



## Small Company Coalition (SCC) Position Paper Relating to the Concept of Universal Service Fund as a “Tax”

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### Background

- The concept of Universal Service originates from the 1934 Communications Act, which states, in part, the goal of “regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges...” The founding of the Federal Communications Commission (FCC or “Commission”) may also be found therein, under the obligation to “execute and enforce the provisions of this Act.”
- The Telecommunications Act of 1996 provides the first major overhaul of the initial 1934 Act and explicitly establishes the Universal Service Fund (USF) as a means of facilitating telecommunications and Internet expansion to reach rural and hard-to-serve Americans.
- The FCC’s Order on USF/Intercarrier Compensation (ICC) Transformation, initially introduced in November of 2011, executes a phase-down and elimination process of USF programs, while transitioning to the new Connect America Fund (CAF). The explicit mechanisms contained in the USF are not replaced by similar cost recovery mechanisms in the CAF, resulting in a net loss for rural-serving carriers previously receiving this vital support. Additionally, the utter lack of any grandfather clause to foster prior obligations held by these carriers jeopardizes both their ability to remain in business and the continuation of telecommunications and Internet service provided to rural and “hard-to-reach” consumers.

### User Fee Logic: Refutation of USF as “tax,” “government spending,” or “federal money”

- In purest theoretical terms and in practical application, the USF is not a tax, nor is it Congressionally-appropriated federal money, but a user fee. As the implement of an executive agency (the FCC), which does not possess constitutional authority to tax, the USF is a federally-*managed* pool of money.
- *Texas Public Utility Counsel, et al vs. FCC (1997)* voiced many of the initial, fundamental objections to the explicit USF, partially based upon these constitutional objections. On this matter, the 5<sup>th</sup> Circuit Court ruled in favor of the FCC, thereby establishing the mechanism as a user fee—*not* a tax. In a convenient reversal of ideology, the Commission has now adopted a view of USF as “federal money,” which fuels the many calls for “accountability and

transparency” one may find scattered about the Transformation Order. Note that the industry is not disputing the requirement for accountability and transparency, which has been in place since the beginning of the fund.

- Unlike taxpayer dollars, Universal Service funding is not and *cannot* be used for general purposes; neither does it contribute to or offset the national deficit. It is collected entirely from users of the national telecommunications and broadband network. It is directly reinvested into the continued expansion and maintenance of the network, with particular emphasis on reaching those Americans who live in areas that would never be served (due to lack of a sound business case) without USF support.
- Contrary to the argument that some are making, eliminating this program will not reduce “government spending”. It will simply and effectively cripple small carriers across the nation, leaving Americans in rural high-cost, low-density areas hoping for urban-centered larger carriers to invest in the abandoned areas with no chance for cost recovery. In the improbable event that such charity may occur, one would reasonably expect service standards to hover at regulated minimums.
- The Universal Service precept directly answers the constitutional directive to “provide for the common Defence and general Welfare.” Similar to the interstate highway system, all Americans benefit individually or collectively from the national connectivity established through USF-driven development. However, unlike federal roadways, for which some money is taxed from the people whether or not they own an automobile, the USF is funded *entirely* by communications (Internet and telephone) users and providers.
- Telephones (cellular or landline) and internet modems are worthless without the network within which they operate. Therefore, purchasing a phone or modem entails paying for construction and maintenance of the existing network that gives value to such phone or modem. The federally-managed USF is the system of ensuring that payments are made for the appropriate availability and use of this network.
- As opposed to the misconception that urban customers “subsidize” the service of rural customers, the reality is that all consumers pay for a nationally-connected network. This network is available for originating or receiving calls (or enjoying Internet connection) to and from areas that, absent USF, would otherwise be unavailable. The economic implications are tremendous, as it facilitates the interdependence between rural and urban America. While rural regions account for only 16% of the population, they produce our food, fiber, domestic energy and 88% of our renewable water resources. Our parks and forests are predominantly rural as well. The military gets 44% of its members from rural America. Add to this the individual benefits all Americans experience as a result of national connectivity, such as Internet/telecommunications capabilities while traveling or vacationing, as well as the ability to engage in interstate commerce, and the necessity for continued USF support is undeniable.