

Universal Service Reform Act of 2009 Overview

The Universal Service Reform Act of 2009 improves the universal service fund and ensures its continued viability by controlling distributions from the fund and implementing competitive bidding for wireless providers, allowing use of the fund for broadband deployment and broadening the base of contributions into the fund. It also makes a number of other much needed changes to improve fund administration.

Distributions:

- *Broadband deployment:* Declares broadband to be a universal service, so support for the buildout of broadband lines would be explicit. Requires universal service fund recipients, within five years of the date of enactment, to be offering high speed broadband service with a download receiving rate of 1.5 mbps or greater either themselves or through resale of another provider's services. The FCC may waive this requirement for providers for whom offering such service would be technically or economically infeasible, and it 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 among all wire centers.
- *Changing to competitive bidding for wireless carriers:* Directs the FCC to adopt a competitive bidding process to determine eligibility of mobile wireless communications service providers for universal service support. The total amount of support the FCC awards pursuant to the competitive bidding process must be no more than the amount of high cost support received by all mobile wireless communications service providers in the year before the date of enactment.
 - 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.
- *Capping the fund:* Caps the total amount of universal service support, other than support for the schools, libraries, rural health care, lifeline, linkup and toll limitation programs. The fund is capped at its current level plus the amount that the switch to wire center averaging and elimination of the parent trap increase demand for universal service support. It is also 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-Chained Price Index. There is also a one-time, permanent increase in the cap if the FCC revises the intercarrier compensation regime and shifts some or all of access charge recovery into the universal service fund.

- *Switching to wire center averaging:* Changes the calculation methodology for the non-rural, high cost portion of the fund from geographic to wire center averaging. Ensures that no provider will receive less funding after the date of enactment than it is receiving under the current methodology. After the first year, the difference between what a provider was receiving under statewide averaging and would receive under wire center averaging phases out over 10 years.
- *Consistent treatment for certain price capped providers:* Allows a price capped provider that is regulated on a forward-looking cost basis for all services other than universal service fund contributions to opt to have the FCC also calculate its universal service fund contributions on a forward-looking cost basis, so that price capped companies may be regulated on a price cap/forward-looking cost basis for all services.

Contributions:

- Assesses contributions on:
 - Any entity that pays into the universal service fund under the current system (e.g., long distance providers);
 - 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 (e.g., VoIP providers); and
 - Any provider that offers a network connection to the public (e.g., DSL, cable modem, WiMax and broadband over powerline providers).
- The FCC determines whether to use a contribution methodology based on revenues, numbers or a combination of the two. If the FCC opts for a revenues approach, it can assess contributions based on revenues derived from the provision of intrastate, interstate and foreign communications services.
- The FCC could limit the contributions of providers whose customers typically make a low volume of calls on a monthly basis (e.g., prepaid wireless customers) or for additional phone numbers provided under a group or family pricing plan for residential customers.
- The FCC could exempt from the contribution requirement providers whose communications activities are so limited that their level of contributions to the preservation and advancement of universal service would be de minimis.

Accountability:

- *Performance measures:* Directs the FCC to establish and implement outcome-oriented performance goals and measures for each universal service fund program and to report to Congress about progress toward meeting such goals.
- *Audits:* Directs the FCC to determine the appropriate methodology for audits of universal service fund recipients and ensure that auditors are trained in universal service fund program compliance and that they may 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.

Other matters:

- *Intercarrier compensation reform:* Directs the FCC to complete a proceeding to reform intercarrier compensation within one year of the date of enactment.
- *Traffic pumping:* Addresses the problem of 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.
- *Traffic identification:* Requires carriers to identify all traffic which originates on their networks and requires all intermediate carriers to pass through that identification so that carriers which terminate that traffic can seek appropriate intercarrier compensation.
- *Rural health care support mechanism:* Clarifies who qualifies as a "health care provider" eligible for rural health care support. Revises the definition of "rural area" to among other things grandfather areas which qualified under a previous FCC definition. Bases support for advanced telecommunications services on the difference between the cost of service in an urban area and a rural area, instead of on the flat percentage rate discount in current FCC regulations.
- *Eliminating the parent trap:* The parent trap is an FCC regulation 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. Eliminating it will encourage the sale of exchanges to rural carriers.
- *Permanent Anti-Deficiency Act exemption:* Permanently exempts the universal service fund from the Anti-Deficiency Act to avoid the need to renew the exemption annually.
- *Prohibition on primary line restriction:* Prohibits the FCC from adopting a primary line restriction.