

Statement of
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Good afternoon, Mr. Chairman, Senator Inouye, and distinguished members of the Committee. Thank you for this opportunity to appear before you to discuss S. 241 and application of the Antideficiency Act to the Universal Service Fund (Fund). Appearing with me this afternoon is Lisa Gelb, Deputy Chief of the FCC's Wireline Competition Bureau. Ms. Gelb will address any questions you may have for the Commission about operational aspects of the Universal Service program.

The Antideficiency Act prohibits government expenditures and obligations in excess of the amounts available in an appropriation, fund, or apportionment. The central purpose of the Antideficiency Act is to prevent federal agencies from incurring obligations that would require them to seek additional appropriations from Congress. The Universal Service Fund is funded by industry contributions, not congressional appropriations. Nevertheless, the Antideficiency Act applies to the Universal Service Fund because the Fund is recognized by the Office of Management and Budget (OMB), the Congressional Budget Office, and the Government Accountability Office (GAO) as a permanent indefinite appropriation. In September 2004, the FCC concluded that the Fund was operating in violation of the Antideficiency Act.

The events that led the agency to that conclusion began in October 2003, when the Commission adopted a rule requiring the Universal Service Administrative Company (USAC) to account for the financial transactions of the Universal Service Fund in accordance with government accounting principles for federal agencies, known as GovGAAP, beginning with Fiscal Year 2005. The decision to require USAC to adhere to GovGAAP for transactions of the Fund was based on the need to bring the FCC into

compliance with statutory and OMB requirements for financial reporting for federal agencies and their programs.

The transition to GovGAAP standards highlighted new accounting issues in the E-rate and rural health care programs. In those programs, USAC issues a Funding Commitment Decision Letter that notifies program applicants which specific services will be funded under the program and the amount of funding that will be provided. In the process of implementing GovGAAP, the question arose whether the Commitment Letters issued by USAC constituted “obligations” for purposes of applying the Antideficiency Act. In addition, OMB informally advised the Commission and USAC that USF monies that were invested in non-Federal securities, as defined by OMB, might not be considered available reserves that could be used to offset obligations under the Antideficiency Act.

In August 2004, USAC suspended issuance of all Commitment Letters in the E-rate and rural healthcare programs until these questions were answered. In September 2004, the Commission’s Office of General Counsel concluded that the USAC Commitment Letters do constitute recordable obligations for purposes of applying the Antideficiency Act and USAC’s non-Federal investments could not be treated as available funds. Both OMB and GAO have since rendered opinions agreeing with the FCC General Counsel’s conclusion.

Based on those determinations, the Fund was being operated in violation of the Antideficiency Act because Commitment Letters in the E-rate and rural healthcare programs were issued at times when the Fund did not have sufficient cash available to cover those new obligations. On September 27, 2004, the FCC’s Managing Director and the Chief of the FCC’s Wireline Competition Bureau directed USAC to liquidate its non-

Federal investments in order to have sufficient cash on hand to comply with the Antideficiency Act.

The Commission has transmitted a report of this Antideficiency Act violation to the President and Congress, as required by statute. The FCC reported that on the last business day before the FCC directed USAC to liquidate its non-Federal investments, the total outstanding program obligations of the Fund exceeded available budgetary resources by \$3.5 billion and exceeded OMB's initial FY 2004 apportionment for the Fund. The deficiency was cured as of September 30, 2004.

The FCC has also considered the application of the Antideficiency Act to the High Cost and Low Income support mechanisms of the Universal Service Fund. In the High Cost and Low Income support programs, there is no specific obligational document equivalent to the Commitment Letters in the E-rate program. As a result, determining the time of obligation is more complex. At this point our tentative view is that obligations in these programs do not occur until USAC signs an internal disbursement authorization that determines the amounts each carrier should be paid for telephone services provided during the prior month. Assuming the Fund has adequate cash on hand to cover those disbursement decisions, operation of the High Cost and Low Income programs complies with the Antideficiency Act. Given the importance of the issue, however, the Commission has sought OMB's expert guidance.

The passage of the Universal Service Antideficiency Temporary Suspension Act in December 2004 permitted the Fund, for one year, to incur obligations prior to the receipt of cash to cover those obligations without violating the Antideficiency Act. The obligations incurred during the exemption period remain permanently exempt from the

Antideficiency Act. As a result, during 2005 USAC may issue Commitment Letters in the E-rate program and the rural healthcare program without having to have cash on hand at that time to cover the associated future disbursements.

Because the current exemption expires at the end of 2005, the Commission is proceeding cautiously by protecting cash reserves in the Fund that may be needed for Antideficiency Act compliance in the future. First, on December 22, 2004, the FCC staff directed USAC not to shift funds out of Federal investments that would qualify as available amounts under the Antideficiency Act, without prior approval. Second, on March 17, 2005, the FCC staff directed USAC not to issue Commitment Letters for the E-rate and rural healthcare programs in amounts that exceed the annual disbursement caps established by FCC rules.

The determinations by the FCC, OMB, and GAO that Commitment Letters constitute recordable obligations mean that, as of January 1, 2006, Commitment Letters may not be issued by USAC unless there is sufficient cash on hand to cover the obligations. Further, if USF monies are invested in non-Federal securities, those funds will not be available for obligation. S. 241, however, would make permanent the Fund's current exemption from the Antideficiency Act's restrictions on obligations in excess of available resources.

Thank you for the opportunity to provide the Commission's views on the impact of the Antideficiency Act on the Universal Service Fund. Ms. Gelb and I will be happy to answer your questions.