
Universal Service Support for Broadband – State and Federal Options

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Overview

1. Federal Options
2. State Options

Federal Reform - Prospects of Success

- Perpetual reform
 - Comprehensive reviews of separations and universal service have now been underway more or less continuously since 1994.
- Past policy reforms have been conservative.
 - Left existing support structures in place.
 - Made incremental adjustments.
 - When adding new programs, they were often designed for revenue replacement.

We are still arguing some basic points.

- ❑ Are markets likely to provide adequate facilities and service universally and at reasonably comparable rates?
 - ❑ Will there be market failure areas?
- ❑ Is telecommunications service a natural monopoly?
 - ❑ Economies of scale can mean that single suppliers can reach maximum efficiency of production and distribution.
 - Tends to occur where capital costs predominate.
 - Tend to occur with standardized products.
 - ❑ Once implicit subsidies are wrung out, do existing networks almost always have lower costs than a new entrant?
- Is a two-network market inherently unstable?

The Basics – Defining the Problem

- What do we want to achieve?
 - Universal deployment?
 - Universal adoption?
- Are there other goals?
 - Ensuring that ILECs stay in business?
 - Or will all telecommunications be over homogeneous IP networks in the future?
 - Creating incentives for competitive entry?

Defining the goal:

- **Who?** Must our goal address all residents of the USA, or only a high percentage, like 96%?
- **What?**
 - What speed goal is on our planning horizon?
 - Are we after multiple means of delivery such as wireline and wireless?
- **Where?** Some customers impose an extremely high cost of service on their carriers. Should we triage rural areas by technology?
 - Areas with only satellite service.
 - Areas with only satellite and wireless service.
 - Areas with copper-based service.
 - Areas with fiber to the premise.
- **When?** How many years out is that planning horizon?

Political Will

- Is there a broad consensus that universal service in rural areas is important?
 - Does a majority of the public even care?
 - Opposition from donor states
 - Opposition from donor carriers
 - How does USF compete with other governmental programs?
 - Is this as important as, say, health care, bridges, water mains?
 - Can the FCC's resource base be broadened?

More Basics: Intergovernmental Issues

- ❑ The states:
 - Have an interest in broadband.
 - ❑ States often try to leverage regulatory power (mergers, acquisitions) into increased investment benefits.
 - Set important policies that are integral to USF success:
 - ❑ COLR policies.
 - ❑ Wireline rate designs.
 - Urban-to-rural support flows.
 - Business-to-residential support flows.
 - Access to basic support flows.
 - Local calling area size
 - ❑ Have high cost programs.

Intergovernmental (cont.)

- The federal government
 - Limited information capacity
 - Broadband mapping,
 - Proprietary data
 - Customer locations
 - Limited fiscal capacity
 - Current USF rate > 12%
 - Current USA deficit = $\$1.24 \times 10^{12}$
 - Implicit support flows are far beyond what is realistic for the current federal USF base.

More basics: federal program design

- Do we want separate federal support systems for small carriers and large carriers?
- Are we willing to pick winners and losers for support? Or should support go to all competitors?
 - Auctions.
 - Competitive grants.
- What do we expect from supported carriers? Is there a specific quid pro quo?

Identifying Support Recipients

- When will COLR/ETC duties of today become irrelevant?
 - Duty to serve retail customers
 - Emergency services
 - Interconnection and collocation
 - UNEs
 - Special access
 - Tandem transport

Federal options to consider:

- ❑ How are the grants working?
 - ❑ Matching grants work well for highways, Medicaid, education.
 - ❑ But state commissions not always comfortable in this role.
- Broader options:
 - ❑ Reclassify wireline and cable broadband Internet access as a “telecommunications service.”
 - Simplifies legal issues of getting facilities built out to customers.
 - ❑ Include broadband in definition of supported services.
 - Not that costly if one also accounts for broadband revenues.
 - ❑ Broaden the contribution base to both telecommunications and broadband revenues.
 - ❑ Base high-cost USF support based on each company’ value contribution to the public or, alternatively, on its own costs.

State Broadband Policy:

- Constrained by federal preemptions
 - 2002 - Cable Modem ruling
 - An “information service” and not a “telecommunications service.”
 - Does not fall under the “common carrier” rules prescribed in Title II of the 1934 Act.
 - Service is “interstate.”
 - Upheld by Supreme Court in 2005.
 - 2005 - Wireline Broadband Order.
 - DSL is an interstate information service.
 - 2007 - Wireless broadband order.
 - Wireless broadband Internet access is an interstate information service.

Effects of Preemption

- Four topics:
 - Rates
 - Deployment of Facilities
 - Service quality and reliability
 - Taxes and contributions

Effects of Preemption - Rates

- May a state regulate the rates charged by a broadband provider?
 - No, unless it's offered in traditional telecom format.
 - Special access

Preemption - Deployment of Facilities

- ❑ For a century, the fact that states were preempted from regulating rates for interstate services did not block states from applying COLR duties.
 - States enforced the duty to serve.
 - States determined line extension policies and set limits on allowed construction charges.
 - States condemned property to create utility rights-of-way.
 - States supervised joint use of poles and conduits.
 - States set rates for intrastate services provided over those facilities.
- ❑ Carriers have said states cannot do these same things regarding DSL loops.
 - Even argued that states cannot ask for DSL deployment as a condition of approving an acquisition where the standard is public interest
- ❑ How has broadband preemption changed any of the above?

Preemption - Service Quality and Reliability

- ❑ For a century, the fact that states were preempted from regulating rates for interstate services did not block states from applying service quality and reliability standards.
 - SQ included facilities installation and repair standards.
 - SQ included customer service standards, such as answering the phone when customers call and sending repair trucks when there is an outage.
 - SQ included continued service during power outages.

- ❑ How has broadband preemption changed any of the above?

Preemption – Taxes and Contributions

- ❑ States can impose sales taxes on interstate telecommunications services. (Goldberg v. Sweet -1989)
 - Commerce Clause requires:
 1. Substantial nexus with state - Call billed to address in state or paid from address in state.
 2. Charges are “fairly apportioned” - State taxes only a fair share of interstate transaction.
 3. No discrimination against interstate commerce - Probably OK if burden falls on state residents.
 4. Charge fairly related to services purchased with proceeds.

Taxes and Contributions – Continued

- TCA96 – State can levy USF surcharges on carriers that offer intrastate telecommunications services.
 - Some courts have held this prevents states from imposing surcharges on interstate traffic.
 - Rationales have varied.
- Internet Tax Freedom Act
 - Internet access not subject to taxes.
 - Some exemptions.
 - Effective until November 1, 2014.

State options to consider:

- Construction Grants
- Public investment
 - Government owns hardware but doesn't provide retail service.
 - Analogy of UPS trucks driving on public roads.
 - Used in Netherlands. – Reggefiber. Prompted upgrade of coaxial copper facilities to fiber-to-the-home.
 - Risks:
 - Increase total cost.
 - Stranding of private investment. Compensation?
 - Dual government rules as regulator and proprietor.
 - Legacy carriers go bankrupt. Can government pick up the pieces?