until additional safeguards are in place. Supporters also want to ensure the integrity of all four programs since the misuse of funds or unreasonable administrative costs not only leave the program vulnerable to critics, but would only decrease available funding to meet the program's goals.

Antideficiency Act Compliance

A more narrowly focused policy issue relating to the operation of the USF deals with Antideficiency Act (ADA) compliance. With the guidance of the Office of Management and Budget (OMB) the FCC decided, in August of 2004, that the accounting requirements contained in the ADA should be applied to the operation of the USF. Under this accounting methodology, the government is precluded from incurring obligations prior to the funds being available. E-rate fund commitment letters, which are issued far in advance of actual funds payment, were considered to be obligations. Therefore ADA compliance requires that the funds be on hand to cover obligations and the program was required to have the cash on hand to cover all of the commitment letters. USAC changed the timing of its funds distribution in order to meet this requirement, leading to a temporary four-month suspension (from August through November 2004) of E-rate funding commitments. The temporary halt in the disbursement of E-rate funding commitments, the concern that funding for other USF programs might be disrupted and that compliance might necessitate a significant increase in USF revenues, brought this issue to congressional attention.

The 108th Congress enacted legislation to provide for a one-year exemption (through December 31, 2005) from the ADA for the USF (P.L. 108-494). Since then the temporary one-year exemption has been extended six times, once to December 31, 2006, in conjunction with the Science, State, Justice, and Commerce appropriations measure (P.L. 109-108); again for an additional one-year exemption (until December 31, 2007) as part of the CR2007 (H.J.Res. 20; P.L. 110-5); once again a one-year extension (until December 31, 2008) as part of the Consolidated Appropriations Act of 2008 (H.R. 2764; P.L. 110-161); again an extension until December 31, 2009, as part of the 2009 Omnibus Appropriations bill (H.R. 1105; P.L. 111-8), again until December 31, 2010, as part of the 2010 Consolidated Appropriations Act (H.R. 3288; P.L. 111-117), and most recently until December 31, 2011, as part of the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082;P.L. 111-322). Whether the USF program should be required to comply with the accounting provisions contained in the ADA and if so what consequences that may have for USF programs is expected to continue to be an issue. Once again this exemption will expire at the close of the first session of the 112th Congress and Congress may choose to address this issue in a variety of ways. It may continue to enact legislation to provide short-term relief by extending the temporary exemption. Also it could choose to enact legislation, such as S. 297 pending in the 112th Congress, to provide the USF program with a permanent exemption from ADA requirements, or it may choose to take no further action allowing the temporary exemption to expire, thereby requiring the FCC to ensure, through whatever steps it deems necessary, that the USF is in full compliance with ADA requirements.

The FCC has resolved, at least temporarily, any compliance problems. Former FCC Chairman Martin, in response to questioning during his September 2006 Senate confirmation hearing, stated that the Commission has concluded that the ADA does apply to the USF. However, he assured

Commerce Committee members that funds will be sufficient and that E-rate program commitment letters will not be delayed.[51] Some, however, have continued to express concern that the actions taken by the FCC are only temporary and that ADA compliance may jeopardize disbursements for not only the E-Rate program, but possibly other USF programs, and may cause a significant increase in the contribution factor.

FCC National Broadband Plan

Provisions contained in the American Recovery and Reinvestment Act of 2009 (ARRA) called for the FCC to develop, and submit to Congress, a national broadband plan (NBP) to ensure that every American has "access to broadband capability."[52] This plan, *Connecting America: The National Broadband Plan*,[53] submitted to Congress on March 16, 2010, calls for the USF to play a major role in achieving this goal. The NBP calls for the USF to be transformed, in three stages over a 10-year period, from a mechanism to support voice telephone service to one that supports the deployment, adoption, and utilization of broadband. More specifically, two new funds, the Connect America Fund and a Mobility Fund, are created, the High Cost program is phased-out, while the Low Income, E-rate, and Rural Health Care programs are modified and assume wider responsibilities. Before these transitions should occur, however, the NBP recommends that the FCC continue to take steps to improve USF performance and accountability through stronger oversight and management and enhanced data collection and reporting.[54]

High-Cost Program

The goal of the reform of the High Cost program is to transition it from one that primarily supports voice communications to one that supports a broadband platform that enables multiple applications, including voice. Although some carriers that receive high-cost funding do use it to deploy broadband capable infrastructure, currently there is no requirement that recipients of high-cost funding provide any households in their service areas with broadband. The NBP recommends that the High-Cost program be phased-out and replaced in stages, over the next 10 years, to directly support high-capacity broadband networks through a newly created Connect America Fund and a Mobility Fund.[55] More specifically, the NBP recommends that the legacy High-Cost program cease operation by 2020 and support be given solely to providers who offer broadband that offers high-quality voice through the Connect America Fund.[56]

Connect America and Mobility Funds

The NBP recommends the creation of two new funds: the Connect America Fund (CAF) and the Mobility Fund (MF). The CAF is created to support the provision of affordable broadband and

[51] Remarks by former Chairman Martin during confirmation hearings before the Senate Commerce, Science and Transportation Committee, September 12, 2006.

[52] American Recovery and Reinvestment Act of 2009, P.L. 111-5, §6001 (k)(2)(D).

[53] A copy of this plan is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

[54] NBP, Chapter 8, *Availability*, recommendation 8.1.

[55] Much of this transition is detailed in Chapter 8, *Availability*, of the NBP.

[56] NBP, Chapter 8, *Availability*, recommendation 8.13.

voice with at least 4 Mbps actual download speed and 1 Mbps of actual upload speed. The NBP recommends that the FCC adhere to the following principles in developing the CAF: funding should only be provided in geographic areas where there is no private sector business case to provide broadband and high-quality voice grade service; there should be at most one subsidized provider of broadband per geographic area; eligibility criteria should be company and technology agnostic; ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine the firms selected for and the levels of support given should be identified by the FCC; recipients of funding must be subject to accountability requirements and subject to enforceable timelines for achieving access as well as a broadband provider-of-last resort obligation.[57]

The MF is created to provide targeted funding to ensure that all states achieve the national average for 3G wireless coverage used for both voice and data. The MF will provide one-time support for deployment of 3G networks. 3G availability, according to the NBP, will improve the business case for the development of 4G networks in harder-to-serve areas and potentially benefit public safety users. The NBP further recommends that the FCC "... select an efficient method, such as a market-based mechanism, for supporting mobility in targeted areas."[58]

Low-Income Program

According to an FCC conducted broadband consumer survey 36% of non-adopters of broadband cited a financial reason as the main reason they do not have broadband service at home.[59] To address this barrier the NBP recommends that both Low-Income programs, Lifeline and Link Up, be expanded to increase broadband adoption levels for low-income households.[60] The NBP recommends that the FCC require that ETC's receiving funds permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service. In this way Lifeline customers can apply their discounts to bundled offerings (i.e., voice and data) making broadband service more affordable.[61]

The NBP also recommends that the FCC integrate the expanded Lifeline and Link Up programs with state and local e-government efforts as well as facilitate pilot programs to obtain information to determine what program design elements most effectively increase adoption rates. Upon completion of the pilot programs the FCC is directed to report to Congress on these results and begin a "... full scale implementation of a low-income program for broadband."[62]

Schools and Libraries and Rural Health Care Programs

The NBP contains almost a dozen recommendations to modernize and improve the E-rate program.[63] These recommendations focus on three goals: improve flexibility, deployment, and use

[57] NBP, Chapter 8, *Availability*, recommendation 8.2.

[58] NBP, Chapter 8*, Availability*, recommendation 8.3.

[59] NBP, Chapter 9, *Adoption and Utilization*, 9.1, Understanding Broadband Adoption.

[60] Details of this expansion are addressed in, Chapter 9, *Adoption and Utilization*, of the NBP.

[61] NBP, Chapter 9*, Adoption and Utilization*, recommendation 9.1.

[62] NBP, Chapter 9, *Adoption and Utilization*, recommendation 9.1.

[63] A detailed discussion of all of these recommendations is contained in NBP Chapter 11,*Education.Section 11.3, Modernizing Educational Broadband Infrastructure.*

of infrastructure; improve program efficiency; and foster innovation. Among these recommendations are those that call for the FCC to initiate rulemakings to streamline the applications process, raise the yearly cap on funding to account for inflation, and set goals for minimum broadband connectivity for schools and libraries; adopt the pending notice of proposed rulemaking to remove barriers to off-hours community use of E-rate funded resources; expand E-rate support for internal connections to more schools and libraries; improve data collection efforts on use of E-rate funds; provide more flexibility to purchase the lowest-cost broadband solutions; and make overall broadband-related E-rate program expenses more cost-efficient.

Citing the importance of health care to the lives of consumers and its importance to the national economy the NBP calls for reform of the Rural Health Care Program. The NBP calls for the restructuring and expansion of its program components.[64] The NBP recommends that the existing Internet Access Fund be replaced with a Health Care Broadband Access Fund, subsidy support be increased beyond the current 25%, the application process be simplified, and, unlike the present Fund, eligibility be expanded beyond rural health care providers to include both rural and urban health care providers, based on need.[65] It also recommends that the FCC establish a Health Care Broadband Infrastructure Fund, based on lessons learned from the Pilot Program, to subsidize network deployment to health care delivery locations where existing network infrastructure is insufficient.[66] Additional recommendations for the Rural Health Care Program include those that suggest the FCC expand the definition of eligible health care provider to include long-term care facilities, off-site administrative offices, data centers and other similar locations and suggest that Congress consider expanding the definition for eligibility to include providing support of certain for-profit entities.[67] To help protect against, fraud, waste, and abuse the NBP recommends that the FCC require that participating institutions meet outcomes-based performance measures to measure the efficient use of health IT to ensure that funds are used to not only build and deploy broadband infrastructure, but to improve the country's health delivery system.[68]

The NBP also recommends that federal and state policies, including USF policies, should facilitate demand aggregation for broader community use and not develop policies that result in dedicated, single purpose networks, such as school networks funded by E-rate, or hospitals funded through the Rural Health Care program. Citing the extremely low connection rates and other unique challenges facing Tribal lands, the NBP specifically recommends that Congress amend the 1934 Communications Act to provide the FCC with the discretion to permit anchor institutions on Tribal lands to share broadband network capacity funded through the E-rate and rural health care programs with other community institutions designated by Tribal governments.[69] The NBP also recommends that Congress consider amending the 1934 Communications Act to help Tribal libraries overcome barriers to E-rate eligibility arising from state laws.[70]

[64] A detailed discussion on the Rural Health Care Program recommendations is contained in NBP Chapter 10*, Health Care.*

[65] NBP, Chapter 10, *Health Care*, recommendation 10.6

[66] NBP, Chapter 10, *HealthCare*, recommendation 10.7.

[67] NBP, Chapter 10*, Health Care*, recommendation 10.8.

[68] NBP, Chapter 10, *Health Care*, recommendation 10.9.

[69] NBP, Chapter 8*, Availability*, recommendations 8.20 and 8.21.

[70] NBP, Chapter 11, *Education*, recommendation 11.22

Funding

The NBP calls for a major restructuring of the USF, but recommends that the funding level be maintained close to its current size (in 2010 dollars). The NBP recommends that $15.5 billion (present value in 2010 dollars) be shifted, through selected reforms, over the next decade from the existing USF High Cost program to support the transition to broadband.[71] However, the NBP also recommends that if Congress wishes to accelerate this transition it could allocate to the CAF additional general funds of "... a few billion dollars per year over a two to three year period."[72]

The NBP also recommends that the USF contribution base be broadened and the FCC "... adopt revised contribution methodology rules to ensure that USF remains sustainable over time."[73] It does not, however, provide specific guidance on how this should be accomplished. Furthermore, the NBP acknowledges the relationship between its broadband goals and the USF contribution factor and seeks to "... minimize the burden of increasing universal service contributions on consumers."[74]

Implementation

The NBP contains over 208 recommendations involving a wide range of Executive Branch agencies, Congress, nonfederal and nongovernmental entities as well as the FCC; approximately 60 of these recommendations call for FCC action. The FCC has initiated a series of proceedings which will provide further guidance regarding how the FCC-specific recommendations will be implemented. These proceedings will flush out the details and give all stakeholders an opportunity to provide input into how the FCC should proceed to implement the recommendations contained in the NBP. The FCC also announced, on June 14, 2010, the establishment of a Universal Service Working Group, an in-house multi-bureau group to facilitate collaboration between the bureaus to further the universal service goals established in the National Broadband Plan.[75]

High Cost Program

The FCC took two major steps towards implementing the NBP recommendations to reform the USF High Cost program by adopting two Notices of Proposed Rulemaking: one to create a Mobility Fund to address access to advanced wireless services; and the other to create a Connect America Fund to promote the development of broadband services. The FCC is scheduled to vote on these rulemakings on October 27, 2011.

[71] NBP, Chapter 8, *Availability*, recommendation 8.6.

[72] NBP, Chapter 8, *Availability*, recommendation 8.15.

[73] NBP, Chapter 8, *Availability*, recommendation 8.10.

[74] NBP, chapter 8, *Availability*, recommendation 8.12.

[75] *FCC Chairman Julius Genachowski Announces Launch of Universal Service Working Group*. Released June 14, 2010. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298775A1.pdf.

Mobility Fund

The FCC adopted, on October 14, 2010, a Notice of Proposed Rulemaking (NPRM) to seek comment on proposals to create a Mobility Fund (MF) to improve the coverage of 3G wireless, or better, services.[76] Under this proposal the MF would provide one-time support, ranging from a total of $100 million to $300 million, to areas that currently do not have access to advanced wireless services, defined as those that offer mobile wireless voice telecommunications services, e-mail, and Internet access. The NPRM proposes using a reverse auction mechanism to make the support to service providers to extend 3G or better mobile voice and Internet service coverage in specified unserved areas.[77] The NPRM also seeks comment on a range of additional proposals, including whether to make support available to any unserved area in the nation or target support by making it available to limited areas; minimum performance and coverage requirements for MF support; suggested administrative, management, and oversight functions to deter fraud, waste, and abuse; and whether the MF initiative should be repeated. The comment and reply periods are now closed.

Connect America Fund

The FCC proposed, in a Notice of Proposed Rulemaking (NPRM) and Further Notice of Proposed Rulemaking (FNPRM), to eliminate and shift the money from the current High Cost program by establishing a new Connect America Fund. Coupled with this action will be a shift in focus from voice to subsidize broadband, which would include voice access. The NPRM and FNPRM, adopted on February 8, 2011, call for this transition to occur in three phases over the next 10 years.[78] Numerous steps are proposed, to complete the transition of the current High Cost program to a "new, more efficient, broadband-focused Connect America Fund," to accelerate broadband deployment. The USF concept is broadened to include the adoption of the principle "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services" and suggests that broadband and mobility should be added to the definition of supported services. The proposal calls for the use of a reverse auction to provide broadband to unserved areas by awarding a "significant amount of funding" (from $500 million to more than $1 billion) in 2012 as a one-time infusion, with the potential for future auctions. Recipients could be either fixed (wireline or wireless) or mobile wireless providers.

The notices seek comment on a wide range of proposals, some more immediate and others more long term, to complete this transition. Included among these proposals, which are open for comment by all stakeholders, are whether the use of reverse auctions, or another mechanism, is appropriate to bring broadband to underserved areas; whether the per-line subsidy should be

[76] *In the Matter of Universal Service Reform, Mobility Fund*. WT Docket No. 10-208, Notice of Proposed rulemaking, adopted October 14, 2010. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-182A1.pdf.

[77] It should be noted that the Obama Administration's FY2012 budget calls for a "national wireless initiative," with a one-time infusion of $5 billion into the USF, to extend 4G wireless coverage to at least 98% of the population, within five years.

[78] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a[n] Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*. WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, adopted February 8, 2011. Available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/FCC-11-13A1.pdf.

capped at $3,000 per year in high-cost areas in the continental United States, absent exceptional circumstances; whether existing carriers should be given the first option to continue serving a given area, or whether some other option should be pursued; whether the minimum broadband speed should be set at 4 megabits per second actual downstream and 1 megabit per second actual upstream, or 3 megabits/768 kilobits per second, or a different speed requirement; how often broadband speed requirements should be reevaluated; what public interest obligations should apply to eligible telecommunications carriers; ending the identical support rule; adopting performance goals and metrics; the appropriate role of the states in preserving and advancing universal service, and the expected level of financial commitment from the states. The comment and reply periods are closed.

Low Income Program

The FCC adopted, on March 3, 2011, a notice of proposed rulemaking (NPRM) seeking comment on a set of reforms to "modernize and drive tougher accountability measures" for the Lifeline and Link Up components of the Low Income program.[79] The FCC is soliciting comments on proposed changes that will better position the program to, among other concerns, take on the expanded role, detailed in the NBP, as a provider of broadband service. The NPRM seeks to modernize the program to accommodate broadband while still controlling program size, strengthen program administration and accountability, increase protections against fraud, waste, and abuse, and improve enrollment and outreach efforts. More specifically the proposed reforms include those to create a National Accountability Database to verify consumer eligibility and a uniform national framework for validating ongoing eligibility; eliminate funding for services that go unused for more than 60 days; evaluate the need for a temporary or permanent cap to control program growth; permit eligible households to use Lifeline discounts on bundled voice and broadband service offerings; address the unique situations facing residents on Tribal lands; and establish pilot programs, from savings from reforms, to test strategies for supporting broadband services. Comments were due April 21, 2011, and replies May 10 and 25, 2011.

Separately, the FCC adopted, on June 17, 2011, a report and order to address "potential waste" in the Lifeline and Link Up programs by strengthening rules to prevent support payments for multiple services to the same individual.[80] The FCC clarified that an eligible consumer may only receive support for "a single telephone line in their principle residence" and codified that "... no qualifying consumer is permitted to receive more than one Lifeline subsidy concurrently."[81] This clarification is necessary, according to the FCC, since consumers now have multiple Lifeline options, through wireless carriers, in contrast to the past when most consumers only had one option for telephone service through their incumbent telephone company's wireline service. To further insure that no duplication occurs the FCC has required that: USAC notify consumers that are receiving multiple benefits that they are allowed only one Lifeline-subsidized phone service; consumers in violation be given 30 days to select which subsidized service they wish to keep; and

[79] *In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*. WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking, released March 4, 2011. Available at http://www.fcc.gov//Daily_Releases/Daily_Business/2011/db0304/FCC-11-32A1.pdf.

[80] In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up, WC Docket no. 11-42, CC Docket No. 96-45, WC Docket No. 03-109. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0621/FCC-11-97A1.pdf.

[81] *In the Matter of Lifeline and Link Up Reform and Modernization*, para 3 and para 8.

companies not chosen must de-enroll the consumer from the Lifeline service within five days after notification by USAC that they have been deselected by the consumer. The expectation is that the dollars saved by removing duplicative Lifeline support will be used to help cover costs associated with a yet-to-be-established pilot program to help expand the Low Income program to provide broadband services.

Schools and Libraries Program

Reform of the Schools and Libraries Program (E-Rate Program) is also underway. The FCC adopted, September 23, 2010, an order to "upgrade(d) and modernize(d)" the E-rate program.[82] While significant these new rules are viewed by the FCC as "a first stage in a multi-stage upgrade of the E-rate program."[83]

Included among the proposals that were adopted are those that allow applicants to lease broadband from a wider range of options, including dark fiber; permit schools to allow community use of E-rate funded services outside of school hours; index the yearly $2.25 billion funding cap to account for inflation as of the FY2010 funding year; support eligible services to the residential portion of schools that serve students in special circumstances (e.g., schools on Tribal lands, schools that meet special medical needs; juvenile justice facilities); permit schools and libraries to receive consideration when disposing of and/or recycling E-rate-funded obsolete equipment; streamline the application process; increase protections against fraud, waste, and abuse by codifying the competitive bidding requirements and clarifying ethics obligations; and establish a limited pilot program to support off-campus wireless connectivity for portable learning devices outside of regular school or library learning hours.[84]

Rural Health Care Program

A NPRM initiating reforms to the Rural Health Care Program to expand the reach and use of broadband connectivity by health care providers was adopted on July 15, 2010.[85] The FCC maintains the existing $400 million funding cap but proposes three major changes to the existing program: creation of a new health infrastructure program that would support up to 85% of the new regional or statewide network broadband project construction costs to serve public and non-profit healthcare providers (a 15% private funding match would be required); creation of a health

[82] *In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf.

[83] The FCC notes in paragraph 5 that the proposals adopted in this order do not address all of the proposals raised in the E-rate NPRM adopted May 20, 2010. A copy of the NPRM, *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan* CC Docket No. 02-6; GN Docket No. 09-51 is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-83A1.pdf.

[84] The FCC announced on March 9, 2011, the selection of 20 schools and libraries as part of a wireless pilot program, "*Learning On-The-Go*," to be funded from $9 million from the E-rate program. The pilot program will help K-12 students connect to the Internet at home and increase access to digitized materials, and help library patrons find and apply for jobs. Qualified pilot programs will be funded, assuming compliance with all program requirements, in the 2011-12 school year. For a list of selectees see *FCC Chairman Julius Genachowski Announces Recipients Of Innovative Wireless Pilot Projects At Digital Roundtable in New York City*, released March 9, 2011. Available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0309/DOC-305088A1.pdf.

[85] *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-06. Available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0715/FCC-10-125A1.pdf.

broadband services program that would subsidize 50% of the monthly recurring costs for access to broadband services for eligible entities; and expansion of the definition of "eligible health care provider" to include such entities as skilled nursing facilities, renal dialysis centers and facilities, data centers, and administrative offices. Comment is also sought on issues such as prioritizing funding requests; establishing performance measures; and whether there are any "unique circumstances" in Tribal lands or insular areas "that would necessitate a different approach." Comments and replies on the NPRM have already been filed.

Congressional Activity

112th Congress

It is anticipated that Universal Service Fund reform will continue to be a topic of congressional interest. Both the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee have included USF reform on their agendas of issues for consideration and oversight. The Senate Commerce Committee held a hearing on October 12, 2011, on reforming the USF, with a particular focus on the High Cost Fund. The chairman and ranking members of the House Energy and Commerce Committee and the Subcommittee on Telecommunications and Technology have requested, in a June 22, 2011, letter to the FCC, USF data focusing on the High Cost and Low Income programs to assist them to better understand the USF and its operations.

Three stand-alone measures (H.R. 2163, H.R. 3118, S. 297) relating to USF have been introduced to date. Representative Matsui introduced, on June 14, 2011, H.R. 2163, the "Broadband Affordability Act of 2011." This measure expands the USF's low-income Lifeline program to include subscribership to broadband services at reduced rates. Eligibility requirements are the same as those used for the current Lifeline telephone program. Provisions require the FCC to establish regulations to prevent eligible households from receiving more than a single subsidy per household. The FCC is tasked with establishing the amount of support and determining whether state matching funds will be required for participation as well as determining how broadband service is defined. Broadband service providers are required to obtain FCC authorization to participate in the program, but the program is neutral as to what type of technology is used and does not require a provider to be classified as eligible telecommunications carrier to participate.

H.R. 3118, introduced on October 6, 2011, by Representative Farenthold, contains provisions to freeze USF funding at 2011 levels and reform the Low Income program More specifically the bill will: rescind the forbearance authority which is used by eligible carriers to offer prepaid wireless Lifeline service; freeze USF funding at 2011 levels and transfer, on a yearly basis, $500 million of those funds to the General Fund of the Treasury; and implement reforms to the Low Income Program, including the establishment of a database, to help prevent fraud, waste, and abuse.

S. 297, introduced February 7, 2011, by Senator Rockefeller, amends Section 254 of the Communications Act of 1934 to provide for a permanent exemption for the USF from the Antideficiency Act.

111th Congress

The House Subcommittee on Communications, Technology, and the Internet and the Senate Commerce Committee are among the committees that held hearings on USF reform and the FCC's national broadband plan. Former House Communications Subcommittee Chairman Boucher and Representative Terry released, on July 22, 2010, a bill (H.R. 5828) which addressed comprehensive reform of the USF. H.R. 5828, the "Universal Service Reform Act of 2010," provided for a major restructuring of the USF. Included among its provisions were those that expanded the USF to include support for broadband services; widened the contribution base to support the USF; required the FCC to develop new cost models for calculating USF support; limited fund eligibility; prohibited the FCC from adopting a primary line restriction; and directed the FCC to establish performance goals and measures for each program to strengthen accountability. The House Communications Subcommittee held a hearing, September 16, 2010, on the measure, but no further action was taken.

Then-House Energy and Commerce Committee Chairman Waxman and other committee members also expressed interest in examining USF reform and released USF data requested by committee and subcommittee members from the FCC, focusing on USF support, that is being used to better understand the USF and its operations.[86]

Legislation (H.R. 3646, H.R. 4619, S. 2879) to expand the role of the USF was introduced. In a move to address the issue of affordability of broadband for low-income households Representative Matsui introduced, on September 24, 2009, H.R. 3646, the "Broadband Affordability Act of 2009." This measure expanded the USF's low-income Lifeline program to include subscribership to broadband services at reduced rates. Eligibility requirements were the same as those used for the current Lifeline telephone program. The FCC was tasked with establishing the amount of support and determining whether state matching funds will be required for participation. Broadband service provider were required to obtain FCC authorization to participate in the program, but the program was neutral as to what type of technology is used and did not require a provider to be classified as eligible telecommunications carrier. H.R. 4619, the "E-Rate 2.0 Act of 2010," introduced February 9, 2010, by Representative Markey, expanded the E-rate program to address access to broadband. This bill created three temporary pilot programs to expand access to broadband by: extending funding to qualifying low-income students for vouchers to be used for monthly service fees for broadband services at home; expanding the E-rate program to include discounts for community colleges and head start programs; and funding an electronic books project. H.R. 4619 also called for the FCC to take steps to "streamline and simplify" the E-rate program application process and adjusted the current $2.25 billion annual program cap to account for inflation.

S. 2879, the "Broadband Opportunity and Affordability Act," introduced on December 11, 2009, by Senator Rockefeller, directed the FCC to conduct a two-year pilot program by expanding the Lifeline program, to include broadband services. The FCC was tasked with establishing the amount of support, determining whether state matching funds would be required for participation, and ensuring that the program is technologically neutral in terms of providers. After 18 months of operation the FCC was required to submit a report to the Senate Commerce and the House Energy

[86] This data was similar to that which was formerly requested in the 110th Congress by Representative Waxman who at the time was Chairman of the House Oversight and Government Reform Committee. For a further discussion of this activity in the 110th Congress see **Appendix B**.

and Commerce committees on the status of the pilot program. S. 2879 also required the FCC to initiate a notice of inquiry to determine whether the Link Up program should be expanded to reduce the cost of initiating broadband service and report its findings to the Senate Commerce and House Energy and Commerce committees.

Action to address the Antideficiency Act (ADA) exemption was also undertaken. In keeping with previous Congressional efforts legislation to extend the ADA exemption for one year periods was enacted. The Consolidated Appropriations Act, 2010, which was enacted into law (P.L. 111-117), contained a provision to extend the USF ADA exemption until December 31, 2010; this exemption was extended once again, until December 31, 2011, as part of the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082; P.L. 111-322). S. 348, introduced January 29, 2009, by Senate Commerce Committee Chairman Rockefeller, and H.R. 2135, introduced April 28, 2009, by Representative Rehberg, as well as provisions contained in H.R. 5828, provided for a permanent ADA exemption for the USF, but none of these measures received further consideration.

An additional provision pertinent to the USF is also contained in P.L. 111-117. This provision prohibits the FCC from using its FY2010 funds to limit USF support to a primary, or single, line.

Appendix A. USF Contribution Factors and State Support

Table A-1. Universal Service Fund Contribution Factors

Year	Quarter	Factor
2004	First	8.7%
	Second	8.7
	Third	8.9
	Fourth	8.9
2005	First	10.7%
	Second	11.1
	Third	10.2
	Fourth	10.2
2006	First	10.2%
	Second	10.9
	Third	10.5
	Fourth	9.1
2007	First	9.7%
	Second	11.7
	Third	11.3
	Fourth	11.0
2008	First	10.2%
	Second	11.3
	Third	11.4
	Fourth	11.4
2009	First	9.5%
	Second	11.3
	Third	12.9
	Fourth	12.3
2010	First	14.1%
	Second	15.3
	Third	13.6
	Fourth	12.9
2011	First	15.5%
	Second	14.9
	Third	14.4
	Fourth	15.3

Source: Quarterly Public Notices on universal service contribution factors. Federal Communications Commission.

Table A-2. USF Support by State 2009

Universal Service Support Mechanisms by State: 2009
(Annual Payments and Contributions in Thousands)

State or Jurisdiction	Payments from USF to Service Providers [1]								Estimated Net Dollar Flow [3]
	High-Cost Support	Low-Income Support	Schools & Libraries	Rural Health Care	Total		Estimated Contributions [2]		
					Amount	% of Total	Amount	% of Total	
Alabama	$100,061	$25,652	$28,922	$229	$154,864	2.13%	$118,935	1.60%	$35,929
Alaska	168,272	24,480	22,542	29,122	244,417	3.37%	19,511	0.26%	224,906
American Samoa	3,939	39	4,282	141	8,400	0.12%	516	0.01%	7,885
Arizona	67,204	21,813	49,278	1,954	140,249	1.93%	146,289	1.97%	-6,040
Arkansas	148,253	4,019	14,974	401	167,647	2.31%	68,063	0.91%	99,584
California	107,508	194,238	281,161	942	583,849	8.05%	822,527	11.05%	-238,678
Colorado	79,397	2,905	14,452	234	96,989	1.34%	132,967	1.79%	-35,979
Connecticut	-390	5,389	22,255	0	27,253	0.38%	99,000	1.33%	-71,746
Delaware	226	661	831	0	1,719	0.02%	27,334	0.37%	-25,615
Dist. of Columbia	0	1,077	8,440	0	9,518	0.13%	34,291	0.46%	-24,773
Florida	70,396	74,720	75,933	854	221,903	3.06%	495,839	6.66%	-273,936
Georgia	136,139	33,514	67,875	1,989	239,517	3.30%	243,770	3.27%	-4,253
Guam	16,650	307	334	101	17,392	0.24%	3,904	0.05%	13,488
Hawaii	58,416	495	1,930	196	61,037	0.84%	36,936	0.50%	24,101
Idaho	50,779	3,603	4,750	257	59,389	0.82%	37,003	0.50%	22,386
Illinois	74,939	13,649	63,987	1,389	153,964	2.12%	307,767	4.13%	-153,803
Indiana	74,418	4,917	22,702	822	102,858	1.42%	145,484	1.95%	-42,626
Iowa	127,435	4,314	9,899	571	142,218	1.96%	67,353	0.90%	74,865
Kansas	230,301	3,128	15,278	327	249,034	3.43%	65,855	0.88%	183,179
Kentucky	101,805	9,802	28,136	708	140,451	1.94%	97,031	1.30%	43,420
Louisiana	156,494	12,011	35,427	40	203,972	2.81%	106,388	1.43%	97,584
Maine	27,443	6,798	6,159	63	40,463	0.56%	31,580	0.42%	8,883
Maryland	3,966	858	9,850	0	14,673	0.20%	163,148	2.19%	-148,475
Massachusetts	2,413	21,043	22,729	150	46,335	0.64%	169,539	2.28%	-123,204
Michigan	63,193	30,329	51,300	941	145,763	2.01%	212,378	2.85%	-66,615
Minnesota	127,037	7,043	17,168	2,637	153,885	2.12%	118,125	1.59%	35,760
Mississippi	281,267	9,880	29,982	148	321,278	4.43%	66,750	0.90%	254,528
Missouri	108,639	8,198	26,168	578	143,583	1.98%	143,845	1.93%	-262
Montana	79,855	3,875	4,201	843	88,774	1.22%	25,215	0.34%	63,560
Nebraska	116,611	2,157	9,004	1,391	129,163	1.78%	41,711	0.56%	87,452
Nevada	25,570	2,906	4,295	73	32,845	0.45%	69,280	0.93%	-36,435
New Hampshire	8,576	746	2,285	11	11,617	0.16%	36,248	0.49%	-24,631
New Jersey	1,058	15,053	37,106	0	53,218	0.73%	248,888	3.34%	-195,671
New Mexico	71,391	14,595	26,912	386	113,284	1.56%	48,248	0.65%	65,036
New York	44,967	60,082	237,857	62	342,968	4.73%	480,589	6.46%	-137,621
North Carolina	85,635	33,899	57,744	312	177,591	2.45%	225,632	3.03%	-48,041
North Dakota	94,452	3,101	3,560	1,201	102,314	1.41%	16,438	0.22%	85,877
Northern Mariana Is.	1,309	168	1,142	0	2,619	0.04%	806	0.01%	1,813
Ohio	33,858	36,707	63,578	426	134,569	1.85%	259,335	3.48%	-124,767
Oklahoma	142,547	71,141	35,314	809	249,812	3.44%	78,444	1.05%	171,368
Oregon	78,826	5,413	15,057	312	99,608	1.37%	89,978	1.21%	9,629
Pennsylvania	57,770	21,603	69,524	109	149,006	2.05%	307,789	4.13%	-158,783
Puerto Rico	74,387	28,854	8,735	0	111,977	1.54%	69,074	0.93%	42,902
Rhode Island	34	3,425	5,466	0	8,925	0.12%	24,456	0.33%	-15,531
South Carolina	98,376	9,629	37,412	47	145,463	2.00%	110,601	1.49%	34,863
South Dakota	97,338	3,334	5,536	1,388	107,595	1.48%	19,168	0.26%	88,427
Tennessee	58,896	31,349	49,110	242	139,598	1.92%	157,946	2.12%	-18,349
Texas	262,049	101,914	155,009	889	519,860	7.16%	518,620	6.97%	1,241
Utah	19,221	3,808	15,628	666	39,323	0.54%	55,550	0.75%	-16,226
Vermont	21,208	2,576	1,382	115	25,282	0.35%	18,062	0.24%	7,220
Virgin Islands	15,986	77	2,014	74	18,152	0.25%	5,136	0.07%	13,016
Virginia	72,933	15,198	29,056	731	117,918	1.63%	209,307	2.81%	-91,389
Washington	94,459	17,704	27,850	80	140,092	1.93%	155,701	2.09%	-15,609
West Virginia	58,640	1,189	10,647	308	70,784	0.98%	49,119	0.66%	21,665
Wisconsin	139,287	9,341	22,569	5,281	176,478	2.43%	125,210	1.68%	51,268
Wyoming	50,740	469	3,559	148	54,917	0.76%	15,103	0.20%	39,813
Total	$4,292,180	$1,025,194	$1,878,295	$60,698	$7,256,367	100.00%	$7,443,781	100.00%	-$187,414

Notes: Figures may not add due to rounding. Support payments do not include quarterly true-ups. USF is an abbreviation for the Universal Service Fund.

[1] Data from USAC's Annual Report.

[2] Estimated contributions include administrative cost of approximately $187 million, as shown in USAC's Annual Report. Allocations of contributions among states is an FCC staff estimate.

[3] Net dollar flow is positive when payments from USF to carriers exceed contributions to USF. Total is negative because of administrative expenses.

Source: Universal Service Monitoring Report, Table 1.12, Federal Communications Commission. December 2010.

Appendix B. Congressional Activity: 110th Congress

The 110th Congress took an active role regarding USF oversight and reform. Legislative measures to address the reform, restructuring, and expansion into broadband of the USF were introduced (S. 101, S. 711, S. 3491, H.R. 42, H.R. 2054, H.R. 5806, H.R. 6320, H.R. 6356, H.R. 7000), but not enacted. The Senate Commerce Committee held a March 1, 2007, hearing on the challenges facing the USF and the House Telecommunications Subcommittee held a June 24, 2008, hearing focusing on the future of universal service including the role of broadband and its role in the future of the program. FCC oversight hearings held by the Senate Commerce Committee and the House Telecommunications Subcommittee, as well as hearings on broadband deployment held by the House Small Business Committee included examination of USF issues. Furthermore, the Senate Commerce Committee held a June 12, 2007, hearing to examine the federal-state Joint Board's recommendation that the FCC place an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers receive for each state from the High Cost program. (For a further discussion of this proposal see the section on "Capping," above.)

The House Oversight and Government Reform Committee under the direction of then-Chairman Waxman requested information from industry recipients as part of an oversight investigation of the USF. The inquiry focused on the High Cost Fund portion of the program and requested information from 24 companies that, according to the FCC, are the top 10 recipients of federal high cost funds from 2006 through 2008 as well as the those that have received the 10 highest per-line subsidies, by location, for 2006 and 2007. According to a memorandum[87] Chairman Waxman sent to the committee, he was not accusing any of these companies of wrongdoing, but felt that the gathering of additional information about and committee oversight of the USF program will "benefit" the program and "may offer useful information to the state and federal policymakers as they formulate proposals for USF reform." This inquiry, he further stated, "is consistent with the Committee's strong interest in ensuring accountability in both the government and private sector."[88]

A provision to extend for one year (until December 31, 2007) the USF exemption from the Antideficiency Act (ADA) was passed as part of the FY2007 continuing resolution (H.J.Res. 20) and was signed into law (P.L. 110-5). Another one-year extension (until December 31, 2008) was passed as part of the Consolidated Appropriations Act of 2008 (H.R. 2764; P.L. 110-161). Two stand-alone measures (H.R. 278, S. 609) as well as provisions contained in S. 101 and H.R. 2054 calling for a permanent ADA exemption were introduced, but not enacted. Two additional provisions pertinent to the USF are also contained in P.L. 110-161. One provision prohibits the FCC from using its FY2008 funds to limit USF support to a primary, or single, line. The other provision permits the transfer of up to $21,480,000 of FY2008 funds from the USF to monitor the USF to prevent and remedy fraud, waste, and abuse, and to conduct audits and investigations by the OIG.

[87] Memorandum to Members of the Committee on Oversight and Government Reform, from Chairman Henry A. Waxman, regarding Universal Service Fund High Cost Program Subsidies, July 28, 2008. Available at http://oversight.house.gov/documents/20080728094856.pdf.

[88] Examples of the letters sent to the companies are available at http://oversight.house.gov/story.asp?ID=2123.

P.L. 110-161 (H.R. 2764)

Consolidated Appropriations Act, 2008. For the USF extends for one year (until December 31, 2008) the USF exemption for the Antideficiency Act (Title V, §510); prohibits the FCC from using its FY2008 funds to limit USF support to a primary, or single, line (Title V, §511); permits the transfer of up to $21,480,000 of FY2008 funds from the USF to monitor the Program to prevent and remedy fraud, waste, and abuse, and to conduct audits and investigations by the OIG (Title V, FCC Salaries and Expenses). Signed by President, December 26, 2007.

P.L. 110-5 (H.J.Res. 20)

Revised Continuing Appropriations Resolution, 2007. Extends for one year (until December 31, 2007) the USF exemption for the Antideficiency Act (§20946). Signed by President, February 15, 2007.

H.R. 42 (Velázquez)

The Serving Everyone with Reliable, Vital Internet, Communications, and Education Act of 2007. A bill to amend the Communications Act of 1934 to continue in effect and expand the Lifeline Assistance Program and the Link Up Program, and for other purposes. Introduced January 4, 2007; referred to the Subcommittee on Telecommunications and the Internet February 2, 2007.

H.R. 278 (Cubin)

A bill to amend section 254 of the Communications Act of 1934 to provide that the funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of Title 31, United states Code, commonly known as the Antideficiency Act. Introduced January 5, 2007; referred to the Subcommittee on Telecommunications and the Internet February 2, 2007.

H.R. 2054 (Boucher)

The Universal Service Reform Act of 2007. A bill to reform the universal service provisions of the Communications Act of 1934, and for other purposes. Introduced April 26, 2007; referred to the Committee on Energy and Commerce.

H.R. 2829 (Serrano)

The Financial Services and General Government Appropriations Bill, 2008. A bill to provide for FY2008 appropriations for selected agencies including the FCC.

The House-passed version contained a provision to authorize the FCC to transfer up to $20.98 million from the USF to monitor and conduct audits of the USF to prevent fraud, waste, and abuse; passed (240-179) the House, June 28, 2007. The Senate Appropriations Committee-passed version contains language that extends for one year (December 31, 2008) the exemption of the USF from the Antideficiency Act (Title V, §501) and prohibits limiting USF funding to a single, or primary line (Title V, §502). Reported out of committee July 13, 2007 (S.Rept. 110-129).

H.R. 5806 (Rush)

The School Emergency Notification Deployment Act. A bill to permit universal support (E-rate funds) to public and nonprofit elementary and secondary schools under the Communications Act of 1934 to be used for enhanced emergency notification services. Introduced April 15, 2008; referred to the Committee on Energy and Commerce.

H.R. 6320 (Markey)

The Twenty-first Century Communications and Video Accessibility Act of 2008. A bill to ensure that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st Century. Introduced June 19, 2008; referred to the Committee on Energy and Commerce.

H.R. 6356 (Barton)

The Universal Service Reform, Accountability, and Efficiency Act of 2008. A bill to reform the collection and distribution of universal service support under the Communications Act of 1934. Introduced June 24, 2008; referred to the Committee on Energy and Commerce.

H.R. 7000 (Waxman)

The Universal Roaming Act of 2008. A bill to require any eligible carrier receiving universal service support for the provision of services for rural, insular, and high cost areas to offer automatic roaming services to any technically compatible carrier upon request. Introduced September 23, 2008; referred to the Committee on Energy and Commerce.

S. 101 (Stevens)

The Universal Service for Americans Act, or USA Act. A bill to update and reinvigorate universal service provided under the Communications Act of 1934 and to exempt universal service contributions and disbursements from the Antideficiency Act. Introduced January 4, 2007; referred to the Committee on Commerce, Science, and Transportation January 4, 2007.

S. 609 (Rockefeller)

A bill to amend Section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of Title 31, United States Code, commonly known as the Antideficiency Act. Introduced February 15, 2007; referred to the Committee on Commerce, Science, and Transportation February 15, 2007.

S. 711 (Smith)

The Universal Service for the 21st Century Act. A bill to amend the Communications Act of 1934 to expand the contribution base for universal service, establish a separate account within the universal service fund to support the deployment of broadband service in unserved areas of the United States, and for other purposes. Introduced February 28, 2007; referred to the Committee on Commerce, Science, and Transportation.

S. 3491 (Stevens)

The Telehealth for America Act of 2008. A bill to amend the Communications Act of 1934 to improve the effectiveness of rural health care support under section 254(h) of that act. Introduced September 16, 2008; referred to the Committee on Commerce, Science, and Transportation.

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