

DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MONTANA

IN THE MATTER OF the Investigation into) REGULATORY DIVISION
Improving Transparency, Fostering Accountability,)
and Maintaining Quality Services for High Cost) DOCKET NO. N2017.10.82
Support and Lifeline Services in Montana.)

COMMENTS OF TRIANGLE COMMUNICATIONS

Introduction

Triangle Communications (TTC) is pleased to have the opportunity to respond to the Montana Public Service Commission's (PSC) investigation into programs supported by the Federal Universal Service Fund (FUSF).

TTC is a cooperative that represents nearly 12,300 members and has 125 employees spread throughout approximately 24,000 square miles of rural Montana. TTC operates in some of the most expensive to serve, sparsely populated territory in Montana as well as the United States. Averaging 1.04 members per mile of cable. We use our members' and wholesale customers' revenues, loans and support from FUSF, among other capital sources, to invest approximately \$20 million a year in Montana's broadband infrastructure. Since 2011, TTC has invested over \$132 million in fiber and electronic infrastructure. Every school served by TTC members has a fiber connection.

TTC commitment to deploy advanced telecom services to our members, who are both businesses and residential consumers, is unwavering. Approximately 90% of TTC members have access to broadband services at download speeds of 4 Megabytes per second and upload speeds at 1 Megabytes per second (4x1). At the end of 2017, TTC served 58% of rural business and residential customers with fiber to the premise, capable of delivering practically any bandwidth our members demand. The effectiveness of TTC members' investment with our communities' broadband capabilities can be demonstrated by the fact that the PSC receives

practically zero consumer complaints from TTC members. (TTC recognizes that the PSC has no jurisdiction (other than Eligible Telecommunications Carrier, (ETC) status) over cooperatives in Montana; yet at times our members do call or write to the PSC with inquiries and other issues.)

The Universal Service Mission

Universal Service is not a political issue, it does not fall between Democrat, Republican or Independent lines. Universal Service was developed to ensure that all Americans were given the same opportunity for safety and economic potential. This issue is greater than the political will of any party or individual, as all members of society, regardless of their political persuasion, benefits from Universal Service.

Section 1 of the of the Communications Act of 1934, as amended, calls for the “rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges [to be made] available, so far as possible, to all of the people of the United States” to meet the national defense, public safety, commerce and other purposes set forth in the Act. 47 USC Sec. 254 no matter where people live, to have access to reasonably comparable telecommunications services without which this great country would not have established the communications infrastructure it has enjoyed for the last 84 years.

The Universal Service system is not a tax, but a cost recovery mechanism. It does not involve the IRS or taxes collected by the Federal Government through payroll or income. It is collected by carriers for carriers to ensure that all Americans are provided equitable service. It allows us to recover our cost of capital to construct and maintain services. Today, these services drive common and readily available communication services for safety, commerce, education, digital access to global content and markets, and even entertainment in America. A hundred years ago, 50% of Americans lived in the rural areas of America. Today, 80% of Americans live in urban areas. Are we to leave 20% of the population that feeds us, clothes us and offers the outdoor and wilderness benefits that the people in the urban areas enjoy behind? Are we to leave our children behind with their education? This is something that free markets cannot

solve unless you are willing to leave behind over 60 million Americans. To say that it is, “their choice to live in that part of Montana” is short sighted.

Since the passage of the Telecommunications Act of 1996, the markets have been free to invest anywhere in America. And yet, those markets did not flourish outside of the urban areas in Montana. Why? Because the free market does not allow for a viable payback on services that are delivered in areas with very little population density. Simply put, it does not provide enough margin or profit for others in the free market to go into rural areas.

Cellular companies are sparse in their coverage of Montana. What coverage does exist in Central and Eastern Montana is provided by three cooperatives that operate small cellular companies in Montana. Without this coverage, there would be many spots in Montana that would not have cellular access for voice calls, let alone access to 911 for emergencies. The three cooperatives and their cellular companies cover a large portion of Central and Eastern Montana’s land mass; however, these cooperatives could not survive on their own without the support of Universal Service. The cost alone to build the back-haul network is prohibitive. Verizon, AT&T, T-Mobile and Sprint all rely on companies that receive Universal Service support for their back-haul networks.

Satellite services currently do not meet the FCC minimums of comparable services to our urban neighbors. Cable companies rarely build outside of city limits and in the parts of Montana, where a cable company does exist, they rely on the same providers supported by Universal Service, without which they would not be able to have their own internet and in some cases, video backbone networks. The markets do work, most of the time. However, there are times when help is needed to allow everyone to gain access to certain goods and services. Universal Service is one of the few mechanisms that works, for all of us. The free market does not work in this case, it does not matter how many times a person says, “let the markets decide”, the markets have decided and that is why Universal Service exists.

If the idea of leaving large swaths of America without affordable communications and the opportunity to participate in the global economy is the route that the PSC would like to see Montana move toward, then continue to think that the free market will decide. Montana in some areas is already considered frontier and is not even rural by many standards in America. If the PSC wants Montanans to move back to the frontier days without communications by denying access to reasonably priced telephone and broadband, then those at the PSC with this idea need to look the residents of Montana in the eye and explain that maybe, someday, the free market will come to their home, business or town.

Without Universal Service, the cost of service would be approximately 10 times the amount per line, per month. The PSC should see why the free market approach will not work in rural Montana. Today there is not a free market condition that can support that level of cost by those that live in rural Montana. This amount per line would be a break even, not even providing a margin that would be necessary for someone in the free market to invest in.

If we are to look at the economic impact of broadband on rural America, a study completed by the Hudson Institute in 2016, called "The Economic Impact of Rural Broadband" would be the first study to read. The report found that while the rural broadband industry "produces a range of telecommunications services in rural areas, the economic activity accrues both to the rural areas served and to urban areas as well. More of this benefit goes to urban than rural areas. Only \$8.2 billion, or 34% of the \$24.1 billion final economic demand generated by rural telecom companies accrues to rural areas; the other 66 percent or \$15.9 billion accrues to the benefit of the urban area. Jobs supported by economic activity created by rural broadband companies are shared between rural and urban areas. 46% are in rural areas; 54% are in urban areas...Rural broadband supported over \$100 billion in e-commerce in 2015. The largest share was in manufacturing, where a majority of transactions now involve electronic data exchange over broadband networks. Nearly \$10 billion involved retail sales; if broadband had the same reach in rural areas as it does in urban areas, sales would have been at least \$1 billion higher."

The evidence is clear, Universal Service is a success and it has been working.

TTC comments henceforth will quote the PSC Notice in *italics* as numbered. Our responses will follow as paragraphs. Our comments begin with a response to the introductory paragraph of the PSC Notice, below, which, in our opinion, sets the tone.

Commission Notice

Companies are certified as eligible to receive federal funding by state agencies, such as the Commission, based on various guidelines. The Commission has concerns that the guidelines and conditions currently in place to certify companies to receive federal funding are not as effective as possible. This concern is reinforced by the fact that ETC Program funding in Montana is significant, totaling over \$100 million this year alone. Accordingly, the Commission is requesting initial comments from interested parties on the issues below.

TTC Comment: As required by law, TTC annually requests to be ETC certified by the PSC. TTC needs to file for ETC status to continue to collect and use FUSF support for the purposes for which it is intended. TTC uses FUSF, among other sources of capital, to deploy advanced telecommunications facilities and services to as many rural Montana business and residential members as financially possible. TTC has deployed 6,987 miles of fiber optic facilities in rural Montana. Every construction season bears witness to TTC crews plowing fiber to remote residences and communities throughout the state. 58% of TTC members already have fiber to the premise.

The fiber investment made by TTC has allowed our members to meet the minimum rural speeds of 4x1, but also the urban download speed of 25 megabytes per second and upload speed of 3 megabytes per second (25x3) as set by the FCC. By deploying fiber now, TTC will be able to meet the future minimum goals set by the FCC. Up until July 15, 2010 the FCC defined broadband as 200 Kilobytes per second in at least one direction. From 7/16/2010 to 1/28/2015 the definition was changed to 4x1, a 2,000% increase in download speeds and 500% increase in upload speed. On 1/29/2015, the

new FCC defined a speed of 25x3, another 6,250% increase in speed as set by the FCC. Within five years, an increase of 125,000% of the original speed from 2010.

Since 2011, TTC has invested over \$132,000,000 in fiber and electronic infrastructure. This is a huge investment that would not have been possible without the cost recovery mechanisms of Universal Service.

In short, while the FCC declared that 25x3 should be the standard definition of broadband for purposes of closing the digital divide, the Universal Service high cost fund barely supported deployment of the defined broadband speeds. Currently, Universal Service high cost program is underfunded, causing a reduction in current FUSF support for ETCs. If the national goal is to close the digital divide, then high cost support needs to be expanded, not reduced as the PSC implies.

The FCC, Congress, state legislatures, governors and public service commissioners among others, Democrat, Republican or Independent, believe that investment in broadband infrastructure is essential economic policy. TTC will not belabor the benefits of broadband availability and adoption. Suffice to say that a robust broadband infrastructure expands economic opportunity and enriches nearly every aspect of our lives, from education, health care, business vitality, community connectivity, emergency services, agriculture, entertainment, and so on. The principle of Universal Service providing reasonably comparable service at reasonably comparable (i.e., affordable) rates is as valid today as ever.

Given the significance of a fully funded universal service program, and TTC's demonstrable commitment to investing in advanced communications infrastructure throughout our designated exchange areas in rural Montana, TTC does not share the PSC concern that \$100 million in FUSF, which includes high cost, schools and libraries, rural health care and low-income programs, is somehow too much.

If anything, the Montana PSC should be working with industry to help close the broadband gap rather than questioning the amount of FUSF received in Montana.

1. *What opportunities exist for the Commission to more appropriately oversee ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission invites comments on the following issues related to ETC Services:*

TTC Comment: The PSC has already determined that it can fulfill its appropriate ETC recertification oversight role in a non-burdensome way. If the PSC finds that an ETC has failed to comply with the intent and letter of the law, it can launch an investigation as it did when it found CenturyLink failed to deliver even basic telephone service, let alone broadband service to Montana consumers.

TTC believes that PSC oversight is most appropriately exercised in such an *ex post* regulatory manner. The PSC CenturyLink investigation is a case in point. It was initiated after the PSC received a number of consumer complaints.

2. *Should additional procedures be required for the annual re-certification of existing ETCs or certification of new ETCs, in addition to those that already exist in Mont. Admin. R. 38.5.3201-3230?*

TTC Comment: The designation of new ETCs requires a diligent scrutiny of the qualifications of an applicant seeking ETC designation, as spelled out in MAR 38.5.3201, ff.

Annual recertification should be subject to a “light touch” review that ensures that an ETC is performing as attested, using FUSF support for the purposes for which it was intended. Additional procedures are unnecessary. In other words, the PSC should exercise its oversight obligations for recertification of ETCs in an *ex post* regulatory manner.

If an ETC fails to demonstrate good faith compliance with the goals of Universal Service, the PSC should look at those ETCs who continue to have consumer complaints of little or no service. Those of us that do invest in our networks should not be required to divert our scarce resources to comply with additionally imposed and unnecessary burdens of the PSC.

3. *Do the minimum additional requirements in Mont. Admin. R. 38.5.3209 ensure ETC Program funding is appropriately spent?*

TTC Comment: Yes. To receive FUSF support, TTC must conduct detailed analyses of their Intrastate and Interstate expenses. Intrastate expenses are not eligible for consideration for FUSF support. Interstate expenses are further allocated among regulated and non-regulated activity. Only regulated Interstate expenses are eligible for consideration for FUSF support. Further, regulated expenses are then subdivided between capital and operating expense, both of which are subject to federal limits. At the end of this process, ETCs submit revenue requirements to the National Exchange Carriers Association (NECA) which determines individual ETC support levels. This process ensures that only eligible expenses are supported by FUSF.

ETCs' revenue requirements, as well as their collection of Universal Service contributions from members and their receipt and distribution of Universal Service support are subject to audit by internal auditors, as well as audits from NECA and Universal Service Administrative Company (USAC). In other words, the calculation and distribution of Universal Service funds are subject to multiple layers of transparency, accountability and oversight designed to ensure that FUSF funds are properly allocated.

Additionally, Montana's administrative rules include requirements, as the question states. MAR 38.5.3209 requires that Montana's ETCs: 1) offer supported services as required by federal rules; 2) advertise the availability and rates of such services; 3) provide reasonably comparable services at reasonably comparable rates to customers upon request; 4) satisfy consumer protection and service quality; 5) offer a local usage

plan that is comparable to the incumbent's plan; and 6) demonstrate that their ETC designation is in the public interest.

Montana's rural ETCs not only meet the federal cost allocation standards discussed above, and the additional requirements of MAR 38.5.3209, the ETCs also submit over 100 compliance filings annually, ranging from emergency service/911 accuracy, to hearing aid compatibility, to extensive broadband deployment reporting in Form 477, for example. A list of these filings can be found in the filing made by the Montana Telecommunications Association (MTA).

4. *Should the Commission request certain existing ETCs to certify or demonstrate the manner in which customers in a designated service area have access to service? Mont. Admin. R. 38.5.3216(1).*

TTC Comment: TTC, which receives broadband loop support (high cost support), will continue to file federal Form 477 compliance data which demonstrate buildout, availability and adoption of supported services. The PSC would be duplicating current reporting requirements and imposing additional, redundant, unnecessary burdens on Montana's small rural telecom providers to obtain the same information that is already collected and publicly available.

5. *The Commission's rules provide that a public interest standard will apply to ETC proceedings, citing to a wide number of factors that should be considered. Mont. Admin. R. 38.5.3210. Are all of these factors appropriate to consider? Should any be eliminated or clarified? Should any be added?*

TTC Comment: The public interest factors enumerated in MAR 38.5.3210 are broad indeed. The rule already provides that "[a] determination of public interest will generally include a consideration and balancing of all relevant factors."

The "broadband factor" as noted in MAR 38.5.3210(3)(e) is of interest to TTC. This public interest factor is directly relevant to the issues raised by the PSC. It affirms the PSC commitment to its determination that ETC designation and certification is in the

public interest if the ETC's "technology platform is compatible with broadband and other advanced service offerings and facilitates availability of advanced telecommunications and information services in the areas served."

6. *Should evidentiary hearings be required to justify recertification of ETCs whose total revenue is comprised substantially from ETC Program funds? If so, what threshold percentage should trigger the hearing?*

TTC Comment: No, the federal statute and rules governing Universal Service provide that all Americans, no matter where they live, should have access to reasonably comparable services at reasonably comparable rates. Any attempt by the PSC to justify recertification of an ETC because it receives a "substantial" amount of support would contradict the intent and letter of federal law. This new provision would allow the PSC to pick winners and losers. It would be contradictory to both, Universal Service and a free market solution.

7. *The Commission has previously required disclosure of certain financial information, such as executive compensation, which was recently reversed by the Montana Supreme Court. S. Mont. Tel. Co. v. Mont. PSC, 2017 MT 123, 387 Mont. 415, 395 P.3d 473. Should the Commission adopt a rule to require disclosure of similar information, including executive compensation, as a requirement for ETCs? Should the Commission limit the rule only to public utilities who are also ETCs?*

TTC Comment: In the case of TTC, our members regulate the cooperative by electing its Board of Trustees. It is the Board of Trustee's fiscal responsibility to ensure the fiduciary duties to its members are handled correctly. Be it executive compensation or the use of Universal Service, which allows the cooperative to borrow the funds necessary to provide the advanced telecommunications network needed today.

8. *What opportunities exist for reforms to Montana law to improve ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission is interested in statutory reforms that might be proposed to the Energy and Telecommunications Interim Committee or during the 2019 Montana Legislative Session. The Commission seeks comment on the following issues:*

TTC Comment: Many States have adopted a variety of broadband deployment incentive programs, in addition to a State Universal Service program. Both could help further the deployment of broadband in the State. As long as the State Universal Service program goes to the small rural companies that are actually providing broadband service today, and not to companies that take the money and slowly rollout their deployment to the minimum or less standards that have been outlined by the FCC.

9. *Should the Commission be permitted to waive its duty to certify ETC utilities, as found in Mont. Code Ann. § 69-3-840, and instead allow the FCC to assume jurisdiction for certification?*

TTC Comment: That would be for the PSC to decide. However, TTC does believe that the guidance given in this response, if used, would have the best effect on ETCs and use of the PSC time.

10. *Should Montana repeal its Universal Service Fund statutes found in Mont. Code Ann. §§ 69-3-841 through -845, that establish authority to create a complementary Montana Universal Service Fund, but which has not been funded nor created since the statutes were enacted in 1997? In the alternative, should the statute be amended to modernize the language authorizing the state USF and, if so, how?*

TTC Comment: About half the States in the nation have State Universal Service fund. As stated above, a properly structured Montana Universal Service fund could play a constructive role in spreading the deployment of enhanced broadband services delivered by Montana's small rural telecom providers.

What opportunities exist for reforming Federal policy, either by statute or regulation, to improve ETC Services in Montana? The Commission seeks comment on the following issues:

11. *Do ETC Program subsidies, by reducing incentives to innovate and economize, actually inhibit effective buildout of rural, insular, or high-cost areas, in contrast to the stated ETC principles in 47 U.S.C. § 254(b)?*

TTC Comment: TTC disagrees with the premise of this question. As explained earlier in this response, the rate of required innovation by TTC has been astronomical. FUSF has

provided a means for rapid infusion of new innovative technologies and services that otherwise would not have been brought to rural Montanans. Universal Service provides for the ability of every American to have access to advanced telecommunication services at reasonable rates. This in and of itself shows that innovation exist due primarily to Universal Service, not in spite of it.

TTC has implemented a host of cost saving efficiencies in our network operations. For example, we pass through to our members the diminishing cost of bandwidth. We continue to invest in hardware and software to deliver more broadband to more of our members more cost effectively. As stated previously, other companies (wireless, cable or WISP) would not be able to provide their services in these markets without the carriers that are able to participate in the FUSF programs.

Innovation of the “edge” providers like Amazon, Apple, Google, Netflix, Twitter, *et al.*, owe their very existence to the robust telecommunications infrastructure built by companies like TTC. While these edge providers drive demand for more and more bandwidth, ironically, they do not contribute to the cost of building and maintaining the nation’s broadband infrastructure. If they did, the cost of building and maintaining the network that they rely upon to reach their consumers would be shared by those who materially drive the costs of building the infrastructure. Rates charged to end users conceivably could be reduced substantially, thereby providing additional capital with which to invest further in broadband infrastructure while reducing pressure on Universal Service.

Without Universal Service, innovation would have been thwarted. Universal Service has fueled innovation and the rapid infusion of cost effective broadband solutions for America’s consumers.

12. *What objective evidence exists that subsidies, as opposed to paying the true marginal cost of services, are actually necessary for consumers to subscribe in high cost areas? On average, what would the additional customer cost amount to?*

TTC Comment: Universal Service is a mechanism to allow carriers to recover its cost, not to make the margins that would be expected in the free market. In 1996 the free market was open to all carriers to move into the high cost areas; however, it did not happen. Universal Service allows carriers the ability to obtain capital to build the network that is needed to provide reasonably comparable service at reasonably comparable rates.

If a company were to provide services into our areas without the support of Universal Service, the cost would be approximately 1,000% more for our members. Verizon, AT&T, T-Mobile or Sprint wireless would not have a backbone network to provide their services in rural Montana. WISPs would not be able to provide services, they ride the backbone networks of the carriers that rely upon Universal Service, simply put, no innovation in Montana without Universal Service.

13. *Later this month, the FCC is scheduled to vote to issue notices which would seek comment on ending a national designation program for certain ETCs, requiring facilities-based service as a prerequisite to the receipt of Lifeline, propose a budget cap for the Lifeline program, and collaborating with States on verification of Lifeline eligibility, among other things. Should the Commission submit comments to the FCC regarding these proposals for reform? Fourth Report and Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, Consolidated Docket Nos. 17-287, 11-12, 09-147 (FCC Oct. 26, 2017).*

TTC Comment: If the PSC feels that it needs to submit comments on the FCC's Lifeline Reform Notice of Proposed Rulemaking, the PSC should file comments.

14. *Are there market-based alternatives, or technologies other than fiber-based broadband, that more effectively accomplish the goals of ETC Programs as stated in 47 U.S.C. § 254(b)?*

TTC Comment: As stated previously, none of these technologies would exist without Universal Service in our area. Someday, a sub-orbital satellite technology may be able

to cover the most remote areas in America. Today, it is not possible for a multitude of reasons.

15. Should ETC Program funds be expended based on a priority of higher cost areas over lower cost areas?

TTC Comment: In “ETC Program funds” that are administered by USAC, the high cost program already directs support to high cost areas over lower cost areas.

Conclusion

As TTC has responded, Universal Service works. It allows the ability of carriers to provide services in areas where the free market will not work. Competing cellular and some cable companies located in Montana would not be able to provide their services without the network provided by companies that receive Universal Service.

TTC fully complies with both the letter and spirit of the law. We go through many audits as it pertains to our use of FUSF. Additional burdensome, *ex ante* regulatory intervention by the PSC, does not help the program or the recipients of Universal Service to act in a cost-effective manner. If anything, it adds to the cost of doing business and lowers the amount of time and energy that TTC needs to spend on planning, building and maintaining our network.

If the PSC has an issue with the FUSF programs, it should direct its attention to the FCC or Congress. It seems that all parties in the legislative process understand the need for rural broadband. From the President of the United States, to the United States Congress and State legislators. The FCC and many other State PSC and PUC's are intent on closing the digital divide in rural America and enabling all Americans to have access to affordable telephone and broadband services. From this line of questioning, the Montana PSC appears intent on heading in the opposite direction and goes so far as to question whether Montana or America even needs Universal Service.

TTC welcomed this opportunity to respond to this line of questioning and we are more than willing to collaboratively work with the State of Montana, the Montana PSC and any legislator, Federal or State, with questions about Universal Service and the delivery of readily available and affordable communication services in rural Montana.