



FEDERAL COMMUNICATIONS COMMISSION

March 14, 2012

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Kenny Marchant
U.S. House of Representatives
1110 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Marchant:

Thank you for your letter regarding the Commission's proceedings to reform the Universal Service Fund (USF), and your concern about the legal authority for USF to support broadband services. I value your input and will ensure that your letter is included in the records of the relevant proceedings.

More than 15 years after Congress passed the Telecommunications Act of 1996, technology and the economy have evolved greatly. The entire USF program was in need of modernization and reform. The reforms in the *USF/ICC Transformation Order* and *FNPRM* are designed to ensure that both voice and advanced broadband services are available in all areas of the country, and universal voice service remains a central purpose of the USF program.

The Commission agreed unanimously, and I am confident that it has the legal authority to modernize USF for the twenty-first century. I have extracted the paragraphs discussing FCC legal authority from the *Transformation Order* and am enclosing them for your information. In particular, the *Transformation Order* notes that Section 254 of the Communications Act grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered. With consumers increasingly receiving voice telephony services from interconnected Voice of Internet Protocol (VoIP) providers over broadband networks, the Commission concluded that its authority to promote universal service in this context does not depend on whether interconnected VoIP services are telecommunications services or information services under the Act.

The job to reform USF is by no means completed. The Commission also has been taking significant steps to reform and strengthen Lifeline and LinkUp against waste, fraud, and abuse. It released a *Report and Order and Further Notice of Proposed Rulemaking* on February 6, 2012, comprehensively reforming the Lifeline program.

I appreciate your interest in this very important matter. Please let me know if I can be of any further assistance.

Sincerely,

Julius Genachowski

Enclosure

Extract from *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, rel. Nov. 18, 2011

V. LEGAL AUTHORITY

60. In this section, we address our statutory authority to implement Congress's goal of promoting ubiquitous deployment of, and consumer access to, both traditional voice calling capabilities and modern broadband services over fixed and mobile networks. As explained below, Congress has authorized the Commission to support universal service in the broadband age. Section 254 grants the Commission clear authority to support telecommunications services and to condition the receipt of universal service support on the deployment of broadband networks, both fixed and mobile, to consumers. Section 706 provides the Commission with independent authority to support broadband networks in order to "accelerate the deployment of broadband capabilities" to all Americans. Recently, moreover, Congress has reaffirmed its strong interest in ubiquitous deployment of high speed broadband communications networks: the 2008 Farm Bill directing the Chairman to submit to Congress "a comprehensive rural broadband strategy," including recommendations for the rapid buildout of broadband in rural areas and for how federal resources can "best . . . overcome obstacles that impede broadband deployment";⁵⁶ the Broadband Data Improvement Act, to improve data collection and "promote the deployment of affordable broadband services to all parts of the Nation";⁵⁷ and the Recovery Act, which required the Commission to develop the National Broadband Plan to ensure that every American has "access to broadband capability and . . . establish benchmarks for meeting that goal."⁵⁸ By exercising our statutory authority consistent with the thrust of these provisions, we ensure that the national policy of promoting broadband deployment and ubiquitous access to voice telephony services is fully realized.

61. *Section 254.* The principle that all Americans should have access to communications services has been at the core of the Commission's mandate since its founding. Congress created this Commission in 1934 for the purpose of making "available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."⁵⁹ In the 1996 Act, Congress built upon that longstanding principle by enacting section 254. Section 254 sets forth six principles upon which we must "base policies for the preservation and advancement of universal service."⁶⁰ Among these principles are that "[q]uality services should be available at just, reasonable, and affordable rates," that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation," and that

⁵⁶ Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 6112, 122 Stat. 923, 1966 (2008) (2008 Farm Bill). Acting Chairman Copps transmitted the report to Congress on May 22, 2009. See *Rural Broadband Report Published in the FCC Record*, GN Docket No. 09-29, Public Notice, 24 FCC Rcd 12791 (2009).

⁵⁷ Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (codified at 47 U.S.C. § 1301 *et seq.*).

⁵⁸ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009); 47 U.S.C. § 1305(k)(2).

⁵⁹ 47 U.S.C. § 151.

⁶⁰ 47 U.S.C. § 254(b).

“[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas” and at reasonably comparable rates.⁶¹

62. Under section 254, we have express statutory authority to support telecommunications services that we have designated as eligible for universal service support.⁶² Section 254(c)(1) of the Act defines “[u]niversal service” as “an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.” As discussed more fully below, in this Order, we adopt our proposal to simplify how we describe the various supported services that the Commission historically has defined in functional terms (*e.g.*, voice grade access to the PSTN, access to emergency services) into a single supported service designated as “voice telephony service.”⁶³ To the extent carriers offer traditional voice telephony services as telecommunications services over traditional circuit-switched networks, our authority to provide support for such services is well established.

63. Increasingly, however, consumers are obtaining voice services not through traditional means but instead through interconnected VoIP providers offering service over broadband networks. As AT&T notes, “[c]ircuit-switched networks deployed primarily for voice service are rapidly yielding to packet-switched networks,” which offer voice as well as other types of services.⁶⁴ The data bear this out. As we observed in the *Notice*, “[f]rom 2008 to 2009, interconnected VoIP subscriptions increased by 22 percent, while switched access lines decreased by 10 percent.”⁶⁵ Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the PSTN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.⁶⁶ Our authority to promote universal service in this context does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act.⁶⁷

⁶¹ 47 U.S.C. § 254(b)(1)-(3).

⁶² 47 U.S.C. § 254(c).

⁶³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4590, para. 95; *see infra* Section VI.A.

⁶⁴ AT&T Apr. 11, 2011 Comments at 10.

⁶⁵ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560, para. 8 (citing Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Report: Status as of December 2009*, at 6 (Jan. 2011) (Jan. 2011 Local Competition Report)). From 2009 to 2010, interconnected VoIP subscriptions increased by 22 percent (from 26 million to 32 million) and retail switched access lines decreased by 8 percent (from 127 million to 117 million). Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Report: Status as of December 31, 2010*, at 2 (Oct. 2011) (Oct. 2011 Local Competition Report).

⁶⁶ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4747, para. 612; *see also IP-Enabled Services*, 20 FCC Rcd 10245, 10256, para. 23 (2005) (“consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a ‘regular telephone’ service.”), *pet. for review denied*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

⁶⁷ If interconnected VoIP services are telecommunications services, our authority under section 254 to define universal service after “taking into account advances in telecommunications and information technologies and services” enables us to include interconnected VoIP services as a type of voice telephony service entitled to federal universal service support. And, as explained below, if interconnected VoIP services are information services, we have authority to support the deployment of broadband networks used to provide such services.

64. Section 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered. Section 254(e) makes clear that “[a] carrier that receives such [universal service] support shall use that support only for the provision, maintenance, and upgrading of *facilities and services* for which the support is intended.”⁶⁸ By referring to “facilities” and “services” as distinct items for which federal universal service funds may be used, we believe Congress granted the Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7).⁶⁹ For instance, under our longstanding “no barriers” policy, we allow carriers receiving high-cost support “to invest in infrastructure capable of providing access to advanced services” as well as supported voice services.⁷⁰ That policy, we explained, furthers the policy Congress set forth in section 254(b) of “ensuring access to advanced telecommunications and information services throughout the nation.”⁷¹ While this policy was enunciated in an Order adopting rule changes for rural incumbent carriers, by its terms it is not limited to such carriers. The “no-barriers” policy has applied, and will continue to apply, to all ETCs, and we codify it in our rules today. Section 254(e) thus contemplates that carriers may receive federal support to enable the deployment of broadband facilities used to provide supported telecommunications services as well as other services.⁷²

65. We further conclude that our authority under section 254 allows us to go beyond the “no barriers” policy and require carriers receiving federal universal service support to invest in modern

⁶⁸ 47 U.S.C. § 254(e) (emphasis added).

⁶⁹ In establishing the rules governing the designation and responsibilities of ETCs pursuant to section 214(e), we have long defined the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support.” 47 C.F.R. § 54.201(e); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁷⁰ *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11322, para. 200 (2001) (*Rural Task Force Order*) (“[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.”) (footnote reference omitted)

⁷¹ *2003 Definition of Universal Service Order*, 18 FCC Rcd at 15095-96, para. 13.

⁷² We also note that the Commission has historically concluded that “the proper measure of cost for determining the level of universal service support is the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services,” *First Report and Order*, 12 FCC Rcd at 8899, para. 224, and that the record contains evidence that the forward-looking cost of deploying voice- and broadband-capable networks today is generally not significantly higher than deploying voice-only networks, *see, e.g., Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 at 2-3* (filed Feb. 12, 2010) (“Fiber networks are . . . more efficient, and more reliable than the legacy copper network. . . . [T]hey are cheaper to maintain and have fewer potential points of failure than copper lines.”). Indeed, although we are updating the high-cost fund to support modern voice and broadband networks, we are not increasing the overall size of the fund to do so.

broadband-capable networks.⁷³ We see nothing in section 254 that requires us simply to provide federal funds to carriers and hope that they will use such support to deploy broadband facilities. To the contrary, we have a “mandatory duty” to adopt universal service policies that advance the principles outlined in section 254(b), and we have the authority to “create some inducement” to ensure that those principles are achieved.⁷⁴ Congress made clear in section 254 that the deployment of, and access to, information services – including “advanced” information services – are important components of a robust and successful federal universal service program.⁷⁵ Furthermore, we are adopting today the recommendation of the Federal-State Joint Board on Universal Service to establish a new universal service principle pursuant to section 254(b)(7) that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.⁷⁶ In today’s communications environment, achievement of these principles requires, at a minimum, that carriers receiving universal service support invest in and deploy networks capable of providing consumers with access to modern broadband capabilities, as well as voice telephony services. Accordingly, as explained in greater detail below, we will exercise our authority under section 254 to require that carriers receiving support – both CAF support, including Mobility Fund support,⁷⁷ and support under our existing high-cost support mechanisms – offer broadband capabilities to consumers.⁷⁸ We conclude that this approach is sufficient to ensure access to voice and broadband services and, therefore, we do not, at this time, add broadband to the list of supported services, as some have urged.⁷⁹

66. *Section 706.*⁸⁰ We also have independent authority under section 706 of the Telecommunications Act of 1996 to fund the deployment of broadband networks. In section 706, Congress recognized the importance of ubiquitous broadband deployment to Americans’ civic, cultural, and economic lives and, thus, instructed the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁸¹ Of particular

⁷³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4581, para. 71.

⁷⁴ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200, 1204 (10th Cir. 2001) (*Qwest I*).

⁷⁵ 47 U.S.C. §§ 254(b)(2), (b)(3).

⁷⁶ See *infra* Section III.

⁷⁷ Recipients of Mobility Fund Phase One support, however, are not required to provide broadband as discussed below. See *infra* Section VII.E.1.b.vi.

⁷⁸ Section 254(e) states that “support should be explicit and sufficient to achieve the purposes” of section 254. As discussed below, our CAF rules satisfy this requirement. See *generally infra*, Section VII.

⁷⁹ See, e.g., Communications Workers of America *USF/ICC Transformation NPRM* Comments at 5-6; National Association of Telecommunications Officers and Advisors *USF/ICC Transformation NPRM* Comments at 3; State Members *USF/ICC Transformation NPRM* Comments at 2; Vonage *USF/ICC Transformation NPRM* Comments at 6-8.

⁸⁰ Commissioner McDowell does not support the view that section 706 provides the Commission with authority to support broadband through universal service funds. Instead, Commissioner McDowell’s view is that section 706 is very narrow in scope and is therefore unnecessary in reaching this conclusion.

⁸¹ 47 U.S.C. § 1302(a). This direct mandate is consistent with numerous other statutory provisions governing the Commission. See, e.g., 47 U.S.C. §§ 151 (instituting FCC for, among other objectives, “the purpose of regulating interstate and foreign communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”), 157 (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”), 230(b)(1) (“It is the policy of the United States . . . to promote the continued development of the Internet and other interactive computer services and other interactive

importance, Congress adopted a definition of “advanced telecommunications capability” that is not confined to a particular technology or regulatory classification. Rather, “‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.”⁸² Section 706 further requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if the Commission concludes that it is not, to “*take immediate action* to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁸³ The Commission has found that broadband deployment to all Americans has not been reasonable and timely⁸⁴ and observed in its most recent broadband deployment report that “too many Americans remain unable to fully participate in our economy and society because they lack broadband.”⁸⁵ This finding triggers our duty under section 706(b) to “remov[e] barriers to infrastructure investment” and “promot[e] competition in the telecommunications market” in order to accelerate broadband deployment throughout the Nation.

67. Providing support for broadband networks helps achieve section 706(b)’s objectives. First, the Commission has recognized that one of the most significant barriers to investment in broadband infrastructure is the lack of a “business case for operating a broadband network” in high-cost areas “[i]n the absence of programs that provide additional support.”⁸⁶ Extending federal support to carriers deploying broadband networks in high-cost areas will thus eliminate a significant barrier to infrastructure investment and accelerate broadband deployment to unserved and underserved areas of the Nation. The deployment of broadband infrastructure to all Americans will in turn make services such as interconnected VoIP service accessible to more Americans.

68. Second, supporting broadband networks helps “promot[e] competition in the telecommunications market,” particularly with respect to voice services.⁸⁷ As we have long recognized,

media”), 257 (mandating ongoing review to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services,” with the goal of promoting “the policies and purposes of this [Communications] Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity”); *see also* Recovery Act § 6001(k)(1) (requiring the Commission to develop a National Broadband Plan with the goal of promoting, among other things, “private sector investment, entrepreneurial activity, job creation and economic growth”).

⁸² 47 U.S.C. § 1302(d)(1); *see also* *National Broadband Plan for our Future*, Notice of Inquiry, 24 FCC Rcd 4342, 4309, App., para. 13 (2009) (“advanced telecommunications capability” includes broadband Internet access); *Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2400, para. 1 (1999) (section 706 addresses “the deployment of broadband capability”), 2406, para. 20 (same). The Commission has observed that the phrase “advanced telecommunications capability” in section 706 is similar to the term “advanced telecommunications and information services” in section 254. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, 11113 n.9 (2006).

⁸³ 47 U.S.C. § 1302(b) (emphasis added).

⁸⁴ *Sixth Broadband Deployment Report*, 25 FCC Rcd at 9558, paras. 2-3; *Seventh Broadband Deployment Report*, 26 FCC Rcd at 8009, para. 1.

⁸⁵ *Seventh Broadband Deployment Report*, 26 FCC Rcd at 8011, para. 4.

⁸⁶ *Id.* at 8040, para. 66.

⁸⁷ 47 U.S.C. § 1302(b).

“interconnected VoIP service ‘is increasingly used to replace analog voice service.’”⁸⁸ Thus, we previously explained that requiring interconnected VoIP providers to *contribute* to federal universal service support mechanisms promoted competitive neutrality because it “reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations.”⁸⁹ Just as “we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage,”⁹⁰ we do not want to create regulatory distinctions that serve no universal service purpose or that unduly influence the decisions providers will make with respect to how best to offer voice services to consumers. The “telecommunications market” – which includes interconnected VoIP and by statutory definition is broader than just telecommunications services⁹¹ – will be more competitive, and thus will provide greater benefits to consumers, as a result of our decision to support broadband networks, regardless of regulatory classification.

69. By exercising our authority under section 706 in this manner, we further Congress’s objective of “accelerat[ing] deployment” of advanced telecommunications capability “to all Americans.”⁹² Under our approach, federal support will not turn on whether interconnected VoIP services or the underlying broadband service falls within traditional regulatory classifications under the Communications Act. Rather, our approach focuses on accelerating broadband deployment to unserved and underserved areas, and allows providers to make their own judgments as to how best to structure their service offerings in order to make such deployment a reality.

70. We disagree with commenters who assert that we lack authority under section 706(b) to support broadband networks.⁹³ While 706(a) imposes a general duty on the Commission to encourage broadband deployment through the use of “price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment,” section 706(b) is triggered by a specific finding that broadband capability is not being “deployed to all Americans in a reasonable and timely fashion.” Upon making that finding (which the Commission has done⁹⁴), section 706(b) requires the Commission to “take immediate action to accelerate” broadband deployment. Given the statutory structure, we read section 706(b) as conferring on the Commission the additional authority, beyond what the Commission possesses under section 706(a) or elsewhere in the Act, to take steps necessary to fulfill Congress’s broadband deployment

⁸⁸ *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, Telecommunications Services for Individuals with Hearing and Speech Disabilities, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 92-237, 99-200, 90-571, 95-116 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541 (2006) (*VoIP USF Order*) (quoting *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42), 21 FCC Rcd at 7541, para. 44 (quoting *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Compare 47 U.S.C. § 153(50) (defining “telecommunications”) with 47 U.S.C. § 153(53) (defining “telecommunications service”).

⁹² 47 U.S.C. § 1302(b).

⁹³ See, e.g., Cellular South Comments at 9; RTCC Comments at 12.

⁹⁴ See *supra* para. 64.

objectives. Indeed, it is hard to see what additional work section 706(b) does if it is not an independent source of statutory authority.⁹⁵

71. We also reject the view that providing support for broadband networks under section 706(b) conflicts with section 254, which defines universal service in terms of telecommunications services.⁹⁶ Information services are not excluded from section 254 because of any policy judgment made by Congress. To the contrary, Congress contemplated that the federal universal service program would promote consumer access to both advanced telecommunications and advanced information services “in all regions of the Nation.”⁹⁷ When Congress enacted the 1996 Act, most consumers accessed the Internet through dial-up connections over the PSTN,⁹⁸ and broadband capabilities were provided over tariffed common carrier facilities.⁹⁹ Interconnected VoIP services had only a nominal presence in the marketplace in 1996. It was not until 2002 that the Commission first determined that one form of broadband – cable modem service – was a single offering of an information service rather than separate offerings of telecommunications and information services,¹⁰⁰ and only in 2005 did the Commission conclude that wireline broadband service should be governed by the same regulatory classification.¹⁰¹ Thus, marketplace and technological developments and the Commission’s determinations that broadband services may be offered as information services have had the effect of removing such services from the scope of the explicit reference to “universal service” in section 254(c). Likewise, Congress did not exclude interconnected VoIP services from the federal universal service program; indeed, there is no reason to believe it specifically anticipated the development and growth of such services in the years following the enactment of the 1996 Act.

⁹⁵ The legislative history supports our conclusion that sections 706(a) and (b) are independent sources of authority. The relevant Senate Report explained that the provisions of section 304 (the Senate analogue to section 706) are “intended to ensure that one of the primary objectives of the [1996 Act]—to accelerate deployment of advanced telecommunications capability—is achieved,” and stressed that these provisions are “a necessary fail-safe” to guarantee that Congress’s objective is reached. S. Rep. No. 104-23, at 50–51 (1995). As we previously explained, “[i]t would be odd indeed to characterize Section 706(a) as a ‘fail-safe’ that ‘ensures’ the Commission’s ability to promote advanced services if it conferred no actual authority.” *Preserving the Open Internet*, 25 FCC Rcd 17905, 17970 (2010). Moreover, section 304(a) of the Senate bill would have required the Commission, upon a finding that broadband deployment is not reasonable and timely, to “take immediate action *under this section*,” S. 652, § 304(b) (1995) (emphasis added), which necessarily related back to the Commission’s authority conferred by section 304(a) of the bill to promote broadband deployment through “price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” Ultimately, however, Congress did not define the authority conferred by section 706(b) by reference to section 706(a). Instead, Congress instructed the Commission to go beyond section 706(a) if it found that broadband was not being deployed in the United States on a reasonable and timely basis and to “take immediate action” to correct that failure.

⁹⁶ See Cellular South *USF/ICC Transformation NPRM* Comments at 16-20; RTCC Apr. 18, 2011 Comments at 5.

⁹⁷ 47 U.S.C. § 254(b)(2).

⁹⁸ 1997 *Universal Service Order*, 12 FCC Rcd at 8622-23, para. 83.

⁹⁹ See *GTE Telephone Operating Cos.*, 13 FCC Rcd 22466 (1998).

¹⁰⁰ *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff’d sub nom. Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 978 (2005).

¹⁰¹ *Wireline Broadband Order*, 20 FCC Rcd 14853.

72. The principles upon which the Commission “shall base policies for the preservation and advancement of universal service” make clear that supporting networks used to offer services that are or may be information services for purposes of regulatory classification is consistent with Congress’s overarching policy objectives.¹⁰² For example, section 254(b)(2)’s principle that “[a]ccess to advanced telecommunications and *information services* should be provided in all regions of the Nation” dovetails comfortably with section 706(b)’s policy that “advanced telecommunications capability [be] deployed to all Americans in a reasonable and timely fashion.”¹⁰³ Our decision to exercise authority under Section 706 does not undermine section 254’s universal service principles, but rather ensures their fulfillment. By contrast, limiting federal support based on the regulatory classification of the services offered over broadband networks as telecommunications services would exclude from the universal service program providers who would otherwise be able to deploy broadband infrastructure to consumers. We see no basis in the statute, the legislative history of the 1996 Act, or the record of this proceeding for concluding that such a constricted outcome would promote the Congressional policy objectives underlying sections 254 and 706.

73. Finally, we note the limited extent to which we are relying on section 706(b) in this proceeding. Consistent with our longstanding policy of minimizing regulatory distinctions that serve no universal service purpose, we are not adopting a separate universal service framework under section 706(b). Instead, we are relying on section 706(b) as an alternative basis to section 254 to the extent necessary to ensure that the federal universal service program covers services and networks that could be used to offer information services as well as telecommunications services. Carriers seeking federal support must still comply with the same universal service rules and obligations set forth in sections 254 and 214, including the requirement that such providers be designated as eligible to receive support, either from state commissions or, if the provider is beyond the jurisdiction of the state commission, from this Commission.¹⁰⁴ In this way, we ensure that our exercise of section 706(b) authority will advance, rather than detract from, the universal service principles established under section 254 of the Act.

¹⁰² 47 U.S.C. § 254(b)(2), (3).

¹⁰³ Section 214(e)(1) requires services supported by the universal service mechanisms to be offered throughout a carrier’s designated service area. This requirement, coupled with the rules we adopt in this Order, will further promote the Commission’s goal of bringing broadband capability to “all Americans.”

¹⁰⁴ See 47 U.S.C. § 214(e)(1), (2), (6).