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To whom it may concern:

The attached comments were filed this afternoon by USTelecom in the above referenced docket. Please feel free to contact me if you have any questions.

Thanks, Kevin

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Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
DEPARTMENT OF AGRICULTURE
Rural Utilities Service
Washington, D.C. 20230

In the Matter of	)	
	)	
Broadband Opportunity Council Notice and Request for Comment	)	**Docket No. 1540414365–5365–01**
	)	
	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] is pleased to comment on the Notice and Request for Comments (Notice) issued by the Rural Utilities Service (RUS), U.S. Department of Agriculture, and National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce regarding its inquiry requesting public comment to inform the deliberations of the Broadband Opportunity Council (Council).[2] With the record developed through its Notice, the Council seeks to identify regulatory barriers that are unduly impeding broadband deployment, adoption, or competition.[3]

I. Introduction

USTelecom is the nation's oldest and largest association for providers of wired communications, and the overwhelming majority of its members offer broadband in rural and urban areas across the United States. USTelecom and its members strongly support policies

[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] See, Notice and Request for Comment, *Broadband Opportunity Council Notice and Request for Comment*, 80 FR No. 82, April 29, 2015 (*Notice*).

[3] *Notice*, p. 23785.

that promote continued broadband deployment so that broadband services are accessible to all Americans.

One key barrier to the deployment of new fiber facilities is the continued application of unnecessary regulatory obligations on broadband service providers.[4] In addition to the regulatory obligations imposed on such providers by the Federal Communications Commission (FCC), they are also often impacted by a range of other federal regulatory obligations, including those imposed by agencies in the Executive Branch. These regulatory barriers arise across a broad range of federal agencies, whose jurisdiction may not initially seem applicable to broadband deployment. For example, broadband providers continue to face challenges arising from gaining access to rights-of-ways (ROWs) on federal lands from multiple federal agencies, such as the Forest Service, the Federal Highway Administration, and the Bureau of Land Management. Similarly Buy-America provisions enforced by the Department of Transportation can also raise significant regulatory barriers to broadband deployment.

Collectively those regulatory obligations present unique challenges and impose significant barriers to the efficient and speedy deployment of broadband services. Elimination of such regulatory barriers will result in the directing of additional resources toward the high-speed networks of tomorrow, heralding an era of further increases in competition in the market for truly high-speed broadband services. Such a result will further the Council's stated goal of speeding up broadband deployment, adoption and competition for consumers.

II. Issues Specific to Federal Executive Agencies

Given the enormous breadth and jurisdiction of federal Executive Branch agencies, it is understandable how regulatory barriers frequently arise that impede the deployment of

[4] USTelecom's comments focus primarily on regulatory barriers to broadband deployment. The comments do, however, also discuss areas where the Council can encourage the adoption of broadband services.

broadband throughout the country. USTelecom maintains that there are several areas where the Council can take steps to remove these barriers, thereby speeding broadband deployment. Opportunities also exist for the Council to take proactive measures to promote greater broadband deployment, adoption and competition.

A. The Council Should Coordinate with Executive Agencies to Identify Regulatory Barriers that Impede Access to Rights-of-Ways (ROWs) and/or Access to Federal Lands

As referenced in the Notice, the Council should take steps to reform the wide range of local, state and federal rules and regulations that impede a provider's ability to roll out broadband services. Chief among these are the multiple, differing, and at times, conflicting, regulatory obligations relating to access to ROWs. As Commissioner Pai pointed out when discussing Google Fiber's deployment in Kansas City, "too many providers who try to obtain [rights of way] are confronted with daunting sets of federal, state, and/or municipal regulations that often delay and sometimes deter infrastructure investment and broadband deployment."[5] According to the National Broadband Plan, "the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment."[6]

The negative effects of these barriers to broadband deployment are well documented. For example, providers have encountered substantial hurdles in their efforts to expand the availability of broadband in their service territories. AT&T, for one, experienced considerable regulatory interference with the roll-out of its U-Verse service at the hands of localities in

[5] See, FCC Press Release, *Statement of Commissioner Ajit Pai on His Visit to Kansas City's Google Fiber Project,* Sept. 5, 2012 (available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0905/DOC-316114A1.pdf) (visited June 4, 2015).

[6] FCC Report, *Connecting America: The National Broadband Plan*, p. 109, March 16, 2010 (available at: https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf) (visited May 13, 2015) (*National Broadband Plan*).

California and Connecticut – among others.[7] In the wireless context, the Commission has recognized that local processes can slow network "deployment substantially, even in cases that do not present significant concerns."[8]

The Council's time would be well spent by directing appropriate federal agencies to streamline and make uniform the various ROW approval processes at the federal level that broadband providers must navigate in order to facilitate the deployment of broadband infrastructure. One possible approach for the Council to consider is the development of best practices or standard procedures for federal agencies to follow regarding access to federally-owned infrastructure and ROWs. For example, Google has developed a collection of best practices recommended by the Fiber to the Home Council, the Gig U report and the U.S. Conference of Mayors that addresses issues relating to infrastructure access.[9] A similar effort undertaken by the Council could help the multitude of federal agencies owning such

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[7] *See* Comments of AT&T, WT Docket No. 11-59, at 5-7 (filed July 18, 2011) (noting that "[t]he practices of many local jurisdictions continue to hinder and delay carrier access to rights of way, and other sites needed to expand broadband capacity and coverage"); *see also* Comments of Verizon & Verizon Wireless, WC Docket No. 11-59, at 16-25 (filed July 18, 2011) (detailing localities' "abuse [of] their authority over public rights-of-way" and other onerous regulations that "result in unreasonably high compliance costs").

[8] Report and Order, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865, ¶ 10 (2014); *see also*, Declaratory Ruling, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(C)(7)(B) to Ensure Timely Citing Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 24 FCC Rcd 13994, ¶ 32 (2009) (finding that wireless service providers "often faced lengthy and unreasonable delays [from state agencies] in the consideration of their facility siting applications, and that the persistence of such delays [was] impeding the deployment of advanced and emergency services"); H.R. Rep. No. 104-204, at 94 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 61 (finding that "State and local requirements, siting and zoning decisions" had "created an inconsistent and, at times, conflicting patchwork of requirements" that was "inhibiting the deployment" of wireless communications services).

[9] *See*, Google Fiber City Checklist, February, 2014 (available at: https://fiber.storage.googleapis.com/legal/googlefibercitychecklist2-24-14.pdf) (visited June 4, 2015).

infrastructure and ROWs, particularly in rural areas where broadband deployment is most challenging, and federal lands are most concentrated.

For example, rural local exchange carriers serve less than five percent (5%) of the U.S. population but roughly 40 percent (40%) of its landmass.[10] These markets present unique broadband deployment challenges since they are high-cost, sparsely populated, far from larger towns and cities, and can be extremely challenging to serve due to unique topography or terrain. The companies deploying and providing broadband services in these areas – including small, mid-sized and large carriers – create jobs, drive the economy, and connect rural Americans to the world.

Moreover, these companies have been at the forefront of the deployment of broadband and Internet Protocol (IP) networks in rural areas for years, executing innovative efforts to deploy advanced networks that respond to consumer and business demands for cutting-edge services while extracting greater efficiencies from network operations in the face of operating in hard-to-serve areas. Companies operating in these territories often traverse Federal, state and Tribal lands, and many are participants in RUS telecommunications programs, such as the Telecommunications Infrastructure Loan Program, the Farm Bill Broadband Loan Program, the Community Connect Grant Program and the Distance Learning and Telemedicine Program.

The Council should ensure that the ROW mandates are fulfilled in an administratively efficient, economical and logical manner. It should consolidate internal processes in order to achieve a uniform and streamlined method of ROW access across all relevant federal Executive Branch agencies. The Council should coordinate its efforts among appropriate

[10] *See*, Comments of USTelecom and NTCA–The Rural Broadband Association, RUS-14-Telecom-0008, 79 FR 70847 (2014) (submitted January 27, 2015).

Federal Executive Branch agencies in order to reduce duplication and increase efficiency where multiple authorities are involved. Finally, the Council should also work with other Federal bodies to address and mitigate circumstances in which inconsistencies between Federal, state and/or local practices may have the effect of delaying or otherwise frustrating ROW access.

B. The Department of Transportation Should Address Regulatory Factors Impeding Broadband Deployment

For more than 35 years, the Federal Highway Administration (FHWA) has maintained a general waiver (Waiver) of Buy America requirements for manufactured products. This Waiver has served the nation and the public well, and it has furthered Congress' legislative intent embodied in the Surface Transportation Assistance Act (STAA). USTelecom recommends that the Council urge the FHWA to preserve the Waiver and make permanent the related guidance that FHWA has provided over the years.

USTelecom's member companies, many of which are small businesses, annually invest tens of billions of dollars in America deploying, improving and maintaining communications networks that make available voice, video and broadband services to virtually every home and business in this country. There are few if any industries that are more committed to supporting American economic growth through private investment in its essential infrastructure.

Our industry is significantly impacted by the agency's implementation of Buy America, including its application of the Waiver. Our member companies commonly engage in utility relocation work to accommodate federally-funded highway projects. For example, highway construction, widening, or re-routing projects may cross the path of facilities owned by a member company situated in or adjacent to the existing rights-of-way. In such cases, our member companies routinely move their facilities to accommodate the project. The FHWA previously made clear that Buy America requirements apply to materials used in such utility

relocation work related to federally-funded projects.[11] This conclusion reinforces the critical importance of the Waiver to the communications industry.

Utility relocation work constitutes only a very small facet of an overall highway project. In general terms, the work involves moving existing utility facilities and installing replacement facilities to avoid conflicts between existing facilities and highway construction. This utility work is substantially incidental to the larger highway construction project. And, by and large, these utility relocation activities do not involve large quantities of steel or iron. Instead, they typically involve materials such as copper or fiber optic cables, wood poles, communications cabinets or pedestals with hardware or electronic components inside, PVC conduit, plastic splice cases and similar items.[12]

Since the FHWA's implementation of the rule in 1983, it has found that the public interest was best served by waiving Buy America's application to manufactured products other than steel and iron.[13] USTelecom believes that the public interest and the Congressional intent behind the STAA continue to be served by the Waiver, particularly as applied to those materials

[11] *See*, *e.g.*, December 20, 2012 Ltr. Of Victor M. Mendez (Administrator FHWA) to American Association of State Highway and Transportation Officials (stating that the DOT has determined that Buy America applies to any utility work that is accomplished as a result of a Federal-aid highway project and that, as a result of MAP-21, the Moving Ahead for Progress in the 21st Century Act, signed by the President on July 6, 2012, the application cannot be narrowed to exclude utility work, even if such utility work is not reimbursed with Federal-aid highway funds).

[12] Certainly, some materials used in utility relocation are made of steel or iron, for example, manhole covers and strand are made of steel – but these materials represent a very small percentage of a typical utility relocation project.

[13] *See*, Preamble to final rule, 48 FR 53099. And in December 2012, the FHWA clarified that manufactured products that are not "predominantly" steel or iron – meaning they do not consist of at least 90% steel or iron content when delivered to the job site for installation – are subject to the Waiver. As a result, many of the materials that communications companies use in utility relocation projects are and have been subject to the Waiver, including off-the-shelf steel component products such as nuts, bolts, and washers, and other miscellaneous steel or iron components, subcomponents and hardware necessary to manufacture products that communications companies use in utility relocation work.

necessary for the continued delivery of communications services. The Council should work with the FHWA to preserve the Waiver and make permanent the related guidance that FHWA has provided over the years.

C. The Department of Housing and Urban Development Should Take Steps to Encourage High-Speed Broadband Deployment to Affordable Housing Units/Low-Income Housing

The Council should ensure that broadband providers are able to deploy fiber facilities in multiple dwelling units (MDUs), including federally-funded and/or subsidized affordable and low-income housing units. Encouraging increased access to MDUs, including in low-income, urban areas, will help the Council achieve its stated goal of increased broadband deployment and adoption, particularly for vulnerable communities.[14] For public and Section 8 housing, the Council should explore ways agencies could mandate, or better facilitate, such access. Such access is crucial to ensuring increased broadband deployment, competition and adoption.

The FCC has previously recognized that MDU access is essential to promoting competition, investment and broadband deployment. For example, its rules prohibit exclusive arrangements for delivering cable television service to MDU properties, given that "[e]xclusivity clauses that run in favor of cable operators typically are a complete bar to entry into MDUs by fiber-deploying LECs such as Verizon, AT&T, and Qwest, as well as [private cable operators]."[15] In 2007, the Commission sought comment on whether to extend this prohibition to other MVPDs, and, also questioned whether "a landlord could restrict a tenant's

[14] *Notice*, p. 3. Vulnerable populations might include, but are not limited to, veterans, seniors, minorities, people with disabilities, at-risk youth, low-income individuals and families, and the unemployed.

[15] *See* 47 C.F.R. § 76.2000(a); *see also* Report and Order and Further Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶ 51 (2007) (*MDU Order and FNPRM*), *aff'd sub nom. Nat'l Cable & Telecomms. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

ability to access certain content over the Internet to prevent a tenant from accessing an Internet-based linear video service."[16]

In its proceeding, the FCC noted that "a large and growing number of Americans live in MDUs," which the agency defines as "apartment, cooperative, and condominium buildings."[17] According to the FCC, "[t]he percentage of minorities living in MDUs is larger than that of the general population."[18] If residents of an MDU are going to enjoy the benefits of high-speed broadband, broadband providers must have access to their building in order to make fiber upgrades, and the Council should takes steps to ensure that such access can be achieved.

Unfortunately, uncooperative building owners routinely deny broadband providers access to MDUs. In some cases, the building owner will demand exorbitant fees from a broadband provider as the price for accessing the premises, while in other cases the building owner will place onerous conditions on building access. Exorbitant fees and onerous conditions effectively prevent providers from installing fiber optic facilities. If broadband providers are unable to access an MDU to install fiber, residents of that MDU will not enjoy the benefits of next generation networks or competitive choices. Thus, in order to achieve its broadband deployment objectives, the Council should act to ensure that broadband providers have MDU access necessary to make appropriate network upgrades. The Council should work with the Federal Housing Administration and other appropriate agencies to identify ways that reasonable access to MDUs by broadband providers can be achieved.

D. The Council Should Enlist Appropriate Federal Agencies to Encourage Broadband Adoption

Given that broadband is essential to economic growth, global competitiveness, and

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[16] *See*, *MDU Order and FNPRM*, ¶¶ 61-62; *see also*, Notice of Proposed Rulemaking, *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services,* 29 FCC Rcd 15995, ¶ 63 (2014) (*OTT Order*).

[17] *MDU Order and FNPRM*, ¶ 3.

[18] *Id.*, ¶ 8.

improved quality of life, the Council should explore ways to increase broadband adoption to underserved and vulnerable communities and groups that may be lagging behind. As confirmed by a Government Accountability Office (GAO) report released last week, there is broad agreement that home broadband adoption can provide a number of social and economic benefits to consumers.[19] The Council can enhance such broadband adoption efforts by encouraging certain federal Executive agencies to conduct targeted adoption efforts directed towards the communities served by relevant agencies.

The GAO report identified affordability, lack of perceived relevance, and lack of computer skills as principal barriers to broadband adoption.[20] The report also identified specific demographic communities with lower adoption percentages than the national average of 73%.[21] These communities include the unemployed (71%), African Americans (62%), Hispanics (61%), senior citizens (54%) and Americans with disabilities (48%). The report also found lower adoption rates among Americans earning less than $50,000 per year.

Given the range of Executive branch agencies that provide services to many of these demographic communities, the Council should seek to leverage their presence as a means of increasing broadband adoption. For example, outreach to the senior citizen community can be facilitated through various Executive branch agencies include, the Health and Human Services Centers for Medicare and Medicaid Services. Similarly, the Department of Housing and Urban Development (HUD) could conduct outreach and adoption efforts in the low-income community. The Council should identify any additional communities that could benefit from increased broadband adoption, and harness the presence of appropriate federal agencies to

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[19] See, GAO Report, *Broadband: Intended Outcomes and Effectiveness of Efforts to Address Adoption Barriers Are Unclear*, GAO 15-473 (June 2, 2015) (available at: http://www.gao.gov/products/GAO-15-473) (visited June 4, 2015) (*GAO Broadband Report*).

[20] *Id.*, p. 2.

[21] *Id.*, p. 33, Figure 2.

conduct targeted outreach.

E. The Council Can Accelerate the IP Transition by Encouraging Federal Agencies to Transition to IP Networks, and Educating Stakeholders on the Benefits of the IP Transition

The ways in which people communicate are undergoing a transformational change. The transition from time-division multiplexing (TDM) to IP-based networks is a significant telecommunications development of the past twenty years. Among the largest customers and owners of communications networks are numerous federal agencies operating at thousands of locations across the country.[22] The Council should facilitate the rapid transition to IP networks by encouraging federal agencies under its purview to transition to such networks. It can facilitate this transition, in part, by ensuring that Executive Branch policies do not prolong the federal government's reliance on legacy copper-based services. In instances where federal agencies secure services from providers (*i.e.*, the agencies do not own or operate the networks), the Council should encourage such agencies to work with such providers on transitioning existing services to IP-based networks. In this regard, the Council should also educate government stakeholders and consumers about the numerous benefits that will result from the IP transition.

1. The Council Should Encourage Federal Agencies to Expeditiously Transition Their Existing TDM Networks to IP.

The FCC has long recognized that the legacy public switched telephone network (PSTN) eventually needs to give way to IP-based networks in order for all Americans to realize the full benefits of IP-enabled broadband services. Indeed, the FCC has expressly stated that accelerating this transition to all IP-networks is one of its primary goals. Given that many Executive Branch agencies oversee substantial network resources, the Council should

[22] *See*, Comments of the Department of Defense and All Other Federal Executive Agencies, GN Docket No. 13-5 (submitted July 8, 2013) (available at: http://apps.fcc.gov/ecfs/document/view?id=7520928837) (visited June 4, 2015) (*DOD/FEA Comments*).

encourage such agencies to transition to IP networks.

For example, the Federal Aviation Administration's (FAA) National Airspace System uses TDM applications and services extensively to deliver those services. While efforts are being made through the FAA's "NextGen" Programs[23] to upgrade the National Airspace System to communications interfaces based upon Internet Protocol (IP) standards, over 92% of FTI services continue to be TDM-based.[24]

Similarly, in comments submitted to the FCC regarding the transition to IP networks, the Department of Defense and Federal Executive Agencies (DOD/FEA), expressed support for the IP transition, but expressed hesitancy to aggressively pursue it. DOD/FEA stated that while they "embrace[d] advances in telecommunications technologies and services, and applaud[ed] the efforts of the [FCC] and service providers to promote these advances,"[25] they nevertheless stated that they continue "to rely heavily on wireline TDM-based networks and services and will do so for the foreseeable future."[26] DOD/FEA noted that the "Networx" contract – a large portion of which covers telecommunications services that have traditionally relied on TDM technology – covers approximately "125 distinct Federal agency customers."[27]

They also noted one estimate that that more than 50% of all "Fair Opportunity" awards for the years 2011 and 2012 rely on TDM-based technology and services.[28] These services include basic voice, circuit switched data, toll-free, private line, and frame relay, "all of which depend on the availability of TDM connections at the end user's location (service delivery point) and/or the availability of copper facilities. Given that many federal government

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[23] See, Federal Aviation Administration website, *What is NextGen?*, (available at: https://www.faa.gov/nextgen/) (visited June 4, 2015).
[24] *See*, Harris Corp. Comments, GN Docket 12-353 at 1-2 (filed January 28, 2013).
[25] *DOD/FEA Comments*, p. 1.
[26] *Id.*
[27] *Id.*, p. 2.
[28] *Id.*, p. 3.

stakeholders continue to utilize TDM networks, the Council should work with such agencies to define what is needed and facilitate the expeditious transition to IP networks.

2. The Council Should Educate all Stakeholders on the Numerous Benefits That Will Result From the IP Transition.

An additional challenge faced by all stakeholders in this area is consumer awareness of, and appreciation for, the many benefits of IP networks. Government stakeholders and consumers may be more willing to make the transition from traditional TDM networks, once they realize the numerous benefits that will be achieved through a successful transition to IP networks. Such outreach and awareness initiatives are tasks ideally suited for the Council.

Although individual companies must be free to make transition decisions based on their own particular circumstances, ILECs have systematically been moving away from copper and TDM networks to fiber and IP-based networks for some time. This shift is both prudent (given the cost of maintaining copper infrastructure, especially where fiber plant exists), and necessary if we are to have any chance of achieving broadband deployment as now measured by the Commission; that is, 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads. These speeds will not be readily achieved with legacy, copper-based networks.

The Council's efforts should include educating all stakeholders about how transition from legacy networks may affect their current communications experience, both to reassure them that technology transitions will result in net gains because of the new features and applications that will be possible, and to manage their expectations about what legacy service features may no longer be available. Similar to the manner in which the FCC, aided by service providers, states, and municipalities, successfully shepherded consumers through the digital television transition, the Council should also encourage the FCC – and possibly other agencies – to employ that same approach in helping the public embrace the enhanced offerings that will be made possible with IP networks. It is in everyone's best interest that the Council help the public to understand that the benefits of allowing technology transitions to happen unimpeded

by unnecessary regulation vastly outweigh the minimal burdens that some customers may (but need not with proper notice and education) experience.

3. The Council Should Seek to Ensure that Agencies Do Not Erect Unnecessary Regulatory Barriers

The Council should actively seek to ensure that agencies such as the FCC tread carefully in fashioning regulations intended to facilitate the success of the IP transition. In particular, regulations must not erect barriers that will take away the incentives for providers to commit their resources, time, and efforts to make successful technology transitions.

One area in which the FCC is considering potentially onerous regulation is with respect to backup power obligations. The Council should work with the FCC to ensure that requirements for provider supply of consumer premises equipment (CPE) backup power are reasonable in scope and appropriately tailored to supplement – rather than replace – self-provisioning of backup power consistent with individual customer needs. Such requirements should acknowledge the steps that consumers already take to ensure the availability of voice services during a time of emergency, as well as supplementary measures by industry to provide backup power during emergencies.

Given the current marketplace realities,[29] and the provision of CPE backup power by

[29] According to recent USTelecom statistics, among telephone households during 2013, more than 90 percent had wireless service and 43 percent used only wireless telephones for voice service. In remaining telephone households, 30 percent were using non-traditional services such as VoIP via broadband. This means only 27 percent of telephone households were using traditional landlines as of year-end 2013. When taking into account customers who have both wireless and landline phones, but use their wireless phones mostly, USTelecom projects that the portion of customers relying either exclusively or mostly on traditional landlines will be only 11 percent by the end of 2015. Based on national trends, by the end of 2015, the portion of telephone households at the national level using only wireless phones for voice service is projected to surpass 50 percent. *See*, USTelecom website, *Consumers Continue Shift Away From Landline – Regulations Are Behind*, November 25, 2014 (available at: http://www.ustelecom.org/blog/consumers-continue-shift-away-landline-%E2%80%93-

carriers already in place, most consumers likely have adequate redundancy for their voice services. In fact, the most recent report from CSRIC Working Group 10, which focuses on CPE powering, noted that "the need for back-up power is evolving, as consumers increasingly rely on their cell phones and other portable devices for emergency communications during a commercial power outage."[30] The Council should therefore encourage the FCC and other agencies to consider the realities of the market when deciding whether to impose new regulations that may serve as a barrier to, rather than facilitate, the IP transition.

F. The Council Should Explore Ways to Incent Broadband Investment Through Reforms to the Tax Code, or Through Permanent Extension of Bonus Depreciation

The US corporate tax rate is the highest in the world, and needs to be reduced. Doing so will attract investment and increase business spending in the US, particularly with respect to capital intensive undertakings such as broadband deployment. However, until that happens companies that continue to invest in the US will continue to be disadvantaged by the high tax rate. Absent broader reforms to the US tax code, the best tax incentive for companies to invest in the US is through an extension of 50% expensing (*a.k.a.*, bonus depreciation), which substantially reduces the risk of investing, provides more certainty and offers a reduced cost of capital for US corporate investors. The Council should therefore work with the Executive Branch – including the Executive Office of the President – to encourage Congress to reform the tax code, or, in the alternative, permanently extend bonus depreciation.

A recent study by Eric Zwick (University of Chicago) and James Mahon (Harvard) found that between 2001 and 2004 'bonus' (30% and 50% expensing) depreciation raised

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regulations-are-behind) (visited June 8, 2015).

[30] CSRIC Working Group 10 Report, p. 19 (September, 2014) (available at: http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf) (visited June 8, 2015) (*CSRIC 10 Report*).

investment 17.3% on average and between 2008 and 2010 (primarily 50% expensing) by 29.5%.[31] It also found that financially constrained firms respond more than unconstrained firms. Pricewaterhouse Coopers (PwC) has found that investment in equipment since the recession remains below historical averages.[32] PwC also noted that a decline in investment in the first quarter of 2014 coincides with the expiration of 50% expensing at the end of 2013, and an increase in investment in the second quarter of 2014 coincides with passage of 50% expensing legislation by both tax committees in Congress.[33]

With most Americans agreeing the economy continues to remain weak, now is not the time to cut one of the best incentives in the tax code designed to encourage business investment by small and large US employers – 50% expensing. Even if not permanently extended, a temporary extension should be a top priority. The 10-year cost of a two-year extension, estimated by the Joint Committee on Taxation to be less than $3.5 billion including a provision to accelerate AMT credits in lieu of bonus depreciation, is minimal considering the economic growth and job creation benefits derived from it.[34]

Capital investment drives productivity growth, and productivity ultimately makes rising wages possible. If the cost of making something is reduced then the savings can be shared among wages, profits, and more investment. Yet, the last two years were the weakest stretch

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[31] Eric Zwick, James Mahon, *Do Financial Frictions Amplify Fiscal Policy? Evidence from Business Investment Stimulus*, p. 1, June 30, 2014 (available at: http://www.ericzwick.com/stimulus/stimulus.pdf) (visited June 9, 2015).

[32] Pricewaterhous Coopers Report, *Partial Expensing and Tax Incentives for Business Investment*, p. 5, November 24, 2014 (*PwC Report*).

[33] *PwC Report*, p. 6.

[34] Joint Committee on Taxation Report, *Estimates of Federal Tax Expenditures For Fiscal Years 2012-2017*, p. 13 (February 1, 2013).

for productivity growth since 1994-95, according to the Labor Department.[35] Incentives for capital investment remain critical to productivity growth and our overall economic recovery.

Accelerated depreciation could also incent broadband providers to increase their investment in, and speed their transition to, advanced IP networks, thereby driving higher efficiency, competitiveness and job creation across the entire US economy. For example, it is estimated that for every $1 invested in broadband networks the economy will benefit by $3 of additional economic activity.[36]

The Council should therefore work with Congress to seek reforms to the tax code or extend bonus depreciation. Absent such an extension, companies will not only be faced with the lack of accelerated recovery of investments in 2014, but they will also have to bear the additional tax costs due to the reversal of bonus depreciation from prior years - all while still facing a weaker economy with weak demand. This additional tax cost alone will drive many companies to dramatically cut their capital spending, and thus US jobs at a time when our economy can least afford it.

III. Issues Specific to the FCC

There are steps independent agencies – particularly the FCC – can take to remove regulatory barriers to broadband adoption. While the Notice acknowledges that Independent Agencies such as FCC are not members of the Council,[37] the Presidential Memorandum on expanding broadband deployment strongly encourages such agencies to comply with its

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[35] *See e.g.*, Bloomberg News, *Biggest U.S. Productivity Drop in Decades Sends Ugly Omen*, May 6, 2015 (available at: http://www.bloomberg.com/news/articles/2015-05-06/productivity-fell-in-first-quarter-as-u-s-labor-costs-climbed) (visited June 10, 2015).

[36] George S. Ford, Thomas M. Koutsky, *Broadband and Economic Development: A Municipal Case Study from Florida*, p. 3, April, 2005 (available at: http://community-wealth.org/sites/clone.community-wealth.org/files/downloads/article-ford-kautsky.pdf) (visited June 10, 2015).

[37] *Notice*, p. 23786.

requirements, including the removal of regulatory barriers.[38] Given the prominent role played by the FCC in various areas relating to broadband deployment issues, the Council should work with the agency and encourage it to address various regulatory barriers facing the broadband industry.

A. The Council Should Facilitate Greater Access to Programming Content by Video Providers

An essential component to increased broadband deployment and adoption is reasonable access to programming content provided to multichannel video programming distributors (MVPDs), such as cable providers, direct broadcast satellite (DBS) providers and traditional phone companies. The FCC has repeatedly acknowledged the connection between video and broadband deployment, noting that "broadband deployment and video entry are 'inextricably linked.'"[39] Given the importance of video programming to broadband deployment, the Council should therefore take steps to ensure greater access to video programming by MVPDs.

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[38] Memorandum for the Heads of Executive Departments and Agencies, *Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training*, Section 4(e), March 23, 2015 (available at https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadbanddeployment-and-adoption-addr) (visited June 4, 2015).

[39] *See e.g.*, Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd. 5101, ¶51 (2006) (concluding that "broadband deployment and video entry are 'inextricably linked'") (*Franchise Reform Order*); *Franchise Reform Order*, ¶62 (stating that, "[t]he record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated."); Report and Order, Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶20 (2007) (*MDU Order*) (stating that "broadband deployment and entry into the MVPD business are 'inextricably linked.'"); First Report and Order, *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, 25 FCC Rcd. 746, ¶36 (2010) (concluding that "a wireline firm's decision to deploy broadband is linked to its ability to offer video.") (*Terrestrial Loophole Order*).

Much has changed in the MVPD marketplace in the years since the initial passage of the 1992 Cable Act that brought about the FCC's program access rules, and the retransmission consent framework.[40] In recent years, the MVPD marketplace has evolved, particularly as LECs of all sizes have entered the video market in areas throughout the country. The FCC's most recent video competition report from 2013, notes that LEC MVPDs alone had 8.5 million video subscribers at the end of 2011, and by the end of 2012, AT&T's U-verse and Verizon's FiOS services combined had 8.6 million video subscribers.[41] At the time of the FCC's report, CenturyLink had also just entered the MVPD market.[42] The FCC also noted, however, that during the same timeframe, smaller LECs were also extending their reach into the MVPD, particularly with respect to the deployment of Internet Protocol Television (IPTV) technologies.[43]

In all areas where LECs have deployed MVPD services, they compete with other video services offered by cable, satellite and other MVPD providers. Local telephone company competitive video entry has greatly benefitted consumers by providing them an alternative to the incumbent which, as the FCC has previously found, has also led to lower consumer prices than in

[40] The FCC's Video Competition report from 1995 confirms that the vast majority of the changes in the MVPD marketplace have been overwhelmingly beneficial to consumers. In what was then the FCC's second report on the status of video competition, it noted that less than 59.7 million consumers even subscribed to MVPD services (just over a 65% penetration rate); DBS providers of MVPD services had just exceeded one-million customers; and LECs were only in the planning stages of deploying video offerings.

[41] Fifteenth Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 28 FCC Rcd 10496, FCC 13-99, ¶ 3.

[42] *Id.*, ¶ 29.

[43] *Id.*, ¶ 30.

areas without a wireline cable competitor. The FCC has also recognized that a successful video offering is directly related to an ILEC's ability to deploy robust broadband facilities.[44]

The vast majority of our midsize and small company members are also delivering or seeking to deliver video service to their customers via broadband fiber and/or coaxial cable, in competition with traditional cable companies, satellite providers, and broadcasters. These companies are generally operating in sparsely populated, rural areas of the country. But the increasingly harsh terms and conditions being demanded by broadcasters and content owners alike for obtaining the programming necessary to serve consumers have been exacerbated by outdated regulations that serve as barriers to broadband deployment and video competition. These adverse impacts are felt in all markets – urban, suburban, and rural.

In recent years, the FCC has undertaken separate proceedings to address competitive imbalances that continue to impact the current MVPD marketplace. Despite the significant changes in the MVPD marketplace, these issues remain pending in unresolved FCC proceedings. Regardless of how – and at what pace – the MVPD marketplace evolves, these existing regulatory imbalances should be resolved in an expeditious manner by the FCC. The Council should therefore encourage the FCC to conclude these proceedings promptly. By resolving these pending proceedings, the Council can ensure that reasonable access to programming content can be achieved by MVPDs, thereby creating a more fertile environment for broadband deployment and adoption.

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[44] *See e.g.*, *Franchise Reform Order*, ¶ 62 (stating that, "[t]he record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated."); *MDU Order*, ¶ 20 (stating that "broadband deployment and entry into the MVPD business are 'inextricably linked.'"); *Terrestrial Loophole Order*, ¶ 36 (concluding that "a wireline firm's decision to deploy broadband is linked to its ability to offer video.").

Moreover, with the increased deployment of over-the-top (OTT) video services, the video marketplace continues to evolve. As Congress considers whether to adopt broader statutory reforms to the video marketplace, the Council should work with Congress to ensure that program access issues are addressed. A starting point for such reform should be providing a more effective backstop that ensures reasonable access to programming by competitive providers and that targets practices that harm competition or consumers, without engaging in burdensome or prescriptive regulation.

Legacy regulations that discourage the deployment of emerging online video services, and burden the provision of traditional video services in the highly competitive MVPD marketplace should be eliminated. When considering whether developing video services such as OTT should be treated as MVPDs, the Council should also consider whether cable operators and/or MVPDs should be subject to less regulation. Given the extensive competition in today's MVPD marketplace, and the developing ecosystem of OTT business models,[45] consumers would be well served by Council efforts to remove unnecessary regulations for MVPDs. As competition in the video marketplace flourishes precisely because of new video competitors, including many of USTelecom's telco members, the Council should follow the prime directive of the 1996 Telecommunications Act to "establish a pro-competitive, deregulatory national policy framework" rather than trying to simply regulate for the sake of regulation.

1. Reforms to the FCC's Program Access Rules

Given the substantial shifts in the video marketplace in recent years – and the challenges

[45] In a proceeding addressing OTT video services, the FCC has identified five types of Internet-based OTT video service offerings: Subscription Linear, Subscription On-Demand, Transactional On-Demand, Ad-based Linear and On-Demand, and Transactional Linear. *OTT Order*, ¶ 13.

facing existing and emerging video competitors – the Council should address areas where regulatory reforms can better encourage emerging video competition and ensure that outdated legacy regulation does not undermine future competition or outlive its usefulness.

Competitive video providers face a number of challenges in gaining access to programming that are not adequately addressed by existing program access rules. While the amount of video content being produced continues to increase, much of the most popular content remains under the control of a few large content providers. Today, almost all popular programming in the United States is sourced from just a half dozen program vendors, most of whom control both some broadcast network programming as well as cable channel programming.

While the FCC's existing program access rules have served an important role in enabling competitive entrants to obtain some of the programming they need to compete, their limited reach has kept them from effectively addressing many of the practices affecting competitive providers. For example, the existing rules generally only apply in the case of cable-affiliated programming, with little or no protection against restrictive practices by other significant content owners that may limit consumer choice or discourage innovative new business models.

The control that video programmers – both cable-affiliated and independent programmers – have over the content that distributors need in order to field meaningful competitive sources gives them substantial negotiating power over competitive MVPDs. As an initial matter, many MVPDs – particularly smaller companies and those in the early stages of video deployment – begin with a disadvantage as compared to their entrenched competitors because programming costs are usually related to subscriber volumes, and incumbent cable operators can offer program owners large subscriber volumes that newer entrants cannot.

Content providers with high-value programming also often make their programming available in ways that may make it more difficult for competitive video distributors to access the most desirable programming or to offer it in innovative new ways with appealing new options for consumers. For example, program owners usually offer desired programming with demands to bundle that programming with other less desired channels. This practice results in higher rates for distribution rights for desired programming and carriage of programming that may be of little interest to many consumers.

Seeking only the desired channels is frequently not a realistic option because a program owner may require, directly or indirectly through the economics of pricing (*i.e.*, one desired channel is more expensive than a bundle) that providers purchase a bundle of programming that includes both desired and unwanted channels. While offering a large and diverse array of programming is generally important for competitive video providers, this "bundle inflation" limits their discretion in selecting what they feel is the best lineup or package of channels for their subscribers.[46]

Sports programming in particular has been a frequent source of problems for competitive providers. This programming is highly desired and significantly expensive in the current video marketplace. An increasing number of regional sports networks (RSNs), affiliated with the same handful of program producers and/or incumbent cable operators, control access to both

[46] Similarly, a program owner may demand that certain channels be carried on a competitive distributor's basic tier of programming – the one all or almost all subscribers receive – thereby raising the per-subscriber cost of the programming. Such placement demands force a competitive distributor to require all its subscribers to pay for programming they may not want. In these situations, alternative pricing arrangements – such as basing costs on viewership rather than subscribership – are often rejected. And, as online distribution services proliferate, a content owner may choose to limit access to online distribution rights, helping to pick winners and losers in the video distribution marketplace.

professional and collegiate sports programming and demand substantial per-subscriber rates for distribution by non-affiliated providers.[47]

Given the outstanding issues in the FCC's program access proceeding, the Council should work with the agency to resolve these matters promptly. For example, with respect to cable-affiliated RSN programming, the FCC should establish a rebuttable presumption that withholding such programming is an "unfair act."[48] It should also adopt, as proposed, a standstill agreement during the pendency of an RSN related program access complaint.[49] Implementation of a standstill mechanism for RSN programming is particularly critical, due to the unique nature of the programming. Given the tremendous consumer interest in sports programming, and its time-sensitive nature, the loss of RSN networks has a significant impact on consumers and competitive MVPDs alike.

The FCC should also establish, as proposed, a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network – regardless of whether it is terrestrially delivered or satellite-delivered – is anti-competitive, any other exclusive contract involving the same network will be afforded the same treatment.[50] Such an approach would be particularly beneficial to smaller MVPDs and to the

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[47] For example, Time Warner Cable was asking such high per-subscriber rates for distribution of the Sports Net LA, which carried the Los Angeles Dodgers' games that many providers simply declined to carry the network, thereby shrinking the number of video choices available to consumers interested in watching Dodgers' baseball. *See*, Meg James, *Time Warner Cable says Dodgers channel won't prompt write-down*, Los Angeles Times, March 25, 2015 (available at: http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-dodger-channel-financial-losses-20150324-story.html) (visited June 9, 2015).

[48] Order and Further Notice of Proposed Rulemaking, *In the Matter of Revision of the Commission's Program Access Rules*, 27 FCC Rcd. 12605, 77 FR 66052, FCC 12-123, ¶¶ 75 – 77 (October 31, 2012) (*Program Access Notice*).

[49] *Id.*, ¶¶ 78 – 80.

[50] *Id.*, ¶ 81.

Commission's broadband policy goals.

The FCC should also adopt procedures specific to new MVPD entrants seeking access to vertically integrated programming under a new contract. In instances where a new MVPD is unable to reach an agreement with vertically integrated programmer for a certain network (or networks), the FCC should establish a shot clock for resolving any associated program access complaint. It should also establish a mechanism whereby a new MVPD may request interim carriage of the programming subject to retroactive application of established prices, terms and conditions during the pendency of any complaint. Finally, the FCC should continue to consider reforms to its program access rules as issues arise for competitive MVPDs in negotiations for must-have cable operator-affiliated programming.[51]

2. Reform of the Broken Retransmission Consent Regime.

One of the more badly broken aspects of the existing regulatory framework is the FCC's retransmission consent regime. This regime was put in place to protect broadcasters at a very different time when there was concern that cable threatened the viability of broadcasters. Now, the shield of these regulations has evolved into a sword harming consumers through rising costs and more frequent programming blackouts. Retransmission consent and other regulatory preferences give preferential carriage rights to broadcasters and increase their leverage in negotiations with MVPDs.

The Council should support efforts to move the retransmission consent regime towards a more market-based and consumer-friendly approach to broadcast signal carriage. In the

[51] As previously noted, a program owner may only offer certain desired programming in a bundle with other less desired content, resulting in purchase of programming that may not be a good fit for an MVPD's offerings and increased rates for distribution rights for the channels. Requiring purchase of such bundles can make it more difficult for competitive MVPDs to develop channel lineups that they want to use to compete for existing and/or new subscribers.

immediate term, some of these reforms can be achieved through favorable resolution of the FCC's pending rulemakings.[52] More broadly, Congress has recently considered comprehensive reforms of the retransmission consent framework through its "Local Choice" legislation.[53] The Council should support reforms to the retransmission consent framework through both regulatory and legislative venues.

B. The Council Should Encourage the FCC to Take Concrete Steps to Complete the Transition to IP Networks

Today, there are likely more households that have chosen to "cut the cord" and subscribe only to wireless service than there are households that subscribe to a switched-access service provided by an ILEC.[54] And the number of households using VoIP service will soon surpass the

[52] For example, in its proceeding the FCC is considering various proposals relating to the strengthening of its good faith rules, and whether it has sufficient statutory authority to order interim carriage during retransmission disputes. *See*, Notice of Proposed Rulemaking, *Amendment of the Commission's Rules Related to Retransmission Consent*, 26 FCC Rcd. 2718, FCC 11-31 (March 2011). In a related proceeding, the FCC is considering elimination of its network non-duplication and syndicated exclusivity rules, which USTelecom maintains are outdated regulations from a bygone era. *See*, Report and Order and Further Notice of Proposed Rulemaking, *Amendment of the Commission's Rules Related to Retransmission Consent*, 29 FCC Rcd. 3351, 79 Fed Reg. 19849, FCC 14-29 (April 10, 2014).

[53] Under this approach, the unique role of broadcasters would continue to be recognized, and their legitimate interests would be protected while addressing some of the broken parts of today's system that are leading to more frequent blackouts, skyrocketing costs, and more bloated video packages. With the local choice framework, each broadcast station could decide for itself what to charge those consumers who choose to watch its programming over an MVPD's network, relieving MVPDs of any obligation to negotiate and pay exorbitant retransmission consent fees. Local choice would get government out of the business of regulating signal carriage to pay TV consumers, and allow consumers to choose what signals to pay to watch. Local choice would thus let broadcasters offer their programming at market-based rates of their choosing, while MVPDs would collect and remit the fees to broadcasters.

[54] Patrick Brogan, USTelecom Research Brief, *Voice Competition Data Support Regulatory Modernization*, p. 1, November 25, 2014 (available at: http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf) (visited June 9, 2015).

number of households subscribed to an ILEC switched access service.[55] These statistics are just the most obvious sign of a profound and accelerating technological and societal shift away from "plain old telephone service" (POTS) offered over the legacy public switched telephone network (PSTN) to IP-based services offered over fixed and mobile broadband networks. In recognition of this transition, the Council should encourage the FCC to favorably resolve numerous proceedings that will alter the nature and pace at which the IP transition can occur.

Open Internet Proceeding. USTelecom fully supported the broad public inquiry on how best to maintain and improve an open and transparent Internet, and our industry remains firmly committed to open Internet principles. But the FCC's recent action taking a Title II approach to this issue is ill-advised. The robust investment and rapid innovation that characterizes the Internet today exists precisely because prior Democratic and Republican FCC chairmen have recognized the importance of keeping 19th century regulation away from 21st century technology.

Since release of the Open Internet order, USTelecom and others have filed an appeal, asking the appellate court to make clear that the FCC has exceeded its statutory authority.[56] However, USTelecom encourages the Council to work with Congress to pass legislation establishing bright-line net neutrality requirements that will ensure an open Internet. Resolution of the open Internet issues will bring certainty to both industry and government stakeholders, thereby accelerating the transition to advanced IP networks.

Modernization Petition. One key barrier to the deployment of new fiber facilities is the

[55] Patrick Brogan, USTelecom Research Brief, *Voice Competition Has Ended ILEC Dominance*, p. 2, April 30, 2014 (available at: http://www.ustelecom.org/sites/default/files/documents/2014-04-30%20voice%20comp%20research%20brief%20FINAL.pdf) (visited June 9, 2015).

[56] *See*, Supplemental Petition for Review, *United States Telecom Association v. FCC*, D.C. Cir. Case No. 15-1086 (filed April 13, 2015).

continued application of legacy regulatory requirements to traditional voice service providers. Whether through the application of Title II common carrier regulations on broadband ISPs,[57] or the continued application of legacy telephone regulations to phone companies,[58] such regulations hinder the national policy goals of broadband deployment and competition. Evidence indicates that these requirements divert substantial resources away from next-generation networks, denying many consumers the benefits of fast reliable broadband.

In October 2014, USTelecom filed a petition identifying specific actions the FCC could take through regulatory forbearance to eliminate barriers to broadband investment and deployment of new Internet infrastructure. Under the current regulatory framework, certain regulations apply to some providers (*i.e.*, ILECs), but not others. This regulatory imbalance distorts broadband investment and competition, ultimately to the detriment of consumers.

While cable, wireless, and non-ILEC fiber providers are free to focus their expenditures on next-generation networks suited to delivering higher-speed services, ILECs must direct a substantial portion of their expenditures to maintaining legacy networks and fulfilling regulatory mandates whose costs far exceed any benefits. The FCC's National Broadband Plan warned of the adverse impact of carryover regulations from the 20th Century that require telephone companies, and telephone companies alone, to continue to invest in antiquated services and technology.[59] Given the Council's stated goal of removing regulatory barriers, it should

[57] Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, 80 FR 19737, FCC 15-24 (March 12, 2015).

[58] Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192 (filed Oct. 6, 2014); *see also*, Public Notice, *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance From Certain Incumbent LEC Regulatory Obligations*, DA 14-1585 (November 5, 2014).

[59] *National Broadband Plan*.

encourage the FCC to expeditiously remove these outdated and unnecessary regulations.

Tech Transition proceeding. The FCC has focused significant resources to prepare for the transition from the PSTN to IP-based networks. It has established a policy goal of modernizing its rules to "accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks."[60] The Council should therefore work with the FCC, encouraging it to move rapidly towards implementation of the IP transition, while eliminating unnecessary legacy regulations in the process.

C. The Council Should Encourage the FCC to Streamline Section 214 Obligations

Under section 214 of the Communications Act, any common carrier that is seeking to sell its lines, discontinue legacy phone service, or exit the business entirely, must first ask the FCC for permission to do so. As recently noted by FCC Commissioner Ajit Pai, gaining approvals under section 214 "isn't a speedy process," with the agency sometimes taking "months or even years" to act on them.[61] The FCC, however, recently changed its approach to the section 214 process, and will now require carriers to also seek permission from the FCC before discontinuing certain features or aspects of their service.[62] The FCC's attempt to "clarify" the section 214 process by redefining what is "service" under section 214(a) imposed impossibly vague new substantive requirements on providers without any notice or opportunity for comment.

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[60] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd. 17663, 76 FR 78384, FCC 11-161, ¶ 11 (November 18, 2011) (*USF/ICC Transformation Order*).

[61] *See*, Statement of Commissioner Ajit Pai, Notice of Proposed Rulemaking and Declaratory Ruling, *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, 29 FCC Rcd 14968, 80 FR 450, FCC 14-185, ¶ 118 (November 25, 2014) (*Declaratory Ruling*) (available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-185A5.pdf) (visited June 9, 2015).

[62] *Declaratory Ruling*, ¶ 5.

The FCC's recent dramatic shift in how it defines a provider's service for purposes of section 214 analysis makes an already challenging process even more onerous. The very fact of having to undergo review pursuant to section 214 handicaps carriers in a way their competitors – such as cable providers – are not. Moreover, the FCC's recent changes to its rules in this area leave no clear guidance as to when providers might need to seek review under section 214. Having already decided that transitioning to fiber and IP-based networks is in the public interest and is necessary to achieve the nation's broadband deployment goals, the FCC should be encouraging providers to upgrade their networks, not erecting barriers to that process.

The Council should therefore encourage the FCC to make the section 214 less onerous for carriers, thereby encouraging the transition to more robust IP networks. USTelecom maintains that the FCC should not establish an approval process for copper retirement.[63] Such an approach is unnecessary, given the extent of fiber deployment that already has been achieved by industry in recent years.[64] While there is no question that providers still employ copper in their networks and that many providers rely on copper infrastructure (at least in part) to provide service to their customers, the trend has been a dramatic shift away from copper toward fiber. The Council should dissuade the FCC from focusing so much of its attention on modifying regulations for a process that is quickly winding down and may be fully resolved in the very near

[63] *Id.*, ¶¶ 49 - 91.

[64] *See e.g.*, Patrick Brogan, USTelecom Research Brief, Latest Data Show Broadband Investment Surged in 2013, September 8, 2014 (available at: http://www.ustelecom.org/sites/default/files/documents/090814%20Latest%20Data%20Show%20Broadband%20Investment%20Surged%20in%202013.pdf (visited June 9, 2015); *see also*, USTelecom website, *Broadband Deployment* (available at: http://www.ustelecom.org/issues/using-broadband/broadband-deployment) (visited June 9, 2015).

future.[65]

D. The Council Should Encourage the FCC to Expedite Reforms to its Universal Service Fund Contribution Methodology

The FCC has an ongoing proceeding to reform the contribution methodology for the Universal Service Fund (USF, or "the Fund"). The Council should work with the FCC in these reforms by encouraging the agency to continue to promote efficient and carefully targeted broadband deployment in rural areas through the Connect America Fund (CAF).[66] The CAF program, which is only now beginning to bear fruit, is properly focused on stimulating investment by making available public funds necessary to deploy broadband in areas that would be otherwise uneconomic to serve. Through these efforts, the CAF offers an efficient, rational means of helping to expand broadband access to all Americans. While the FCC recently finalized offers of model-based support for incumbent price cap carriers, the Council should encourage the agency to move promptly to design and implement the competitive bidding process for CAF Phase II so that the benefits of the program can finally be realized for rural Americans.

Equally important, the Council should encourage the FCC to settle on a long-term universal service solution for rate-of-return carriers sooner rather than later.[67] In the absence of a new universal service high-cost support mechanism for rate-of-return carriers, the benefits of extended and enhanced broadband service for many rural Americans will be delayed and

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[65] *See e.g.*, *Declaratory Ruling*; *see also*, Order, Report and Order and Further Notice of Proposed Rulemaking, *Technology Transitions*, 29 FCC Rcd 1433, 79 FR 11366, FCC 14-5 (January 31, 2014); *see also*, Policy Statement and Notice of Proposed Rulemaking, *911 Governance and Accountability*, 29 FCC Rcd 14208, 80 FR 3191, 80 FR 18342, FCC 14-186 (November 21, 2014).

[66] *See*, *USF/ICC Transformation Order*; Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 79 FR 44352, FCC 14-98 (July 14, 2014).

[67] *See*, Report and Order, *Connect America Fund*, FCC 14-190, WC Docket Nos. 10-90, 14-58, 14-192, ¶ 100 (December 18, 2014).

possibly denied, contrary to Congress's directives in Sections 254 and 706. Indeed, for rate-of-return carriers ready to make investments in broadband infrastructure, many are dissuaded from doing so due to concerns about the lack of a broadband-focused universal service program attuned to their needs. To address this problem, the Council should encourage the FCC to move quickly to implement a long-term universal service plan for rate-of-return carriers that will promote broadband investment in rural, high-cost areas.

E. The Council Should Support the FCC's Transitioning of its Lifeline Program to a new Broadband Model

The FCC recently announced that it will consider reforms to its Lifeline program, which currently provides subsidized voice service for low-income consumers.[68] Among other things, the FCC is considering transitioning the service to subsidize broadband subscriptions for low-income consumers, while at the same time removing the current role of phone and Internet providers as the parties responsible for determining if customers are eligible for the subsidies.

USTelecom welcomes these proposed reforms, and believes it is prudent for the FCC to consider such reforms for the Lifeline program. Its efforts are consistent with a recent GAO report which encouraged the FCC to determine the extent to which the Lifeline program is efficiently and effectively reaching its performance goals.[69] Given the FCC's new focus on transitioning the Lifeline program to include broadband, USTelecom encourages the Council to work with the FCC to ensure the availability of voice and broadband services for low-income

[68] *See*, FCC New Release, *FCC Announces Tentative Agenda For June Open Meeting* (May 28, 2015); *see also*, FCC Fact Sheet, *FCC Chairman Wheeler Seeks Comment On Modernizing Lifeline To Make 21st Century Broadband Affordable For Low-Income Households*, (May 28, 2015) (available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0528/DOC-333686A1.pdf) (visited June 9, 2015).

[69] GAO Report, *Telecommunications, FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, GAO 15-535, March 2015 (available at: http://www.gao.gov/assets/670/669209.pdf) (visited June 8, 2015).

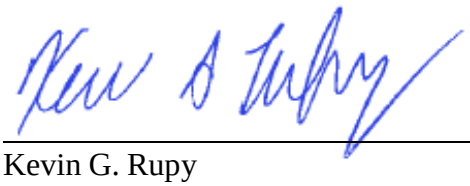
Americans while minimizing the contribution burden on consumers and businesses.

IV. Conclusion

USTelecom strongly support policies that promote continued broadband deployment so that broadband services are accessible to all Americans. An important step in achieving this goal is through the elimination of unnecessary regulatory barriers that impede the deployment of advances broadband networks. Elimination of such regulatory barriers will result in the directing of additional resources toward the high-speed networks of tomorrow, heralding an era of further increases in competition in the market for truly high-speed broadband services. Such a result will further the Council's stated goal of speeding up broadband deployment, adoption and competition for consumers.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

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