



January 8, 2015

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Protecting and Promoting the Open Internet, GN Docket No. 14-28; Universal Service Contribution Methodology, WC Docket No. 06-122*

Dear Ms. Dortch:

On Wednesday, January 7, 2015, Shirley Bloomfield, Chief Executive Officer of NTCA–The Rural Broadband Association (“NTCA”), together with the undersigned, met with Gigi Sohn, Special Counsel to Chairman Tom Wheeler for External Affairs, to discuss issues presented in the above-referenced proceedings.

Consistent with prior advocacy, NTCA urged adoption of a balanced approach to protecting and promoting Open Internet principles that relies upon Section 706 of the Telecommunications Act of 1996 to apply basic “no blocking” and transparency/disclosure requirements to retail broadband Internet access services, paired with targeted application of specific provisions of Title II of the Communications Act of 1934, as amended, specifically and only to transmission and exchange of data across and between underlying networks. See, e.g., Comments of NTCA, GN Docket No. 14-28 (filed July 18, 2014) at 3-17.

Regardless of the path chosen by the Federal Communications Commission (the “Commission”), however, NTCA observes that the Commission should not and cannot logically distinguish between kinds of transmission (*e.g.*, last-mile, middle-mile, etc.) in classifying telecommunications services. If data are conveyed from points A to Z or exchanged between networks of any kind, those functions are transmission – and the mere location of that transmission at a given point in the network ecosystem is irrelevant by itself to the regulatory classification of that transmission. Moreover, while certain parties may focus on alleged “bottlenecks” or ambiguous “threats” posed by retail or last-mile providers specifically, even if these concerns were valid (and the case has not been made in that regard), this too is simply irrelevant for classification purposes; that is perhaps a question for what level of regulation should or should not apply, but it does not change the fundamental nature of transmission itself and the threshold classification determination.

We further explained that an exclusive policy focus on “last-mile” networks and retail services risks ignoring (and leaving the Commission relatively powerless to address) broader interconnection disputes that can undermine consumer expectations and harm smaller network providers. Concerns relating to the transmission and exchange of broadband network data in recent years have arisen not out of any mistreatment or malfeasance on the part of retail Internet Service Providers with respect to their consumers, but rather in disagreements over the economics and technical burdens associated with underlying networks that exchange such data. These disputes and disagreements have involved network operators who serve as peers to one another or provide transit services to smaller operators. Thus, the Commission should address the transmission and exchange of data across all networks in lieu of an exclusive focus on “last-mile” or retail operations.

With respect specifically to regulation, the Commission need not and should not engage in heavy-handed regulation even if transmission or services are found subject to Title II. What is needed is not substantial *ex ante* regulation, but rather an *ex post* “regulatory backstop” that puts parties on notice that they are not to engage in unjust or unreasonable practices or unjust or unreasonable discrimination, that their operations must be consistent with our national policy of universal service, and that there will be swift and effective enforcement to the extent that they fail in either regard. To this end, NTCA suggests the Commission would need to do little more than apply Sections 201, 202, 208, and 254 to such transmission and data exchange functions, along with some basic transparency requirements (including optional but not mandatory tariffing) to provide visibility into the workings of these markets. In this regard, NTCA urges the Commission and other stakeholders to look to the interstate interexchange marketplace which, while nominally regulated pursuant to Title II, has in fact been virtually regulation-free for decades. *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, *Implementation of Section 254(g) of the Communications Act of 1934, as amended*, FCC 96-424, Order on Reconsideration (rel. Aug. 20, 1997) (reaffirming commitment to detariffing policies for most interstate long distance services). NTCA continues to assert that applying a light-touch, *ex post* “regulatory backstop” to broadband transmission and data exchange would not create uncertainty or equate to “regulation of the Internet.” The basic rule under this proposal – “Don’t treat other providers unjustly or unreasonably” – would be simple and should be well-understood by every network operator and service provider at all familiar with Title II jurisprudence. Such a “golden rule” can hardly be called “heavy-handed” or characterized as rising to the level of “regulating the Internet.”

Finally, NTCA observed that forbearance from Section 254 in particular as part of any classification exercise would short-circuit – if not defeat altogether – the ongoing consideration of contributions reform by the Federal-State Joint Board on Universal Service. Specifically, we noted that if the Commission were to forbear from applying Section 254 to broadband, the Commission would have effectively pre-judged and cut off all meaningful debate by the Joint Board and other stakeholders about how to “broaden the base” for purpose of universal service contributions through options such as an assessment on broadband connections. Moreover, any such forbearance with respect to Section 254 would call into question the Commission’s prior and still-ongoing to update each of the universal service programs to reflect increasing consumer use of and demand for broadband, as the Commission’s efforts to impose broadband-related conditions in connection

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with the *distribution* of universal service support would appear firmly at odds with a decision then to forbear from applying Section 254 to broadband. NTCA also provided to Ms. Sohn a recently prepared presentation (a copy of which is attached hereto), in which NTCA estimated that the contribution factor if broadband were included in the contribution base and the universal service programs did not increase above current levels would fall from 16.8% to less than 2% – *making the burden for broadband users far less than the price of a cup of coffee; just as importantly, reducing substantially the burden placed today on millions of other American ratepayers; and, most importantly, introducing no new contribution burden whatsoever on American ratepayers as a whole.*

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

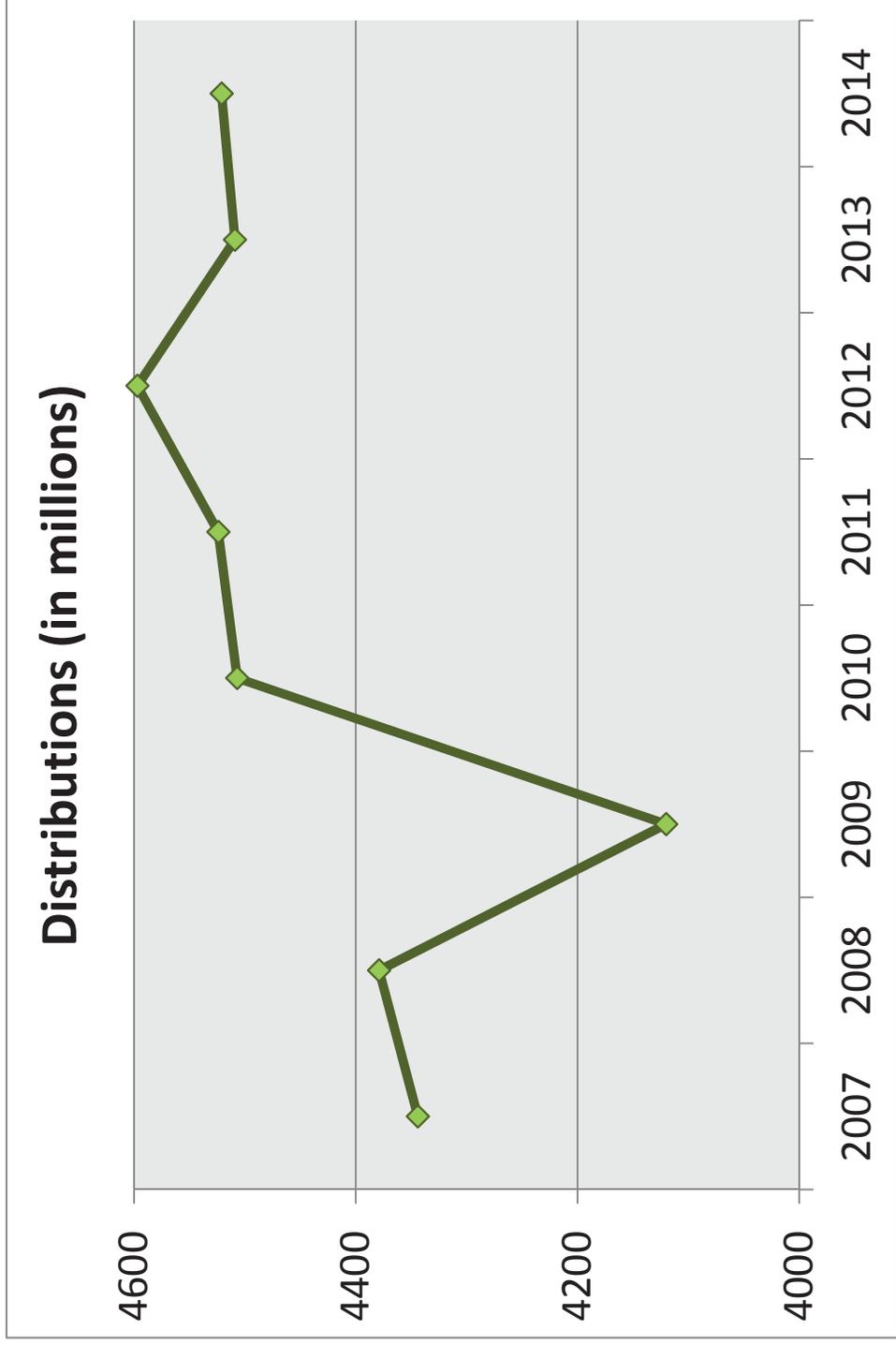
Enclosure

cc: Gigi Sohn

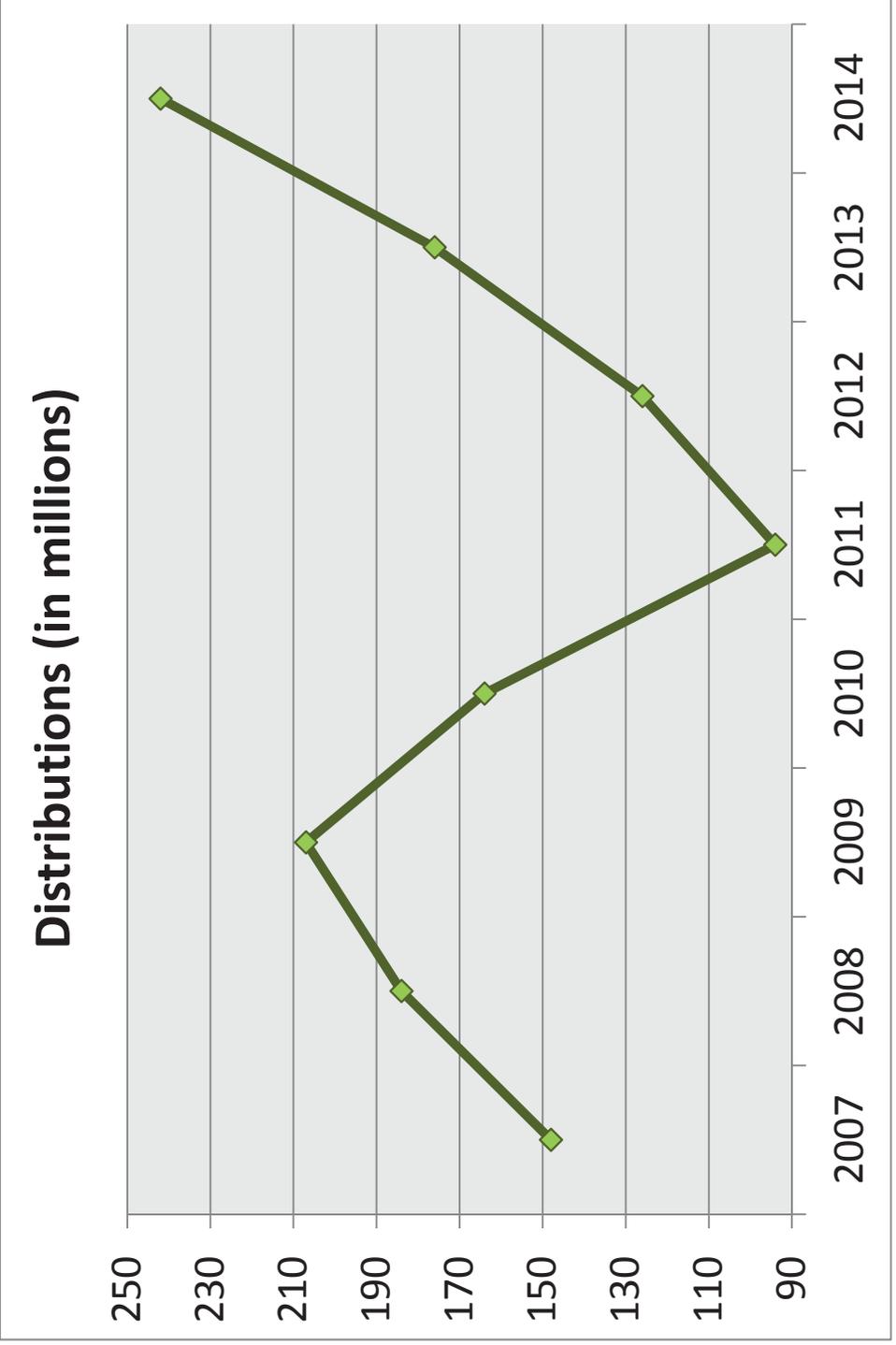
Perspectives on USF Contributions Reform

Mike Romano
Senior Vice President – Policy
NTCA

Demand – High Cost (\$4.5B Cap)



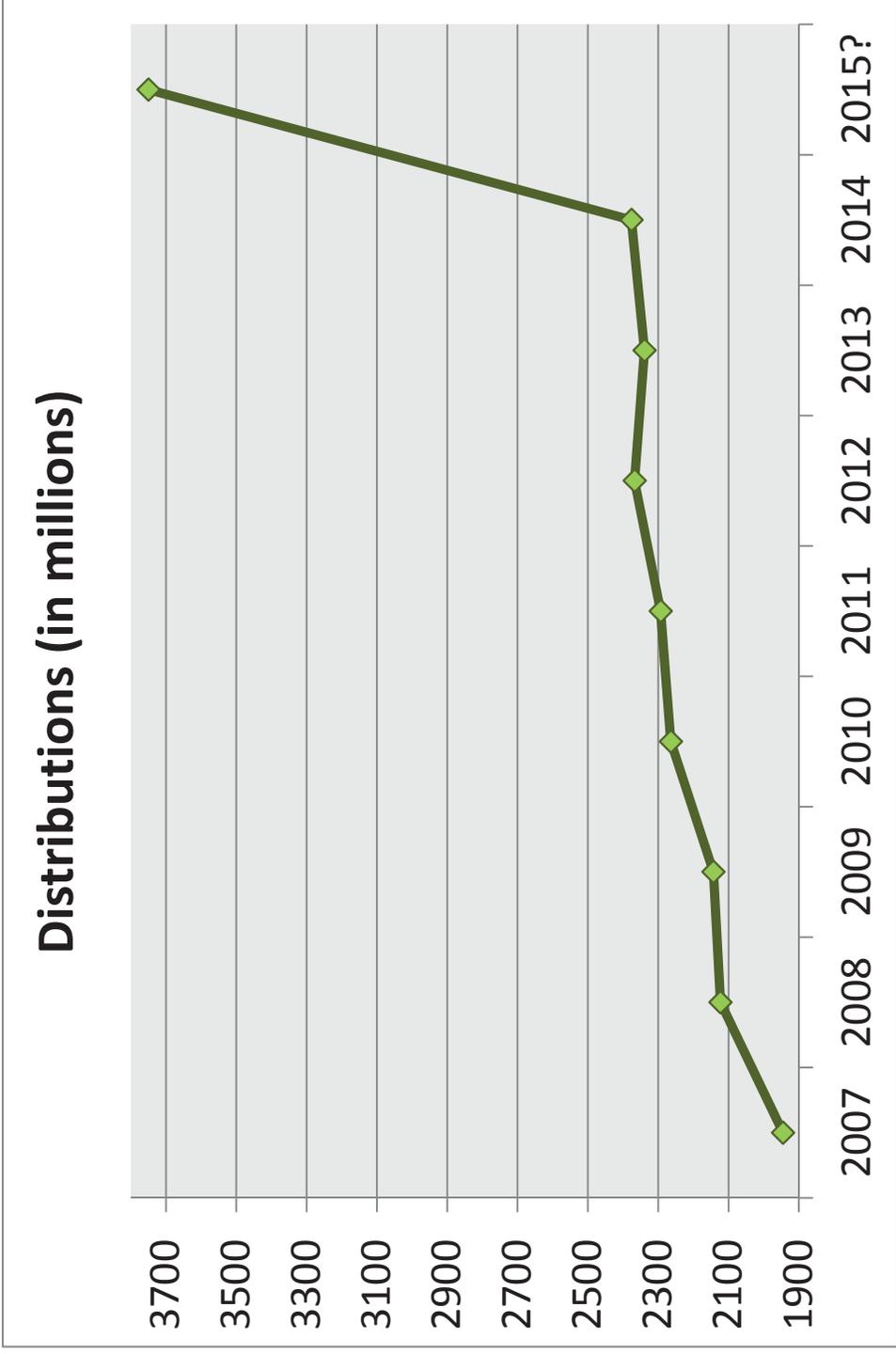
Demand – Rural Health Care (\$400M Cap)



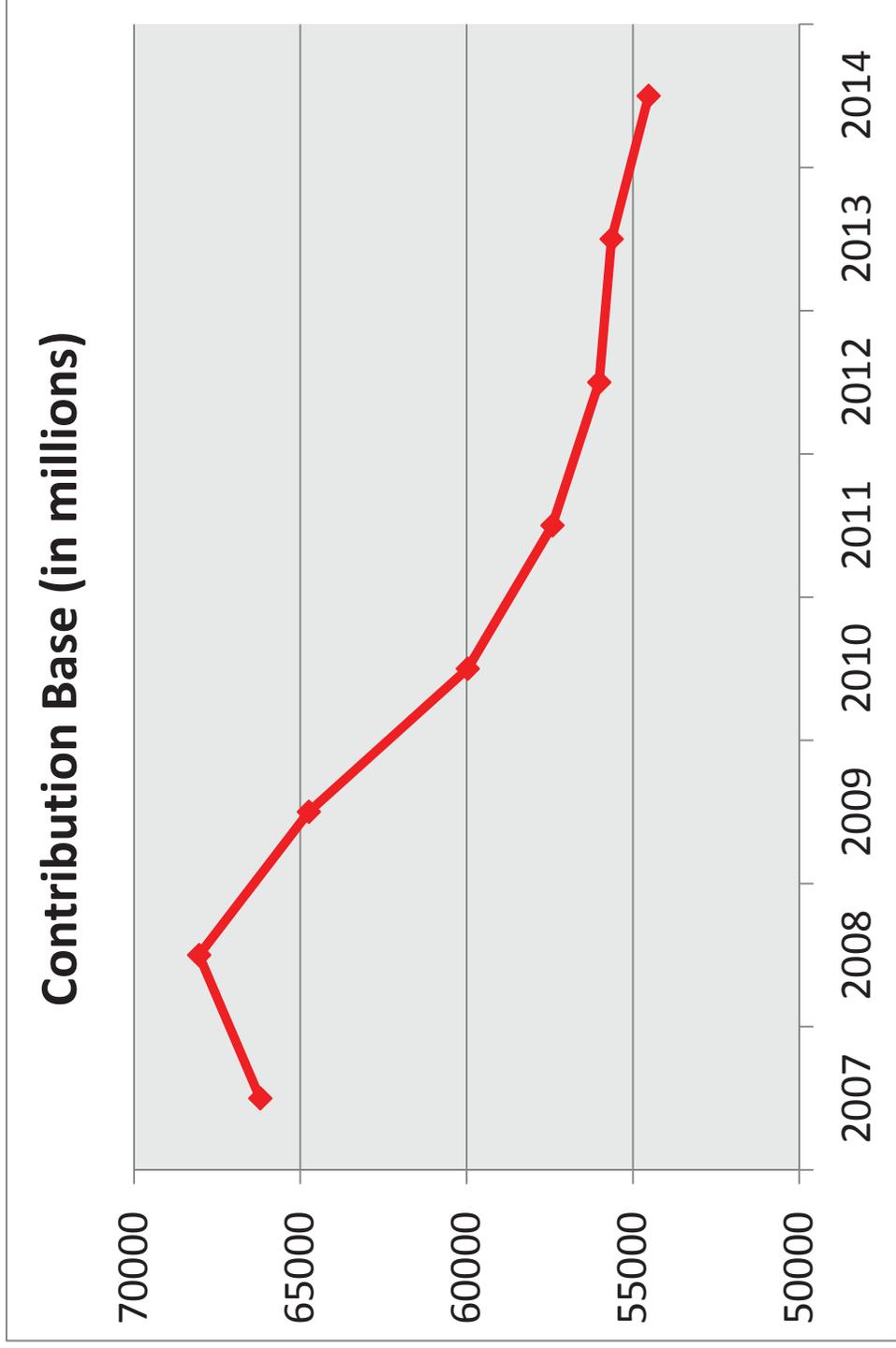
Demand – Low-Income (No Cap)



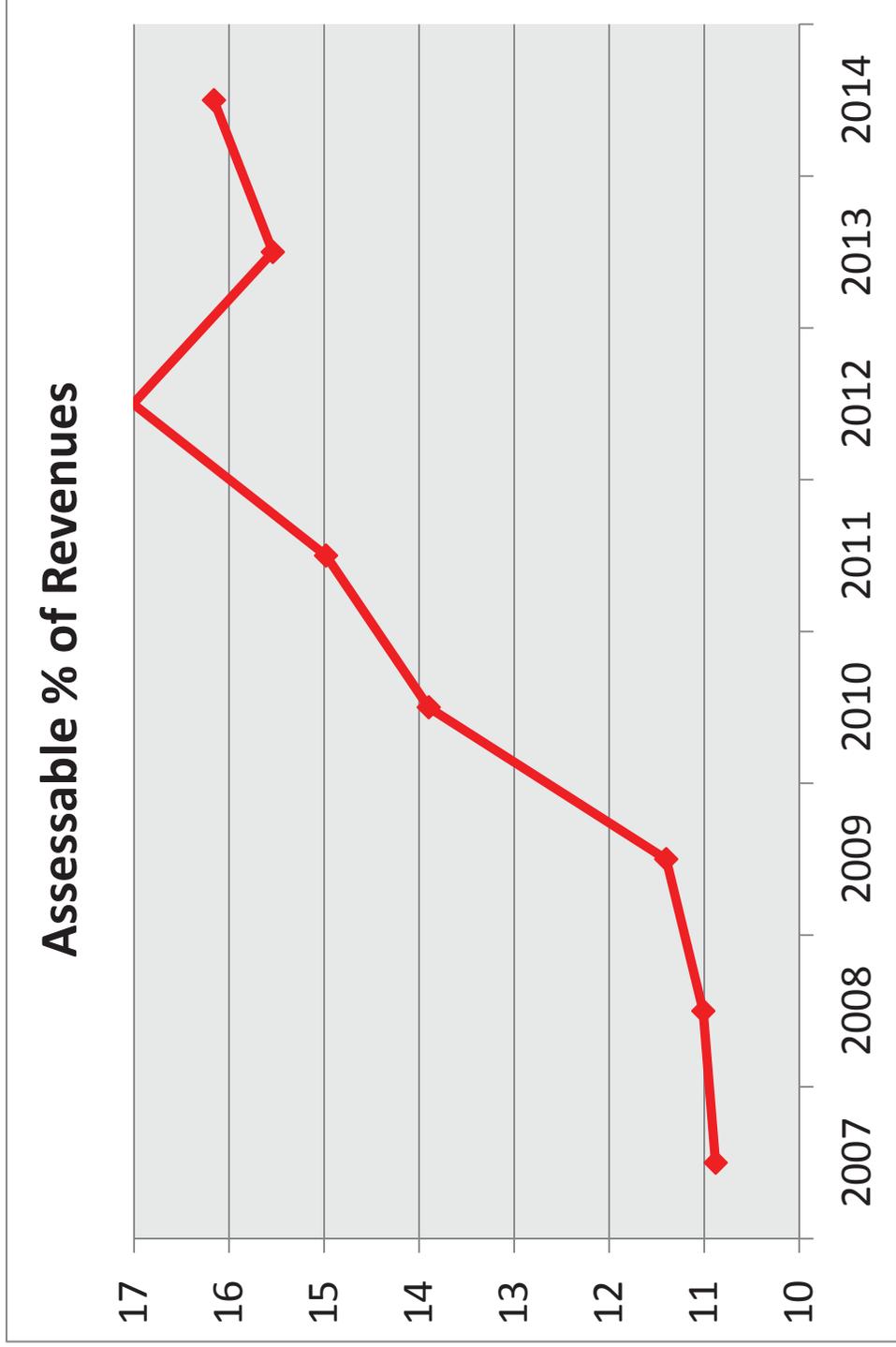
Demand – E-rate (\$3.75B Cap + inflation index)



Supply

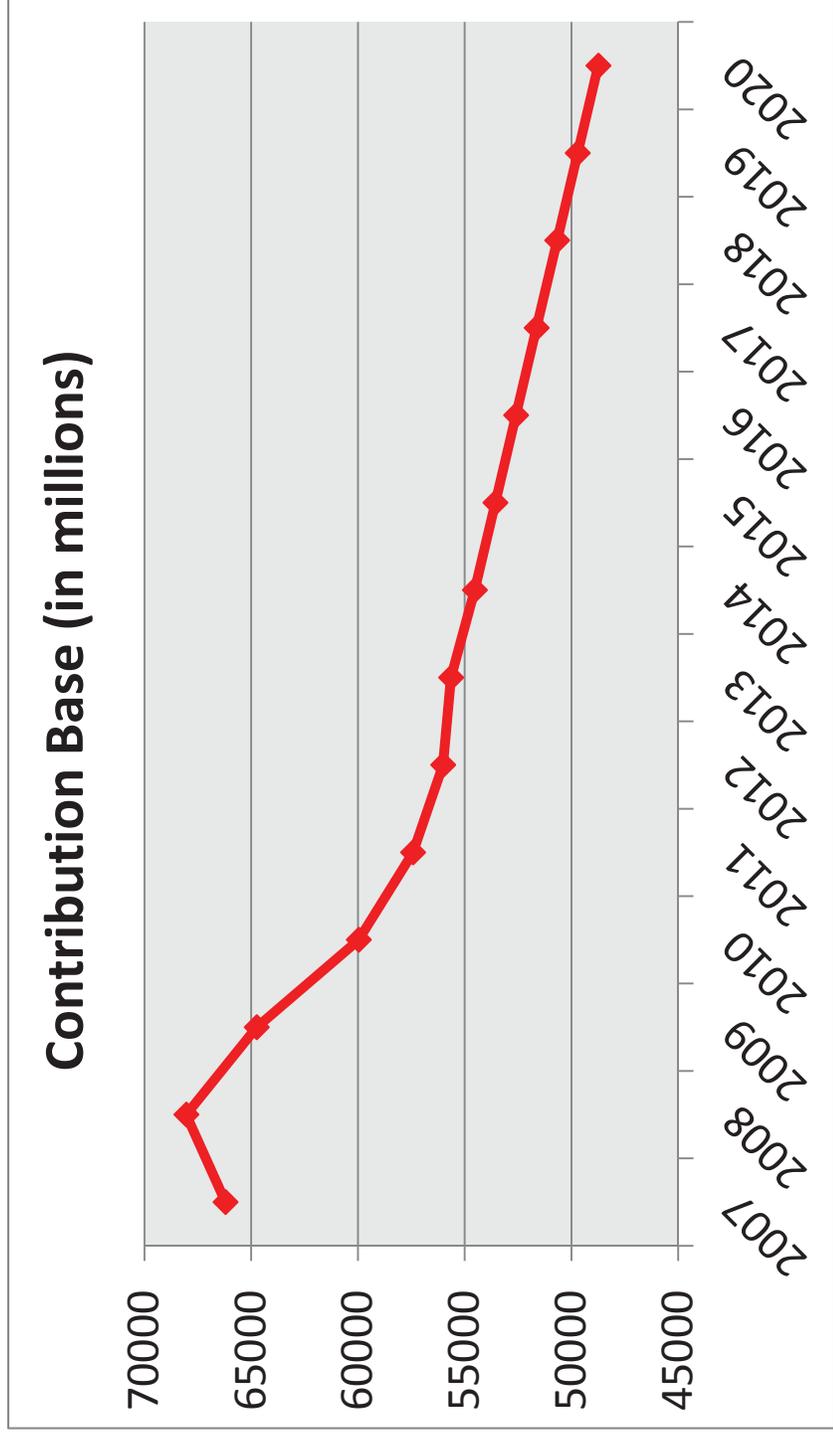


Contribution Factor



Supply without Reform Going Forward

(assumes avg. of last 3 years as continued annual reduction)



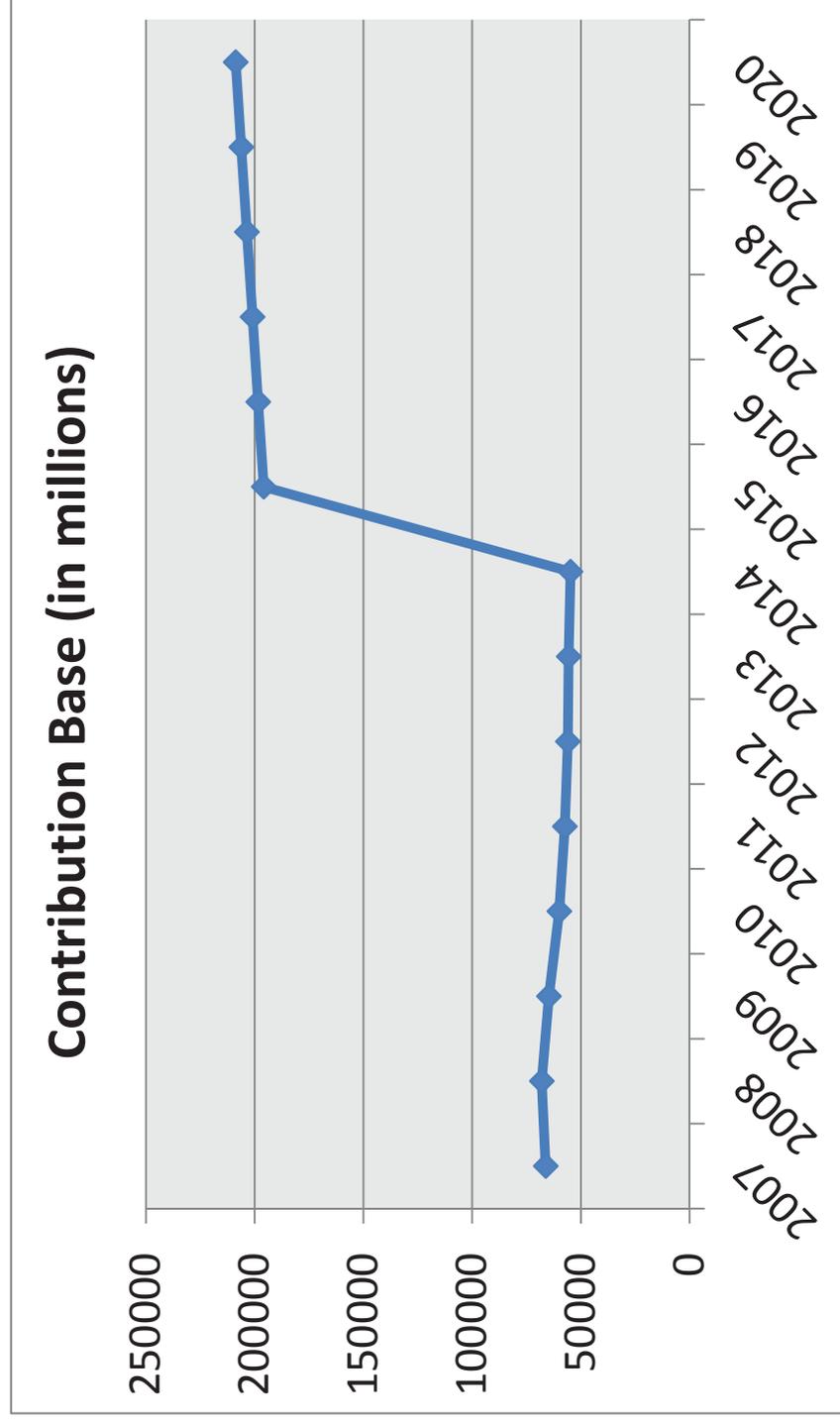
Fixing USF Supply

- We can dramatically improve the Supply equation – effective immediately – by expanding the Contribution Base just to include:
 - Fixed & Mobile Retail Broadband Internet Access Revenues – Est. \$122B Market combined in 2012*
 - Texting Revenues – Est. \$20B Billion Market**
 - Non-Interconnected (1-way) VoIP Service Revenues

Sources: * ABI Research (Feb. 2013); Chetan Sharma (Mar. 2013) ** Time Magazine (Nov. 2012)

Supply with Reform Going Forward

(assumes avg. of last 3 years as continued annual reduction, plus inclusion of new revenues as of 2015 with 2.5% annual increase therein thereafter)



Broadening the Base Has To Mean Something

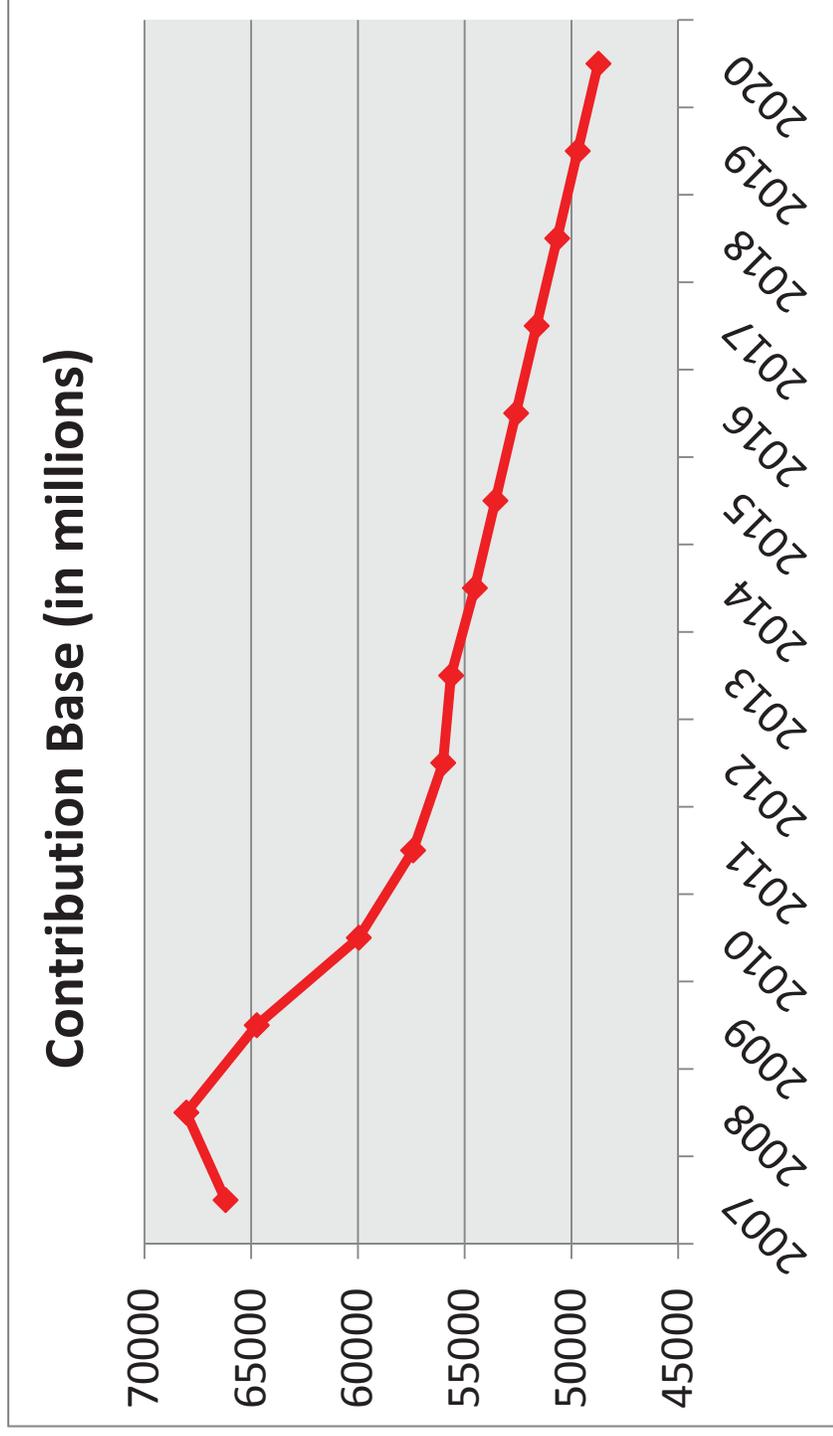
- Quarterly factors have fluctuated wildly – between 12.9% and 17.8% just since 2010
- Sends bad signals to purchasers of services and unsustainable as a matter of policy
- If we had Supply with Reform tomorrow, and assumed no increase in USF distributions, the Quarterly Contribution Factor for Q1 2015 could be ~ 1.4% rather than 16.8%.
- Average customer's broadband assessment could equal:
 - For 10/1 = ~ \$1.20 per month
 - For 4/1 = ~ \$1.04 per month
- Meanwhile, average customer's voice assessment could reduce from \$3+ to \$0.28 (or even lower)

What Now?

- Joint Board
 - 2012 repeat or something more?
- Industry Politics
 - Telecom segments
 - Net-centric businesses
 - Consumer groups
- What Can't Happen – Nothing . . .

Supply without Reform Going Forward

(assumes avg. of last 3 years as continued annual reduction)



So What are the Options (Other than Nothing)?

- Revenues
 - Pros: Simple to administer; builds upon existing system
 - Cons: Politics; builds upon existing system . . .
- Connections
 - Pros: Gets to heart of network use
 - Cons: Not as easy to administer – speed, capacity, intercarrier?
- Numbers
 - Pros: Really simple to administer
 - Cons: Backward-looking, especially in an IP/BB world
- Hybrids?