

113TH CONGRESS
1ST SESSION

S. 1858

To require the Federal Communications Commission to suspend and revise portions of the Report and Order and Further Notice of Proposed Rulemaking that revised Universal Service Fund distribution to rural carriers, to encourage renewed investment by rural rate-of-return carriers in deployment of broadband infrastructure in rural areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 25, 2013

Mr. BEGICH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Communications Commission to suspend and revise portions of the Report and Order and Further Notice of Proposed Rulemaking that revised Universal Service Fund distribution to rural carriers, to encourage renewed investment by rural rate-of-return carriers in deployment of broadband infrastructure in rural areas, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rural Broadband In-
3 vestment Act of 2013” or the “RBI Act of 2013”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “applicable Federal-State Joint
7 Board” means—

8 (A) the Federal-State Joint Board on Uni-
9 versal Service; and

10 (B) if the limitations in the proposal sub-
11 mitted by the Commission to the Federal-State
12 Joint Board on Universal Service under section
13 4(b)(1)(A) result in a revision of the jurisdic-
14 tional allocation of expenses, the Federal-State
15 Joint Board on Separations;

16 (2) the term “Commission” means the Federal
17 Communications Commission;

18 (3) the term “revised proposal for rural sup-
19 port” means a revised proposal to establish limita-
20 tions on study area total unseparated loop costs of
21 rural rate-of-return carriers;

22 (4) the term “rural carrier” means—

23 (A) a rural rate-of-return carrier;

24 (B) a rural wireless carrier owned by a
25 rural rate-of-return carrier; and

1 (C) a rural competitive local exchange car-
 2 rier owned by a rural rate-of-return carrier;

3 (5) the term “rural rate-of-return carrier”
 4 means a rural telephone company (as defined in sec-
 5 tion 153 of the Communications Act of 1934 (47
 6 U.S.C. 153)) that is a rate-of-return carrier (as de-
 7 fined in section 54.5 of title 47, Code of Federal
 8 Regulations);

9 (6) the term “study area total unseparated loop
 10 cost” means the cost calculated under section
 11 36.621 of title 47, Code of Federal Regulations;

12 (7) the term “Transformation Order” means
 13 the Report and Order and Further Notice of Pro-
 14 posed Rulemaking of the Federal Communications
 15 Commission adopted on October 27, 2011 (FCC 11–
 16 161); and

17 (8) the term “tribal lands” has the meaning
 18 given the term in section 54.400(e) of title 47, Code
 19 of Federal Regulations.

20 **SEC. 3. FINDINGS.**

21 Congress finds the following:

22 (1) The implementation of new rules and regu-
 23 lations set forth in the Transformation Order has
 24 created financial uncertainty and instability for rural
 25 carriers by denying rural carriers a meaningful op-

1 opportunity to recover investments and expenses in-
2 curred to provide universal service prior to 2012.

3 (2) The implementation of the Transformation
4 Order, including the utilization of a widely criticized
5 regression analysis used to determine levels of uni-
6 versal service support, is creating significant uncer-
7 tainty with respect to the sufficiency and predict-
8 ability of the universal service support mechanisms,
9 which has discouraged rural carriers from making
10 broadband infrastructure investments to build out
11 new broadband capabilities in high cost-to-serve
12 rural communities throughout the United States.

13 (3) The intent of Congress under section 254 of
14 the Communications Act of 1934 (47 U.S.C. 254) is
15 that the Commission—

16 (A) consult with the Federal-State Joint
17 Board on Universal Service before adopting
18 changes to regulations that affect universal
19 service high-cost fund mechanisms; and

20 (B) adopt policies and regulations that es-
21 tablish and maintain “specific, predictable, and
22 sufficient” support mechanisms to preserve and
23 advance universal service.

24 (4) The Secretary of Agriculture has warned
25 that the implementation of the Transformation

1 Order is having unintended consequences for rural
2 broadband investment and deployment and for other
3 Federal programs designed to promote rural broad-
4 band deployment.

5 (5) The Department of Agriculture has re-
6 ported that demand for Rural Utilities Service loans
7 for broadband buildout has plummeted in 2013, due
8 in part to the uncertainty created by the new rules
9 and regulations set forth in the Transformation
10 Order.

11 (6) Surveys of rural carriers indicate that near-
12 ly two-thirds of rural rate-of-return carriers are can-
13 celing or postponing new broadband investments,
14 while other reports indicate that rural rate-of-return
15 carriers are being forced to increase consumer prices
16 and reduce staff, creating ripple effects for econo-
17 mies in rural areas of the United States.

18 (7) Congressional hearings have demonstrated
19 that the approach of the Commission to the consid-
20 eration, review, and resolution of petitions for waiv-
21 ers from rules adopted under the Transformation
22 Order—

23 (A) is unduly burdensome and costly for
24 small, rural carriers and inconsistent with the

1 established policy and waiver standards of the
 2 Commission; and

3 (B) is consequently discouraging small,
 4 rural carriers from requesting waivers and is
 5 creating additional business uncertainties.

6 (8) Congressional hearings have demonstrated
 7 that the Commission can make adjustments to the
 8 Transformation Order to address the adverse impact
 9 and business uncertainties confronting small, rural
 10 carriers without affecting other categories of carriers
 11 or increasing the Universal Service Fund budget es-
 12 tablished in the Transformation Order.

13 **SEC. 4. SUSPENSION AND REVISION OF PROVISION OF**
 14 **TRANSFORMATION ORDER.**

15 (a) SUSPENSION.—Section 36.621(a)(5) of title 47,
 16 Code of Federal Regulations (relating to the annual limi-
 17 tation of study area total unseparated loop cost pursuant
 18 to a schedule announced by the Wireline Competition Bu-
 19 reau), shall have no force or effect.

20 (b) REVIEW AND REVISION.—

21 (1) PUBLICATION OF REVISED PROPOSAL FOR
 22 UNIVERSAL SERVICE DISTRIBUTION TO RURAL RATE-
 23 OF-RETURN CARRIERS.—

24 (A) REQUIREMENT TO SUBMIT PRO-
 25 POSAL.—Not later than 60 days after the effec-

1 tive date of this Act, the Commission shall issue
2 a notice of proposed rulemaking to adopt a re-
3 vised proposal for rural support.

4 (B) RECOVERY OF REASONABLE INVEST-
5 MENTS AND OPERATING EXPENSES.—The Com-
6 mission shall ensure that the revised proposal
7 for rural support does not deprive a rural rate-
8 of-return carrier of the opportunity to recover
9 reasonable investments and operating expenses
10 incurred prior to the adoption under subpara-
11 graph (D) of the revised proposal for rural sup-
12 port.

13 (C) CONSULTATION WITH JOINT
14 BOARDS.—Before the Commission issues a final
15 rule under subparagraph (D) to adopt a revised
16 proposal for rural support, the Commission
17 shall consult with the applicable Federal-State
18 Joint Board to the extent that such consulta-
19 tion is required under the Communications Act
20 of 1934 (47 U.S.C. 151 et seq.).

21 (D) FINAL RULE ADOPTING PROPOSAL.—
22 Not earlier than 45 days and not later than
23 120 days after the date on which the Commis-
24 sion issues the notice of proposed rulemaking
25 under subparagraph (A), the Commission shall

1 issue a final rule adopting a revised proposal
2 for rural support.

3 (2) REPORT TO CONGRESS.—Not later than 60
4 days after the effective date of this Act, the Com-
5 mission shall submit to the Committee on Com-
6 merce, Science, and Transportation of the Senate
7 and the Committee on Energy and Commerce of the
8 House of Representatives—

9 (A) a report that contains the revised pro-
10 posal for rural support published in the notice
11 of proposed rulemaking under paragraph
12 (1)(A); and

13 (B) a report that—

14 (i) describes the amount of universal
15 service funding necessary to achieve uni-
16 versal service objectives during the 10-year
17 period following the date on which the re-
18 port is submitted; and

19 (ii) includes—

20 (I) quantitative and qualitative
21 analysis in support of the findings of
22 the Commission under clause (i); and

23 (II) a specific analysis identifying
24 the unique circumstances and result-
25 ing high-cost loop support required to

1 provide and maintain universal service
2 in Alaska and on tribal lands.

3 (c) INTERIM LIMITATIONS.—

4 (1) IN GENERAL.—Not later than 30 days after
5 the effective date of this Act, the Commission shall
6 establish interim limitations on study area total
7 unseparated loop costs by—

8 (A) determining the annual Universal
9 Service Fund distribution for each rural rate-of-
10 return carrier on the basis of the applicable
11 rules that were in effect on the day before the
12 effective date of the Transformation Order; and

13 (B) adjusting the universal service dis-
14 tribution of high-cost loop support that results
15 from the annual distribution determined under
16 paragraph (1) to reflect—

17 (i) the revision to section 36.605 of
18 title 47, Code of Federal Regulations, re-
19 quired under section 5 of this Act; and

20 (ii) any revisions to responses to waiv-
21 er petitions required under section 6 of
22 this Act.

23 (2) DURATION.—The interim limitations estab-
24 lished under paragraph (1) shall be in effect until

1 the date on which the final rule required under sub-
2 section (b)(1)(D) takes effect.

3 **SEC. 5. SAFETY NET ADDITIVE.**

4 The Commission shall amend section 36.605(a) of
5 title 47, Code of Federal Regulations (relating to adjust-
6 ments to high-cost loop support for rural rate-of-return
7 carriers) to provide that, beginning on January 1, 2012,
8 the calculation of safety net additive support for a rural
9 rate-of-return carrier shall include all just and reasonable
10 investments made by the carrier prior to 2012.

11 **SEC. 6. WAIVERS.**

12 (a) IN GENERAL.—The Commission shall apply the
13 criteria and standards under this section when considering
14 a petition for a waiver submitted by a rural carrier nega-
15 tively affected by a revision adopted in the Transformation
16 Order.

17 (b) REASONABLE OPPORTUNITY TO RECOVER
18 COSTS.—The Commission shall grant a petition for a
19 waiver described in subsection (a) if the Commission de-
20 termines a waiver is necessary to ensure that the request-
21 ing rural carrier is afforded a reasonable opportunity to
22 recover the costs of providing universal service, including
23 an equitable return on the investments the rural carrier
24 made to provide universal service.

1 (c) TIME LIMIT FOR CONSIDERATION OF WAIVER
2 PETITION.—

3 (1) IN GENERAL.—Not later than 90 days after
4 the date on which the Commission receives a petition
5 for a waiver, the Commission shall grant or deny the
6 petition.

7 (2) FAILURE TO ACT WITHIN TIME LIMIT.—If
8 the Commission fails to make a determination on a
9 petition for a waiver prior to the expiration of the
10 time period set forth under paragraph (1), the Com-
11 mission shall be deemed to have granted the peti-
12 tion.

13 (3) WAIVER PETITIONS FILED BEFORE EFFEC-
14 TIVE DATE.—The Commission shall reconsider, in
15 accordance with this section, any petition for a waiv-
16 er relating to a revision to a regulation adopted in
17 the Transformation Order that—

18 (A) was submitted to the Commission dur-
19 ing the period beginning on November 18,
20 2011, and ending on the day before the effec-
21 tive date of this Act; and

22 (B) is denied by the Commission.

23 (d) DENIAL OF WAIVER PETITION.—If the Commis-
24 sion denies a petition for a waiver, in whole or in part,
25 the Commission shall identify with specificity—

1 (1) any operating expenses of the requesting
2 carrier that the Commission determines unreason-
3 able;

4 (2) any investments made by the requesting
5 carrier that the Commission determines are not used
6 and useful in the provision of universal service; and

7 (3) the underlying basis for any determination
8 under paragraph (1) or (2).

9 **SEC. 7. EFFECTIVE DATE.**

10 This Act shall take effect 30 days after the date of
11 enactment of this Act.

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