

[STAFF DISCUSSION DRAFT]

110TH CONGRESS
2^D SESSION

H. R. _____

To reform the collection and distribution of universal service support under
the Communications Act of 1934.

IN THE HOUSE OF REPRESENTATIVES

Mr. BARTON of Texas introduced the following bill; which was referred to the
Committee on _____

A BILL

To reform the collection and distribution of universal service
support under the Communications Act of 1934.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Universal Service Re-
5 form, Accountability, and Efficiency Act of 2008”.

1 **SEC. 2. UNIVERSAL SERVICE PRINCIPLES, SUPPORTED**
2 **SERVICES, CONTRIBUTION MECHANISM, AND**
3 **SUPPORT.**

4 (a) IN GENERAL.—Section 254 of the Communica-
5 tions Act of 1934 (47 U.S.C. 254) is amended by striking
6 subsections (b) through (e) and inserting the following:

7 “(b) UNIVERSAL SERVICE PRINCIPLES.—The Com-
8 mission and the Joint Board shall base policies to advance
9 the goal of universal service while reforming the universal
10 service support and contribution mechanisms on the fol-
11 lowing principles:

12 “(1) AFFORDABILITY.—Voice communications
13 service shall be available to low-income households
14 and households in rural, insular, and high cost areas
15 at rates that are affordable to such households.

16 “(2) EFFICIENCY.—Universal service support
17 and contribution mechanisms for the provision of
18 services described in subsection (c) shall impose the
19 lowest possible costs on telecommunications service
20 subscribers and users.

21 “(3) CONTRIBUTION AND DISTRIBUTION RE-
22 QUIREMENTS.—Neither the provision of universal
23 service support nor the contribution mechanisms for
24 the provision of universal service shall favor any par-
25 ticular provider of voice communications service or

1 any particular technology used to provide voice com-
2 munications service.

3 “(4) TRANSPARENCY.—The rules governing
4 both the provision of and contribution to universal
5 service support shall—

6 “(A) be clear and enforceable; and

7 “(B) clearly define, and require the annual
8 measurement of, the goals and outcomes of uni-
9 versal service, including the performance meas-
10 ures developed under section 4 of the Universal
11 Service Reform, Accountability, and Efficiency
12 Act of 2008.

13 “(5) CONSUMER FOCUSED.—The paramount
14 goal of the universal service program shall be to sup-
15 port the availability of affordable voice communica-
16 tions service for consumers in low-income households
17 and households in rural, insular, and high cost areas
18 throughout the United States, rather than to provide
19 financial support to any new or existing carrier,
20 service provider, or vendor.

21 “(6) ACCESS TO ADVANCED TELECOMMUNI-
22 CATIONS SERVICES FOR SCHOOLS, LIBRARIES, AND
23 RURAL HEALTH CARE PROVIDERS.—Elementary and
24 secondary schools, libraries, and rural health care
25 providers should have access to advanced tele-

1 communications and information services as de-
2 scribed in subsection (h).

3 “(c) DEFINITION OF SERVICES SUPPORTED.—

4 “(1) VOICE COMMUNICATIONS SERVICE SUP-
5 PORT.—Except as provided in paragraph (2), uni-
6 versal service support is to be used solely to provide
7 voice communications service to consumers in house-
8 holds in rural, insular, and high cost areas through-
9 out the United States and to consumers in low-in-
10 come households.

11 “(2) SPECIAL SERVICES.—In addition to the
12 services supported under paragraph (1), the Com-
13 mission may designate additional services to receive
14 universal service support for use by schools, librar-
15 ies, and health care providers in accordance with
16 subsection (h).

17 “(d) CONTRIBUTIONS.—

18 “(1) BASIS FOR CONTRIBUTIONS.—In estab-
19 lishing under the principles set forth in subsection
20 (b) the contribution mechanism for the support of
21 universal service, the Commission shall adopt a
22 mechanism that is based solely on the following re-
23 quirements:

24 “(A) Such mechanism shall be based exclu-
25 sively upon the assignment of numbers in the

1 North American Numbering Plan or any suc-
2 cessor numbering methodology.

3 “(B) Such mechanism shall require that all
4 assigned telephone numbers that are used for
5 accessing voice communications services, and
6 only such numbers, be assessed an equivalent
7 amount, subject to subparagraph (C).

8 “(C) Such mechanism shall include an ex-
9 emption from universal service contributions for
10 low-income households.

11 “(2) CAP ON CONTRIBUTIONS.—In establishing
12 under the principles set forth in subsection (b) the
13 level for the contribution for the support of universal
14 service, the Commission shall require that the total
15 amount of universal service support for all universal
16 service support mechanisms shall not exceed the
17 total amount that was collected from all sources for
18 all universal service support mechanisms in the last
19 year prior to the date of enactment of the Universal
20 Service Reform, Accountability, and Efficiency Act
21 of 2008.

22 “(3) ANTI-DEFICIENCY ACT COMPLIANCE.—

23 “(A) IN GENERAL.—In designing the con-
24 tribution mechanism for the support of uni-
25 versal service, the Commission shall take such

1 steps as are necessary to reform such contribu-
2 tion mechanism so that compliance with the re-
3 quirements of section 3679 of the Revised Stat-
4 utes (31 U.S.C. 1341; commonly known as the
5 Anti-Deficiency Act) will not cause a disruption
6 in the administration of universal service sup-
7 port.

8 “(B) REPORT TO CONGRESSIONAL COM-
9 MITTEES.—The Commission shall determine the
10 earliest time that complying with such section
11 will not cause a disruption in the administration
12 of universal service support, and the Commis-
13 sion shall report that determination promptly to
14 the Committee on Energy and Commerce of the
15 House of Representatives and the Committee
16 on Commerce, Science, and Transportation of
17 the Senate.

18 “(e) UNIVERSAL SERVICE SUPPORT.—

19 “(1) IN GENERAL.—

20 “(A) After the date specified in subpara-
21 graph (B), only an eligible telecommunications
22 carrier designated under section 214(e), as such
23 section is amended by the Universal Service Re-
24 form, Accountability, and Efficiency Act of

1 2008, shall be eligible to receive specific Federal
2 universal service support.

3 “(B) The date specified in this subpara-
4 graph is the date on which the initial set of
5 auctions required under section 254(m), as
6 amended by the Universal Service Reform, Ac-
7 countability, and Efficiency Act of 2008, is
8 completed.

9 “(2) EXCEPTION TO SUPPORT.—The Commis-
10 sion shall promulgate regulations to ensure that an
11 eligible telecommunications carrier shall not receive
12 universal service support based on the provision of
13 voice communications service to high-income house-
14 holds in rural, insular, or high cost areas.”.

15 (b) IMPLEMENTATION OF REFORM MEASURES.—Sec-
16 tion 254(a) of such Act (47 U.S.C. 254(a)) is amended
17 by adding at the end the following new paragraph:

18 “(3) PROCEDURES TO REFORM UNIVERSAL
19 SERVICE SUPPORT SYSTEM.—Notwithstanding para-
20 graphs (1) and (2), within 9 months after the date
21 of enactment of the Universal Service Reform, Ac-
22 countability, and Efficiency Act of 2008, the Com-
23 mission shall implement reform of the universal
24 service system in accordance with this section, as
25 amended by the Universal Service Reform, Account-

1 ability, and Efficiency Act of 2008, and section 4 of
2 such Act. The Federal-State Joint Board may sub-
3 mit comments in any proceeding carried out by the
4 Commission pursuant to this section.”.

5 **SEC. 3. DISTRIBUTION MECHANISM REFORM FOR HIGH**
6 **COST SUPPORT.**

7 (a) IN GENERAL.—Section 254 of the Communica-
8 tions Act of 1934 (47 U.S.C. 254) is further amended by
9 adding at the end the following:

10 “(m) DISTRIBUTION MECHANISM FOR HIGH COST
11 SUPPORT.—

12 “(1) ESTABLISHMENT OF REVERSE AUCTION
13 DESIGN.—

14 “(A) IN GENERAL.—Not later than 9
15 months after the date of enactment of the Uni-
16 versal Service Reform, Accountability, and Effi-
17 ciency Act of 2008, the Commission shall de-
18 velop, and shall promulgate regulations to im-
19 plement, a reverse auction plan to be used to
20 distribute universal service support for voice
21 communications service in rural, insular, and
22 high cost areas, in which each auction winner
23 shall have the privileges and obligations of a
24 carrier-of-last-resort, as determined by the
25 Commission.

1 “(B) AUCTION DESIGN PARAMETERS.—In
2 carrying out the requirements of subparagraph
3 (A), the Commission shall ensure that the auc-
4 tion design provides for—

5 “(i) the provision of quality voice com-
6 munications service, as defined by the
7 Commission by regulation prescribed after
8 the date of enactment of the Universal
9 Service Reform, Accountability, and Effi-
10 ciency Act of 2008, consistent with clause
11 (iii);

12 “(ii) cost-constraining benefits;

13 “(iii) technological neutrality;

14 “(iv) incentives for providers of voice
15 communications service to become more ef-
16 ficient;

17 “(v) conducting the auctions at appro-
18 priately gauged intervals that take into ac-
19 count new information about changes in
20 the marketplace, so that universal service
21 support based on current technology does
22 not become a barrier to entry for service
23 providers using new technologies;

24 “(vi) in the first set of auctions, which
25 shall be conducted not later than 15

1 months after the date of enactment of the
2 Universal Service Reform, Accountability,
3 and Efficiency Act of 2008, reserve prices
4 that, in the aggregate, do not exceed the
5 total amount of support for rural, insular,
6 and high cost areas provided in the year
7 prior to the date of enactment of the Uni-
8 versal Service Reform, Accountability, and
9 Efficiency Act of 2008 and which take into
10 account that support—

11 “(I) shall not be provided to
12 more than one entity per area; and

13 “(II) shall only cover costs that
14 are directly related to the provision of
15 voice communications service, con-
16 sistent with the requirements of para-
17 graph (3)(B);

18 “(vii) for succeeding auctions to be
19 carried out periodically at the discretion of
20 the Commission, reserve prices that, in
21 each study area, are no greater than the
22 winning bid in the previous auction for
23 each such study area; and

1 “(viii) avoiding, to the greatest extent
2 practicable, conducting auctions in which
3 only 1 firm participates.

4 “(C) SERVICE AREAS.—

5 “(i) IN GENERAL.—In carrying out
6 the requirements of subparagraph (A), the
7 Commission, within 9 months after the
8 date of enactment of the Universal Service
9 Reform, Accountability, and Efficiency Act
10 of 2008, shall define service areas based on
11 a study, conducted at the most specific ge-
12 ographic level practicable, of those rural,
13 insular, and high cost areas throughout the
14 United States that require universal serv-
15 ice support to comply with the principles of
16 universal service in subsection (b).

17 “(ii) PROHIBITION.—The Commission
18 shall not provide support to an area in
19 which, in the absence of a subsidized car-
20 rier-of-last-resort, consumers would have
21 access to affordable voice communications
22 service by 1 or more unsubsidized carriers.
23 The Commission shall have the authority
24 to issue vouchers to consumers if needed to

1 complete the transition away from sub-
2 sidizing a carrier-of-last-resort.

3 “(2) CHARACTERISTICS OF AUCTIONED AU-
4 THORITY.—Not later than 90 days after the date of
5 enactment of the Universal Service Reform, Ac-
6 countability, and Efficiency Act of 2008, the Com-
7 mission shall prescribe the obligations and privileges
8 of the winner of each auction as the carrier-of-last-
9 resort for each service area (defined pursuant to
10 paragraph (1)(C)(i)). In prescribing such obligations
11 and privileges, the Commission shall describe the
12 minimum quality of voice communications service to
13 be provided (as defined by the Commission pursuant
14 to paragraph (1)(B)(i)) and shall take into consider-
15 ation the principles of universal service in subsection
16 (b).

17 “(3) SUPPORT LIMITATIONS.—

18 “(A) DUPLICATE SUBSIDIES PROHIB-
19 ITED.—The Commission shall designate only 1
20 eligible telecommunications carrier per service
21 area to receive universal service support for
22 providing the services described in subsection
23 (c)(1).

24 “(B) PROHIBITED EXPENDITURES.—In
25 any rural, insular, or high cost area in which

1 support is provided by a subsidy that is deter-
2 mined under paragraph (1), such subsidy shall
3 not be expended for costs not directly related to
4 the provision of voice communications service,
5 including the following prohibited expenditures:

6 “(i) Office furniture or office equip-
7 ment.

8 “(ii) Artwork.

9 “(iii) Cafeterias, lunch rooms, and
10 vending facilities.

11 “(iv) General purpose computers and
12 databases for such computers.

13 “(v) Patent rights.

14 “(vi) Government franchises.

15 “(vii) Charitable contributions.

16 “(viii) Penalties or fines for violations
17 of statutes.

18 “(ix) Membership fees and dues in so-
19 cial, political, service, recreational, or ath-
20 letic clubs or organizations.

21 “(x) Marketing, including costs in-
22 curred in performing administrative activi-
23 ties related to marketing products and
24 services, or any other costs incurred in sell-

1 ing products and services, such as product
2 advertising.

3 “(xi) Lobbying or public relations.

4 “(xii) Performing personnel adminis-
5 tration activities.

6 “(xiii) Legal services.

7 “(xiv) Making planned search or crit-
8 ical investigation aimed at the discovery of
9 new knowledge.

10 “(xv) Vehicles, including the cost of
11 fuel, lubrication, license and inspection
12 fees, washing, repainting, or minor acces-
13 sories.

14 “(xvi) Airplanes, including fuel, flight
15 crews, mechanics, ground crews, license
16 and inspection fees, washing, repainting, or
17 minor accessories.

18 “(xvii) Janitorial service, cleaning
19 supplies, or guard service.

20 “(xviii) Sewage or water utilities or
21 services.

22 “(C) NO DIVIDEND PAYMENTS.—No eligi-
23 ble telecommunications carrier, including a tele-
24 phone cooperative, receiving a subsidy under
25 paragraph (1) shall issue dividends or vouchers

1 to its members or customers that negate the
2 cost of voice communications service or cause
3 the member to profit from having voice commu-
4 nications service. Any net profits gained based
5 on the receipt of such subsidy shall be returned
6 to the Commission.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) ELIGIBLE TELECOMMUNICATIONS CAR-
9 RIERS.—

10 (A) IN GENERAL.—Section 214(e) of the
11 Communications Act of 1934 (47 U.S.C.
12 214(e)) is amended—

13 (i) by striking paragraph (1) and in-
14 serting the following:

15 “(1) ELIGIBLE TELECOMMUNICATIONS CAR-
16 RIERS.—The Commission shall deem the winner of
17 an auction under section 254(m)(1)(A) as the eligi-
18 ble telecommunications carrier for a service area, de-
19 fined in accordance with section 254(m)(1)(C). Such
20 carrier shall, throughout the service area for which
21 the designation is received—

22 “(A) offer the voice communications serv-
23 ice that is supported by Federal universal serv-
24 ice support mechanisms under section
25 254(c)(1), either using its own facilities or a

1 combination of its own facilities and resale of
2 another provider's services; and

3 “(B) advertise the availability of such serv-
4 ice and the charges therefor using media of
5 general distribution.”; and

6 (ii) by striking paragraphs (2)
7 through (6).

8 (B) EFFECTIVE DATE.—The amendments
9 made by subparagraph (A) shall take effect 15
10 months after the date of enactment of this Act.

11 (2) ADDITIONAL CONFORMING AMENDMENT.—
12 Section 254(h)(1)(B) of the Communications Act of
13 1934 (47 U.S.C. 254(h)(1)(B)) is amended by strik-
14 ing “subsection (c)(3)” and inserting “subsection
15 (c)(2)”.

16 **SEC. 4. ACCOUNTABILITY.**

17 (a) IN GENERAL.—The Federal Communications
18 Commission (in this Act referred to as the “Commission”)
19 shall take such steps as are necessary to make the reforms
20 described in this section.

21 (b) FEDERAL-STATE JOINT BOARD ON UNIVERSAL
22 SERVICE REFORM.—

23 (1) ECONOMISTS REQUIRED.—Not later than
24 180 days after the date of enactment of this Act, the
25 Commission shall appoint 3 additional members to

1 the Federal-State Joint Board on Universal Service.
2 Such members shall each be economists with a doc-
3 torate degree in economics and shall have at least 5
4 years of post-graduate experience as a professional
5 economist.

6 (2) DIVESTITURE OF FINANCIAL INTERESTS
7 BEFORE SERVING.—Not later than 60 days after the
8 date of enactment of this Act and within 60 days
9 after the appointment of each new member of the
10 Board, the Commission shall review any financial in-
11 terests of any member of the Board and shall take
12 necessary actions to eliminate any conflicts of inter-
13 est.

14 (c) USAC BOARD OF DIRECTORS.—The Commission
15 shall reconstitute the Board of Directors of the Universal
16 Service Administrative Company to ensure that all Board
17 members are professional public administrators with at
18 least a master's degree in public administration, 5 years
19 of post-graduate professional experience, and no financial
20 interest or affiliation with any organization or company
21 that may receive universal service support.

22 (d) PERFORMANCE MEASURES.—

23 (1) IN GENERAL.—The Commission shall de-
24 sign and implement performance measures, which
25 shall include specific goals, outcome measures, and

1 efficiency measures, to determine whether the goals
2 of advancing universal service are being achieved in
3 an economically efficient way.

4 (2) PRINCIPLES.—In developing performance
5 measures under paragraph (1), the Commission may
6 examine independent research on the consequences
7 and effectiveness of universal service programs. The
8 following principles shall govern the development of
9 these performance measures:

10 (A) Outcome measures shall reflect both
11 proposed progress and actual benefits to the
12 public produced by universal service support.

13 (B) Efficiency measures shall identify the
14 cost per unit of a successful outcome, rather
15 than the cost per unit of output.

16 (C) The relevant measure of costs shall in-
17 clude the full economic effect of the universal
18 service program's expenditures.

19 (3) MINIMUM REQUIREMENTS FOR PERFORM-
20 ANCE MEASURES.—

21 (A) HIGH COST AREAS AND LOW INCOME
22 PROGRAM.—In order to ensure the existence of
23 an affordably priced service option for voice
24 communications service for consumers in rural,
25 insular, and high cost areas and consumers in

1 low-income households, the Commission shall
2 monitor availability, price, and subscription
3 rates. The Commission shall measure, per mil-
4 lion dollars spent, the change in penetration
5 rate or number of subscribers, availability of
6 voice communications service, and price/income
7 ratios.

8 (B) SCHOOLS AND LIBRARIES.—In order
9 to ensure that the program carried out under
10 section 254(h)(1)(B) of the Communications
11 Act of 1934 (47 U.S.C. 254(h)(1)(B)) has led
12 to an increase in access to the Internet by
13 schools and libraries and that improved edu-
14 cational outcomes are directly attributable to
15 such increased access, the Commission shall
16 measure, per million dollars spent, the improve-
17 ment in educational outcomes attributable to in-
18 creased Internet access.

19 (C) RURAL HEALTH.—In order to ensure
20 that increased access to advanced services by
21 rural health care providers under section
22 254(h)(1)(A) of the Communications Act of
23 1934 (47 U.S.C. 254(h)(1)(A)) has directly
24 contributed to improved health outcomes and

1 the reduced cost of maintaining a healthy popu-
2 lation, the Commission—

3 (i) shall ascertain the extent to which
4 universal service support increases the use
5 of various communications services by
6 health care providers serving rural areas,
7 compared to such use in the absence of
8 universal service support; and

9 (ii) shall measure, per million dollars
10 spent, whether, and by how much, the in-
11 creased use of various communications
12 services has improved health outcomes or
13 reduced health care costs.

14 (e) REPORT TO CONGRESS.—The Commission shall
15 submit to Congress an annual report on whether, and to
16 what extent, the goals of advancing universal service are
17 being achieved in an economically efficient way, including
18 an analysis of the performance measures implemented.

19 (f) ANNUAL REPORT REQUIREMENT.—The Commis-
20 sion shall require each eligible telecommunications carrier,
21 school, library, and rural health care provider who received
22 universal service support in the previous fiscal year to file
23 an annual report with the Commission about how such
24 support funds were used during such year.

1 (g) AUDITS.—The Commission shall strengthen the
2 oversight structure of the universal service program and
3 shall provide the Commission’s Inspector General with ap-
4 propriate resources to conduct regular and thorough au-
5 dits and investigations.

6 (h) PENALTIES.—The Commission shall permanently
7 bar anyone who commits fraud related to the universal
8 service program from receiving any future universal serv-
9 ice support subsidies. The Commission shall also develop
10 increased penalties for wrongdoing associated with the
11 universal service fund.