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Chair Schwartz and members of the committee, thank you for making this forum available to address the current significant issues, opportunities and difficulties affecting rural broadband availability in our state. While my presentation has not been reviewed and ratified by all of the three dozen rural Kansas telephone companies already providing broadband service, I will address generally the new issues confronting them and the communities they serve.

As Chairman and CEO of Twin Valley Telephone I oversee the operations of a fourth-generation family-held business providing basic and advanced communications services to approximately 6,000 customers in thirteen counties. In spite of our low population density we have been able to implement the longstanding policy of comparable services at comparable rates, by providing basic voice and advanced broadband throughout our service area.

I. THE STATE OF EXISTING RURAL COMPANY SERVICE

It is true that there are substantial areas of low population density in Kansas where broadband-capable facilities have not been deployed. Almost without exception these are areas NOT served by independent rural telephone companies. The locally based rural companies have invested hundreds of millions of dollars to deploy fiber facilities that make delivery of broadband services a present reality throughout half of our state. One remaining rural company's fiber project is on track for completion by year's end, providing broadband and advanced communications services not only to local residents and businesses but also to BP's Flat Ridge 2 wind energy generation project in Harper County.

Our own experience at Twin Valley is illustrative. In 2005 we made the largest commitment in our company's history, acquiring thirteen rural exchanges from Sprint. In pursuit of your stated public policy, and with the support of the Rural Utilities Service, we took on the task of replacing deteriorated physical plant throughout the exchanges, in the process bringing up-to-date basic and advanced services to every home, every business and every public facility in our expanded service area. We tripled the size of our company and, by 2007, completed a \$50 million investment project to provide those services to our communities, many of which had been held back by an outdated and inadequate local telephone network. Our commitment carries substantial debt obligations of twenty years or more, but the investment we've made for public service have provided the backbone of a network that will meet increasing needs for much longer than that.

Over the last few years our colleagues at other rural telephone companies have made similar long-term commitments to the communities they serve, with the result that virtually every customer of a Kansas rural telephone company has access to the advanced services necessary to full participation in today's economy. In rural companies' service areas the "heavy lifting" is done.

The Kansas rural companies support the objective of broadband service available to all. Our success in meeting this goal can serve as a valuable and particularly relevant example of overcoming the difficulties of limited population and increasing service needs. In Kansas the rural companies have no "legacy" infrastructure capable of providing only voice communications. A number of companies have completed deployment of fiber to the premises; others have extended fiber more deeply into their networks, while utilizing broadband-capable copper for "last mile" connectivity. We anticipate this remaining copper will be replaced incrementally by fiber in the course of ordinary network management, just as rural companies traditionally have maintained and enhanced their networks to provide highly reliable service.

Going beyond deployment in their own service areas, Kansas rural companies have acted together to facilitate broadband availability and affordability statewide. The Kansas Fiber Network, a venture initiated by most of the Kansas rural companies, is presently completing deployment of "middle mile" facilities statewide to provide more affordable transport between major "backbone" carriers and local networks. Reduced costs will allow broadband to become more affordable, addressing a primary factor limiting consumer acceptance of available advanced services. To the extent wireless broadband service receives the investment necessary to become a real option in rural Kansas, the rural companies' extensive fiber facilities will continue to play a central role for transmission of information initiated or received wirelessly.

II. UNSERVED AREAS AND EXPANSION OF BROADBAND

When considering how to extend broadband to unserved areas it makes sense to review the conditions that have made deployment possible in similar areas. New programs to encourage deployment may or may not be effective, but proven performance deserves serious consideration. Generally the two common characteristics differing between served and unserved areas are local control of the incumbent carrier and the form of that carrier's regulation.

A company based in a given community is more directly responsible for, and dependent on, the community's viability and success. Failure to meet the community's developing needs creates a threat to the company's own viability. Not only does positive local operation engender good will; it also enables growth and retention of population and business, strengthening the market served. Lacking access to national markets and resources, rural independent companies just have more "on the line" in serving their communities and are more motivated to meet customer needs and expectations.

Demographic relocation is as much a result of broadband service unavailability as it is a cause. Small rural communities that have broadband access to commercial, medical and educational opportunities will be more stable and less likely to experience significant population decline. In a modern service economy many businesses can have multiple locations, or no particular "location" other than an internet presence. Broadband enables start-up opportunities in rural settings that many find more desirable, and independent rural communications companies are proud to enable many substantial businesses for which robust broadband service is an absolute necessity. Conversely, where loss of physical service availability has not been offset by broadband access, population decline is aggravated and rural economic development is frustrated.

Rate of return regulation has been largely responsible for the availability of any communications service, basic or advanced, in rural America. Sparsely populated areas are simply unable to sustain the expense of ubiquitous communications infrastructure through affordable rates alone. Rural companies exist because larger carriers saw insufficient profit opportunity, and because governmental policy provided necessary assurance of cost recovery to justify investment at all. Almost without exception in Kansas, the rural areas that already enjoy access to reliable, ubiquitous broadband services are those areas served by companies operating under the transparency, predictability and stability of rate of return regulation.

All specific elements of traditional rate of return regulation may not be necessary to support expanded rural broadband deployment, but the fundamental assurance of stable and sufficient long-term cost recovery is essential. Seen through the other end of the telescope, thorough and conscientious rate of return regulation by our state commission has given the public the assurance that external support is neither excessive nor insufficient. Cost-based support, as required for the Kansas Universal Service Fund, guarantees support will be "right-sized" to meet public policy goals.

There have been unfounded and exaggerated claims of improper payments from traditional universal service support mechanisms. When these claims have been put to the test of independent review an interesting result has emerged: audits of rate of return regulated companies have shown an insignificant error rate, with as much likelihood of underpayment as overpayment. The detailed audit efforts of the Kansas Corporation Commission have been substantial as to rate of return carriers; those efforts have provided valuable assurance to the ratepaying public that a "Goldilocks test" - neither too much nor too little support - continues to be satisfied. Meanwhile, there has been a failure of nonregulated support recipients to demonstrate any public benefit, rather than windfall profit, from the significant expansion of overall USF support they have caused.

In Kansas we have seen legitimate concerns in simply determining which areas lack advanced services. The State's previous effort in mapping that availability produced numerous inaccuracies in both directions, showing unsupported claims of service availability where none existed and missing some locations where consumers already enjoy advanced services. The rural telephone companies support state efforts to develop timely and verifiable mapping systems that will reflect the presence or absence of actual availability at a given location. The first step in filling service gaps is to know where the gaps exist in fact.

III. FCC REFORMS

The FCC's ongoing efforts to reform universal service and increase broadband availability have included, to date, policy approaches that we believe to be counterproductive. In particular, the agency's treatment of rate of return carriers has been to abandon the basic conditions that have produced much current rural broadband access. The threshold political decision to cap overall support is particularly troubling; it says, in effect, that the level of support that has been inadequate to date will be maintained. An arbitrary limit that ignores verified, actual and specific reasonable cost is not sufficient, and its imposition is disruptive at best.

In addition to an overall cap regardless of need, the FCC's reforms include application of a regression analysis intended to limit an individual company's support based on other companies' costs rather than on the reasonableness of the supported carrier's own costs.

The greatest concern with the FCC's orders is - and should be - with the retroactive imposition of new recovery limitations on existing investment. Rather than create regulatory certainty, as Commissioners have claimed, this action destroys any possibility of regulatory certainty. This action, unless rescinded, sends the message that no support mechanism is reliable for longer than the tenure of the current Commission majority.

As in Twin Valley's case, Kansas rural companies have incurred long-term debt obligations to deploy broadband facilities, often with the active support and approval of the USDA's Rural Utilities Service. Both the carriers and the government agency made their commitments reasonably relying on express government commitments to universal service support. Any abandonment of these commitments would jeopardize carriers' ability to repay extensive loan obligations to the taxpayers and others. Carriers would be forced into default in a short time, and the RUS is ill prepared to operate or dispose of the rural fiber facilities that will become the property of the government. Given the likely inability to find buyers for unsupported rural wireline networks, this exercise in false economy would ultimately fall on the taxpayers.

Responsible, reliable provision of rural broadband requires a long-term commitment. An unreliable or arbitrary support mechanism will attract only businesses that can figure out how to game the mechanism successfully over the short term. Neither of the large local service providers in Kansas intends to take advantage of the initial round of federal broadband support opportunities in our state - a fact that says much about the claimed predictability and sufficiency of a "reformed" mechanism. This is not intended as a criticism of the carriers, who cannot be expected to make specific investment commitments based on uncertain policy.

IV. IMPACTS ON KANSAS

The Kansas Universal Service Fund was created as a direct and express replacement for revenues lost due to access rate reductions; these reductions directly benefited consumers through more affordable long distance calling within Kansas. Since the fund was adopted the Kansas Corporation Commission has undertaken extensive audits of every rural telephone company, with the objective of assuring that KUSF support is limited to independently verified and reasonable

actual costs. KUSF support serves to satisfy the state's constitutional obligation to afford carriers a reasonable opportunity to recover their approved costs and investments; this, in turn, makes the ubiquitous provision of reliable and affordable service possible.

The direct and necessary impact on the KUSF from federal support reduction is far from clear. The legality of such reduction is already before the courts. Any arbitrary "reform" of lawful KUSF support retroactively limiting recovery of approved costs would encounter additional strenuous opposition in the courts as a violation of constitutional private property rights. Any such reduction that survived judicial scrutiny would serve only to hasten discontinuance of existing service. This, in turn, would deprive rural businesses, families and institutions of their communications opportunities, to await uncertain and eventual replacement for those residents and businesses that choose to "wait it out."

V. CONCLUSION

Our recommendations for the Legislature are these:

- Continue to urge the Federal Communications Commission to consider seriously the concerns of state regulators and existing broadband providers about announced components of reform that will jeopardize rather than enhance broadband availability
- Reject any and all proposals for retroactive limits on recovery of reasonable costs and investments made in good faith to serve the public, in order to restore stability and predictability necessary for sound investment planning.
- Maintain utilization of responsible state commission cost oversight to set rate of return carriers' recovery levels rather than rely on untested alternatives likely to depart from actual need.
- Recognize and build on the lessons of rural companies' success to achieve more extensive and affordable rural broadband deployment.
- Refrain from overreaction to unresolved federal reforms when considering appropriate state policy on availability and affordability of communications services.