

Testimony of Eric Votaw – Varcomm Holdings, Inc.

My name is Eric Votaw and I am the CEO and Chairman of the Board of Varcomm Holdings, Inc. which owns and operates an Incumbent Local Exchange Company in California and Oregon, a Competitive Local Exchange Company that has deployed in the Central Valley of California as well as an Internet Service Company that operates in California and Oregon. I would like to thank the House Energy and Commerce Committee for this opportunity to speak about the State of Rural Broadband in America and in particular what is happening in rural California and Oregon. I am thankful for all of you holding such a relevant and important hearing on such a critical topic here in Bakersfield, California.

I'd like to tell you a little bit about myself and Varcomm. My career has always been focused on rural telecom as I ran operations and regulatory affairs at Warwick Valley Telephone in rural upstate New York, and I also worked at Sprint's Local Telephone Division in Kansas City focused on rural competition. In addition, I served as Vice President of Marketing and Regulatory for GTA TeleGuam on the beautiful island of Guam. Prior to taking over Varcomm, I worked as a regulatory consultant with Moss Adams where I focused on rural service providers. In 2016 I took over as CEO of Varcomm which owns Ducor Telephone Company, Varcomm Broadband Inc., and Roome Telecommunications in Oregon and I am happy to say that in 2021 I bought the company. I believe I am the first and only Mexican-American to own and operate a local telephone company in California or Oregon. Together with Jenifer Vellucci, who is President and CFO of Varcomm, we are 100% minority owned and 100% committed to providing broadband to all of our rural subscribers and fully intend to expand our network to offer even more broadband to rural California. Ducor Telephone Company operates here in California in 3 noncontiguous exchanges, one about 7,500 feet up in the Sierra Nevada Mountains, called Kennedy Meadows, about a 3-hour drive from here in Bakersfield. Another exchange is 38 miles NE of Bakersfield in the town of Ducor, and we operate another exchange 150 miles north of Sacramento in Rancho Tehama Reserve, which is about a 6-hour drive from here. Varcomm also has a telephone exchange in Oregon that is 30 miles north of Eugene, Halsey Oregon. Our CLEC operates in Terra Bella, California which is about 45 miles NE of Bakersfield, next to Ducor, California. Our ISP affiliate operates in all the exchanges our local exchange companies operate in, so that as a company, we provide high-quality voice and broadband service to residents and businesses throughout these deeply rural areas. Varcomm operates in some of the most remote parts of California where cellular service and commercial power are not available. Believe it or not, landlines are still needed, even here in California.

Many of my subscribers are working poor Latino farm workers working the fields where table grapes, mandarin oranges, and pistachios are grown. In our Rancho Tehama Reserve exchange, my subscriber base is similar except that almonds are the preferred crop and people work at the Walmart distribution center in Red Bluff. In the Oregon exchange there is a papermill, and hazelnuts and grass seeds are the main crops of Linn County. It's important to note that in California over 50% of my customers are on Lifeline service.

100% of our students in Ducor are on free lunch, not because their parents are on welfare, but they are working poor. The median household income in Ducor is roughly \$43,000, where the median income in California is over \$76,000. Rancho Tehama doesn't fare much better where their median household income is around \$42,000 according to the California Interactive Broadband Map. These areas are illustrative of a larger problem nationwide because many parts of rural California are working poor and deserve access to broadband service—and in many cases, they are being left behind. My company does not serve glitzy and glamorous places like L.A. I operate in high-cost areas where people are working to provide food for the region, and farms, ranches and groves are vital to our economy. All of our residential and business subscribers need quality telecommunication services, and it is critical that state and federal decision-makers continue provide universal service support for these areas.

Access to reliable and affordable broadband is crucial to the economies of rural America and I think we are at a very important crossroad in our country as we move forward with broadband deployment. It's important that the Affordable Connectivity Program ("ACP") be reappropriated quickly and then moved onto the Universal Service Fund ("USF") program and to make sure the FCC implements ACP as a USF program quickly. It's important that that Senate Bill S.3321, "Lowering Broadband Costs to Consumers Act of 2023" sponsored by Senators Kelly and Mullin be passed by Congress and signed into law by President Biden before the end of the year. Implementation of the Broadband Equity Access and Employment Program also known as BEAD, to hard-to-reach areas is essential for digital equality purposes, but, as I'll explain, I also have concerns over its implementation. Congress needs to pass the Farm Bill to ensure that rural providers have access to the necessary funds to continue to build broadband in remote areas through USDA programs like Reconnect and that we ensure our farmers and ranchers are able to maintain their businesses. Finally, even as there are many details to be worked through that could affect providers and consumers, I am happy to see the FCC issued its *Safeguarding and Securing the Open Internet Order* that provides some much needed federal guidance on the treatment of broadband, as well as some guardrails on state commissions, who might otherwise adopt patchwork of rules and I discuss below, the need greater clarity with respect to regulatory frameworks. As a rural service provider, I feel there is a lot of momentum to get broadband deployed and generally am very thankful for what President Biden and the Congress have done to make broadband a priority and hope my testimony today will help provide a perspective as a small independent provider who relies heavily upon federal and state support to deploy broadband.

I would like to briefly discuss the importance of federal and state support to help close the digital divide in rural America. Federal support programs like Universal Service Funding through ACAM, Enhanced ACAM, Lifeline Service, and E-Rate mechanisms continue to support rural providers deployment of fiber out to our subscribers. State programs like California High-Cost Fund A and the Oregon Universal Service Fund further supplement deployment of fiber optics to rural states. These programs coupled with grants and loans through American Rescue Plan Act (ARPA), BEAD, and Reconnect from USDA help to

further ensure rural America has sufficient fiber for long-term viability of telecommunication services and to help keep rates more affordable for rural consumers. It is vital that the FCC quickly look at its funding mechanism for rural networks and implement fair and reasonable USF funding mechanisms to ensure that small providers are able to continue to serve rural America. We cannot lose sight that once a broadband network is built, it still requires operational support; we cannot build it and forget it.

I applaud what Congress and the Biden Administration did in response to the COVID-19 pandemic to quickly address the digital divide and push out low-income subsidies through ARPA and Infrastructure Investment and Jobs Act (“IIJA”), making funding for middle mile and last mile programs possible. The legislation passed because of the pandemic provided a strong ray of hope towards closing the digital divide by making broadband affordable and by allocating funds to construct new broadband connections in hard-to-reach areas. These are all good programs for rural America.

Starting with the H.R. 133 the Consolidated Appropriations Act at the end of 2021, Congress along with the FCC drove \$3.2 billion dollars and quickly implemented the Emergency Broadband Benefit program or EBB so that low-income households could receive a \$50.00 per month discount and \$75.00 per discount for tribal lands. Starting around April 2021 service providers were signing people up for EBB and it was successful. In February 2022, Congress and the Biden Administration quickly moved EBB over to the Affordable Connectivity Program for a longer-term \$14 billion program, through appropriations; however, there was a reduction from a \$50.00 per month to a \$30.00 discount for non-tribal lands subscribers, but service providers still were signing up customers. The transition from EBB to ACP worked. ACP has been instrumental in closing the digital divide by allowing customers to afford broadband because \$30.00 goes a long way to making broadband affordable. Many providers worked hard signing rural customers up for ACP. Some states, like Oregon, made their lifeline subsidy portable to broadband service. Because of this, I was able to combine ACP discounts along with Oregon Telephone Assistance Program discounts to provide near zero cost broadband to my customers in Oregon. It’s most unfortunate that ACP is no longer being funded.

I strongly encourage Congress to quickly reappropriate funding for ACP and quickly roll that over to the FCC and make it part of Lifeline support. Low-Income customers in rural America need affordable broadband and they need it now! Please don’t let rural subscribers suffer much longer without ACP.

States must do their part to help make broadband affordable. The California Public Utilities have been big proponents of making broadband affordable. Last year the CPUC implemented an ACP broadband pilot program to make the California ULTS low-income subsidy of \$19.25 portable from voice service to broadband only service, although the CPUC’s rules made it very cumbersome for providers like Varcomm to participate. The CPUC tied the ACP pilot program to ACP and when ACP ended so did the CPUC’s pilot program. Quite honestly, the CPUC had a difficult time implementing their ACP Pilot

Program because of how it was structured and caused their own delays in getting it rolled out. Rather than trying to simply force rural ISPs to offer lower rates, I encourage the CPUC to do three things to make broadband affordable for all Californians:

- 1.) Make LifeLine portable to broadband only subscribers. If the CPUC is truly committed to making broadband affordable, stop trying to rate regulate small providers like Varcomm and make LifeLine available to broadband only subscribers—so customers can apply discounts to the plan of their choice.
- 2.) Do not tie State Broadband Only LifeLine to any federal program, and
- 3.) Create an efficient way for ISPs to become “Eligible Telecommunications Providers” so they can access federal Lifeline support that can be paired with the state discounts.

Congress’ passage of the ARPA has provided even more opportunity to close the digital divide. ARPA authorized the FCC to roll out \$7.171 billion in support to school and libraries benefiting the communities Varcomm serves. In particular, my company was able to work directly with Ducor Union Elementary School to implement the broadband subscription through the implementation of the Emergency Connectivity Fund (“ECF”). ECF allowed Ducor Elementary to identify students that lacked access to broadband. In turn, my company followed the rules and turned up around 45 new households that qualified for new broadband service at zero cost to the students. ECF was effective. If states ponied up, like the federal government has, I suspect we could quickly shut that digital divide up for good. ACP and ECF are programs that worked to get rural America connected.

I truly believe that broadband is a way out of poverty and enables hope and prosperity in otherwise forgotten rural areas. Broadband, and especially affordable broadband, give people a hand up as opposed to a handout because:

- 1.) Affordable broadband provides access to online education; either through the local schools like Ducor Union Elementary to complete homework or allows that farm worker to attend a Community College at times that are convenient for them. Through education we see a path out of poverty.
- 2.) Affordable broadband allows access for small homebased businesses to sell goods through various online outlets. This gives families that extra income they desperately need to cover high cost of living expenses or provides that extra income to help pay for their child’s tuition to take online classes at Community College.
- 3.) Affordable broadband provides access to telemedicine. Most of my subscribers are field workers, they get paid when they work, no sick time and no vacation time as they are seasonal workers. Access to telemedicine allows people to get diagnosed and treated at times that work from them. There are no doctors in any of my ILEC exchanges and telemedicine is an effective way to treat rural America.
- 4.) Broadband is needed for farms and ranches. Today’s ranches are more and more dependent upon broadband for monitoring water, cattle, tree growth, and

crop health, more than ever before. Deployment of reliable broadband and telecommunication services is crucial to their continued survival.

Congress has given us a once in a lifetime opportunity to get broadband deployed through ARPA and IIJA legislature. We have to get it right first time, there is no going back. ARPA grants for middle-mile and last mile connectivity programs a good step forward. In California we have seen delays in getting ARPA funded state-controlled grants out like the California Middle-Mile Broadband Initiative and CPUC's Federal Funding Account ("FFA") for last mile grants. Finally at the end of 2023 we saw some movement in middle mile funding and grant awards being announced for middle mile builds. Californians are still waiting for the last mile grant award to be announced. My company has applied for the CPUC's FFA grant and hope to be awarded the grant where we are asking for \$9M to build out Fiber-To-The-Home to over 1300 households. Varcomm stand by ready to quickly provide bring affordable broadband to Terra Bella, California here in the Central Valley. Rural ILECs have a proven track record of being able to deploy fiber quickly and I believe rural providers are best to help move California's Middle-Mile and last mile programs forward.

In California we are just getting started with the BEAD program. The CPUC is just finalizing its first "volume" of rules. In Oregon, the state broadband office was very collaborative with all providers in Oregon to quickly get its program off the ground. As companies gear up for BEAD, ARPA grants, and USDA completes Reconnect 5, it's important to note that many commercial companies are discouraged to apply for grants because of income taxes imposed on grants awarded to commercial companies. I call to the Member's attention that a commercial company, like mine, must pay income taxes on any grants awarded, where non-profit and local governments are exempt from taxation on grants. If Congress is truly looking for broadband to get deployed quickly, it must find a way to combat the income tax issue on grants to commercial companies and level the tax playing field by changing the tax regulations. I would note that bonus depreciation is set to sunset and applying a bonus depreciation doesn't get us where we need to be to offset the income taxes. As stated earlier, my company has applied for CPUC FFA last mile grant and if Varcomm is awarded the grant will create a \$2.6 million tax liability to my company. I strongly believe in my company's ability to build out the 22 miles of new fiber-to-the-home that I'll may possibly seek debt to cover the tax liability. I therefore recommend Congress pass (S.341/H.R.889) the "Broadband Grant Tax Treatment Act" introduced by Senators Warner and Moran and Representatives Kelly and Panetta to exclude broadband grants from gross income and maximize the impact of every dollar granted for broadband. As I have done in the past, I will reach out to the California Infrastructure and Economic Development Bank ("iBank") for loan guarantees and work closely with the Small Business Development Corporation of Orange County, who have been very instrumental in providing me the funding I needed to build out fiber in my exchanges. My goal is to utilize federal grant programs along with state guarantee borrowing opportunities to ensure I meet the fiber optic needs of rural California. Because of the slow pace that the California PUC acts upon approving any funding on rural ILECs, I have been forced to look for funding at my

holding company level to then infuse my operating company, as my need to construct outpaces the speed at which regulators in California approve ILEC loans.

As my last comment on grants and build out obligations, I urge Congress to pass *The Rural Prosperity and Food Security Act of 2024* which I will refer to as the Farm Bill. I believe this bill will help protect our farmers and ranchers, make sure that rural Americans don't go hungry and have access to childcare and also provide Rural Broadband Access through grants, loan, and grant/loan combinations for the cost of construction, improvement, or acquisition of facilities and equipment for rural speeds not less than symmetrical 100Mbps service administered through ReConnect. Some may argue that other technologies are cheaper to deploy, and in full disclosure, I do operate part of my CLEC as a WISP and therefore value wireless technology as an initial edge out strategy, but deployment of fiber optics provides us with the opportunity to deploy a service that build a long-term asset that meets the future needs of rural America and in the end is cheaper to maintain than wireless and copper. Fiber simply requires less maintenance than copper facilities or wireless facilities. It's important that there is close coordination among federal and state agencies to avoid deploying duplicative government-funded broadband network in rural America and ReConnect funds should not be awarded to any provider in an areas where a different provider is the recipient of RUS programs or is support from federal USF programs and or state broadband grant programs have been awarded, we must ensure that we do not unnecessarily waste federal funds. The Farm Bill needs to make sure that grant recipients, need not spend matching fund in full prior to making a draw on the grant funds as this this is unnecessary to ensure grant recipients have "skin in the game". And lastly on this matter, the Bill should make sure that grants or other funding awards will not be favored based on the form of organization or commercial status. All providers who are willing to step up and apply for funding should be allowed to apply on a level playing field. This is the best way to deploy fiber faster and efficiently in rural America.

Moving to the FCC's recent *Safeguarding and Securing the Open Internet Order*. The Order appears to enhance the FCC's ability to fulfill several key public interest obligations and objectives as it relates to the provision of Broadband Internet Access Service. From my perspective, the FCC's light touch Title II regulation of broadband is a step in the right direction; small, independent broadband providers like Varcomm have traditionally not discriminated against providers of internet content, we don't throttle, block, or provide paid prioritization of legal internet content. I agree that broadband service is a telecommunications service and should be 100% within the jurisdiction of the FCC and applaud the FCC for not imposing rate regulation on broadband providers and I believe, as with 2015 Open Internet Order, the Biden administration would never impose rate regulation on ISPs, unlike the California PUC which I will address in greater detail shortly. I will say that I disagree with the FCC for not imposing a USF contribution on broadband providers and I hold out hope that U.S. Senate Bill 3321, the *Lowering Broadband and Cost to Consumer Act of 2023*, is enacted into law to stop the largest edge providers from getting a free ride on the network paid for by companies like mine by making them contribute to USF and provide necessary relief to USF. USF contributions are

strained and long overdue for modernization; S.3321 will accomplish this. I encourage Congress to quickly move on making S.3221 law.

In addition, I'd like to speak to three important aspects of the Order here and how they can be utilized to circumvent excessive regulation of broadband service by the CPUC:

- 1.) The Order allows the FCC to reinstate a nationwide framework of rules for broadband providers and to preempt state or local measures that interfere or are incompatible with this federal regulatory framework. In the Introduction to the Order, the FCC states that “[w]e also exercise broad forbearance—including no rate regulation, no tariffing, no unbundling of last-mile facilities, and no cost accounting rules—in the Commission’s application of Title II to broadband providers to ensure that the regulatory environment is properly tailored to protect consumers and achieve other important public interest responsibilities while not unnecessarily stifling investment and innovation. (See Paragraph 6). I believe that the implementation of Title II regulation strikes a reasonable balance in accomplishing these goals. However, I have to caution that the CPUC has already has adopted rules, and the Public Advocates Office (“CalPA”) of the CPUC has proposed additional requirements, that would go well beyond what the FCC’s Order appears to envision by placing excessive regulations on ISPs that are affiliated with ILEC recipients of state universal service funding that are contrary to the public interest and have or will stifle investment and innovation by these companies.
 - a. The CPUC has implemented rules that confiscate 100% of the profits of ISPs affiliated with rural ILECs through dollar-for-dollar reductions in universal service support. This “imputation” of broadband profits into regulated ratemaking calculations interferes with the FCC’s intent to forbear from traditional rate of return regulation of broadband providers. This is having negative impacts on rural ILECs in California as it reduces state USF, strips the companies of much-needed cash flow and potential investment dollar. This greatly harms rural California.
 - b. CalPA, the entity which supposedly advocates for consumers within the CPUC, has proposed to require that the affiliated ISPs of ILEC recipients of state universal service funding provide an unfunded low-income broadband plan for the ILEC to be eligible for state universal service funding. This requirement is clearly incompatible with the FCC’s intent when it granted broadband providers forbearance from rate regulation. Varcomm supports reducing broadband rates, but the CPUC should be working with us to find support for price reductions, not creating unfunded mandates that fail to recognize the high costs of service in rural areas.
 - c. CalPA has also proposed to disallow investment in broadband capable fiber to the home facilities from inclusion in intrastate rate base where

the affiliated ISPs of ILEC recipients of state universal service funding do not meet specific broadband adoption standards. Again, this proposal clearly interferes with the FCC's intent to forbear from traditional rate of return regulation of broadband providers.

2. The Order allows the FCC to expand the scope of the Network Outage Reporting System (NORS) to require broadband providers to report network outages and bolsters the Commission's authority to require broadband providers to participate in the Disaster Information Reporting System (DIRS). I have no problem with this additional network outage reporting requirement for operators of broadband networks, as it helps to address the need for network resiliency and reliability. However, I am concerned that CalPA has proposed additional and potentially duplicative reporting requirements for ISPs, which adds to the cost of providing service and does not serve the public interest; the FCC has this covered and there is no need for state regulators to pile on with conflicting and duplicative requirements.
3. The Order leaves broadband providers' broadband transmission services, which is the local network access service provided by the ILEC that enables the provision of broadband service by an ISP, subject by default to the rate-of-return framework identified in the Wireline Broadband Classification Order, which includes "the full set of Title II obligations" (See Paragraph 315). Had the FCC intended for broadband to be subject to the same "full set of Title II obligations", including rate-of-return style regulation, it would have done so. I believe that the CPUC is overstepping by regulating both the broadband service and the broadband transmission service in the same manner and not differentiating as the FCC has done in the current order.

In conclusion, I thank the Committee for the opportunity to discuss how a small service provider like Varcomm is working to deploy rural broadband in California and Oregon. We are at an exciting time to help make sure that rural America is afforded broadband. I applaud what Congress and the Biden Administration have done so far to help encourage, support, and enable further adoption and deployment of broadband. As I previously stated, we are at a crossroads with a once-in-a-lifetime opportunity to utilize funding opportunities to complete and close the digital divide. It's important that Congress quickly move on S.3321 to make sure all users of broadband are paying their fair share to USF, and I know big content providers will oppose the bill and pray you hold fast and keep the bigger picture in mind and work with the Senate to move this to the President's desk. I also hope Congress will move quickly to pass S.341/H.R.889 to ensure all government broadband grant funds go toward network deployment. And I encourage bipartisan support and passage of the Farm Bill as it truly supports not only ranchers and farmers as well as continued broadband deployment. I am thankful for the FCC's passage of the *Safeguarding and Securing the Open Internet Order* and hope that the FCC will come back and revisit in and tighten the Order up to ensure that the California PUC doesn't overstep its boundaries. Hope that California can quickly award out last

mile grants and make its state lifeline portable to broadband. And lastly, I strongly encourage all Members to work together to make sure ACP is reappropriated this year. Since the expiration of EBB, ECF, and ACP I have already seen a near 20% loss in broadband lines because low-income subscribers can't afford to pay for broadband. Thank you for your time.