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PUBLIC MEETING ON UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY

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HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005-4018
(202) 628-4888
hrc@concentric.net
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

PUBLIC MEETING ON UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY

Commission Meeting Room
TW-305
Federal Communications Commission
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Washington, D.C.

Friday,
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The conference met, pursuant to notice, at 1:07 p.m.

APPEARANCES:

Commission Present:
Chairman Michael Powell
Kathleen Abernathy (presiding)
Kevin Martin
Michael J. Copps
Bob Rowe

Others Present:
Thomas Dunleavy
Lisa A. Jaber
Nan Thompson
Billy J. Gregg
Bill Gillis
Kathy Wallman
John Nakahata
Judy Walsh
Roger Nishi
H. Richard Juhnke
Michael Altshul
Christopher Day
Joel Lubin
James S. Blaszak
Michael J. Travieso
Michael Sheard
Steve Ednie

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(202) 628-4888
MS. ABERNATHY: Thanks again for coming today. This is a Public Meeting on Universal Service Contribution Methodology.

Before we start, we have a surprise guest appearance by Chairman Michael Powell. If you want to say a few words before we start, that would be great.

CHAIRMAN POWELL: Yes, I just came down to see somebody else swinging my gravel. This doesn’t establish a precedent, so don’t get used to it.

(Laughter.)

CHAIRMAN POWELL: No, I unfortunately had a commitment and couldn’t be here, but I would be remiss if I didn’t come here and, number one, welcome everyone here, and to thank everyone for their extraordinary participation.

I these are some of the most important issues facing the Commission and facing the country and facing the states. Nothing is more important than our responsibility to -- for all Americans.

I think there is difficult and often mind numbing work to do here, and I think it’s in the hands of an extraordinary able Joint Board, my colleagues from the Federal level and outstanding contribution from the state level by a network that for many years I have had so much
faith and confidence, that I am totally sure that I don’t need to be here.

(Laughter.)

CHAIRMAN POWELL: They know exactly what they’re doing. I just wish you a good afternoon, and thank you for letting me come down and say hi; so thank you and good luck.

MS. ABERNATHY: Thank you, Mr. Chairman.

(Applause.)

MS. ABERNATHY: I’m just going to quick repeat what the Chairman said, which is we are very, very pleased that basically everyone that we approached about participating in today’s conference enthusiastically responded. Sometimes, we’re not very much not noticed, which we apologize for, but we are always on a pretty short timetable.

So thank you, again, for coming here today. As you know, our subject is the methodology for collecting contributions to fund the universal service support mechanisms. Currently, carriers contribute to those mechanism, based on their inter-state and user telecom revenues.

As many of our panelists will discuss, there are significant questions about the sustainability of our existing rules, and a number of parties have advanced proposals to reform the revenue-based approach, or to make a
more fundamental change to a connection-based system of charges.

As a Joint Board, we decided to get innovative, thanks to creative thinking by Commissioner Bob Rowe and others about how is the best way for the Joint Board to have significant input in a short timeframe, and based on good information.

We came up with the en banc proposal, which I am now enthusiastically a supporter of. I think we’re going to get some very good information. We have already gotten written submissions from all the witnesses.

So what we’re going to do -- but before I move onto to introducing our first two presenters, I thought I would allow an opportunity for the State Chairman, Chairman Nan, from the State of Alaska, to say a few welcoming remarks to all of us, and take it away.

MS. THOMPSON: Thank you, I’m glad to be here today, and I’m looking forward, as our my state colleagues, to listening and having the opportunity to ask questions.

I appreciate the flexibility and support of our Federal colleagues on this Joint Board in allowing active participation on this issue by the states. It’s one that’s very important to the states and fundamental to this fund’s future. So I’m looking forward to learning a lot and asking a lot of questions today.
MS. ABERNATHY: Thank you, and it's Chairman Nan Thompson, excuse me.

What I thought we'd do then is begin with an overview that's going to be provided by Dr. Bill Gillis, Director of Washington State University's Center to bridge the digital divide; and also by Kathy Wallman, who is a consultant on telecommunications issues.

Following their presentations, our first panel will then explore the various proposals that are out there for reforming the assessment methodology.

Then our second panel will consider the rules that govern carriers' recovery of their contribution costs. And what I thought we would do, instead of spending lengthy time introducing the various panelists, we are just going to have each panelist briefly introduce himself or herself, and then move on to opening remarks.

Once all of the panelists conclude opening remarks, then we'll start with questions from the Joint Board members.

So Mr. Gillis, please start, and again, we appreciate you coming all the way here to Washington to help us out with this very important issue.

Oh, I'm sorry, there is one housekeeping matter. To the extent that anyone in-house would like to have a sign language interpreter, we do have someone available over
there. Just let him know, and he will make sure that he is
your line of sight. Thank you.

DR. GILLIS: Well, thank you, Madam Chairman and
members of the Joint Board; it is extremely a privilege to
be here with you today. I don’t get a chance to do this
much any more, and I am very passionate about these
particular issues.

The notion of the 1996 Act as having a number of
inconsistencies or difficult issues to resolve is something
that is talked about a lot. In my view, it is an amazing
document, and I have nothing but a lot of respect for the
legislators and the -- from all sides who reconciled those
differences and came up with a document that very much is in
the national interest.

One of the things that impresses me most is that
they ask regulators not to balance competition in universal
service. They ask regulators to achieve both goals. It’s
difficult, yes; but advance the national interest, you bet
it does.

It’s a huge challenge. It isn’t something that’s
easy. The topic today is right on target with that
particular challenge.

I would say that it’s never been really done
before. We’ve looked at a lot industries, going from
monopoly to competition and transportation finance.
Economists will tell us that it's been in the national good, and probably has. But it's come at the cost of certain players, usually rural, low income, ethnic minorities. And the statutory framework of the act is such that we have a chance to do it right, with respect to telecommunications. So I think it is a very exciting opportunity.

The mechanism itself shouldn't be a barrier to you all achieving those goals, and I think that's what this is really about; making sure the mechanism minimizes conflict as much as possible.

The choice of what mechanism to use, if the currently mechanism is replaced, is a difficult one. It involves controversy. I don't mean to be presumptions. I'm not a sitting decision-maker any more. But you know, if I were a decision-maker, I would look at this as short-run pain for long-run gain.

It is that it is important to get this mechanism straightened away, so that it's consistent with the principles of the act; and particularly Section 254(d), the equitable non-discriminatory mechanism provides for predictable and sufficient universal service. Because that, in my view, will make decisions that you need to make on sufficient universal service on competitive reform more easy, down the road.
Key messages and some criteria, I suppose, or challenges that I see, that we need to look at when you reform the mechanism, if you choose to reform the mechanism -- the legal criteria is spelled out in the act, but these are, I guess, issues -- not a complete list -- but issues that I see are particularly important -- the identification shift to a more predictable, stable base to ensure customers of competing carriers are treated equitably, minimizing consumer confusion, enhancing administrative efficiency, and mitigating the impacts and affordability of low income. I will come back to those, but I want to lay just a little more framework, first.

Most importantly, I'm not going to go through the legal basis. You have a panel on that topic coming up. But I do want to, I guess relay my view or my bias that the act, very clearly, says that we need a mechanism to provide sufficient universal service.

In my view, it's also good public policy that, first of all, if there's sufficient universal service, complying with Section 254(b)(2) and (3) -- and Senator Dorgan made this point on Wednesday a couple times -- it is that the sufficient universal service makes sure that we're able to access reasonable comparable and affordable services in all regions of the nation. It was a very powerful statement, but a very important statement, from the public.
It kind of goes back to my point about, maybe we have a chance to do it right, with respect to telecommunications. We can’t say this with a lot of industries who have grown from monopoly to competition, but the framework is there.

The other thing, and this is not for me as part of the real task force. We spent hundreds of hours together, as real task forces. Bill Jack Gregg knows, in talking about these issues, one of the hots for me was that having sufficient years of service, so that we do have a network that’s capable of delivering these comparable services, as required by Section 254(b) and (2) and (3), is actually in the nation’s interest; that the states that pay into the fund, as well as those that receive.

The reason being is that we’re minimizing costs in two ways. One is that by supporting forward-looking infrastructure, we’re avoiding the idea of patchwork bills later on.

Chris McClain, who was the Director of the LUS service at that particular time, brought data to us, in demonstrating that the U.S. has had that policy for some time, and they are minimizing costs with their loans by making sure that their borrowers held forward-looking infrastructure.
Secondly, it enables a network that’s able to provide more profitable information services that, in the end, hopefully will help to reduce the need for subject -- and will maximize the power of the market to meet the needs of rural investment.

I also want to just briefly point out that there are pressures on sufficiency of the fund; decisions already made; the mags interstate common line charges wasn’t well kept. That was adopted from the RTF recommendation for rural carrier cap, that will expand by the number of working lines and inflation. And SLEC certifies eligible telecommunication carriers, all current pressures.

Looking to the future, we can certainly, I think, expect continued pressures to reduce interstate access to rate of return carriers. The Joint Board has before them decisions on supported services. Another wild card there is the possibility for the consolidation of rural properties. There is a Legg Mason analysis that I thought was fairly persuasive, that looks at the trends in the marketplace and the possibility of consolidation. The issue that I would present for the FCC and possibly the Joint Board is that three-quarters of rural Americans are currently served by RBOCs.

In any cases, RBOCs currently receive no Federal universal service support. What does that mean, in terms of
dealing the customers that are in the middle of all that? So again, possible future pressure is on the fund.

The current mechanism, in my view, and this is my key point, I guess, shouldn't be a distraction to the decisions you are going to need to make with respect to sufficiency in competition.

At the present time, consumers are seeing frequent changes in their surcharge on their long-distance bill. It wasn't long ago that it was four percent. If the FCC had not acted last week to stabilize the fund for three-quarters, we could easily be looking at 13 percent. So from a consumer's perspective, it is growing and it is confusing.

An equally serious issue, in my mind, is the potential tradeoff of the support of fair competition, as regulators consider issues of sufficiency, expanding the fund, and it applies equally to their decision on competition.

There needs to be some assurance that we're not, I would think, if I were in your shoes anyway -- there needs to be some assurance that we're not further damaging competition. The lag in collection impacts and affects alternative long distance carriers differently. The rising U.S. surcharge is not technology neutral, and there will be some probably different views on that expressed today, at
least as I read and understand, that's what I see.

The regulatory challenges, let me just very briefly touch on these, and then I will move off. But the identification shift to a more predictable and stable base - I think there will be a fair amount of discussion of that today, and that’s probable core issue.

I’m personally persuaded and concerned that the interstate minutes have been declining for the past several years. We’re starting to see the impact on the interstate revenues, as well, as being an unstable base.

I view it as systemic. When you look at an increase in violas lines from 143 percent in the last five years, and you look at the trends of increasingly people making reservations and transactions on line, as opposed to calling an "800" number and other important trends, what we’re seeing is a shift in the industry that nobody could have imagined in 1995 -- at least I wouldn’t have imagined it in 1996 -- and the world is changing quickly.

But the base that is in place probably was appropriate in 1996, but it doesn’t appear to be stable to me, today.

The second major area that needs to be looked at is ensuring that customers of competing carriers are treated equitably. This is very important, because my view of the act as an equal obligation of competition and universal
If we are going to support fair competitive markets, it's very important that the customers of competing carriers, particularly those in the same market space, are treated equitably in that environment.

The choices of technology, choices of carriers, should not be based on the mechanism, or avoiding universal service. Whatever mechanism you choose needs to neutral with respect to technology and carriers.

Minimizing similar confusion, and this is almost an oxymoron, that I don't know how anybody is going to come up with a mechanism that is not confusing to consumers. It's a complex topic. But certainly minimizing confusion is a good idea, and something that's probably essential for competitive markets, again.

Because if there's not consumer acceptance of competitive markets, how do you expect to get there? So it perhaps provides a vital role for regulators; one, as consumer education; making sure consumers understand what is being talked about; secondly, that the truth in billing rules that were enacted by the FCC a couple of years ago are important; state counterparts to those rules are important; cooperation between the state and Federal entities on billing matters are important. All these things are issues.

But moving to the next point and connecting them,
enhancing administrative efficiency, where I think these two
connect are, if you are able to achieve the goals to provide
an equitable, non-discriminatory mechanism that provides
predictable and sufficient universal service; if you can do
it with a simple mechanism, as opposed to a complex
mechanism, I think everybody is better off.

But you need to make sure you are comfortable with
what you are achieving and the legalities of it, in doing
what needs to happen. But in the end, the simpler it is,
the easier it is to explain to consumers, and consumers are
probably going to be more comfortable, particularly if it’s
stable. Secondly, it’s going to be easier to administrate.

One thing that I’m particularly concerned about,
and I guess it comes, again, from my past role as a
regulator, but seeing it as a regular, constantly, companies
more and more came and got in a bickering over not wanting
to provide each other information. We saw it certainly in
slamming enforcement. We saw it in PIXIE and we saw it in a
number of different forms.

So if you have a rule that requires carriers to
provide information to each other, maybe it’s needed. But
if it’s not needed, it’s probably not a good idea. The same
thing is requiring that more information be provided to
carriers and to regulators. It’s just not consistent with
trends; at least, it leads to more difficulties. Let’s put
it that way.

I'm not suggesting to simply, for the purpose of simplifying. I'm just suggesting that there's a good question to ask always, which is, can it be done more simply and achieve the same goals.

Finally, mitigate the impacts on affordability and low income. I didn't put it last because I think it's least important. I put it last because I wanted to emphasize it as a point in the end.

Particularly, if you went to a connection-based charge, but it's true of any of any of the alternative mechanisms proposed -- is that ultimately, universal service, expanding universal service, has impact on low income consumers.

But we live in an interesting world today, where you can't make the distinction between low income and low volume, at least in the same breath; that there are a number of low volume consumers that aren't low income, and they are the new digital savvy consumers.

They are consumers that are low volume, long distance, I should say, wire land long distance, because they are the consumers that take advantage of national wireless plans. They are consumers that go on line and make reservations. They are the ones that would be potentially lose benefits out of that body of the base. So would low
income consumers, who fall in that same category, however.

I think it's vitally important that when
regulators make decisions, particularly that change the
mechanism, and that's a decision that you chose to make,
that there are provisions that pay special attention to
whatever impacts there may be on long-term consumers, and
provide mitigating impacts, if you can.

I think an issue that is clearly before the Joint
Board right now is Lifeline and revisions to Lifeline. That
may be one mechanism, and it may not be the only mechanism.
But balancing that and including new criteria, in my mind,
is essential.

So in concluding, I don't think this problem is
going to go away. I don't think this is something we are
going to work out, when the recession goes away. I think
with the systemic changes in the industry, the current
system is not adequate and consistent with the criteria is
Section 254(d), in my view.

The collection mechanism needs to be reformed, in
response to the change, to something that's consistent with
competition in universal service. A decision on the issues
shouldn't be that you need to make on sufficiency and
competition shouldn't be hindered by the mechanism. You
should minimize that. This is an opportunity to do that.

When I say immediate action, I am certainly not

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suggesting reckless action. I'm suggesting that you do need
a good record to make your decision on this, and there's a
lot complex issues here.

But I'm impressed with the record that's already
there. You may need to do more inquiry. But it's important
enough, and I think it has foundation enough, for many of
the other decisions you need to make, that I certainly would
recommend to you very quick and immediate action as is
feasible.

Thank you.

MS. ABERNATHY: Thank you very much, Dr. Gillis.

Kathy Wallman?

MS. WALLMAN: Thank you for the opportunity to
make some framing remarks today before you.

Dr. Gillis has very comprehensively addressed the
regulatory challenges facing the universal service system,
and also the challenging task of what to do to maintain the
strengthened integrity of the program.

I would like to focus for a few minutes on
consensus building in universal service. That's two
concepts you don't often see linked in the same sentence, so
let me hasten to explain where I'm headed with this.

The policy making process on important issues like
this gives lots of opportunities for advocacy, and it seems
increasingly even more opportunities for appeal. We have
the reconsideration process here at the FCC. We used to
joke in way that now seems not very funny about the NCON, because it seemed like some of it went on that long.

We have appeals to court, and increasingly have other routes of recourse that parties pursue, including going back to Congress.

Not to differ from the usual flow of administrative law, where Congress articulates a new law, expects the agency to implement it, faithful to the rules of the statute, with appropriate interpretative appeals to the Appeals Court, in many cases now, we have Congress involved in ways that adjust existing implementation efforts by the agency.

A concern, I think, that all share is regulatory certainty; knowing what the rules are, so that you can get on with it. If there's going to be a massive rethinking about universal service policy, it's extremely important in this environment that it's a policy built to last.

That doesn't mean that no one will take an appeal. But it does mean that I think the effort has to be directed toward a consensus-based approach to change in the universal service.

The act is over six years old now, and we're still getting corrective interpretations and corrective collateral actions on important first principles upon implementation of
competition, for example.

So I would urge that the exercise has to aim toward a consensus-based result. And I would suggest to that this is different from compromise. You know, compromise is about people giving a little bit, and ending up with something like a least common denominator.

I think that this is different. A consensus is what we all agree is important. Compromise is the suit that results when people give up a little something that’s important to them, in order to get other things that are important to them.

The problem with policy making in a compromise matter is that that suit that I referred to. Regulators aren’t going to end up in the suit, because it’s sometimes difficult to articulate a policy-based rationale for a compromise based on opposing inputs.

So in this, really, I’d like to call your attention to a project that I chaired last year, and some of the members of the Board are already familiar with this project.

But it was a forum sponsored by a non-profit organization called the Consumer Energy Council of America Research Foundation. It gives you some hope that there is something to this idea of trying to do this is a consensus-based manner.
It was a forum that had very broad participation, from the academic community, wireless industry, cable industry, wire line incumbents and competitors, large users, consumer advocates, local regulators, state regulators, labor.

One regret was that we were unable to attract participation from the small tel-co community. The resources didn't permit it. But we did try to talk with them before the report was finalized, to make sure that we understood their point of view.

Their modus operandi was that there were several meetings of the committee as a whole, and then ongoing work between the meetings, with some subcommittees, that focused on many of the issues that Dr. Gillis touched on: eligibility criteria, supported services, what services should be supported; and the question before you today of who pays and how.

Now there's plenty to disagree about, as you might expect, with a group that large, and so much to talk about. But what was surprising and encouraging to me, was the consensus that emerged on several key points that may be valuable to this board.

First, is the very broad support for what universal service does and support for its continuity. There was not, going back to first principles, what are we
doing; why are we doing it; is it worth doing. And I was
encouraged by the very broad support among people who
disagreed on a lot of things, for that bedrock principle.
But second, equally broadly held in this group was
the significant concern that the system cannot continue as
it is under the current funding and support approaches.
Really, from many of the people participating in
this work, there was really strongly felt sense of urgency
about this; that it was not going to be okay to continue
under the umbrella of the current regime. That was a little
surprising to me, how strongly held that concern was.
Then third, in the illustration of the depth of
concern about the stability of the current system and under
the current rules, the group came to the conclusion that
this is not the time to extend support for services, for
advanced services.
This is a group that sells advanced services.
This is a group that has very progressive leaders in trying
to get affordable essential services for consumers. So that
conclusion was a little surprising to me, that they were
willing to take a position that this is not the time to do
that.
It was not a question of slamming the door shut on
that approach. It was suggested that a technological task
force be formed along the lines of the world task force that
Dr. Gillis led, to figure out whether, when, and how it might be appropriate to support advance services, and to make a broad-based group available to the Joint Board for discussion and recommendation.

I think that in addition to the systematic regulatory challenges that Dr. Gillis identified, one of the human element difficulties that this board will face is the simply anxiety that human beings experience when a great change is contemplated. This is another reason that I advocate building a consensus around approaches that would bracket this change.

You also have an opportunity, I think, to rely on the resources of the Commission and the state commissions and the industry for economic analysis, which I think will help abate what these quantify, the degree to which people might be anxious about great change.

In the course of the work on this forum, we had available to us some of that talent, and we were able to do things like model what it would be like to have a per-connection charge.

So I think that equally important, and perhaps even more important in the legal analysis in a proceeding like this is the economic analysis that explains what the new role will look like.

Finally, one of the challenges that I think, that
I think were made about just what universal services have faced in the past, is how it looks from the consumer end. The docket addresses a number of those questions.

And I think it would aid a consensus based approach and abate a lot pain down the road for there to be a very direct consensus between the decision makers, and the people who have to implement this policy, about exactly how it gets explained to consumers.

Thank you, and I wish you luck and success in this important talks.

MS. ABERNATHY: Thank you, Kathy, and I think now, we’re going to provide an opportunity for any of the Joint Board members to ask questions. So we’ll just start to my left, with Billy Jack Gregg, and work our way down, and get in as many questions as we can, before our time runs out for this particular opening panel. Thank you.

MR. GREGG: Thank you, Madam Chairman.

Good afternoon, Dr. Gillis and Ms. Wallman.

Dr. Gillis, you said that whatever system is adopted for contributions should minimize information transfers between companies, to the extent possible. Does that mean that the information upon which the contribution system would be based should be information retained by the company, from its relationship with its customers?

DR. GILLIS: I don’t personally come to that
direct of a conclusion. My point that I was making is that the information that is needed is needed, of course, to be able to enforce and ensure compliance, and meet the standards of equitable and nondiscriminatory mechanism.

But it is more difficult, I was simply observing, from experiencing with slamming enforcement and PXIE and experiences that we had, where we rely on one company to give information to another. It’s more difficult to implement such a mechanism for that exact reason. So it’s easier if we are able to rely on open information that an individual carrier has with its existing customer base.

Thank you.

MR. GREGG: Thank you.

MR. COPPS: I would just ask a question, I guess, about the urgency that Kathy Wallman referenced. You said the sense of urgency of many participants surprised you. I’d just like to get a feel from both of you, on your own personal reaction to, is the system really broken, and how urgent is the need to do this?

I ask it in the context really of your discussion on consensus polling, which I thought was very interesting. Because it’s so difficult to try to develop a consensus on methodology, when we lack, in this country, a consensus on universal service. Ideally, you’d like to see the horse come before the cart. Unfortunately, we don’t live in an
ideal world.

But I think these are some of the questions we need to be addressing today, and I'll ask some more questions in this regard when we get to the subject of the connection charge.

But do we have, generally, a consensus that the system is broke right now and needs repair, even though we lack that consensus on where universal service is going? Because it's hard to imagine a repair, no matter what it is, getting us through changes that may come in universal service, through expansion or whatever. Then, you know, you're going to get in all kinds of litigation, going down a new route, so you are getting into a thicket there, too.

So what's the urgency, really, in your mind, to proceed on this right now?

MS. WALLMAN: I don't know that there is a consensus outside the large group that I described here about that urgency. As I looked at some of the comments that have been filed in the proceeding, I think there are some participants who disagree; that it's broken in a way that needs to dramatically fixed. I think that is the first assessment that this Board needs to make, sort of how much you are willing to take on.

The thing that surprised me, in the SICA process was how willing people were to look at the existing trends