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Broadband Challenges Remain For Rural Communities

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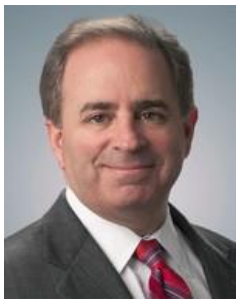

Andrew L. Ehrlich

Internet connectivity has become a pillar for everything from commerce to health care delivery. Being a connected community removes traditional barriers for rural communities by providing access to the same goods, services, education and small business opportunities to those living elsewhere. The Internet provides access to markets for small businesses trying to establish themselves, operate and thrive. Recent advances in telehealth offer rural families the promise of 21st century health care. Simply stated, Internet connectivity is an economic driver in rural communities and improves the quality of life for rural Americans.

The very nature of what makes rural communities rural creates challenges for deploying telecommunications services — low population density, tremendous distance between homes and businesses, and the challenging terrain of swamps and mountains. All of these factors add to the tremendous cost of deploying a telecommunications infrastructure to rural communities. To address these challenges, Congress created the Universal Service Fund in 1934 to ensure that all Americans had a telephone at reasonable and affordable rates. Then, Congress passed the Telecommunications Act of 1996 to expand the traditional goal of universal service to include increased access to both telecommunications and advanced services, e.g., high-speed Internet — for all consumers at those fair and affordable rates. While the USF program has done a good job meeting the goals and mission of the federal law, ongoing reforms at the Federal Communications Commission threaten to halt progress toward connecting rural communities.

A-CAM has Unmistakable Weaknesses that Can't be Ignored

The FCC is currently undergoing reforms to the USF program and many rural broadband providers are concerned. The latest version of the FCC's reforms for rate-of-return carriers, referred to as the Alternative Connect America Model, or A-CAM, has numerous flaws and demonstrates the weaknesses of a one-size-fits-all model. Specifically, the model:

➢ Penalizes telecommunications providers who have already invested in infrastructure by focusing primarily on new construction, seemingly ignoring infrastructure projects that have begun but are not yet paid for;

➢ Fails to realistically account for actual costs associated with infrastructure build-out, attributing the purchasing power of larger, price-cap carriers to small, family owned telecommunications providers;

➢ Ignores specific geographic and geologic challenges that exist when crossing difficult terrain, like mountains, or when lines need to be buried or placed in conduits to avoid tornados or hurricanes; and

➢ Does not address right-of-way challenges for deploying infrastructure around tribal lands, railroads, large private tracts and other obstacles that need to be navigated.

Unsubsidized Competitor Strikes at the Heart of Rural Connectivity

The A-CAM also includes the new concept of "unsubsidized competitor," which proposes to remove all businesses and residences in a census block from receiving USF support when a company claims to be able to offer telecommunications services without federal support in any location within that census block. This proposal could have devastating impacts on small, incumbent rate of return carriers who rely on USF support to provide broadband, Internet and voice services to those who are unserved or underserved in rural areas.

➢ Companies are allowed to "self-certify" that it provides services within a particular census block. The appeals process is time consuming and expensive to challenge or appeal the claim made in the self-certification.

➢ Incumbent carriers are unable to question whether the services allegedly provided fulfill the FCC's minimum 10/1 standard. Some providers have been known to offer "up to" speeds that are not truly attainable, leaving consumers with inadequate broadband and Internet service.

➢ Cherry-picking within census blocks is encouraged. When determining whether a census block is eligible for funding, the entire geographic area is subject to the decision of whether it is eligible for USF funding. If a company claims it is doing business within a census block, it is not required to provide service to every home and business in that census block. What will happen in many instances is a company will come in and provide services to the population center (green), but not make the enormous investment to build out to the surrounding remote and rural communities. The result is two-fold:

1) The surrounding rural area is no longer eligible to receive federal support for the build-out of a network; and

2) A company looking to build out to the rural areas cannot count on the population center to offset the higher costs associated with serving the rural portions of the census block because the area is already being serviced.

Forward-Looking Models Could Incent Unethical Behavior

The A-CAM also changes the very nature by which the funds are deployed as well. Historically, the USF program has been a reimbursement-based program. Companies have committed to building a broadband network, taken out a business loan from the government or a bank to finance the project and then submit their expenses for USF reimbursement based on the actual work performed and actual costs incurred. The A-CAM would proactively provide companies with 100 percent federal grant funding based on a forward-looking, 10-year basis. It is unclear how or when the FCC would reclaim unused funds or if those funds would then be redistributed for other companies to utilize. Furthermore, this new system could be ripe for abuse or fraud, or companies taking shortcuts to hold onto a greater share of the subsidy.

Finally, the FCC's plan doesn't just create winners and losers, it creates *enormous* winners and losers — with some states and specific companies receiving huge amounts of funding, while others see their funding slashed substantially. Being a forward-looking, ten-year model, creating such huge discrepancies will be market-shaping and will have a profound market impact, dictating where additional economic development can occur as a result of the funding being dispensed to specific areas.

A-CAM's Expected Economic Impact Will Not be Positive

The FCC went through a similar process in 2011 that was known as the Quantile Regression Analysis, or the QRA. Those reforms resulted in huge losses in reimbursement to telecom services providers. That attempt created so much uncertainty among providers that nearly all development was frozen, and only a year later the QRA was repealed by the FCC. Despite its repeal, two of the companies represented by our firm had to lay off 50+ employees — not to mention the secondary impacts of those job losses and the lack of continued investment. The work being done today by the FCC will determine whether rural areas go through a similar period as a result.

We hope to work with policymakers in Washington, D.C., to help educate and inform the FCC, senators and representatives of the impact of the A-CAM proposal. They should be aware that this FCC rule could have a profound impact on the health of a state's small, rural telecommunications provider industry as well as the availability and affordability of the telecommunications and broadband services that are provided to rural small businesses in towns and homes in America today.

—By Andrew L. Ehrlich, FaegreBD Consulting

Andy Ehrlich is a principal of FaegreBD Consulting in Washington, D.C., and works with companies in the telecommunications and information technology industries. He has managed and executed initiatives for clients on rural broadband, privacy and data breach objectives. He previously worked as chief of staff in the leadership of the U.S. House of Representatives and in a variety of legislative, political and communications positions for three members of Congress. He recently presented to Congress on the future on broadband in the U.S.