

THE BACK PAGE

ANALYSIS AND COMMENTARY
FOR THE INDEPENDENT TELECOMMUNICATIONS INDUSTRY
PUBLISHED BY INDEPENDENT TELECOM ASSOCIATES
WEDNESDAY, APRIL 28, 2010

W i r e l i n e - W i r e l e s s - B r o a d b a n d - C a b l e - V i d e o

COMMON SENSE

The Broadband “Plan” Undermines Universal Service: “Fixing The Problem”

By Steve Kraskin

In last week’s **Back Page**, I wrote about the threat to the rural Independent industry that arises from the universal service proposals in the Broadband “Plan.” Quoting from the advice of a great corporate governance adviser, I suggested that the industry use the three “Fs” – find the problem, face it, and fix it.

Last week’s **Back Page** went through the proposals in the “Plan” in order to find and face the problem. I summarized the problem in this way:

The “Plan” essentially guts and rebukes the foundations of universal service. The “Plan” displaces the very policies that have formed the basis for successful deployment of communications networks in the high cost areas of the nation served by rural Independent companies.”

Now that we have found and faced the problem, we need to fix the problem.

“In the middle of difficulty lies opportunity.”

- Albert Einstein

If Einstein is correct, the rural Independent industry has stepped into one big pile of opportunity!

Many voices claim to represent the telecommunications industry offering their views before the FCC and the U.S. Congress on the critical policy issues affecting the industry. Welcome to **The Back Page**, a special newsletter featuring commentary and viewpoints of interest primarily to the independent telecommunications industry. The views and opinions expressed in **The Back Page** are the views of the author.

The Back Page is our attempt to give voice to the policy objectives and goals of the independent telecommunications industry. **The Back Page** includes commentary on legislative and regulatory issues specifically affecting the independent telecommunications industry.

This week’s edition of the **Back Page** is intended to simulate industry dialogue and action. You can add your voice on our Blog at:

<http://independent-forum.com/> or send your comments to Tom Smith at:

tmfsmith@starpower.net or

Steve Kraskin at:

<mailto:skraskin@independent-tel.com>

The Back Page may be duplicated and distributed with the written permission of Independent Telecom Associates.

Copyright, Independent Telecom Associates, 2010

When the FCC issued its “Plan,” I heard nothing. And so, I asked, “Is anybody there? Does anybody care?”

The answers came, and the universal answer is “YES.”

I heard from friends and colleagues from around the country. While some responses came from people with whom I speak often, even more were from friends and clients with whom I had not been in touch for a long time. And, some were even from people I don’t know.

The responses to last week’s **Back Page** were all individual, distinct and thoughtful, tied together by two common questions:

“How did we get here?” “What can we do?”

Each of these questions is worthy of lengthy discussion and detail. I’ll initially offer the short answers to each question which, I think, will help to focus the framework needed for a plan to deal with the “Plan.”

“How did we get here?”

What a great question. With all of the money Independents have spent on their national associations, the “Keep America Connected” effort and the “Rural Alliance,” how did we get here? Only those among you who ran an Independent company prior to the 1996 Act know first-hand the difference in the disappointing results of our industry advocacy reflected by the “Plan” in contrast to the long track record of regulatory and legislative success that the Independent industry once enjoyed. In fact, if you came into the Independent industry in more recent years, you are probably wondering if the industry ever achieves its goals!

We don’t need to dwell on the past or to point fingers or allocate fault. We do, however, need to understand the past in order to make certain we don’t keep going down the same non-productive paths the industry has traveled in recent years.

In addition, we should understand that the policies and revenue mechanisms the Independent industry successfully utilized both before and after the 1996 Act – the very mechanisms that the “Plan” would dismantle – did not simply fall out of the sky. These policies and revenue mechanisms were the product of substantive industry efforts tied successfully to rural consumer interests by good politics. Understanding how the Independent industry succeeded in the past can help us rediscover the paths that lead to success.

What can we do?

You can actively engage in fixing the problem:

(1) by working together in a united effort to define the objective and supporting principles that will provide the focus of the Independent industry effort to address the “Plan,” and then insisting that all advocacy efforts undertaken on your behalf must focus on obtaining this established industry goal. I’ll suggest specifics in today’s **Back Page**.

(2) by participating in rebuilding the political support that the Independent industry once had. I'll offer specifics on how we can achieve this in the last installment of this **Back Page** three-part series.

The road that leads to fixing the problem successfully begins with asking ourselves some difficult questions – and recognizing that we cannot get the right answers if we don't ask the right questions, regardless of how difficult they may be. From the answers to these questions emerges a unified Independent industry objective to address the "Plan," and a set of principles that will support our objective.

“If I had an hour to solve a problem and my life depended on the solution, I would spend the first 55 minutes determining the proper question to ask, for once I know the proper question, I could solve the problem in less than five minutes.”

- Albert Einstein

The rural Independent industry worked hard on intercarrier compensation and universal service. Everyone's heart was in the right place. But, were we working on the right question?

You have heard about the ongoing industry efforts and association skirmishes over intercarrier compensation and universal service funding for nearly 10 years now. Some of you reading this were involved directly in the debates among the rural industry associations. Most of you have probably only heard or read about the disunity, and do not know first-hand what it was about.

For years, the national associations, association staff members, company representatives, consultants, attorneys and other advisers have devoted an incredible amount of time and effort to the ongoing FCC proceedings dealing with intercarrier compensation and universal service. Everyone tried to do what they thought was right.

And, it made good sense to expend effort on those proceedings. After all, the combination of intercarrier compensation and universal service funding generally accounts for 60% or more of a rural Independent's revenues and an even larger percentage of a company's operating margins.

Your representatives thought the FCC was asking:

“How do you think we should reform intercarrier compensation and the Universal Service Fund?”

In response, they went to work designing and advocating various plans. Sometimes the plans of one set of advocates for rural Independents were in conflict with the plans of another set of advocates. In every instance, though, the advocates undoubtedly thought their proposals gave the best answer to the question that they thought the FCC was asking. They thought that they had a plan to make changes in intercarrier compensation and USF that would work for their constituents.

Each was well intended and each thought they had the right answer to what they thought the FCC was asking.

But, they had the wrong question. The FCC was really asking:

“Hasn’t the time come to throw out intercarrier compensation and the universal service network support program for rural Independents?”

Our industry gave the FCC lots of pages of filings with alternative plans to make changes in intercarrier compensation and USF that rural Independents might like, but we never answered the FCC’s real question.

Answering the wrong question led to the proverbial analogy to the deck chairs on the Titanic. We were so busy arguing within the industry about how to rearrange the deck chairs that we almost missed spotting the iceberg.

In all fairness, it is far easier to see this today with both hindsight and the glaring reality that the “Plan” has now stuck in our faces. Today, however, we have no excuse not to focus on dealing with the iceberg.

But, you can stop reading this, if your answer to the following question is “Yes.”

Can your company operate successfully and provide universal service within your incumbent service area if you have to rely only on the revenues you obtain from charges to your customers?

This is a difficult, but realistic question to face. I think Einstein knew exactly what he was talking about. Finding the right questions and facing those questions is difficult, but the solutions do emerge from the questions.

Our industry associations and advocates understandably thought that the question they faced was how to propose changes in intercarrier compensation and USF that best served the bottom-lines of their members. The fact is, though, that we never really had the luxury of time to argue about what USF and intercarrier compensation mechanics will work best for any individual company or group of companies. We only thought we did.

While we argued among ourselves, others successfully argued to do away with both intercarrier compensation and the USF high cost program – the proof may not be in the pudding, but it is in the “Plan.”

We now confront the fundamental need to convince both the FCC and Congress that the proposals in the “Plan” threaten universal service, and that there is a continuing need for a mechanism that ensures an opportunity for a rural Independent to recover the expenses it incurs in the provision of universal service including a reasonable return that justifies investment in rural areas. Without that mechanism, universal service is not sustainable in high-cost to serve rural areas where the reasonable rates charged to customers only generate 40% or less of the revenues needed to operate a company.

You already know this. And, you are probably thinking this is self-evident. How could an FCC Commissioner or any regulator or member of Congress not understand this? The fact is that they don’t.

While we were busy with those deck chairs, our adversaries were busy sculpting that iceberg into an ice sculpture that serves their interests. They convinced some on the FCC staff and some in Congress that USF is going to areas where it is not needed. And, in those areas where they might concede that USF is needed, they argued that the current system sends too much funding to the wrong carrier.

Unless Einstein was wrong about that need to ask the right questions, fixing this problem requires every association, every advocate and every CEO and General Manager of every Independent to answer these three fundamental questions:

- 1. Why does your service area require universal service support mechanisms and funding?*
- 2. How should we measure and determine the amount of funding your company should receive from universal service support mechanisms?*
- 3. And why should the universal service funding needed for your community go to your company and not to another carrier?*

The answers to these three questions hold the key to the substantive aspect of responding to the challenges of the broadband “Plan.” Restoring the grassroots is the key to the political aspect of the challenge.

“If you don't know where you are going, any road will get you there.”

Lewis Carroll

The answers to those difficult questions can be found, I think, in fundamental principles that support the foundations of universal service. And, these principles support the essential Independent industry-wide objective that should unite all industry efforts into a single purpose as we face the challenges set before us by the “Plan.” I think that this fundamental objective can be framed in the context of the Broadband “Plan” in this way:

The Broadband Plan universal service proposals should be modified to provide for an explicit funding mechanism that provides each rural telephone company with revenues that are sufficient to enable the company to recover the actual expenses, including a reasonable return on investment, that it incurs in the provision of universal services to rural consumers at rates comparable to those charged to consumers in urban areas.

As simple and straightforward as this fundamental statement of objective is, this is the principle that is missing in the Broadband “Plan.” It is the absence of this principle in the “Plan” that results in the threat both to universal service and to rural Independents. This is the objective to which every piece of Independent Industry advocacy should lead. The Independent industry cannot afford again to launch uncoordinated efforts down varied roads that can lead to different destinations without first securing this fundamental objective that the “Plan” would otherwise discard.

The objective I propose was purposefully written with words that mirror terms already incorporated within the Communications Act. An important aspect of the strategy to address the “Plan” is to demonstrate that existing law not only supports, but also mandates the outcome we seek. The words I have offered may

not be perfect; and others may improve upon them. But, they provide a single binding objective that every company in the Independent industry can embrace. Others may want to add details or change the words, but right now we need to deal with the iceberg and not the arrangement of the deck chairs.

The words incorporated in this objective that I propose, however, are not sufficient without the support and strength found in fundamental principles that have supported the Independent industry. Adversaries of our universal service support mechanisms (including both USF and intercarrier compensation) have successfully hacked away at the very foundations of policy upon which the universal service mechanisms were built. The policies and mechanisms were first deployed in the era of analog copper networks. The mechanism were changed and transitioned with evolution into a digital network, but the foundation of the principles remained in place. We need to restore focus and adherence to this foundation.

The very same fundamental principles that supported the establishment of today's universal service system can easily be modified and applied to the transition to broadband networks and packet switching that the Broadband "Plan" purports to address. Each of the following proposed principles is derived from existing law and policy that sustain universal service. These principles could have and should have been incorporated into the Broadband "Plan," and adherence to these principles leads to the very fundamental objective that I believe unites the Independent industry:

1. Broadband service should be universally available to all citizens of the United States at comparable rates, speeds, terms and conditions throughout the nation.
2. The definition of universal service, including broadband access, should continuously evolve and be consistent with services and rates that are generally available in the nation's urban areas in order to avoid a digital divide.
3. Regulators and members of Congress who propose caps on USF should understand that by limiting available funding, they limit the level of services available in high-cost areas.
4. All individuals or entities connected to and benefiting from the universal broadband network should contribute to equitable funding of universal service requirements in high cost to serve areas.
5. Recipients of universal service funding should provide non-discriminatory network access consistent with common carrier utility requirements. Customers should be permitted to attach devices of their choice and to transmit and receive content of their choice in accordance with the Network Neutrality principles that the Commission has set forth and reasonable network management practices.
6. Subject to the existing provisions and limitations of the Act with respect to the designation of eligible telecommunications carriers in areas served by rural telephone companies, any broadband network provider serving a high-cost area that is willing to provide universal service in a manner consistent with the FCC's regulatory requirements should be eligible to apply for USF
7. High-cost service areas are areas where the cost of providing universal broadband exceeds the revenues that can be generated by charging "comparable" broadband rates to the customers receiving service.

8. Fixed and mobile broadband services are complimentary and both should be supported, as necessary, so that they are available to all citizens of the nation.
9. Broadband universal service support should only be provided to one fixed and one mobile service provider in any geographic area.
10. Services or applications provided over an open, non-discriminatory broadband network are subject to worldwide competition, and should not be regulated. As provided in the Act, revenues from these competitive services should not offset or subsidize universal service funding requirements.

I know that this “Top 10” list undoubtedly can lead to lots of good questions and discussion. I am equally certain that each of us could take any one of these principles and get lost in trying to “rearrange the deck chairs.” And, I have no doubt that my wording can be improved. A good industry friend (who is involved in Independent management and served as an association leader) looked at my original draft of these principles and said, “You sound like a lawyer.” He helped me by translating them into English, but there is no pride of authorship on the part of either of us. If you have better words, please send them.

You also may be able to think of other principles that should be added – and, I will add them to the list if I cannot show you how they fit into a principle already set out. And, you might take issue with one or more of the principles. Let me know – I hope I can show you how the principle serves your company’s long-term interests.

These principles together with the fundamental objective I have proposed are offered as more than straw proposals. They are offered as the bricks and mortar with which to build a plan to address the “Plan.” If the industry can unite behind a fundamental objective and fundamental principles that support that objective, we can avoid the disunity that has marked the industry efforts in recent years. The industry needs the help of each of its rural associations and the resources that each offers. With unity of purpose and principles, we can ensure that every facet of every advocacy effort in which we engage to meet the challenges of the “Plan” is focused on the unified objective and is consistent with the supporting principles. Multiple voices can maintain their individuality, but join together in common purpose.

I once had the privilege of holding an ownership interest in a rural Independent company. I have also served on the Boards of Directors of both publicly and privately held Independents. Though I am no longer either an owner or a Board member, I am as zealous as I have always been for the rural Independent industry. I try to ask myself what I would want if I were involved today in Independent management or serving as a member of a company’s Board. For what it’s worth, here is my answer:

I’d like to be able to go to bed at night knowing with certainty that I can recover the costs, including a reasonable profit, of providing my customers with broadband access at speeds and prices comparable to the services generally available in urban markets.

And, I’d like to be able to get up in the morning, knowing that my core business of providing the broadband connection is financially stable, so that I can focus on competing to bring my customers services and applications over the universal service broadband pipe that my company provides.

You might be able to say this better than I did, or you may have a better destination in mind. The important thing – especially in the context of working to fix the Broadband “Plan” problem – is to have a

clear destination, a focused objective. Lewis Carroll was right, I think. If the members of the Independent industry cannot get together on where we want to go, what we do and what roads we take won't matter.

I think it does matter. I think there is and always has been both a clear objective that unites the industry and fundamental principles that support our objective. Part 3 will focus on the process needed to advocate successfully and restore the foundation that has supported universal service throughout the nation – a combination of “Back to the Future” and “Let's beat them at their own game!”

WHAT DO YOU THINK? LET US KNOW

We always close the Back Page with this note welcoming comments and responses, and we want to encourage continuing response and dialogue. Please feel free not only to respond, but also to let us know if we have your permission to transmit and share your response on our website at <http://independent-forum.com/>.