

BEFORE THE HOUSE COMMITTEE ON COMMERCE AND ECONOMIC
DEVELOPMENT HEARING CONCERNING H. 760

February 6, 2014

WRITTEN COMMENTS OF THOMAS P. COHAN

Good morning. Thank you for this opportunity to address the Committee. I am Tom Cohan, Director of Government Relations at Charter Communications, Inc. (“Charter”). Through its operating companies, Charter provides broadband service, voice-over-Internet Protocol (“VoIP”) service and/or multichannel video service in Vermont and is committed to providing quality communications to residential and business consumers in the state.

Less than two (2) years ago this Legislature enacted, and the Governor signed into law, Act 169 (S.180). Act 169 created a limited, one-year high-cost universal service fund to support voice service where it was deemed to be needed.

Today we consider H. 760, which instead of considering an extension of a high-cost universal service fund to support voice services skips that step and instead, takes the unprecedented step in this state of creating a permanent fund to subsidize broadband service as well as voice service.

Moreover, although the new fund would be subsidized by Vermont consumers of voice services throughout the state, regardless of whether a cable company or some other company provides them with broadband service, the fund would provide subsidies exclusively to local telephone companies to build broadband networks. Subsidies would be available unless there were at least two (2) other providers of voice and broadband in every part of the exchange area served by the local telephone company. Thus, even if there were unsubsidized competitors –

such as cable companies – providing broadband service in most, but not all, of a local telephone company’s area, the telephone company would still receive subsidies, which it then would use to compete against the unsubsidized competitors.

In addition, there would not necessarily be a cap on the fund, and there would be no determination as to whether the costs of building or the rates charged for broadband service were reasonable (or even sustainable). On top of the federal universal service fees imposed on consumers of voice service – currently 16.4% of a consumer’s monthly interstate telecommunications bill – the bill would authorize an additional 4% assessment on interstate and intrastate voice service.

Under these circumstances, it is necessary to understand the Federal Communications Commission’s (the “FCC”) universal service programs, because it is those programs that are touted as justifying this bill. The federal universal service program has subsidized local telephone companies for many years for their costs of providing voice service in high-cost areas. In addition, the retail rates charged by local telephone companies to consumers have been subsidized by the local telephone companies’ access charges – that is, the charges imposed on other companies whose long distance services use their local networks. In 2011 the FCC began the process of reducing access charges¹ because many of those charges were quite high, in some cases unsustainably so given the growth in alternative technologies that could by-pass the local networks. While that is resulting in a loss of revenue for local telephone companies, the incumbent local telephone companies (“ILECs”) in Vermont and elsewhere are permitted to charge a monthly Access Recovery Charge (“ARC”) to partially offset the decline in access

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

revenue. The FCC also created the Connect America Fund (the “CAF”) to provide support to ILECs for revenue not recovered by the ARC.² In other words, in addition to the ARC, the CAF is intended to be the mechanism by which ILECs are compensated for reductions in intrastate switched access rates. If an ILEC believes it needs additional support, the FCC wants the ILEC to petition the FCC and “demonstrate a need” for such support by a showing of credible evidence.³

Of course, federal high-cost universal service funding, through the CAF, is also transitioning to subsidize broadband deployment. However, that transition is in its initial stages. For price cap ILECs -- generally, larger ILECs such as Fairpoint -- the CAF is in “Phase I,” which means those ILECs continue to receive the same levels of federal universal high-cost funding that they received in 2011, plus additional amounts for broadband deployment. For rate-of-return ILECs -- generally, smaller, rural ILECs -- going forward they will need to offer broadband service (at 4Mbps/1Mbps) upon reasonable request, comparable to that available in urban areas. However, the FCC did not adopt intermediate build-out milestones or increased speed requirements for future years.

My broader point is that the FCC’s gradual reforms do not necessarily reduce federal high-cost funds, and they ensure that there will be ample opportunity for states not only to assess, but to define in financial terms, the effects of the FCC’s programs on consumers and, when more information becomes available, determine appropriate courses of action with respect to universal service funding. At this early date, however, the effects of the FCC’s reforms on state high-cost programs are not yet quantifiable with respect to Vermont consumers.

² *Id.*, ¶ 37.

³ *Id.*, ¶¶ 924-27.

Thus, it is premature to create a high-cost funding program in Vermont.

Assuming for the sake of argument that state funding is needed, it would be for voice, not broadband, because the FCC's program, as you have heard today, is undertaking to deploy broadband in high-cost areas in Vermont and elsewhere. Thus, the argument for funding in H. 760 really is premised on the claim that funds are needed to replace federal funds that are being transitioned to broadband deployment.

Limited, targeted state high-cost funding for voice could be feasible under some circumstances, but not to ensure "make-whole" subsidies to replace "lost" federal universal service subsidies. The purpose of any state high-cost fund created by the Public Service Board, instead, should be to support basic local service. Before creating such a fund subsidized by ratepayers, however, the following issues would have to be addressed to ensure that such funding would be effective, limited and competitively neutral:

a. Whether an area should qualify for state high-cost funding:

The first question would be whether there is a *compelling financial basis* for ratepayers to be assessed for and certain companies to receive public subsidies. We believe that a compelling financial need for public subsidy cannot exist for an area in which a private-sector business case does exist; that is, funding should be provided only where the service to be supported would be impracticable without such support. Stated differently, financial need is predicated on the non-existence of facilities-based competition for basic local service. The Committee and the Board should regard the availability of voice service offered by an unsubsidized competitor to a substantial portion of the residents of an area as irrefutable evidence that there is a business case for serving the area without state high-cost support.

b. Whether the costs of providing basic local service are reasonable:

Local telephone companies use their networks to provide, either directly or through one or more affiliates, a variety of competitive, revenue-generating services, some of which are not regulated by the Board. Such services include Internet access and cable or video services. Any determination of financial need must be premised on the fact that the services provided over such shared facilities must bear a reasonable share of the cost of the facilities, or, alternatively, recognize that there must be offsets for the unregulated revenues made possible by the other services using the shared facilities. Thus, any state high-cost fund should be based on the costs of voice service, and should allocate the shared costs of the loop to broadband and other non-voice services, with an opportunity for the supported carrier to demonstrate “need” determination based on reasonable costs. If the costs for voice service exceed a certain rate for service set by the Board, then support may be provided.

c. Whether the rate charged is reasonable:

Support, however, should not be provided if the rates charged for service are artificially low. The FCC’s universal service program sets a rate for purposes of determining if support is needed. The rate represents a national average, which is \$14 for the current period. However, as recognized by several states, a higher benchmark rate is recommended. As examples, the Illinois rate benchmark is \$20.39; the Georgia rate benchmark (calculated at 110% times the state weighted average residential rate) is \$19.54. The Wyoming rate benchmark, for the twelve-

month period ending June 30, 2014, is \$31.39 excluding taxes, fees, surcharges, custom calling features and other optional services, for basic local exchange telephone service.⁴

In addition to the foregoing requirements, and as alluded to above, there should be a cap on any funding, with a phase-down of support over a defined period. Any proposal for high-cost funding must recognize the significant financial burdens already imposed on ratepayers at a time when consumers are experiencing substantial add-on fees imposed for federal universal service, 911, telecommunications relay service, taxes, and other programs.

Moreover, any receipt of universal service funds by ILECs must be conditioned on the ILECs allowing competitors interconnection and access at just and reasonable rates, consistent with federal law (47 U.S.C. §§ 251(b) and (c)). ILECs also must continue to provide wholesale services to competitive carriers and the Public Service Board must continue to resolve disputes concerning wholesale services. It would be bad public policy and unfair to consumers and competitors alike to subsidize ILECs' telecommunications services while conferring them with what is effectively a local service monopoly.

Finally, audits and accountings would need to be frequent and calculated to confirm that support is used in the target areas and for the services to be supported. Oversight should be rigorous and regular assessments of effectiveness should be made.

Again, thank you for this opportunity to address the Committee on these important matters.

⁴ The Wyoming State Universal Service Fund calculates state high-cost support based on “the extent [to which] essential local exchange service prices [i.e., residential and business basic local service], after consideration of any contributions from the federal universal service fund, exceed one hundred thirty percent (130%) of the weighted statewide average essential local exchange service prices.” Wyoming Code, § 37-15-501(d).

