

**COMPTEL’s Response to Questions in House Energy and Commerce White Paper
“Universal Service Policy and the Role of the Federal Communications Commission”**

COMPTEL, the leading industry association for competitive communications service providers, submits its response to the questions in the Committee on Energy and Commerce’s fifth white paper, which focuses on the nation’s universal service policy for communications services.¹ For more than 30 years, COMPTEL and its members have advocated for pro-competitive policies that will ensure all consumers benefit from the innovation and investment that robust competition brings to the communications marketplace.

COMPTEL’s membership has a diverse interest in the nation’s universal service policies. First, COMPTEL’s members are contributors to the Universal Service Fund (“USF”) and the members generally pass through those contributions to their customers as permitted by the Federal Communications Commission’s (“FCC”) rules.² Second, many of COMPTEL’s members provide services to customers that are partially subsidized by the USF. We have some members (or their affiliates) that serve rural areas and participate in the high-cost program. We have members that offer Lifeline service (both wireline and wireless) to low-income consumers. We also have members that provide E-rate services to schools and libraries, and members that provide services to rural healthcare facilities that receive support through the Rural Healthcare program.

¹ “Universal Service Policy and the Role of the Federal Communications Commission,” House Energy & Commerce Committee, *available at* <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20140822White%20Paper-USF.pdf> (rel. Aug. 22, 2014).

² 47 C.F.R. § 54.712.

Effective universal service policies are key to ensuring that *all* Americans, including residential, business, government, anchor institutions, rural, urban and low income—benefit from the world-class communications networks and services available in the U.S. When the value of a product increases with the number of consumers who purchase it, network effects arise. Telecommunications products and services become more valuable to an individual subscriber as the number of other people or websites he or she can reach using the products and services increases. As a result, the more consumers that are connected to and subscribe to telecommunications networks, the more valuable the networks become for all subscribers.

Since 2011, the FCC has significantly reformed each of the four programs supported by USF. In general, these reforms were designed to modernize the programs to better reflect the use and value of broadband services and ensure their availability in rural areas, to schools and libraries, and to rural healthcare facilities.

The FCC’s high-cost reforms, which were adopted on a bipartisan, unanimous basis in November 2011³, have the potential to deliver more fixed and mobile broadband networks and services in rural areas. In the *USF/ICC Transformation Order*, the FCC found that fixed and mobile broadband services have become “critical to our nation’s economic growth, global competitiveness, and civic life” and that the existing USF regime had to be reformed to ensure that all Americans would benefit from the availability of broadband networks.⁴ The Commission adopted the Connect America Fund and Mobility Fund to promote the availability of fixed and mobile broadband networks, respectively. It also adopted the

³ See *In the Matter of Connect America Fund*, WC Docket Nos. 10-90 *et al*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 5 (2011), *aff’d sub nom. In re FCC11-161*, 703 F.3d 1015 (10th Cir. 2014) (“*USF/ICC Transformation Order*”), available at [FCC-11-161A1.pdf](#).

⁴ *Id.* at ¶ 3.

following goals for reform: (1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.⁵ The FCC's latest data show that approximately 19 million Americans still lack access to fixed broadband service at threshold speeds and that up to 150 million Americans are unserved by mobile wireless data services at threshold speeds, many of whom live in rural areas.⁶

Unfortunately, implementation of the high cost reforms has been slower than anticipated. COMPTTEL has advocated that the FCC should continue on a path toward implementing the reforms expeditiously, maintain its original goal of addressing unserved areas for both fixed and mobile networks and ensure ongoing operational support for such networks where there is not a business case to be made to offer service.⁷ The availability of voice and broadband services to all Americans is critical to achieving the most value for all consumers.

⁵ *Id.* at ¶48.

⁶ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eighth Broadband Progress Report, FCC 12-90, at ¶¶1, 5, 90 (rel. Aug. 21, 2012), available at [FCC-12-90A1.pdf](#)

⁷ Reply Comments filed by COMPTTEL in WC Docket Nos. 10-90, *et al.*, on September 8, 2014, available at [View \(24\)](#).

Just a few months ago, the FCC voted to modernize the E-rate program⁸ to ensure better broadband connectivity within schools and libraries, and the FCC continues to consider additional changes in the program to improve broadband connectivity to schools and libraries. The availability of competitive choice in providers and in the provision of services has benefitted the E-rate program, and COMPTTEL and its members have encouraged the Commission to maintain the competitive bidding requirements. The FCC's latest reform has introduced some limited exceptions to the competitive bidding process, and it remains to be seen whether the alleged benefits of these exceptions will outweigh the efficiencies that can be gained through competitive bidding, such as lower prices and more innovative services.

The FCC's reform in the Rural Healthcare Program adopted in late 2012⁹ was based on lessons learned from its pilot program and is intended to promote the availability of rural healthcare networks to advance telemedicine and the availability of healthcare in rural areas. In addition, the Commission's Telecommunications Program continues to provide support for telecommunications and broadband services to qualifying rural healthcare facilities. COMPTTEL supports the continuing availability of both programs to ensure healthcare providers can choose the best solution that will deliver quality services at affordable rates. COMPTTEL also strongly supports the competitive bidding requirements in both programs.

⁸ *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014), available at [FCC-14-99A1.pdf](#).

⁹ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150, (rel. Dec. 21, 2012), available at [FCC-12-150A1.pdf](#).

The Lifeline program currently provides a subsidy to make basic telephone service more affordable for low-income consumers. The FCC's 2012 reform¹⁰ took significant steps to reduce the inefficiencies in the program and to ensure that both providers and customers are abiding by the program's rules. The FCC implemented a national Lifeline Accountability Database to eliminate duplicate claims for service, but has yet to create a database that service providers may access to verify a prospective customer's eligibility for service as contemplated by the 2012 reforms. The FCC should strengthen the Lifeline program and benefits to appropriately address the evolving communications needs of low-income consumers, complete its implementation of the Lifeline reforms adopted in early 2012, and complete and issue a report on its broadband pilot project to determine how best to meet the broadband communications needs of low-income consumers on a going forward basis.

All providers of telecommunications services are required to contribute to the USF to support these programs. The FCC has had pending since 2006 a proceeding to consider the possible reform of the USF's contribution regime.¹¹ Recently, the FCC adopted an Order that asks the Federal-State Joint Board on Universal Service ("Joint Board") to review the FCC's

¹⁰ *In re Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, (rel. Feb. 6, 2012), available at [FCC-12-11A1.pdf](#). Prior to the Report and Order, the FCC began taking steps in June 2011 to reduce the incidence of duplicate coverage, and its February 2012 Order continued to reform the program's rules to eliminate duplicate coverage.

¹¹ *In the matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-94, (rel. June 27, 2006), available at [FCC-06-94A1.pdf](#). In 2012, the Commission issued a Further Notice to refresh the record. *In the matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46, (rel. April 30, 2012), available at [FCC-12-46A1.pdf](#).

contribution reform record and provide its recommendations for reform by April 7, 2015.¹² As the FCC moves to reform universal service funding, it is important that the contribution base be as broad as possible to include both telecommunications and broadband services, so that the USF will be more equitable for contributors and help lessen the growing burden on voice telecommunications providers and consumers.¹³ As noted above, many of the reforms that have been adopted in the universal service programs have been based upon the goal of ensuring access to broadband networks and services and USF largely supports broadband. However, subscribers to broadband services do not currently contribute to USF. The full burden falls on subscribers to telecommunications services, which has created an inequitable situation. Telecommunications consumers who may not necessarily subscribe to broadband services are nonetheless required to support them through contributions to the USF.¹⁴

Moreover, it is important that universal service policies do not discourage competition, but certain FCC policies and rules have that effect. For example, competitors that purchase telecommunications inputs from incumbent carriers to provide broadband services are required to pay double digit universal service assessments on the price of the inputs, while incumbents who provide broadband services using their own facilities are not required to pay into the USF

¹² *In the matter of Federal State Joint Board on Universal Service, Universal Service Contribution Methodology*, WC Docket Nos. 96-45 *et al.*, Order, FCC 14-116 (rel. Aug. 7, 2014), available at [FCC-14-116A1.pdf](#).

¹³ Under the FCC's current rules, only telecommunications services – i.e., voice services – contribute to the Fund.

¹⁴ For example, approximately 30 percent of Americans do not have broadband connections at home, whereas over 97 of American households have telephone service at home. See Broadband Technology Fact Sheet, available at <http://www.pewinternet.org/fact-sheets/broadband-technology-fact-sheet/>; National Health Interview Survey Early Release Program, Wireless Substitution: Early Release of Estimates, available at [Centers for Disease Control and Prevention](#).

on the telecommunications inputs used to provide broadband service. Both consumers and competitive providers of broadband service are at a disadvantage when competitive providers are required to pay universal service fees on leased telecommunications inputs of a broadband Internet access service, while incumbents do not have to pay universal service fees on these services at all. Accordingly, COMPTTEL has advocated that the FCC should revisit this issue expeditiously so that broadband competition is promoted.

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

As discussed above, COMPTTEL supports an expansion of the contribution base to include both telecommunications and broadband services, given that the Fund largely supports the availability of broadband networks and services. Section 254(d) of the Communications Act, 47 U.S.C. § 254(d), provides that every telecommunications carrier that provides interstate telecommunications service shall contribute to the Universal Service Fund. This mandate is consistent with the fourth principle set forth in Section 254(b)(4), 47 U.S.C. § 254(b)(4), that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. Because the FCC has classified broadband Internet access services as information services, rather than telecommunications services, the FCC does not require broadband service providers to contribute to the Fund. In order to ensure that all telecommunications and information service providers bear an equitable share of the cost of preserving and advancing universal service, Congress should modify the fourth principle so that, at the very least, all providers of services that are supported by universal service funding are required to make an equitable and

nondiscriminatory contribution to the Universal Service Fund. Expanding the contribution base to include broadband, as well as telecommunications services, will alleviate some of the inequities that exist in the Fund today and hopefully avoid inequities in the future as the definition of supported service may be modified over time.¹⁵

The two non-statutory principles that have been adopted and implemented by the FCC – competitive neutrality and the use of universal service support for networks that provide advanced services as well as voice – should be codified and incorporated in the statute. Given the evolution of communications services and technology since the 1996 Telecommunications Act and the likelihood that communications services and technology will continue to evolve, COMPTTEL submits that it is also important for Congress to maintain the flexibility afforded the FCC and the Joint Board to add other universal service principles that are “necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the Act.” 47 U.S.C. § 254(b)(7).

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

High-cost universal service was created not only to fund wireline network build-outs in areas incapable of economically supporting network investment, but also to subsidize the continuing operating expenses of such networks. The statute specifies that one of the guiding principles on which the FCC should base its policies for the preservation and advancement of universal service is that consumers in all regions of the nation, including those in rural, insular and high-cost areas, should have access to telecommunications and information services that

¹⁵ Congress should also amend Section 254(d) to require contribution from broadband as well as voice telecommunications service providers.

are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. §254(b)(3). In today's marketplace, both fixed wireline service and mobile wireless service have become essential communications tools for consumers and Congress should ensure that universal service policies continue to promote the availability of both types of service, especially in high-cost and hard to serve rural areas.

A competitive choice of services and providers brings many benefits. The other three USF programs generally subsidize services (as compared to subsidizing network build-outs). Competitive providers are permitted to participate in these programs and bring tremendous value to the table. Competition in these programs helps drive prices down and improves service to participants, including schools, libraries, qualifying healthcare facilities, and low-income consumers. Lower prices and the availability of better services make these programs more efficient and effective, benefitting all those who receive support from the Fund, as well as those who contribute to the USF.

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

Affirmative actions by the states to promote universal service in their own geographic areas can lessen the burden on the federal program. Accordingly, states should be encouraged to promote universal service for advanced networks and services as well as voice services. The Federal – State Joint Board's work on universal service issues has contributed greatly to the formulation and development of the FCC's rules and policy objectives for universal service since the 1996 Act, and COMPTTEL believes that state input through the Joint Board process should continue. Many states have their own universal service programs and coordination between the federal and state programs to achieve shared objectives occurs

through the Joint Board process. Although the partnership between the federal government and state governments to promote universal service has largely been effective, there is still more work to be done to ensure that all consumers have access to basic and advanced services at just, reasonable and affordable rates. The Joint Board process has been and can in the future be used to help facilitate these positive results.

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

As the Committee is aware, both the Federal-State Joint Board on Universal Service and the Federal-State Joint Board on Separations are required by statute. 47 U.S.C. §§ 254, 410. As discussed above, the Federal-State Joint Board on Universal Service has a continuing role to play in achieving the objective of access to basic and advanced telecommunications services at just, reasonable and affordable rates for all Americans.

The Joint Board on Separations makes recommendations to the FCC regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations. Incumbent local exchange carriers are generally required to separate property and costs by the jurisdiction of the services provided (interstate vs. intrastate) for purposes of rate regulation. Traditional wireline telephone service remains regulated in approximately half the states and as a result, the separations process remains relevant in those states. In determining the future of the Joint Board on Separations, the Committee should carefully evaluate the network, market and regulatory changes that have occurred in the last decade and a half and should consult with the FCC and the states on the ongoing need for the Joint Board on Separations.

In contrast to the Joint Boards, the Joint Conference was created by the FCC during Chairman William Kennard's tenure. It has recently been focused on raising the profile of and encouraging broadband best practices and adoption. Lowering barriers to broadband availability and encouraging adoption of broadband are both in the public interest and complement the statute's overall universal service goals.

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

Both the Broadband Technology Opportunities Program ("BTOP") and the Broadband Initiatives Program ("BIP") were created by the American Recovery and Reinvestment Act of 2009 and provided one-time funding grants for the buildout of broadband networks in primarily unserved and underserved areas. As of the end of 2013, BTOP grantees built, upgraded or leased more than 112,000 miles of fiber and fixed wireline broadband connections,¹⁶ and BIP awardees will provide broadband access to 2.8 million households, 364,000 businesses and 32,000 anchor institutions across more than 300,000 square miles in rural America,¹⁷ thereby narrowing the digital divide. Because applications for BTOP and BIP funds are no longer being accepted, the question of whether they are necessary or not is moot.

The Rural Utility Service also provides grants and loans for funding the costs of construction, improvement and acquisition of facilities to provide broadband service to rural communities. Rural providers that rely on these grants and loans may otherwise not be able to

¹⁶ Remarks by Chief of Staff Glenn Reynolds at Building a Community Broadband Roadmap Workshop (September 14, 2014) available at [Remarks by Chief of Staff Reynolds at Building a Community Broadband Roadmap Workshop | BroadbandUSA - NTIA](#).

¹⁷ About the Recovery Act BIP, available at [USDA Rural Development-UTP Broadband Initiatives Program Main](#).

afford to undertake the expense of upgrading their networks or extending their networks to provide broadband service to sparsely populated or other rural areas. The Rural Utility Service funding programs remain necessary to facilitate the delivery of broadband service to Americans living and working in rural communities.

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

See response to Question 1. COMPTTEL supports reasonable budgets to ensure that the USF meets its statutory and regulatory objectives, but also submits that policymakers must be sensitive to the financial burden imposed on consumers paying into the USF. Contribution reform must be undertaken by the FCC without further delay.

As noted in the introduction, contribution reform has been pending before the FCC since 2006 with no action. Since that time, the FCC has expanded the permissible uses of universal service funds to include the support of broadband Internet access service, but continues to exempt such services from contribution to the Universal Service Fund. As a result, the entire burden of subsidizing both telecommunications and information services falls on voice customers, whose interstate services are assessed at the rate of 16 percent.¹⁸ The FCC must broaden the contribution base to include all of the services and technologies that people in the 21st century use to communicate. Doing so would substantially reduce the inequities in the current contribution system, as well as the assessment factor that carriers and customers are required to bear.

¹⁸ <http://www.fcc.gov/document/proposed-4th-quarter-usf-contribution-factor-161-percent>.

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

Yes, as described in the introduction, each of the universal service programs has greatly contributed to ensuring that all Americans have access to telecommunications and advanced services and they continue to be necessary, perhaps even more so, in the modern communications marketplace. Each of the funds is targeted toward providing assistance to different audiences to ensure that (1) customers in high cost, rural areas have access to services comparable to those available in urban areas at comparable rates; low income customers have access to affordable telecommunications services; schools and libraries have access to the advanced services necessary to provide today's students with the educational advantages required to succeed in the 21st Century at affordable rates; and public and non-profit healthcare providers serving rural areas have access to the telecommunications services necessary to provide healthcare services at rates comparable to the rates charged in urban areas.

Rather than cutting back on or eliminating any of the funds, Congress may want to focus on directing the FCC to increase accountability in the distribution and use of universal service funds. The Universal Service Administration Company ("USAC"), acting at the direction of the FCC, collects universal service contributions from carriers and distributes the funds to eligible telecommunications carriers or schools, libraries and healthcare providers. In its Universal Service reform proceedings, the FCC has adopted requirements and procedures designed to curtail waste, fraud and abuse in the programs, but those requirements and procedures have not yet been fully implemented.

8. In lieu of the current support mechanisms, could any of the programs be better managed or made more efficient by conversion to:
 - a. A state block grant program;
 - b. A consumer-focused voucher program;
 - c. A technology-neutral reverse auction; or,
 - d. Any other mechanism.

As discussed above, each of the programs has undergone major reform in less than five years. Some of these reforms are still being implemented. An assessment of the effectiveness of the reforms should be undertaken prior to implementing sweeping legislative changes. Moreover, the cost for implementing and operating the programs under any new models should be carefully evaluated prior to adoption.

Thank you for the opportunity to comment.

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