

November 6, 2009

Universal Service Reform Act of 2009 Section-By-Section Description

Section 1: Establishes the short title as the “Universal Service Reform Act of 2009.”

Section 2: Defines a “communications service provider” as any entity that: (1) currently pays into or receives funds from the universal service fund (e.g., long distance and local exchange service providers); (2) uses telephone numbers or IP addresses, or their functional successors or equivalents, to offer real-time, two-way voice communications in which the voice component is the primary function (e.g., cable telephony and VoIP providers); or (3) offers a network connection to the public (e.g., DSL, cable modem, WiMax, satellite broadband and broadband over powerline providers).

Defines “high speed broadband service” as a two-way network that uses Internet protocol or a successor protocol to enable end users to receive communications, including voice, data, video or any other form, in Internet protocol format at a download receiving rate of one-and-a-half megabits per second or greater. The FCC is directed to review the one-and-a-half megabits per second speed requirement every other year beginning the sixth year after the date of enactment and to make adjustments to move to higher speeds as deployment and advancement of new technology allows communications service providers to provide higher broadband speeds to end users in an economically efficient manner.

Title I reforms the universal service fund.

Section 101: Directs the Federal-State Joint Board on Universal Service and the FCC to initiate proceedings to implement the Act. The Joint Board must make recommendations to the FCC within 9 months after the date of enactment and must complete a proceeding within 18 months after the date of enactment.

Directs the Joint Board and the FCC to base policies for the preservation and advancement of universal service on the principles that quality services be available at just, reasonable and affordable rates; access to advanced telecommunications and information services be available throughout the United States; consumers nationwide have access to those services deemed to be universal services at reasonably comparable rates; all communications service providers make equitable contributions to the universal service fund; mechanisms to preserve universal service be explicit, specific, predictable and competitively neutral; and elementary and secondary schools and classrooms, health care providers and libraries have access to advanced telecommunications services.

Defines universal service as the services defined as universal services as of the day before the date of enactment, plus high-speed broadband services and an evolving level of telecommunications and information services to be identified by the FCC. Directs the Joint Board to review the list of universal services at least once every five years.

Allows the use of universal service support for the provision, maintenance and upgrading of high-speed broadband service.

Section 102: Directs the FCC to determine whether to use a contribution methodology based on revenues, working telephone numbers, connections or a combination of these. If the FCC opts for a revenues approach, it may assess contributions based on revenues derived from a communications service provider's provision of intrastate, interstate and foreign communications services. Allows the FCC to limit or exempt contributions from communications service providers whose customers typically make a low volume of calls each month or whose contributions would be de minimis. If the FCC opts for a numbers-based methodology, the FCC may provide a discount for group or family pricing plans for residential customers. Directs the FCC, within 9 months of the date of enactment, to complete a study, including a cost-benefit analysis, of using a numbers or revenues-based contribution methodology and to report the study results to the House and Senate Commerce Committees.

Requires the FCC to establish annual reporting requirements for all communications service providers contributing to universal service support mechanisms or receiving universal service support.

Caps the high-cost support fund at the amount collected for all universal service support programs other than programs supporting schools, libraries, rural health care, lifeline, link-up and toll limitation service in the year prior to enactment of the Act plus the amount that the switch to wire center averaging and elimination of the parent trap increase demand for universal service support. Raises the cap annually based on a growth factor—the annual percentage change in the total number of rural, insular, and high cost local exchange carrier working loops, if that number is positive, plus the annual percentage change in the Gross Domestic Product-Chained Price Index. Provides for an upward adjustment to the cap if the FCC revises the intercarrier compensation regime and shifts some or all of access charge recovery into the universal service fund.

Section 103: Clarifies that universal service support should be expanded to include high-speed broadband services. Provides that an eligible communications service provider that is also an incumbent local exchange carrier may opt to have the FCC also calculate its universal service fund contributions on a forward-looking cost basis.

Changes the calculation methodology for non-rural high-cost support from geographic to wire center averaging and allows support to a wire center when the incumbent's forward-looking cost per line for the wire center exceeds 2.75 times the national average. Provides that for one year after the date of enactment, no incumbent local exchange carrier shall receive less universal service support than it was receiving on the day before the date of enactment. However, the difference between what the carrier was receiving before the switch to wire center averaging and after will phase out in equal increments over the next 10 years.

Section 104: Clarifies the minimum criteria communications service providers must meet to be eligible to receive universal service support by codifying certain standards adopted by the

FCC for eligible telecommunications carriers, including making universal services available throughout a service area and adhering to State carrier-of-last-resort requirements, advertising supported services and associated charges throughout a service area, advertising the availability of lifeline and link-up services to reach those most likely to qualify for those services, demonstrating the ability to remain functional in emergency situations and complying with Federal and State consumer protection and service quality standards and high-speed broadband service over one's own facilities or through resale throughout a service area. Universal service fund recipients must meet these requirements within one year to continue to be eligible for universal service support.

Requires universal service fund recipients to offer high-speed broadband service with a download receiving rate of at least one-and-a-half megabits per second either itself or through resale of another provider's services. This requirement may be waived by the FCC for renewable periods of three years for a provider for whom offering such service would be technically infeasible or from an economic standpoint would materially impair its ability to offer local exchange service and would automatically be waived for providers that can demonstrate that their cost per line of deploying such service is at least three times the average cost of providing high-speed broadband service for all wire centers.

Directs the FCC to adopt within one year and implement within 3 years a competitive bidding process to determine eligibility of mobile wireless communications service providers for universal service support in each service area, as designated by the FCC. The total amount of support the FCC awards pursuant to the competitive bidding process must be less than the amount of high cost support received by all mobile wireless communications service providers in the year before the date of enactment. To be eligible to participate in the competitive bidding process, a mobile wireless communications service provider must be designated an eligible telecommunications carrier and establish that it is legally, technically, financially and otherwise qualified to serve a high cost area.

In areas where at least 3 mobile wireless communications service providers are eligible to participate in competitive bidding, the FCC shall issue a request for proposals identifying the area a winning bidder must serve and the minimum requirements for serving the area. The FCC shall select up to 2 winning mobile wireless communications service providers in each service area and should consider the amount of the bid and minimum proposed broadband speeds as primary factors when evaluating applications. Winning bidders shall receive a flat amount of subsidy per year for up to 10 years, as determined by the FCC.

In areas where fewer than 3 mobile wireless communications service providers are eligible to participate in competitive bidding, the FCC shall continue to provide universal service support at the per-line level in effect prior to the date of enactment.

Defines a communications service provider's "service area" for purposes of determining universal service obligations and support as the geographic area where it is licensed or authorized to provide service.

Section 105: Eliminates the “parent trap,” which provides that a carrier which acquires telephone exchanges from an unaffiliated carrier receives universal service support at the same level for which those exchanges were eligible prior to the transfer, and prohibits the FCC from reinstating it.

Section 106: Prohibits the FCC from adopting a primary line restriction.

Section 107: Permanently exempts the universal service fund from the Anti-Deficiency Act to avoid the need to renew the exemption annually.

Allows the FCC to invest contributions to the universal service fund in liquid, interest-bearing, government-backed securities until they are disbursed.

Section 108: Clarifies that nothing prevents any state from establishing a state universal service fund based on any contribution mechanism, though if a state assesses contributions on a revenue basis, it may only assess on intrastate revenues.

Title II sets forth accountability measures.

Section 201: Directs the FCC to within one year from the date of enactment establish and implement outcome-oriented performance goals and measures for each universal service fund program.

Section 202: Directs the FCC to within 9 months establish rules to determine the appropriate methodology for audits of recipients of universal service support and ensure that auditors are trained in universal service fund program compliance and only audit records that universal service fund recipients are required to retain pursuant to the FCC’s rules. Provides that any appeal of a USAC finding related to an audit must be resolved by the FCC within 6 months after the date of filing.

Section 203: Directs the FCC to report to Congress every three years concerning the availability of universal services to all Americans, including an analysis of the implementation of performance goals and measures and progress toward meeting such goals and measures.

Title III addresses intercarrier compensation reform.

Section 301: Directs the FCC to complete a proceeding to reform intercarrier compensation within one year of the date of enactment. If the FCC establishes an alternative revenue recovery mechanism within the universal service fund to replace access recovery, the cap on the high cost fund shall be raised to accommodate the shift.

Section 302: Requires telecommunications carriers to identify all traffic which originates on their networks so carriers that terminate traffic can seek appropriate intercarrier compensation.

Section 303: Prohibits 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.

Title IV addresses changes to the rural health care support mechanism.

Section 401: Makes changes to the rural health care support mechanism so that support for advanced telecommunications services is based on the difference between the cost of service in an urban area and the cost in a rural area, instead of the flat percentage rate discount under current law. Clarifies which entities are eligible for support under the rural health care support mechanism. Revises the definition of "rural" for the rural health care support mechanism to among other things grandfather any community that qualified as rural under the FCC's rules prior to December 2004.