



ZAG/S&W LLP TELECOMMUNICATIONS ADVISORY

FCC Seeks Comments on the Role of Universal Service Fund and Intercarrier Compensation in National Broadband Plan

Over the next couple of weeks, the FCC will be receiving input that could play a significant role in the future of both the Universal Service Fund (USF) and Intercarrier Compensation (ICC). In response to requests from AT&T, T-Mobile and others, the FCC has requested that the industry provide its recommendations on how USF and ICC might be reformed as part of the National Broadband Plan, which the FCC must deliver to Congress in February 2010.

In a [Public Notice](#) released on November 13, the FCC requested comments in seven general categories. But within each of those categories, the FCC asked for substantial detail on a wide assortment of issues. The industry will be watching this proceeding closely as it has the potential to significantly change the FCC's USF and ICC policies. Comments are due on December 7, 2009. No deadline for Reply Comments has been set thus far.

Below is a brief look at the seven categories covered by the Public Notice, along with a synopsis of some of the details as to which the FCC is seeking input:

1) Size of the USF: The FCC asks whether the amount of funding for each of the four support mechanisms (high-cost, low-income, schools and libraries, and rural health care) is sufficient to achieve universal broadband, or whether the support afforded to each mechanism should be adjusted. For those recommending significant adjustments, the FCC asks for detailed suggestions on whether funds should be reduced from other mechanisms, and how such changes would affect the FCC's broadband objectives.

2) Contribution Methodology: The FCC seeks comments on whether its current contribution assessment methodology should be modified, perhaps switching to a numbers or connections-based methodology, expanded revenue-based methodology, or a combination of the two. The FCC requests details on how various proposals would impact end users, alter the proportion of contributions borne by residential versus business consumers, and potentially impact residential households with varying consumption characteristics.

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3) Transitioning the Current Universal Service High-Cost Support Mechanism to Support Advanced Broadband Deployment:

The FCC asks a bevy of questions related to the reformation of the USF high-cost mechanism. It requests input on various reform proposals: one suggests the addition of programs targeting funding for broadband deployment in unserved areas; another proposes the gradual reduction of funding under the existing programs, transitioning that funding into a redesigned mechanism explicitly funding broadband. The FCC seeks detailed input and information regarding current use of funds, such as the percentage of high-cost support funds currently being used to maintain legacy networks, and the percentage being devoted to broadband-capable networks.

4) Impact of Changes in Current Revenue Flows:

The FCC asks for commenters to reconcile the debate on the effect that any significant reductions in current levels of high-cost support and/or ICC would have on the industry. The Public Notice highlights a fundamental difference in viewpoints: some commenters previously have asserted that reductions would “jeopardize their ability to continue to serve customers and advance the deployment of next generation broadband-capable networks,” while others contend that the current levels of support and compensation “have led to regulatory arbitrage and inefficient investment and have undermined the deployment of advanced communications.” The FCC requests input on reduction proposals such as the elimination of high-cost USF support for carriers in areas where there is already at least one competitor offering broadband, or alternatively, multiple competitors offering broadband. The FCC poses a multitude of questions on how any ICC reform would support or inhibit broadband deployment, requesting factual information or data “rather than conclusory assertions that intercarrier compensation should be reformed.”

5) Competitive Landscape: The FCC seeks input on USF mechanisms in the context of its competitive neutrality principles. Comments are sought concerning the disparity in regulatory obligations between facilities-based broadband providers that receive high-cost fund support, and those that do not. The Public Notice also solicits comments on carrier of last resort (COLR)

obligations imposed on voice services for incumbent local exchange companies operating in rural high-cost areas, highlighting the fact that there are no corresponding obligations for other providers offering voice, video and/or broadband in such areas.

6) High-Cost Funding Oversight: The FCC seeks insight into the types of oversight and accountability mechanisms necessary to minimize waste, fraud and abuse for future recipients of broadband high-cost support. Input is solicited concerning state practices and certain proposals such as mandatory reporting requirements.

7) Lifeline/Link Up: Following up on comments previously submitted concerning the extension of low-income support to establish a Broadband Lifeline/Link Up program, the FCC seeks additional details on the suggested structuring of such a program. The FCC solicits comments on the types of devices that could be involved, program qualifications, demand estimates, and many other details concerning the proposed program’s implementation.

As mentioned above, this is merely an overview of the host of issues cited by the FCC in its Public Notice. We strongly recommend that all clients review the Public Notice carefully, regardless of whether you plan on submitting comments. Should you have any questions, or if you are interested in submitting comments, please contact your S&W Telecommunications Group attorney as soon as possible.

For your convenience, below is a link to the Public Notice:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-2419A1.pdf

Draft USF Reform Bill Released

The long-awaited draft [Universal Service Reform Bill](#) crafted by U.S. Representatives Rick Boucher (D-Va.), and Lee Terry (R-Neb.) was released on November 6, with a hearing on the draft conducted just 11 days later. The Universal Service Reform Act of 2009 (the Act) would implement numerous, dramatic changes to USF in response to skyrocketing contribution rates amidst the

country's lagging broadband deployment and adoption.

In his introduction to the Nov. 17 hearing on the bill before the Subcommittee on Communications, Technology and the Internet, of which Rep. Boucher is the Chairman, Rep. Boucher stated that a comprehensive USF reform is necessary because the "status quo is not sustainable." Rep. Boucher cited the current contribution rate of 12 percent of long distance revenues, which is slated to rise to 14.2 percent in January. "Unless we enact comprehensive reforms, there will be continued escalation after that," he said.

The Act would make widespread changes to USF, including requiring competitive bidding for wireless providers and the use of USF funds for broadband deployment. Below is a brief synopsis of the sweeping changes proposed in the Act. A copy of the draft is included, and should be reviewed for a complete look at the proposed reforms.

PROPOSED CHANGES INCLUDE:

- The inclusion of broadband as a universal service. Those obtaining funds would be required to offer speeds of 1.5 mbps or greater within five years of the date of enactment (waivers will be available where such service would be technically or economically infeasible, and automatic waivers will be issued to providers demonstrating that their cost per line of deploying such service is at least three times the average cost among all wire centers)
- The introduction of a competitive bidding process to determine eligibility of mobile wireless communications service providers for USF support. In areas where at least three mobile providers are eligible to participate, the FCC would be required to issue a request for proposals identifying the area a winning bidder must serve and the minimum requirements for serving the area. The FCC would be able to select up to two winning providers in each service area, which would receive a flat subsidy for up to 10 years. In areas with less than three eligible providers, the FCC would continue to provide USF support at the per-line level in effect prior to the bill's enactment
- Capping the total amount of USF support for the high-cost program at its current level, plus the amount that the switch to wire center averaging and elimination of the "parent trap" (an FCC regulation providing that a carrier acquiring telephone exchanges from an unaffiliated carrier receives USF support at the same level for which those exchanges were eligible prior to the transfer) increase demand for USF support. The high-cost fund would also be subject to an annual growth factor based on the annual percentage change in the total number of rural ILEC working loops, if that number is positive, plus the annual percentage change in the Gross Domestic Product-Chain Price Index. There would also be a one-time, permanent increase in the cap if the FCC revises the ICC rules
- Changing the calculation methodology for the non-rural, high-cost portion of the fund from geographic to wire center averaging
- Allowing price-capped providers that are regulated on a forward-looking cost basis for all services other than USF contributions to opt to have the FCC also calculate their USF contributions on a forward-looking cost basis
- The assessment of contributions on any provider of a service that uses telephone numbers, IP addresses or their functional equivalents to provide or enable real time voice communications and in which the voice component is the primary function (such as VoIP providers), along with any provider that offers a network connection to the public (such as DSL, cable modem, WiMax and broadband over powerline providers)
- An amended federal USF contribution methodology based on revenues, numbers, or a combination of the two
- Limitations on the contributions of providers whose customers typically make a low volume of monthly calls, for additional phone numbers provided under a group or family pricing plan for residential customers, or from those with nearly zero communications activities
- The establishment of goals for each USF program, with accountability to Congress on its progress. The audit process would also be revised, providing that any appeal of a USAC finding related to an audit must be resolved by the FCC within six months after the date of filing
- Requiring the FCC to complete a proceeding to reform ICC within one year of the date of enactment
- Addressing "Traffic Pumping" by prohibiting access charge recovery when an entity that has a business, financial or contractual relationship

with a local exchange carrier relating to switched access revenues from such services offers a free or below-cost service

- Requiring carriers to identify all traffic originating on their networks, and requiring all intermediate carriers to pass along that information
- Clarifying who qualifies as a “health care provider” eligible for rural health care support
- Eliminating the “parent trap” referenced above
- Permanently exempting the USF from the Anti-Deficiency Act
- Prohibiting the FCC from adopting a primary line restriction

For more information on the details of the Act, reaction on Capitol Hill and developments on the legislation, please do not hesitate to contact the S&W Telecommunications Group.

A copy of the proposed Act is included here for your convenience:

<http://www.boucher.house.gov/images/usf%20discussion%20draft.pdf>

November 24, 2009