

**FCC Workshop on Universal Service Reform - May 18, 2011**  
The Evolution of the State/Federal Partnership in a Broadband World  
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**I. Notwithstanding the theory of “dual jurisdiction,” universal service has been more like a “marble cake” than a “layer cake.”**

- ◆ State franchise laws and COLR policies imposed a duty to serve in most areas.
  - “Interstate services” depended on existence of local loops, which the law treated as intrastate “local exchange” service.
- ◆ State policy has limited carriers’ ability to exit and to disconnect customers. Before cell phones, many states promoted public pay phones.
- ◆ Federal support has helped keep *intrastate* rates comparable through the High Cost Loop, Local Switching Support and Model-Based Support programs.

**II. Notwithstanding “dual jurisdiction” and preemption, states still have an important role in promoting universal service for broadband networks.**

- ◆ The 1996 Act required a partnership between the federal and state governments to support universal service.
  - Section 214(e) makes state commissions essential participants by delegating the task of designating ETCs and allowing them to use “public interest” standards.
- ◆ State commissions have better access to important local facts.
  - States know more about service quality and customer satisfaction. States hear the complaints when service fails or is not offered in remote areas.
  - States know more about where competition exists. If federal support is going to be targeted solely to non-competitive areas, only states can plausibly map those areas.
- ◆ States are essential for enforcement.
  - The FCC cannot plausibly enforce ETC obligations such as the duty to serve and compliance with consumer protection rules.
  - States also are still needed to ensure that funds are used wisely, such as by reviewing five-year build-out plans.
- ◆ Federal support is unlikely to be sufficient. Especially if access is preempted and broadband is a supported service, universal service is too big a job for the FCC’s current financial resources.

**III. Given past FCC rulings preempting broadband, the FCC should offer delegation agreements.**

- ◆ Slamming enforcement is a model. Other federal agencies often delegate program authority (e.g. Clean Air Act) or grant authority (e.g. highways, education, health). Some federal agencies even pay for state enforcement (e.g. gas pipeline safety).
- ◆ States should continue to have a role in setting consumer protection requirements and service quality standards that do not conflict with federal standards.