PUBLIC AND PRIVATE PARTNERSHIPS: PERFORMANCE STANDARDS AND ACCOUNTABILITY

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ABSTRACT

Since World War II, public and private partnerships have been on the rise. These partnerships help the federal government deliver public programs because they are often overwhelmed and understaffed. The partnerships are formed between private and third party partners. In addition to the federal government, public and private partnerships assist state and local governments. This thesis examines public and private partnerships, the role of two tools of government, government corporation and economic regulation, and whether or not the federal partner involved in the universal service partnership is to blame for the accountability issues that led to fraud, waste, abuse, and incidents of financial improprieties.

Here I propose that the federal government is to blame when things go wrong in these partnerships, despite the fact that there is a private or third party entity involved. Performance standards in public and private partnerships are addressed in this paper with a focus on the case study of the Universal Service Administrative Company (USAC), a “hybrid” partnership that exists because of the Telecommunications Act of 1996.

Additionally, many theorists and scholars view the partnerships as a possible way of governing. It is my belief that if “hybrid” partnerships similar to USAC have become
a trend in governing, or used as an alternative, the partnerships will need to include stronger oversight or language in the legislation. The same care must be applied to the partnership agreement in order to deal with accountability issues. Public and private partnerships can continue, but the appropriate government tool has to be incorporated into the foundation of the partnership to prevent problems.

The success or demise of public and private partnerships is evaluated by tracing important historical and political history of legislation and regulation. The case study of the Universal Service partnership will trace telecommunications legislation and regulation, specifically the Communications Act of 1934, The Modified Final Judgment of 1982, and the Telecommunications Act of 1996 as well as how the regulation and legislation affected the telecommunications industry and how it evolved into the current “hybrid” partnership.

A comparison of past and present programs reveals that legislation and regulation and the use of two government tools, government corporations and economic regulation, helped form the current “hybrid” partnership. Additionally, I will discuss the current accountability problems that exist and offer solutions to deal with existing and future problems.

Based on research and an examination of relevant documents, it can be concluded that in the case of the universal service public and private partnership, the federal government is ultimately to blame when performance and accountability issues surface. Public and private partnerships will need to determine other ways to deliver programs if they are to continue, especially in light of Universal Service reform that occurred in
October 2011 (the universal service reform was too late for inclusion in this thesis).¹

Since the ink of the Universal Service reform is still drying, it is unclear as to how this new reform will affect the current partnership.

In order for this current partnership to continue, I propose several solutions. I believe it is necessary to address the following: scheduled and unscheduled audits of the fund conducted by internal and outside auditors; applying Donald Kettl’s five imperatives that focus on open communication and sharing the risk between all parties; rewriting the bylaws of USAC to allow for changes to the program as they occur; limiting the FCC’s role in this partnership by asking the National Exchange Carrier Association (NECA) or another private telecommunications entity to help monitor the partnership; and using and revising the tools of government as needed.

DEDICATION

I dedicate this thesis to my parents, William and Marika Hanger, and my grandmother, Clara Parsons-Hanger.
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CHAPTER 1

PUBLIC AND PRIVATE PARTNERSHIPS

Introduction

Public and private partnerships have been around since World War II thanks to New Deal initiatives introduced by President Roosevelt. Public Administration scholars Stephen Goldsmith and William D. Eggers, authors of *Governing by Network: The New Shape of the Public Sector*, believe that public and private partnerships have become a trend in governing.¹ While these partnerships have evolved because of initiatives and legislation through federal agencies, they have become a new form of governance. Public Administration scholar Lester Salamon, who wrote *The Tools of Government: A Guide to the New Governance*, believes that when partnerships connect with the appropriate government tool, they are able to deliver public programs with minimal disruptions from the federal agency.²

This thesis focuses on the role of the Federal Communications Commission (FCC) in a public and private partnership that exists with the Universal Service Administrative Company (USAC). The current universal service partnership developed because Congress felt that the universal service subsidy program developed in the 1960s to help defray the high cost of delivering telecommunications services to rural and under

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developed areas should continue. The Telecommunications Act of 1996 codified universal service and delivered a public program in the form of a partnership that benefits the public it serves; however, this partnership is referred to as “hybrid” because it was created by the public partner (the FCC) with the help of the National Exchange Carrier Association (NECA). In a traditional public and private partnership, the public partner contracts with a private or third party source to deliver a public program to fulfill a public need. However, problems surface within this “hybrid” partnership because of a lack of oversight that led to cases of fraud, waste, abuse, and incidents of financial improprieties.³

**Government Tools**

Government tools lay the foundation for the public and private partnership by adding characteristics such as flexibility, regulation, oversight, and other factors that help the partnerships succeed. In Chapter 2, I will discuss the strengths and weaknesses that exist within these government tools and how they apply to the universal service case study. Lester Salamon explains the use of government tools to help deliver programs through partnerships, “… massive proliferation has occurred in the tools of public action, in the instruments or means used to address public problems. Whereas earlier government activity was largely restricted to the direct delivery of goods or services by government bureaucrats, it now embraces a dizzying array of loans, loan guarantees, grants, contracts, social regulation, economic regulation, insurance, tax expenditures,

This thesis discusses two tools that are specific to this partnership, government corporations and economic regulation. A government corporation is defined as a “government agency owned, and controlled by government, which is set up as a separate entity legally distinct from the rest of the government of which it is a part.”5 In the case of USAC, a government corporation exists between the FCC and USAC. However, the FCC created the private partner that facilitates the program and controls every aspect of the government corporation. The second tool, economic regulation, is explained in the following way, “economic regulation is a specialized bureaucratic process that combines aspects of both courts and legislatures to control prices, output, and/or the entry and exit of firms in an industry.”6 The economic regulation tool is used in utility companies that have operated as a monopoly. The thesis case study focuses on the telecommunications industry and the universal service program that began because the telecommunications industry operated as a monopoly until 1982. The monopolistic environment in telecommunications was due in large part to the regulatory scheme that the FCC and its predecessor created. These tools perfectly match this non-traditional partnership by using “indirect” government. At the same time, improper oversight ushered in accountability problems.

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6Ibid., 118.
Accountability

According to Public Administration scholar Paul Posner, who is a key authority on accountability in the public and private sector and wrote the accountability chapter in *The Tools of Government*” believes, “… two important questions that should be addressed when discussing accountability – accountability for ‘what’ and to ‘whom.’” The “what” is the lack of accountability and oversight and will be addressed in relation to this partnership and how accountability issues could have been prevented by being proactive when the partnership was created. The “whom” according to Posner includes elected officials, interest groups, and other participants who have a vested interest in this partnership. Additionally, Donald Kettl, believes that: “… challenges are presented when the federal government must use independent actors it does not fully control to achieve its goals especially since transferring who does the work does not relieve the federal government of responsibility for the performance.” When universal service became mandated in the Telecommunications Act of 1996, the FCC created the partnership that became the Universal Service Administrative Company (USAC) and controlled it, thus assuming responsibility for any problems that surfaced. After the partnership began and the awarded funds went to applicants, many used the funds for illegal activity and not for their intended purposes.

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Case Study: The Universal Service Fund

In Chapter 3, this thesis examines the evolution of the universal service program from its beginning as an idea that led to a subsidy program that eventually led to the current partnership. According to Milton Mueller, the universal service subsidy did not start until the 1960s, despite the fact that many believed that universal service was mandated in the Communications Act of 1934. However, AT&T President Theodore Vail coined the “universal service” term in 1908 because his vision for AT&T involved the interconnection of telephone networks rather than a subsidy for individuals to have access to the service. Regarding the development of the program, this thesis discusses the role of regulation and legislation and how they affected the universal service program; additionally this thesis will address and analyze the program’s effect on the telecommunications industry and how it set the tone for a monopolistic environment that existed until the 1980s and was replaced by an era of competition that still exists today.

Examples of how the government tools selected for this thesis, government corporation and economic regulation, do or do not apply to universal service are also discussed in Chapter 3.

Methodology

The methodology will be an analysis of a political process, the relevant theorists, tools of government, and public and private partnerships. This thesis will investigate

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11 Ibid.
how government tools affect the public and private partnership process using a case study of the four funds within USAC and the FCC.

Additionally, a discussion of accountability issues and who is ultimately responsible are included as well as an examination of the tools of government and the supporting theory; however, this thesis will only focus on two government tools: government corporation and economic regulation.

The thesis will also discuss public and private partnerships and how they are used as well as the reality that these partnerships have become the way of governing at the federal government level. The thesis will show whether or not the government tools are the problem or if it is the fault of the members within the public and private partnership. Additionally, we will examine Donald Kettl’s five imperatives. The five imperatives are: a policy agenda that focuses more on problems than on structures; political accountability that works more through results than on processes; public administration that functions more organically, than through rigid hierarchy; political leadership that works more by leveraging action than simply by making decisions; and citizenship that works more through engagement than remoteness. The imperatives are presented because of their significance to public and private partnerships and governing.12

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Conclusion

In Chapter 5, this thesis will conclude with an overall discussion of the research presented in Chapters 2, 3, and 4 in relation to whether it is the public partner who is really to blame when things go wrong in the partnership or if it is the fault of the private or third-party partner. By presenting the regulation and legislation that led up to the current partnership, this thesis proves the argument that the federal agency, in this case the FCC, is to blame for the problems that exist in the current universal service partnership and offer other recommendations or solutions for the problems that exist within public and private partnerships.
CHAPTER 2

PARTNERSHIPS, TOOLS, AND IMPERATIVES

What are Public and Private Partnerships?

Public and private partnerships are in demand because they help the Federal Government meet their goals through the creation of new public programs. The National Council on Public and Private Partnerships defines public and private partnerships as “…a contractual agreement between a public agency and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition the sharing of resources, each party shares in the risks and rewards potential in the delivery of the services and/or facility.”¹ This definition falls in line with this thesis because of the unusual or “hybrid” partnership that exists between a federal regulatory agency and a private agent that helped create another private agent that in turn delivers the government program. As federal, local, and state governments face possible budget cuts, layoffs, and the elimination of critical programs, the need for these partnerships will continue to rise.

Why are Public and Private Partnerships on the rise?

There are three reasons for the rise of partnerships: (1) federal agencies who need help meeting the demand for public programs, (2) financial constraints and budget

deficits, and (3) high profile federal agency projects.\(^2\) With respect to the rise of partnerships in the 20\(^{th}\) century, Salmon explains, “… the last sixty years have marked an unprecedented expansion of the role of government, particularly the federal government, in our nation’s domestic life. During this same period, public confidence in the capacity of government to deliver on those expectations has eroded.”\(^3\) Federal agencies use partnerships to assist with projects or programs, and the work can be done at the agency or at an off-site location. The participants in the partnership can facilitate a variety of daily tasks ranging from monitoring information technology help desks or call centers, performing building maintenance, managing Human Resource functions, or other administrative functions with which an agency needs help. Partnerships are built on the concept of indirect government. Indirect government continues to be embraced because it enables the delivery of public programs in a timely fashion and with minimal government interaction.\(^4\) Examples of indirect government tools are discussed in the “Tools of Government” section of this chapter.

The first reason for the rise in partnerships can be traced back to World War II. According to Kettl, “…major policy initiative[s] launched by the federal government since World War II – including Medicare and Medicaid, environmental cleanup and

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\(^4\)Ibid., 491.
restoration, anti-poverty programs and job training, interstate highways and sewage treatment plants – has been managed through a public and private partnership.”

The continued use of partnerships is very noticeable because contractors are present in just about every federal agency and in some cases could possible outnumber permanent federal employees.

The second reason for the rise in partnerships is due to financial constraints and budget deficits. Muhittan Acar views the rise of partnerships to be the result of financial concerns. Acar believes that, “… the increased use of public-private partnerships in such areas as transportation, communication, and energy has also been attributed to the severe financial constraints and budget deficits many governments around the world have been experiencing during the 1980s and 1990s. Faced with unmet expectations of producing efficient public services for their citizens, many governments have begun introducing polices conducive to the creation of new models of collaboration in and through multi-organizational, multi-sectoral networks and partnerships in delivering public services.”

A primary example of financial challenges occurs in the education sector. Faced with budget cuts, many school systems benefit from the use of public and private partnerships. An education study conducted in 1990 by the National Association of Partners in Education (NAPE) revealed that 65% of the school districts surveyed were involved in

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some sort of lucrative and beneficial partnership with an outside or private partner. The main goal of the education partnerships is to improve the quality of education.

The third and final reason for the rise in partnerships involves high profile federal agency projects. The partnerships facilitate day-to-day operations. A perfect example of this is when President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 to fund various projects. There are two telecommunications projects that the ARRA currently funds that are delivered through partnerships: Rural Utilities Service (RUS) and Broadband Technology Opportunity Program (BTOP). The ARRA program awarded $7 billion to upgrade the telecommunications infrastructure in the United States. The Rural Utilities Service (RUS) Broadband program, which is a division located within the United State Department of Agriculture (USDA) Office of Rural Development, hires government contractors and federal employees to process applications for broadband funds and helps disburse the broadband funds once they are approved. The National Telecommunications Information Administration (NTIA), which is an agency within the United States Department of Commerce, also hires government contractors and federal employees to assist with the Broadband Technologies

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7 Acar, Accountability in Public and Private Partnerships, 13.

8 Ibid.


Opportunities Program (BTOP) grant program. The employees help process applications, disburse funds, and complete any other administrative work. Public and private partnerships continue to meet a variety of needs for the public sector, while offering win-win solutions to all the parties involved. These partnerships have become commonplace in federal, local, and state governments, and unless funding for these partnerships is eliminated or reduced, they will continue to remain popular. This popularity has lead scholars to believe that these partnerships have become a new way of governing.

Are Public and Private Partnerships the Future Governing Network?

As public and private partnerships have become a future way of governing, the federal government continues to manage through a hierarchal model. The traditional hierarchal model has worked well in the federal government because it does not embrace a different way of delivering public programs; instead it rewards managers for delivering routine programs and projects in order to meet goals and objectives. Government also has to realize that the demands for public programs are growing here in the United States and abroad, and they must alter the way that they do business because, “… increasingly complex societies force public officials to develop new models of governance.” A new way of governing is important because it can keep pace with the changes in technology


13Ibid., 7.
and meet the demand for public programs.\textsuperscript{14} While existing public and private partnerships built on the hierarchal model continue, future public and private partnerships become the new way of governing. The federal government does realize that they are not able to keep up with the demand for public programs, so they must partner with other federal agencies and private partners.

Lester Salamon explains the interaction between government agencies and contractors, especially when the tools of government help deliver public programs, “... a dense mosaic of policy tools, many of them placing public agencies in complex, interdependent relationships with a host of third-party partners.”\textsuperscript{15} The collaboration between the Department of Homeland Security (DHS), Federal Bureau of Investigations (FBI), and the Central Intelligence Agency (CIA) is an example of how these agencies work together by sharing resources and using tools related to domestic and international security issues.\textsuperscript{16} The agencies then enlist the outside help of private contractors or third party agents to gain access to additional resources and technology.\textsuperscript{17} As public and private partnerships have become a new way of governing, problems exist within them and they must be addressed and removed.

\textsuperscript{14}Goldsmith and Eggers, \textit{Governing by Network}, 9.


\textsuperscript{17}Goldsmith and Eggers, \textit{Governing by Network}, 7-8.
The Problem with Public and Private Partnerships

While the government continues to rely on public and private partnerships, these partnerships are not without their own set of problems. One problem is the lack of accountability within the partnership. Lester Salamon views accountability in the following way: “…accountability controls were envisioned as a way to prevent the arbitrary exercise of power by leaders,”18 adding, “there are thus two important questions that should be addressed when discussing accountability – accountability for ‘what’ and to ‘whom.’”19

Examples of “what” and “who” are found in the Universal Service Fund, which is operated by the Universal Service Administrative Company (USAC). Since the fund was codified and created after the passage of the Telecommunications Act of 1996, it has incurred its share of accountability problems. Regarding the “what,” an example would be what happened when USAC first started processing applications to disburse funds. The funds were supposed to go towards upgrading computer labs and purchasing new computer equipment and software for the school or library; however, there were documented cases of financial improprieties that occurred after the initial disbursement.20 The funds ended up going directly to the personal bank accounts of individuals or organizations instead of to the schools and libraries that had applied for the funds. In the

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19Ibid.

case of the Universal Service Fund, “who” should be held responsible when there are cases of embezzlement? Would it be the FCC, NECA, or the USAC? This thesis does focus on the fact that it is ultimately the federal agency “who” is held accountable when problems occur. In this case, it would be the FCC, because they created the law in the Telecommunications Act of 1996 that created the Universal Service Fund.  

Accountability problems can be prevented at the onset of the public and private partnership. All of the parties involved in the partnership can include specific language or safeguards in the agreement that can prevent problems. Salamon cites Posner who believes that partnerships should “… include oversight mechanisms necessary to ensure that the goals set forth in statutes and regulations are in fact being achieved.” Posner explains how a federal official can include specific rules on how funds are used spent in a partnership to ensure that misappropriation does not occur. Oversight mechanisms should be included and addressed in the federal agency’s initial agreement or bylaw. A perfect example of a federal agency writing oversight mechanisms into the agreement occurred when Congress passed the Telecommunications Act of 1996 and mandated universal service and created the “hybrid” partnership known as USAC. The FCC enlisted the help of the Federal State Joint Board to determine the rules and regulations of the program and to choose who would facilitate it. The bylaws created for the Universal

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23Ibid.
Service Administrative Company (USAC) note that the FCC has sole responsibility over any activity of the corporation, despite the fact that the National Exchange Carriers Association (NECA) is the sole stockholder of the corporation. Even though USAC and NECA are involved with the fund, the FCC, the government agency is responsible. The FCC would also be responsible for investigating any violation of the rules. Kettl believes that the federal government is accountable when something goes wrong in the partnership, “…challenges are presented when the federal government must use independent actors it does not fully control to achieve its goals, especially since transferring who does the work does not relieve the federal government of responsibility for the performance.”

While there might be certain situations that occur in a partnership where the private or third party partner is ultimately responsible, it is the federal agency questioned by GAO during the audits and it is the federal agency asked to testify on Capitol Hill when Members of Congress are notified of problems in the partnership.

The cause of accountability problems can also be due to the inappropriate use of third party tools of government. There are five accountability problems that are based on the use of third party tools of government: “(1) goal diversion or goal conflict, (2) fiscal windfalls, (3) moral hazards, (4) perverse fiscal incentives, and (5) attraction of opportunistic partners.”

Goal diversion or goal conflict occurs “…when third parties

24 Kettl, Performance and Accountability, 49.

avoid or sidestep federal policies.” 26 An example of goal diversion involves the enforcement of federal speed limits in western states. As a reaction to federally mandated speed limits warning tickets were given to offenders that broke the law. The message to drivers in this region suggested that it was okay to exceed the speed limit. 27 If a speed-related accident or death occurred on the highway, someone has to be held accountable, especially if it was discovered that the driver had been issued previous warning tickets for speeding instead of being fined or having points issued against his or her driving record. If a fatal accident occurred, who is held accountable, the federal agency for increasing the speed limit?, the state agency?, or the local jurisdiction who did not issue the ticket? It would be the local jurisdiction who “sidestepped the federal policies.” 28

The next accountability challenge revolves around “fiscal windfalls.” 29 Fiscal windfalls occur when a public or private partner uses funds or a tax expenditure that is set aside to benefit a specific group and in reality the public or private partner ends up benefitting from the funds or taxes. 30 Posner uses the example of the tuition tax credits given to the parents of college-bound students to explain fiscal windfalls. The credits are supposed to help the parents pay tuition for their children. The windfall happens because

26Ibid.
27Ibid.
28Ibid.
29Ibid.
30Ibid.
in most cases the parents have the money to send their children to college without the tax credit. Constant increases in tuition will still occur due to increased enrollment rates. The windfall goes to the university because they will ultimately benefit from the tuition hikes, but the parents can’t benefit from the tax credit. In this case, the tax break really does not help the individual or group in need.  

The third accountability challenge is moral hazards. The theory behind this challenge is where “tools that indemnify third parties for risks may undermine program purposes by encouraging third parties or recipients to engage in behavior that exacerbates the risks and undermines the program goals.” The creation of the Federal Pension Insurance Act promised employees that, if their pension fund ever failed or terminated, the government would cover any loss up to a certain amount. When the original act passed it did not contain strict regulations; therefore, there was no enforcement of the law. The lack of oversight allowed employers to use the funds towards other projects within the company instead of going towards employees’ pension funds. The employers reasoned that the government would cover losses or any other financial failings associated with their pension fund.

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32 Ibid.


34 Ibid.

35 Ibid.
This next accountability challenge is “perverse fiscal incentives,” and it involves the lack of “sufficient incentives to promote efficient programs when they have no responsibility for raising the funds that they spend.” 36  Posner explains this challenge using the HUD program as an example: “lenders who hold and service Housing and Urban Development (HUD) insured multi-family mortgage loans bear little or no financial risk of default, and it is no surprise that they become passive in their oversight of borrowers.” 37  In the case of HUD, they have nothing to lose. HUD’s sole purpose is to help get people into affordable homes, not to monitor the financial risk once the transaction has taken place. The lenders who work with HUD retain the profits. HUD and the lenders should both assume responsibility when homeowners fail to meet their monthly payments or face foreclosure.

The last challenge is the “attraction of opportunistic partners.” 38  In this accountability challenge, “third party subsidies can encourage the emergence of third parties whose primary goal is to profit from the subsidy rather than address the program’s goal.” 39  The example Posner provides for this challenge is the relationship between Medicare and Health Management Organizations (HMOs). 40  HMOs profit through payments from Medicare for every citizen participating in the program. The problem

36 Ibid.
38 Ibid.
39 Ibid., 530.
40 Ibid.
surfaces when HMOs receive reduced funds because the formula was based on unhealthy senior citizens. After the payment formula was questioned, many HMOs decided not to participate in the Medicare program anymore because they were not receiving healthy profits.\textsuperscript{41}

Federal agencies need to strengthen their oversight mechanisms to eliminate accountability problems in partnerships. The federal agency also needs to enforce stricter rules, regulations, fines, and other forms of punishment on those who break the law. Even though third party tools of government can be at the root of the accountability problems, selecting the appropriate tools of government can prove to be successful in public and private partnerships.

**The Tools of Government**

Lester Salamon defines the tools of government as “… an identifiable method through which collective action is structured to address a public problem.”\textsuperscript{42} There are tools of government that are in use every day in the government and the private sector. Tools of government can consist of the following: government corporations, government enterprises, social regulations, economic regulations, grants, government insurance, contracts, taxes and expenditures, and loans.\textsuperscript{43}

Along with the working definition of the tools of government, Salamon points to three features or characteristics that exist within each tool that are also a part of the

\textsuperscript{41}Salamon, *The Tools of Government*, 530.

\textsuperscript{42}Ibid., 19.

\textsuperscript{43}Ibid., 4-5.
definition: (1) each tool is assumed to have certain common features that make it identifiable, (2) tools structure action, and (3) collective action aimed at responding to public problems. In the first feature of the tools of government, each tool is assumed to have certain common features that make them identifiable. Salamon gives the example of the grant-in-aid program that delivers payments to public and private partners. While the grant-in-aid program may have similar participants, policies, and procedures, it can have different goals or missions. The second feature of the tools of government, tools structure action, focuses on the fact that the tools are neither “free form or transient but institutionalized.” Who is involved in the partnership and what they are expected to accomplish are at the core of this feature. The partnership can be flexible or can change at a moment’s notice. How the goals are met will reveal how policy is formed regarding the partnership. The final feature of the tools of government involves “collective action,” which uses a particular tool to solve or handle a problem and can be used with either a public or private agent. The tools of government and the features located within them can be a useful guide in the creation and success of the partnership. This thesis focuses on two specific tools of government used within a non-traditional partnership that is “hybrid” in nature.

44Ibid.,19.
45Ibid.
46Ibid.
48Ibid.
The two tools of government that are examined in this thesis are: government corporations and economic regulation. The government corporation is “… a government agency owned and controlled by government, which is set up as a separate corporate entity legally distinct from the rest of the government of which it is a part. This form is often used for activities that are expected to be revenue producing and potentially self-sustaining; however, this need not be the case.” Salamon points to three problems that exist within government corporations: “… controversy over the proper role of government, especially in providing services that might be provided by private companies (e.g., the Postal


Ibid., 92-93.


Service, Tennessee Valley Authority (TVA), and Export/Import Bank of the United States), an increasingly efficient economy that obviates past market shortcomings that government corporations were created to serve (TVA and Export/Import Bank of the United States), and finally, new technologies that make obsolete some old ways of doing business (Federal Housing Administration, TVA, Postal Service).”

For example, in the case of the postal service, there are other private corporations such as Federal Express (Fed-ex) and the United Parcel Service (UPS) that offer the same services as the United States Postal Service. While the private companies cost more, they offer a wide variety of shipping methods. Meanwhile, the United States Postal Service is suffering financially and may need to enlist the help of the private shipping companies in order to remain operational. An example for the second challenge in government corporations exists with the creation of Co-Bank. Co-Bank is a private company that provides funding and other financial resources to rural utility companies and to rural consumers. Co-Bank is an alternative to TVA. The third challenge deals with new technology. A perfect example is the Postal Service. Private shipping companies offer access to their services via the web and wireless telephone. While the United States Postal Service offers similar services, a glance at the UPS website reveals more shipping options and other business-related tools.

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related tools that the Postal Service does not offer thanks to state of the art technology.\textsuperscript{57}

Government corporations are faced with challenges like many other tools of government; however, government corporations can avoid the challenges by addressing the problems before they begin, keeping an open mind about new ways of doing business and by using other tools, like economic regulation, which will be addressed in the next section.

The second tool of government, economic regulation, is used in conjunction with the government corporation and can strengthen the partnership by creating rules and regulations. Salamon defines the tool of economic regulation in the following way: “…economic regulation is a specialized bureaucratic process that combines aspects of both courts and legislatures to control price, output, and/or the entry and exit of firms in an industry. Prominent examples of this tool are setting price ceilings and the operating requirements for utilities that historically have been monopolies, such as cable television, electricity, railroads, and telecommunications.”\textsuperscript{58} The FCC is an independent government regulatory agency that was created by the Communications Act of 1934. The FCC oversees the regulation of interstate and international communications by radio, television, wire, satellite, and cable.\textsuperscript{59} While the economic regulation tool is helpful to public and private partnership, the tool comes with its share of problems.


\textsuperscript{58}Salamon, \textit{The Tools of Government}, 118.

Economic regulation has four challenges. This thesis will only focus on two of the four challenges because the public and private partnership in this thesis is unusual due to its ‘hybrid’ nature. The first challenge is information management. Information management problems occur in regulatory agencies. The problem is a lack of access to ‘objective information.’ An example of this problem can be found in the FCC. The FCC is responsible for rules and regulations for all telecommunications activity in the United States. The FCC holds public meetings for consumers and industry insiders as well as “open meetings” with all of the commissioners to discuss communications rules and regulations and any upcoming legislation on Capitol Hill, however, the FCC has been known to hold closed meetings or denies access to information because the information might affect the passage of rules, regulations, and legislation. Salamon uses the example of the AT&T anti-trust case. The Department of Justice worked with the National Telecommunications Information Administration (NTIA) and the FCC during the Anti-trust case against AT&T. The Department of Justice asked for assistance from the NTIA and the FCC because both agencies have extensive knowledge of telecommunications rules and regulation. Salamon believes that when agencies don’t work together it can damage the regulation or legislation because information is not made public so that other agencies can review and possibly offer other solutions or advice.

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62 Ibid.
The second challenge is “managing by commission,” which occurs in regulatory agencies such as the FCC and is defined in the following way: “economic regulatory agencies are frequently led by multimember commissions that are required to be balanced in terms of their partisan composition….“63 In the case of the FCC, there are five commissioners. In 2010, Julias Genachowski, was selected by President Obama to become a commissioner and the Chairman. There are always three commissioners of the same political party; currently there are three Democrats, one being Julius Genachowski, and two Republicans.64 There are two political parties represented at the FCC, instead of just the political party of the President, in order to give everyone an equal, bipartisan voice on matters concerning communication rules and regulations.65 In addition to the chairman and commissioners, the FCC has bureaus that specialize in specific communications issues, such as the Enforcement Bureau or Wireline Competition Bureau, and each bureau has a “Chief” that oversees its day to day operations.66 The Chiefs then report to the Chairman and Commissioners on matters related to their bureau. Using the managing by commission concept helps with the development of regulatory policy.67 It can also help when politics needs to be removed from a policy discussion.68

The problem surfaces

63Salamon, The Tools of Government, 150.


65Ibid.

66Ibid.


68Ibid.
when there is regulation or legislation on which the commission disagrees and despite the fact that the Chairman has the final say, the Chairman’s decision creates controversy and disagreement among the other commissioners.\textsuperscript{69} The solution is to enlist the help of the “Chief of Staff” or another high-ranking staff member who has extensive knowledge of the issue at hand and is willing to help the commission come to a unified agreement on regulation or legislation.\textsuperscript{70} Despite the challenges in economic regulation, it can be used in conjunction with other tools to solidify a public and private partnership.

The combination of the government corporation and economic regulation tools can create a lucrative and successful public and private partnership if all parties do exactly what the agreement or contract states. Donald Kettl introduced five imperatives that can be used in the creation of public and private partnerships. Kettl’s imperatives can work in conjunction with the tools of government and with appropriate tool selection. The five imperatives also support the concept of a “governing network.”

\textbf{Kettl’s Five Imperatives}

The two tools of government and the discussion of public and private partnerships fall in line with the imperative framework created by Donald Kettl. Kettl’s “five imperatives” examine how our government could operate in the future. The thesis will test whether or not Kettl’s imperatives can be applied to the unusual case study of the Universal Service Fund. The five characteristics are: “a policy agenda that focuses more on problems than on structures, political accountability that works more through results

\textsuperscript{69} Salamon, \textit{The Tools of Government}, 150.

\textsuperscript{70} Ibid.
than on processes, public administration that functions more organically, through networks, than rigidly through hierarchy, political leadership that works more by leveraging action than simply by making decisions, and citizenship that works more through engagement than remoteness.”

Each imperative explains how our current government deals with public problems and replaces them with win-win solutions that are cost-effective and efficient. These imperatives are examples of how government can operate in the 21st century and beyond.

The first imperative is a “policy agenda that focuses more on problems than on structures.” In the current government structure, the emphasis is on agency responsibility instead of problem solving. In order for government to be effective in the future, a “joined up government” can provide services to meet public needs and solve public problems. Kettl gives the example of how emergency service teams from different towns would work together when responding to a car accident instead of bickering over jurisdiction and allocation of responsibility. If the safety of citizens were put at risk because neither town responded, the other problem would then become one of accountability, the second imperative’s goal.

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73 Ibid.
The second imperative is “political accountability that works more through results than on processes.”74 This characteristic focuses on holding all parties involved accountable for their collective actions. This can be done through citizens and politicians working together to confront accountability issues in public programs. Currently, Members of Congress confront government agencies through audits by the Government Accounting Office (GAO) and hearings on Capitol Hill that address a variety of lapses in public programs. Citizens affected by such lapses are asked to testify before Congress. When Congress received complaints about the Fund from citizens, program recipients, and politicians, Congress conducted audits and hearings.75 The audits and hearings questioned how the FCC dealt with undelivered funds, embezzlement, and a host of other problems associated with the program, even though the FCC uses a private partnership to carry out its daily functions. The accountability involved in this structure leads to the third imperative, which results from government and citizen cooperation that creates special or “organic” partnerships.

The third imperative deals with the use of public, private, and third parties to carry out public programs and applied to special cases or circumstances and is explained as “public administration that functions more organically than rigidly.”76 In the third characteristic, the focus is on how government agencies at the federal, state, and local

74Ibid.


level interact in the face of a crisis. Kettl uses the example of how the Arlington County Government responded to the 9/11 Pentagon attacks by preparing for such scenarios and removing bureaucratic barriers. When the attacks occurred at the Pentagon on 9/11, Arlington County fire and rescue did not have to determine who was in charge once they arrived on the scene because there was a plan in place that detailed which agency would be in charge in the event of a disaster or emergency.\(^{77}\) The Arlington County Fire Department found a way to deal with a public crisis while eliminating the red tape that often comes with making such decisions. This type of “organic relationship” leads to productive partnerships between federal, state, and local agencies. These partnerships are explained in the fourth imperative.

In the fourth imperative, the focus is on how politicians deal with very public programs and how they should work with all of the parties affected by a problem or project. Kettl views this imperative in the following way: “political leadership that works more by leveraging action than simply by making decisions.”\(^{78}\) In this imperative, Kettl believes that the old ways of dealing with a public problem have to change in order to meet public needs and that elected officials can play a critical role by acting as mediators. Kettl uses the example of the state of Pennsylvania when politicians become entangled in the decision to build a new highway located throughout different jurisdictions in one state. All of the parties involved feared that a new highway would create more traffic accidents. The politicians decided that before they built the highway, everyone needed to

\(^{77}\)Ibid.

\(^{78}\)Ibid.
agree on the project. In the end, working together was beneficial because an accident did occur on the newly built highway and all of the federal, local, and state agencies responded in a positive way. \textsuperscript{79} Political involvement forced all of the jurisdictions to work together in an unusual partnership. The success of this partnership builds on engaging everyone and asking for input. By working together, they were able to build their highway and solve a potential problem that did occur once the project was complete. This leads to the fifth and final imperative, builds on engaging everyone from citizens to politicians at all levels of government.

The fifth and final imperative is “citizenship that works more through engagement than remoteness.”\textsuperscript{80} In this imperative, the goal is on enlisting the help of everyday citizens. Kettl uses the example of Howard Dean, whose presidential campaign relied on technology to collect campaign donations, connect with possible voters, and allow them to play an active role in the campaign. By allowing citizen interaction, the public can voice concerns about programs that are important to them as well as let politicians know what programs are needed in their communities. Kettl’s vision of governing has become reality because public and private partnerships continue to grow. Eventually, his model will become the norm instead of the exception, and our current government structure will change for the better. Kettl’s imperatives also solve public programs demands while easing the burden placed on the federal government and improving performance standards.

\textsuperscript{79} Ibid.

\textsuperscript{80} Ibid.
Chapter 3 will discuss the history of legislation that led to a case study of a public and private partnership between the Federal Communications Commission and the Universal Service Administrative Corporation. Chapter 4 will test the quality of that partnership applying the public programs and the problems that come along with them using theories presented by Goldsmith and Eggers, Salamon, and Posner.
CHAPTER 3

CASE STUDY

Case Study: Universal Service Fund

This chapter will focus on the case study of the universal service program and its evolution into its current form, a “hybrid” public and private partnership. The case study reveals the common thread within this partnership in that it incorporates the same criteria and government tools (government corporation and economic regulation) as a traditional public and private partnership. In the traditional public and private partnership, there is a federal agency and a private partner that work together to meet a public need, but in this case, the federal agency creates the private entity that it partners with thus making it “hybrid” in nature. The government tools used in the traditional and “hybrid” partnership are similar in that they are built on indirect government, which allows for greater flexibility.

The universal service fund began as an idea that led to a subsidy based on long distance telephone revenues. The subsidy then led to the current form of universal service. The chronology of universal service will address a series of events that relate to the universal service program with a focus on the program and its origins in telecommunications history, the telecommunications legislation and regulation that affect universal service, and the policy and events that led to the current universal service program.
After the addition and subsequent codification of universal service in the Telecommunications Act of 1996, universal service took on a new mission. The new law made the FCC the caretaker of the Universal Service Program and the FCC realized, as many federal agencies do, that they could not meet the demand of the public program. As a result, they decided to create a public and private partnership, the Universal Service Administrative Company (USAC), to facilitate the program. This case study examines the role of the federal agency and regulation in this public and private partnership.

**History of Telecommunications**

On February 8, 1996, President William Jefferson Clinton signed the Telecommunications Act of 1996 into law. The passage of the law was the first major rewrite of the Communications Act of 1934; however, before the passage of any guiding legislation about universal service, the telecommunications industry began with several inventors whose ideas changed telecommunications in the United States. This chapter will examine the beginnings of the telecommunications industry and the effect that regulation had on the creation of universal service and the subsequent universal service partnership.

In 1837, an inventor named Samuel Morse patented an electromagnetic telegraph device. The device could be used to type out a message on paper using Morse Code, a system of dots and dashes. Congress approached him to help construct a telegraph line network. In 1844, Morse sent the first message with his device through the network:

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“What hath God wrought.”² He attempted to sell the patent to the federal government, but they refused to buy it.³ Meanwhile, Western Union started their telegraph business using a similar device.⁴ The telegraph device that Morse created was the beginning of the telecommunications industry, but it took another 30 years before a device was built that allowed two people to speak to each other through the transmission of code typed out on a machine.⁵ The telephone carried sound waves through wires built on telephone poles.⁶ Alexander Graham Bell, along with several other inventors built a similar telephone; however, it was Bell’s telephone patent that was approved on March 7, 1876.⁷ Bell successfully tested his telephone by transmitting a message, “Mr. Watson, come here, I want you!” to his assistant, Thomas Watson, who was in another room of the house waiting to receive the message.⁸ This was the beginning of the telecommunications industry.

The Bell Telephone Company began in 1877 with the help of financial backers of Bell’s telephone.⁹ The expiration of the patents created a competitive environment that

²Ibid.
⁴Ibid.
⁵Ibid.
⁶Ibid.
⁷Ibid.
⁸Ibid.
⁹Ibid.
led to the creation of the independent telephone companies.\textsuperscript{10} The competitive era was short lived—the Bell Telephone Company and other independent telecommunications carriers began to experience a decline in profits. In 1908, fearing financial loss and declining profits, J.P. Morgan, who owned $90 million worth of bonds in the Bell Telephone Company, purchased the Bell Company.\textsuperscript{11} J.P. Morgan renamed the company the American Telephone & Telegraph Company (AT&T).\textsuperscript{12} Morgan restructured the company and hired Theodore Vail, a former executive with Bell and Western Union, to run AT&T.\textsuperscript{13} Theodore Vail would change the landscape of the telecommunications industry through the “natural regulated monopoly” and the idea of “universal service.”

**Theodore Vail and Universal Service**

Long before the Telecommunications Act of 1996 mandated “universal service,” Theodore Vail coined the term “One Policy, One System, Universal Service” in 1908.\textsuperscript{14} The goal of Vail’s “universal service” was to provide basic telephone service at a reduced rate and connect the networks.\textsuperscript{15} Vail believed that universal service could be achieved through a “natural regulated monopoly.”\textsuperscript{16} According to Vail, “… a natural regulated monopoly”

\begin{itemize}
\item \textsuperscript{10}Max D. Paglin, *The Communications Act: A Legislative History of the Major Amendments, 1934-1996* (Silver Spring, MD: Pike and Fischer Publications), 33.
\item \textsuperscript{11}Ronald Fulle, *Telecommunications History & Policy into the 21\textsuperscript{st} Century* (Rochester, New York: RIT Press, January 2010), 7.
\item \textsuperscript{12}Ibid.
\item \textsuperscript{13}Ibid.
\item \textsuperscript{14}AT&T Archive, *Events in Telecommunications History* (Warren, New Jersey: AT&T, 1992), 30.
\item \textsuperscript{15}Ibid.
\item \textsuperscript{16}Ibid.
\end{itemize}
monopoly best serves the public.” Vail’s definition of the natural regulated monopoly involved the use of a telephone company providing all services to the customer by rejecting competitive behavior. Vail would have the blessing of policymakers for introducing the natural regulated monopoly. The creation of long distance toll calls and other additional revenues helped AT&T purchase additional unprofitable telephone companies and expand the telecommunications network throughout the United States. Independent telephone companies began to take notice of how Vail used the monopoly model to expand his business. This was one of the arguments presented during the discussions about the Kingsbury Commitment, which we will discuss later in this chapter.

Vail’s natural regulated monopoly began to dominate the burgeoning telecommunications industry with the approval of the federal government. AT&T relied on the existing telecommunication laws under the Interstate Commerce Commission (ICC) to support their monopoly due to policy between AT&T and the ICC. Patricia Aufderheide believes that some sort of policy existed that supported AT&T, “… telephony was already on its way to being a regulated monopoly, with AT&T gaining government approval for offering most of the nation’s telephone service noncompetitively and providing most of the equipment in exchange for price and quality

17Ibid., 255.
19Ibid.
of service regulation, while giving up its telegraphy interests.”

While Vail’s idea of universal service was more of a “policy statement” about “unifying service” so that telephone customers could talk to each other, regulation helped expand the monopolistic environment and removed competition as the telecommunications industry expanded. The official universal service subsidy did not start until the 1960s and then evolved into the current form of universal service.

The early relationship between AT&T and the federal government that embraced the monopoly was a form of a government corporation. The difference between the early government corporation and the current government corporation is that the previous form was a private monopoly acting like an invisible government corporation; whereas, the current government corporation is visible. Government corporations are known to change over time. This is the case with the government corporation presented in this thesis. Another difference in the previous monopoly and the current government corporation is the previous government corporation existed because of the monopolistic environment, while the current government corporation exists due to competition. AT&T realized that in order to keep the telephone company in business, they would rely heavily on regulation. Regulatory agencies create, implement, and enforce the rules they create: this is an example of the economic regulation tool. Meanwhile, the ICC continued to serve as the regulatory authority over telecommunications.

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The Interstate Commerce Commission

Before the passage of the Communications Act of 1934, telecommunications policy came from the Interstate Commerce Commission (ICC). The ICC is a federal regulatory agency created in 1887 by Congress to regulate all forms of transportation and telecommunications in the United States. The ICC set the “interstate rates” that were charged by telephone, telegraph, and cable charges; however, they could not regulate telephone rates. Congress passed an amendment to the Mann-Elkins Act of 1910 that gave the ICC additional regulatory authority. The ICC would allow the monopoly environment to continue, affecting the universal service subsidy that eventually would begin in the 1960s. The ICC became AT&T’s first official federal regulator.

Two other additional amendments strengthened the ICC’s regulatory authority, the Esch-Cummins Act of 1920 and The Willis Graham Act of 1921. Both amendments are discussed later in this chapter.

Stronger regulatory authority given to the ICC shows how economic regulation works in telecommunications, by controlling the prices of monopoly through regulation.

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23 Ibid.

The Kingsbury Commitment

As AT&T dominated the telephone industry due to the monopoly, independent telephone companies began to question AT&T’s business practices.25 Independent telephone companies decided to join forces and create the Independent Telephone Company (ITC). The ITC realized that AT&T offered the only long distance toll call service but AT&T refused to connect with non-AT&T companies.26 The ITC decided to purchase the Stromberg Carlson Manufacturing Company of Chicago, a telephone manufacturer that built telephones, telephone poles, and laid telephone wires for residential and business customers.27 The ITC also attempted to purchase the Independent Telephone Company of New York City’s franchise. Unfortunately, the ICC rejected the purchase of the manufacturing company and the franchise (the ICC was responsible for approving or denying any mergers, purchases or acquisitions of telephone companies before the creation of the FCC).28 Lacking the additional profits and revenues that would have come from the manufacturing company and the franchise purchase, the ITC went out of business in 1908.29 AT&T began purchasing the failed ITC telephone companies.30 As AT&T’s telephone business expanded, the Department of Justice became suspicious of AT&T’s activities and filed an anti-trust complaint against AT&T.

25Howe, Endless Voices, 18-23.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.
on the grounds that they were operating as a monopoly.\textsuperscript{31} The anti-trust settlement was issued in 1913.\textsuperscript{32} The settlement became the Kingsbury Commitment. It was named after the Vice President of AT&T, Nathan Kingsbury.\textsuperscript{33} Kingsbury played an active role in the wording of the settlement. The settlement reads as follows: 1.) AT&T agreed to divest itself of Western Union stock, 2.) AT&T agreed to buy no additional independent telephone companies without approval from the ICC, and 3.) AT&T agreed to interconnect with other telephone companies.\textsuperscript{34} It seemed that the Kingsbury Commitment would hurt AT&T; instead, it helped AT&T continue its monopoly.\textsuperscript{35} AT&T could offer different types of services to current and new customers and AT&T could purchase non-competing independent telephone companies.\textsuperscript{36} Milton Mueller supports the notion that AT&T benefited from the Kingsbury Commitment and he believed it was the beginning of regulation. “The Kingsbury Commitment was neither a milestone nor a turning point, but merely a brief pause on the road to regulated monopoly.”\textsuperscript{37} Mueller believes that any future regulation benefitted AT&T and its monopoly. Mueller viewed the Kingsbury Commitment as a way for AT&T to avoid

\textsuperscript{31}Fulle, \textit{Telecommunications History \& Policy}, 9-10.
\textsuperscript{32}Ibid.
\textsuperscript{33}Ibid.
\textsuperscript{34}Ibid.
\textsuperscript{35}Ibid.
\textsuperscript{36}Ibid.
future antitrust problems, “…the anti-trust inspired Kingsbury Commitment was a shrewd tactical move by AT&T, in that it deflected antitrust pressures but did not undermine the company’s superior position in access competition.”

On the surface, the Kingsbury Commitment appeared to hurt AT&T when in reality it laid the foundation for the telecommunications industry until the creation of the Federal Communications Commission (FCC). Federal telecommunications law also reveals that the telecommunications regulatory environment from 1913-1934 was due in large part to The Kingsbury Commitment. While the Kingsbury Commitment did not have a direct effect on universal service per se, it opened the door to a stronger monopolistic environment for AT&T.

The Kingsbury Commitment is an example of how the economic regulation tool prevents anti-competitive behavior through regulation that allows the telephone monopoly to continue.

The Esch-Cummins Act of 1920 and The Willis-Graham Act of 1921

Two amendments passed in 1920 and 1921 gave the ICC additional authority over telecommunications. The first amendment, the Esch-Cummins Act, gave the ICC statutory authority for federal regulation of telecommunications. The second amendment, the Willis-Graham Act, gave the ICC “jurisdictional authority” over wire or

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38Ibid., 134.


wireless communication. The ICC was now able to “approve or disapprove consolidations and mergers of telephone and telegraph companies”. It is important to note that the Esch-Cummins Act and Willis-Graham Act amendments were regulatory mechanisms that strengthened the ICC’s regulatory authority; however, the amendment to the Willis-Graham Act of 1921, had more impact on the telecommunications industry than the other two amendments to the ICC. The ICC approved 223 of 234 acquisition requests from AT&T with little or no objection. The Willis-Graham Act created federal policy and regulation to strengthen telecommunications by removing the federal anti-trust barriers against consolidations. According to Milton Mueller, the Willis-Graham Act “…exempted telephone companies from anti-trust laws in order to unify the service by merging competing telephone exchanges and creating the legal foundation for the first generation of universal service policy.” The Willis Graham Act amendment strengthened the monopoly that would help expand AT&T’s services and dissolve any competition that still existed in telecommunications. It did not affect universal service yet because the subsidy was still not in place yet.

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42 Ibid.

43 Ibid.


45 Ibid.
These two amendments gave more regulatory power to the ICC, which shows how the economic regulation tool controls every aspect of the telecommunications industry through regulation.

Congress began to realize that regulation and legislation in place since 1887 was not keeping pace with advances in telecommunications. Congress decided it was time for telecommunications to have its own federal regulatory agency.

**Communications Act of 1934**

During the 1930s, President Roosevelt’s New Deal initiatives drove public policy. Congress realized that the ICC could not keep pace with all of the activity in the telecommunications industry. The ICC was busy with increasing transportation issues and could not monitor the expanding communications industry. Congress decided that the new federal regulatory agency be modeled after the ICC. Congress inserted much of the existing telecommunications regulatory authority language from the ICC into the newly formed Federal Communications Commission (FCC). Congress decided that the new regulatory agency should create stronger regulatory authority and set telephone rates. The legislation that created the new commission included language that gave the FCC the ability to regulate rates and gave the FCC exclusive regulatory authority for all

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47 Ibid., 32.


telecommunications policy.\textsuperscript{50} Section 201 of the act gave authority to the FCC to regulate rates, “…the statute granted the FCC clear authority to review not only carriers’ charges and rates, but also their ‘practices, classifications, and regulations, to determine whether rates were just and reasonable.’\textsuperscript{51} Section 203(b) of the 1934 Act granted additional regulatory authority to the FCC over all telecommunications policy.\textsuperscript{52} AT&T feared the new regulatory commission would have too much say over telephone regulation so instead of fighting against them, AT&T decided to support the creation of the FCC.\textsuperscript{53} Section 1.3.5 of the Federal Telecommunications Law contains evidence that the FCC continued to support AT&T’s telephone monopoly, “… but, by all appearances, government authorities—in the courts, in the state agencies and legislatures, and in the federal government—were quite content to let telephone industry slip from the unruliness of competition to the quiet order of monopoly.”\textsuperscript{54} In 1934, Congress passed the Communications Act that created the FCC. The creation of the new regulatory agency ushered in real telecommunications regulation.

The creation of the FCC shows how the continued use of a regulatory agency uses the economic regulation tool to control price and entry in the telecommunications industry. The continuing relationship between the AT&T and now another government

\textsuperscript{50}Ibid.

\textsuperscript{51}Ibid.

\textsuperscript{52}Ibid

\textsuperscript{53}Ibid., 6.

agency, the FCC, is similar to the government corporation tool discussed in this thesis; however, in this case, the government corporation was not as visible as the current universal service partnership is today. It also shows that the economic regulation tool was in play in this relationship.

After the passage of the Communications Act of 1934, the monopoly model continued allowing AT&T to dominate the telecommunications industry. The continuation of the monopoly environment in telecommunications would eventually lead to the creation of the official “universal service” subsidy in the 1960s.

The Universal Service Subsidy

Universal service is believed to have started because of language included in the preamble of the Communications Act of 1934; however, that is not true. Universal service officially began in the 1960s. Universal service began as Vail’s way of connecting all the telephone networks into one big company that offered an array of services while maintaining the monopoly. The official universal service subsidy began in the 1960s because federal and state regulators wanted to keep local telephone rates low. Federal and state regulators manipulated “telephone systems jurisdictional cost separations.” The manipulation of telephone costs are known as separations and

56 Ibid.
57 Ibid.
The revenues collected from long distance calls were returned to Independent Local Exchange Telephone companies to cover the cost of providing service to high cost areas. A second universal service subsidy came in the form of the rate of return regulation. Rate of return regulation is a regulatory mechanism used to take profits from a fixed percentage return from invested capital. The FCC gave their regulatory approval to AT&T to apply profits earned through rate of return regulation towards universal service. During the 1970s, both subsidies were threatened because of long distance competition. Long distance competition lowered the revenues that would have gone towards the universal service subsidy and threatened the telephone monopoly and the regulation that it created. These two forms of universal service subsidy stayed in place until the early 1980s.

The economic regulation tool can be applied to universal service because "traditional economic regulation equity concerns pertain to consumers and is expressed as the universal service objective." The universal service objective ensures that consumers have access to utilities (telecommunications, water, and electricity) at a lower

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59 Ibid.

60 Aufderheide, *Communications Policy*, 16.

61 Ibid.

62 Ibid.

63 Ibid.


When universal service became law in 1996, one of the programs that would benefit from universal service funds would be a program called “Lifeline.”\(^{67}\) Lifeline provides discounted telephone service to low income consumers.\(^{68}\)

The next hurdle for monopoly and universal service was the legal case heard by Judge Harold Greene, who changed the landscape of the telecommunications industry through the Modified Final Judgment (MFJ) of 1982.

**Judge Greene and the Modified Final Judgment of 1982**

While telecommunications industry had grown substantially since the 1950s, it was still dominated by AT&T. Revenues continued to pour into AT&T because of its monopoly status and its strong relationship with the FCC.

In the 1970s the Department of Justice became suspicious of AT&T’s revenue activity; AT&T generated revenues by “padding” its rate base through rate regulation.\(^{69}\) The revenues from rate padding funded the universal service subsidy. An antitrust lawsuit filed in 1974 charged AT&T with monopolistic practices based on “rate padding.”\(^{70}\) The 1974 lawsuit led to the Modified Final Judgment (MFJ) with Judge Harold Greene presiding over the case. During the trial, AT&T fought to keep long distance service and its monopoly because long distance competition threatened the

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\(^{66}\)Ibid., 140-141.


\(^{68}\)Ibid.


\(^{70}\)Ibid.
universal service subsidy.\textsuperscript{71} Lower long distance rates meant no additional revenue towards universal service.\textsuperscript{72} During the trial, AT&T presented evidence that other companies practiced “cream skimming.” AT&T was concerned that “cream-skimming” would endanger universal service subsidy.\textsuperscript{73} Cream skimming is a practice that occurs when competitors concentrate their intercity services on routes where the volume of business is high and the costs of service are low.\textsuperscript{74} AT&T believed that if cream skimming continued, rural markets would suffer with higher prices and less telephone coverage.\textsuperscript{75} AT&T believed that the Modified Final Judgment (MFJ) would permit competitors and new telephone companies the ability to “cream skim.”\textsuperscript{76}

AT&T feared that this trial would deregulate the telecommunications industry and open the door to competition, eliminating the monopoly and their profits so they used universal service as justification for their argument. After two years of litigation, Judge Greene ruled that AT&T could no longer operate as a monopoly.\textsuperscript{77} The ruling became known as the break-up of the “Baby bells” and cause AT&T to separate from the Bell

\textsuperscript{71}Ibid.
\textsuperscript{72}Ibid.
\textsuperscript{73}Ibid.
\textsuperscript{74}Ibid.
\textsuperscript{75}Ibid.
\textsuperscript{76}Ibid.
\textsuperscript{77}Ibid.
companies. AT&T was able to keep their long distance service subsidy. Elimination of the subsidy would have ushered in that higher telephone rates.

The Modified Final Judgment (MFJ) is an example of how economic regulation is used to deregulate. In the 1970s, economic regulation of industries such as transportation and telecommunications began, while many of the same heavily regulated industries began to deregulate. The monopoly model was replaced with competition because of deregulation. The FCC relaxed regulation, which led to competition among long distance providers. The relaxed regulation embraced competition and eventually broke apart AT&T because of lower rates and less revenue.

Despite AT&T’s efforts to keep the monopoly, a new era of deregulation and competition was on the horizon due to the re-write of the Communications Act of 1934 in the Telecommunications Act of 1996.

**The Telecommunications Act of 1996**

The rewrite of the Communications Act of 1934 was due in large part to technological progress and Congress’s desire to recognize the changes that had already occurred as a result of the breakup and establish a framework for the new emerging industry. While the new law reduced previous telecommunications regulation, it also created a new set of rules and regulation, which created more work for the FCC. The

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78Ibid.

79Ibid.

80Ibid., 97-98.
FCC was now responsible for monitoring a new set of rules and regulations. The new law opened local and remaining portions of long-distance markets and cable television service to competition, removed the restrictions on the lines of business that the Regional Bell Operating Companies, AT&T, and other providers had as a result of the divestiture. The Telecommunications Act of 1996 increased consumer choice, opened local markets to competition, provided carrier status to emerging local competitors, protected and expanded universal service, and specified that all consumers, including low income, had access to information services including long-distance and advanced telecommunications. Telephone companies were now able to share their telephone lines with competitors at regulated rates. Barriers that once stopped local or smaller companies from entering the market were eliminated. Susan Ness, one of the FCC Commissioners, who served when the new law went into effect, viewed the legislation as “…a pro-competitive and deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” According to Ness, the FCC embraced the competition model after many years of a monopolistic environment.

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81 Ibid.
82 Ibid.
84 Ibid.
The passage of the Telecommunications Act of 1996 shows how the economic regulation tool uses public policy to deregulate the telecommunications industry. While the new law ushered in a new era of competition in the telecommunications industry, it changed telecommunications services.

**Telecommunications Services after the Act**

After the passage of the Telecommunications Act of 1996, many of the services and technologies such as cable, wireless, and landline telephone, internet, and video services changed because of the new telecommunications law.\(^85\) The new law created mergers between radio and television companies and increased the cost of cable television.\(^86\) Cable television benefitted the most from deregulation because they were able to set their own rates.\(^87\) The new law allowed cable companies to purchase video and satellite companies.\(^88\) While the cable companies gained access to markets that were once inaccessible to them, telephone companies approached Internet technology companies to create new services such as Voice over Internet Protocol (VoIP).\(^89\) VoIP gives consumers another option to basic telephone service by allowing them to place telephone calls through their Internet service provider.\(^90\) Eventually, telephone and

\[^{85}\text{Aufderheide, } \textit{Communications Policy}, 86-88.\]

\[^{86}\text{Ibid.}\]

\[^{87}\text{Ibid.}\]

\[^{88}\text{Ibid.}\]

\[^{89}\text{Ibid.}\]

\[^{90}\text{Ibid.}\]
internet realized that they needed to join forces, the joint efforts created “broadband technology.” Broadband technology uses fiber optic technology to deliver quicker Internet speed that delivers faster forms of media, such as email, telephone, and cable. New technological services were due in large part to competition and relaxed regulatory rules. Relaxed regulatory rules are an example of how the economic regulation tool influences pricing and telephone rates and creates new services. Telecommunications services after the passage of the Telecommunications Act of 1996 benefitted consumers and businesses, but it also benefitted the new Universal Service Fund.

**Section 254: Universal Service Fund**

During the telecommunications re-write discussions, Congress was concerned that the current universal service subsidy would disappear and low-income individuals and households would not have access to advanced telecommunications services such as the Internet. The new amendment would create and mandate universal service. Universal Service (Section 254) was intended “to make the current explicit authority implicit of the FCC and the States to require common carriers to provide universal service” Explicit authority clearly defines how the regulation will impact the policy and the program, while implicit authority in regulation is not clearly defined and, therefore, could change or be altered.

91Ibid.

92Ibid.

The universal service amendment was introduced by Senators Snowe, Kerrey, Exon, and Rockefeller because Congress and the FCC wanted universal service to keep pace with advanced telecommunications services.\textsuperscript{94} Congress placed the FCC in charge of administering the new program. The FCC enlisted the help of the Universal State Joint Board to define the rules and regulations for the program under the auspices of the FCC.\textsuperscript{95}

Section 254 of the Telecommunications Act of 1996 uses the economic regulation tool by depending on rulemaking to lay the foundation for the newly mandated program. The economic regulation tool uses “enactment” to carry out the mission of the program. In the 1930s, federal regulatory laws were created and enacted to address a public need. Rule making helped the FCC create the Universal Service Administrative Company (USAC), a “hybrid” partnership.

**USAC**

The Universal Service Administrative Company (USAC) oversees the Universal Service Fund (USF) and disburses funds to applicants that have been approved on behalf of the FCC and the Universal Service State Joint Board.\textsuperscript{96} The creation of the Universal Service State Joint Board is included in the first section of 254: “within one month after the date of enactment of the Telecommunications Act of 1996, the Commission (FCC)

\begin{itemize}
\item \textsuperscript{94}Aufderheide, *Communications Policy*, 58.
\item \textsuperscript{96}Universal Service Administrative Company (USAC), “USAC Overview,” USAC, \url{http://www.usac.org/about/usac/} (accessed March 4, 2012).
\end{itemize}
shall institute and refer to a Federal State Joint Board.” The FCC would be responsible for all rulemaking and regulations.

USAC is a non-profit, independent company created with the help of the National Exchange Carrier Association (NECA). USAC would become the private partner in the new government corporation. Four funds receive universal service funds. The four universal service funds consist of the following: high cost, low income, rural health care, and the schools and libraries fund. The schools and libraries fund is also known as the “E-rate” fund. The first fund, the high cost fund, “ensures that customers in all regions of the nation have access to and pay rates for telecommunications services that are reasonably comparable to those customers in urban areas.” The second fund, the low income fund, also known as “lifeline and link-up,” provides discounts that make basic, local telephone service available for more than 7 million low-income customers. The third fund, the rural health care fund, “provides reduced rates to rural health care providers for telecommunications and Internet services so they pay no more than their urban counterparts for the same or similar telecommunications services.” The fourth fund, also known as the “E-rate” fund, “provides affordable telecommunications and

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97 Ibid.
98 Ibid.
99 Ibid.
100 Ibid.
101 Ibid.
102 Ibid.
103 Ibid.
Internet services to connect schools and libraries to the Internet. This support goes to service providers that provide discounts to eligible schools, school districts, libraries, and consortia of these entities.”

Universal service funds are collected from telecommunication carriers. The carriers receive the funds by taxing consumers a universal service fee on their monthly bills. Since the creation of USAC, the FCC ensured that bylaws reflected their control over the program even though the USAC facilitated the universal service funds. The governance of the fund is based on the bylaws put in place by the FCC.

The creation of USAC shows how the government corporation tool forms another partnership. Government corporations allow greater operating flexibility while still being able to generate revenue to fund the program.

**Governance**

When the FCC and the NECA created the USAC, a decision was made to select a Board of Directors to review and monitor all of the activities of USAC. The FCC

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104 Ibid.
105 Ibid.
107 Ibid.
109 Ibid.
110 Ibid.
Chairman selects 19 board members. The members are nominated by their respective interest groups and come from telecommunications companies and telecommunications industry groups. The Chairman of the FCC approves the nominations. The main role of the Board of Directors is to ensure that USAC operates in accordance with the bylaws. The Board of Directors does not engage in creating the rules and regulations or any public policy related to the Universal Service Fund. The bylaws also state that the FCC assumes responsibility for any problems or accountability issues associated with USAC.

While the mandate of universal service in the Telecommunications Act of 1996 created a new set of challenges for USAC and the FCC, it provides quality services at reasonable and affordable rates.

The government corporation and economic regulation tools are used in the USAC partnership. The current relationship between the FCC and USAC to facilitate a public program uses the government corporation tool. The government corporation also depends on governance to control the corporation by relying on the bylaws created by the FCC to govern the partnership. Managing by commission is how the economic regulation tool is used to govern USAC through the FCC. Managing by commission allows stabilized and depoliticized regulatory policy.

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\textsuperscript{111}Ibid.
\textsuperscript{112}Ibid.
\textsuperscript{113}Ibid.
\textsuperscript{114}Ibid.
In Chapter 4, the theories presented in Chapter 2 are applied to the universal service case study and their relation to public and private partnerships, government tools, and accountability.
CHAPTER 4

THEORIES AND APPLICATION

Introduction

This chapter will discuss public and private partnerships, the tools of government used in this thesis, and accountability. The discussion will focus on how each component helps further the goals of the universal service partnership.

Public and Private Partnerships

Since World War II, public and private partnerships have grown because they help the federal government meet the demand for public programs.¹ Private firms, nonprofits, and the federal government work together and rely on each other to carry out an array of public programs. This thesis examines the “hybrid” public and private partnership that exists between the FCC (a federal regulatory agency) and USAC (private partner). The partnership evolved because the FCC could not facilitate the Universal Service program. Partnerships similar to the FCC and USAC continue to grow and are becoming commonplace in the Federal Government because they help remove the workload from the government agency. The growth of these partnerships illustrates the growing trend of the distribution of power to the private sector.

Currently, a discussion is taking place among public administration scholars that focuses on the idea that the use of the tools of government enables public and private partnerships as detailed in chapter 2. Two specific tools, government corporation and

¹Goldsmith and Eggers, Governing by Network, 10.
economic regulation, are applied to the universal service case study discussed in this thesis.

**The Tools of Government**

The tools of government are defined as “...an identifiable method through which collective action is structured to address a public problem.”\(^2\) As public and private partnerships continue their popularity in the public and private sector, the use of the appropriate government tools ensure that partnerships meet the needs of a public program because each tool has “its own operating procedures, skill requirements, and delivery mechanism, indeed its own political economy,” thus giving each tool “its own twist to the operation of the program it embodies.”\(^3\)

This thesis highlights two government tools—government corporation and economic regulation—to show how they lay the foundation for the current partnership between the FCC and USAC to facilitate the universal service program. The same government tools also created the initial partnership between AT&T and the ICC and then later the FCC. The previous government corporation that existed between AT&T and the FCC eventually led to the development of the universal service subsidy program that was the precursor for the current universal service program.

**Government Corporation**

The government corporation is “... a government agency, owned and controlled by government, which is set up as a separate corporate entity legally distinct from the rest


\(^3\)Ibid., 6.
of the government of which it is a part. This tool is often used for activities that are expected to be revenue producing and potentially self-sustaining." The public and private partnership that exists between the FCC and USAC is a perfect example of the government corporation tool because the universal service partnership continues to produce revenue without the help of federal appropriations. The USAC partnership operates with funds collected from consumer bills and not federal government funds; therefore, it is self-sustaining.

In the government corporation that existed between AT&T and the federal government, the federal government approved telecommunications legislation that favored AT&T, which allowed AT&T to produce additional revenue and profits. Evidence of self-sustainment allowed AT&T to dominate the telecommunications industry without the help of outside companies; however, the previous relationship between AT&T and the FCC existed primarily due to regulation. As discussed in Chapter 2, government corporations come with their own set of strengths and challenges. The strengths of government corporations include continuous revenue creation, self-sustainment, flexibility, and a strong connection to the federal government. In the case of the universal service partnership, revenues continue to stream in through mandatory taxes placed on telecommunications carriers or by billing consumers for telecommunication services. Regarding self-sustainment, the universal service

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4Ibid., 81.
5Ibid.
6Ibid.
partnership continues to operate without the help of any outside federal agency, budget appropriations, or private partner funding because the revenues replenish the universal service fund. Finally, flexibility allowed the FCC and USAC to create a partnership based on program needs instead of those that create a “traditional public and private partnership.”

As noted in Chapter 2, three management challenges exist in government corporations and the universal service partnership is not exempt from these challenges. Salamon elaborates that the challenges are: “1.) Continuing controversy over the proper role of government; 2.) especially in providing services that might be provided by private companies, an increasingly efficient economy that obviates past market shortcomings that government corporations were created to serve; and 3.) new technologies that make obsolete some old ways of doing business.”

The first management challenge in the government corporation involves the problem of government stepping in when the government should limit its role in certain industries. Before the current USAC partnership began, AT&T relied on the government to get legislation and regulation approved to allow the monopoly model to continue. While this partnership was an informal government corporation, the government had a limited role and did not control universal service because universal subsidy did not begin until the 1960s. As noted in Chapter 3, AT&T had control over the telecommunications industry until the break-up of the “Baby Bells” in 1982. The Telecommunications Act of 1996 ushered in and expanded the role of government that continues today. It also

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created a new set of problems through competition. Competition would help businesses and consumers gain access to advanced services at lower rates; however, telephone and cable rates continue to rise. The expanded role of government continues to be a problem, but there are some alternatives: using similar communications agencies, such as the National Telecommunications Information Administration (NTIA) or the Department of Agriculture’s Rural Utilities Service (RUS) to facilitate the program; having the FCC delegate the program to a private firm; or running the program through a coalition of telephone companies. Another point of discussion connected to the first challenge is the issue of governance. Public and private partners usually rely on a governing document or governing board to dictate how the partnership should operate; however, governance can hinder or help the government corporation. The first problem that exists within governance involves the use of Ex-officio members who appoint lower ranking officials to represent them. These substitutes have no substantial working knowledge of the partnership. This is not the case with the universal service partnership and isn’t considered to be a weakness. All of the board members who govern the universal service partnership are selected by the FCC and do not select a lower ranking official to serve on their behalf. The FCC is mindful of whom they select because they do not want any

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8Ibid., 87.

9Ibid.

10Ibid.

opposing views. This is why the FCC selects current and former employees from
telecommunication companies and federal agencies that participate in the universal
service program.\textsuperscript{12} An example of this is one of the current board members, Scott
Bergmann, who served as Chief of Staff to former FCC Commissioner Jonathan
Adelstein.\textsuperscript{13}

Another point of discussion regarding governance involves who should govern
over the government corporation, the CEO or a board member.\textsuperscript{14} Lester Salamon cites a
report conducted by the National Academy of Public Administration that notes the
importance of having one person in control of a government corporation to prevent
“policy differences.”\textsuperscript{15} The CEO of USAC is also on the Board of Directors and has
control over the daily operations of the partnership.\textsuperscript{16} There is no evidence of policy
differences within the universal service partnership due in large part to the fact that the
FCC, not the Board of Directors, has full control over all policy changes.\textsuperscript{17}

In addition to the role of government, an efficient economy poses a second
challenge to the government corporation. As the telecommunications market grew more
sophisticated, universal service funding began in the 1960s and continued until the

\textsuperscript{12}Ibid.

\textsuperscript{13}Ibid.

\textsuperscript{14}Salamon, \textit{The Tools of Government}, 87.

\textsuperscript{15}Ibid.

\textsuperscript{16}Universal Service Administrative Company (USAC), “Governance and Board of Directors of the
USAC program,” USAC, \url{http://www.usac.org/about/governance/board-directors/board-members/}

\textsuperscript{17}Ibid.
Telecommunications Act of 1996. The previous program met a need by lowering rates to ensure that everyone had basic telephone service. In our current economy, however, the government corporation, USAC, provides funding to rural and under-served areas.\textsuperscript{18} The prior universal service funding mechanism was a subsidy and not structured like the current partnership. The previous universal subsidy existed based on profits from long distance services that were applied towards the high cost of delivering telephone services to rural areas. The current universal service program funds are applied to four funds that support advanced telecommunications services; therefore, the previous universal subsidy program would not have been able to support the current universal partnership because the fund was based on profits from long distance telephone calls. This second challenge builds on the third and final challenge because instead of focusing on changes to the economy it focuses on changes to technology.

As noted in Chapter 3, new technology and services have impacted telecommunications over the years. From the 1880s to the 1980s, the goal was basic telephone service; however, new services such as Broadband, telephone service over the internet (VoIP), and Skype and new equipment such as the Blackberry, iPhone, and iPad could eventually make telephones and telephone landlines obsolete. As mentioned in Chapter 3, new technologies are not a challenge to the universal service partnership, if anything it builds on what the re-write of the Telecommunications Act of 1996 focused

on, keeping up with new technology and introducing advanced telecommunications services.

While the government corporation has tool its share of strengths, weaknesses, and management challenges, in the case of the universal service partnership, it is the appropriate government tool. The only other tool of government that fits perfectly into this partnership is economic regulation.

**Economic Regulation**

The second tool of government, economic regulation, enhances the government corporation and can strengthen the partnership with rules and regulations. Economic regulation is “… a specialized bureaucratic process that combines aspects of both courts and legislatures to control price, output, and/or the entry and exit of firms in an industry.”

An example of the economic regulation tool is the use of a federal regulatory agency such as the FCC, which controls and regulates telecommunications.

With respect to the defining features of economic regulation, three complications exist. The first complication is difficult to define, “because regulation refers to the rules and procedures of government agencies regarding the qualifications for participation in their programs.” Salamon provides a similar example that exists for requirements when submitting proposals and procedures to potential contractors in a public-private program. This complication does not apply to the universal service partnership because

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20 Ibid.

21 Ibid.
the FCC is the agency issuing the rules and regulations. If another federal agency issued the rules and regulations in the partnership, then it would be a problem. The second complication “… refers to the process for developing and enforcing rules as well as the rules themselves.” This does apply to the universal service partnership because as mentioned in Chapter 3, the regulation that initiated the partnership, the Telecommunications Act of 1996, did not specifically state that was the responsibility of the FCC to create the current partnership. It only asked that the FCC work with the Federal State Universal Service Joint Board to determine how to move forward with a new universal service plan and how to enforce it.

Finally, the last complication involves the difference between economic and social regulation. According to Lester Salamon, “… regulation takes two different forms: economic and social regulation.” As noted in Chapter 2, economic regulation controls entry, exit, price, and output, while social regulation controls citizen health and social welfare. The problem surfaces when economic regulation is used for social issues and social regulation is used for economic issues. An example of this last complication involves using “economic regulation for social purposes and then turning around and using social regulation to control price, output, and entry control.” Salamon discusses

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22 Ibid.
23 Ibid.
25 Ibid.
26 Ibid.
27 Ibid.
how the electrical utility business set prices to gain profit through regulation while communicating to its customers that higher costs are applied to other alternative forms of energy conservation that could reduce environmental hazards.\textsuperscript{28} The last complication does apply to the universal service partnership because Members of Congress re-wrote the Telecommunications Act of 1996 and wanted the universal service program to expand to meet telecommunication needs in rural areas; however, they also wanted to ensure that new regulation did not affect pricing of telecommunications services, making it an economic regulation.\textsuperscript{29} Since the beginning of the telecommunications industry, the goal has always been to give consumers access to telecommunications services at reduced rates. As noted in Chapter 3, universal service began as a notion to connect the telecommunication networks. When the universal service program started in the 1960s to help defray the high cost of providing telephone service to underserved rural areas, it was seen as a form of social welfare.\textsuperscript{30} The current universal service partnership uses four funds to help rural areas provide health, education, and other sorely needed necessities to function.\textsuperscript{31} The previous and current universal service programs combine economic and social regulation to meet a visible public need.

Despite the complications that exist in economic regulation, there are strengths that exist within this tool. The first strength involves visibility. Visibility in economic

\textsuperscript{28}Ibid.

\textsuperscript{29}Aufderheide, \textit{Communications Policy}, 95.

\textsuperscript{30}Ibid.

regulation has its roots in the political process. Federal regulatory agencies use visibility to their advantage by keeping citizens and Members of Congress informed of any new or revised public policy. The universal service program that started in the 1960s was not as visible as it is today. The current universal service program is highly visible. The website for USAC educates applicants on the program and how to apply for funds as well as how to report any abuses or any other problems that surface. The FCC also posts on its website public meetings, notices of proposed rulemaking (NPRMs), and any other changes made to the universal service program. The FCC also posts congressional committee hearings to update the public on any meetings relating to changes in the universal service legislation. While visibility communicates public policy to citizens, it can backfire when citizens do not take advantage of information displayed on websites and other forms of media.

Pro-competitive regulation creates a competitive environment by introducing or stopping competition. The current universal service partnership builds on pro-competitive regulation. As discussed in Chapter 3, the Modified Final Judgment started to break up the telecommunications monopoly but left long distance intact, which

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33 Mueller, Universal Service Myth Made Law, 39-47.
allowed AT&T to save the universal service program from the 1960s; however, the MFJ was the beginning of the end of AT&T’s monopoly. The passage of the Telecommunications Act of 1996 eliminated the monopoly and ushered in the current competitive era of telecommunications. Pro-competitive regulation allowed the universal service program to continue. The era of competition in the telecommunications industry would become part of a deregulation trend that began in the 1970s and continues today.\textsuperscript{37}

Some of the main functions of the FCC include rulemaking, regulatory decisions, and enforcement of the rules and regulations. As discussed in Chapter 3, AT&T relied first on the ICC and then the FCC to approve rules and regulations that benefitted their business and the universal service program of the 1960s. Section 201 of the Communications Act of 1934 gave the FCC regulatory authority and the ability to set telephone rates while Section 203 of the Communications Act of 1934 gave the FCC regulatory authority over all telecommunications-related services. Sections 201 and 203 respectively helped support the rate of return regulation that became one of the universal service subsidies in the 1960s that helped the telephone monopoly to continue.

After the 1960s, regulatory cases, such as the anti-trust lawsuit MCI filed against AT&T in 1974 and the Modified Final Judgment of 1982 started the movement of removing the monopoly model in favor of competition that created the current universal service program.\textsuperscript{38} Regarding enforcement, the FCC has an enforcement bureau and an Inspector General who specifically deal with issues that surface with the current universal

\textsuperscript{37}Ibid., 124.

\textsuperscript{38}Fulle, \textit{Telecommunications Policy and History}, 14.
service program. As discussed in Chapter 3, price control set telephone and long distance rates that enabled the universal service program of the 1960s to continue. While economic regulation helped the telecommunications industry and universal service over the years, several challenges and complications exist with the use of the economic regulation tool.

In Chapter 2, three management challenges were discussed that exist within the economic regulation tool. The first challenge is preventing anticompetitive behavior. Anti-competitive behavior involves three practices: abuse of process, anti-competitive pricing, and leveraging. As discussed in Chapter 3, since the beginning of the telecommunications industry, AT&T worked very hard to maintain a monopoly and prevent the independent telecommunications carriers from taking over the telecommunications industry and putting the competition model in place. Despite the attempts by independent telecommunications carriers in the beginning of the telecommunications industry, AT&T was able to remain the dominant carrier with the blessing of the ICC and then the FCC through legislation and regulation. The universal service program began because of long distance competition as well as the legislation and regulation discussed in Chapter 3 that built the environment that lasted until the MFJ of 1982 and the Telecommunications Act of 1996.

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The second challenge in economic regulation revolves around how information in the regulatory agency is used.\footnote{Ibid.} As noted in Chapter 2, the problem arises when information isn’t shared within the agency itself or with other federal agencies. This has not been a challenge for the FCC and the current universal service program. When the FCC decides to introduce any changes to rules and regulations, they send out public notices asking for comments or notices of proposed rulemaking (NPRMs).\footnote{Federal Communications Commission (FCC), “Example of a Notice of Proposed Rulemaking (NPRM),” FCC, \url{http://www.fcc.gov/search/results/notice\_20of\_20proposed\_20rule\_20making} (accessed March 4, 2012).} The FCC also coordinates with Congress, related agencies such as the National Telecommunications Information Administration (NTIA), telecommunications carriers, and telecommunications industry groups through FCC and Congressional hearings on related issues, these meetings are posted on the “Open Meetings” and the “Press” section of the FCC’s website.\footnote{Federal Communications Commission (FCC), “March 2012 Open Meeting Notice,” FCC, \url{http://www.fcc.gov/document/fcc-announces-tentative-agenda-march-open-meeting} (accessed March 4, 2012).}

The third and final challenge, “managing by commission,” falls in line with the universal service partnership.\footnote{Salamon, \textit{The Tools of Government}, 150.} Managing by commission requires that, when there is a controversial regulation or legislation, the commission must come to a unified decision. As noted in Chapter 2, this is a frequent challenge for the FCC, which is bipartisan by
design, so the Chairman and Commissioners may often disagree on a rule or regulation.\textsuperscript{45}

There is no evidence to show that the FCC did not want to create the current universal service program. If anything, comments made by the FCC Chairman and Commissioners in 1996 regarding the Telecommunications Act of 1996 showed unanimous consent for a new universal service program.\textsuperscript{46}

Despite the strengths, weaknesses, and management challenges inherent in the government corporation and economic regulation tools, using them together can create a lucrative partnership. The government corporation model allows for flexibility and special circumstances, similar to the universal service partnership, while the economic regulation tool builds on regulation. Despite the fact that regulation can often hinder an industry, in the case of the telecommunications industry, it did not hinder the beginning of the industry. With the help of AT&T, regulation dominated; however, with the removal of the telephone monopoly, regulation of the industry took place and led to an era of competition and de-regulation. Meanwhile, the government corporation model that existed between AT&T and the FCC changed into a new government corporation (USAC) created and controlled by the FCC. The government corporation (USAC) builds on the government corporation and regulation model. However, when the tools and the partnership fail, it opens the door to accountability issues.


\textsuperscript{46}Aufderheide, \textit{Communications Policy}, 303-306.
Accountability

Since the 1940s, public and private partnerships have become increasingly common; however, with their popularity comes the issue of accountability.47 As the federal government continues to rely on public and private partnerships, third-party vendors, and government tools to conduct business, there comes a point where accountability becomes a major problem. Accountability issues in partnerships can lead to the loss of millions of dollars, cause significant embarrassment, and even signal the end of the partnership. Once the relationship has ended, the federal agency may have to eliminate the public program, which can be detrimental to its intended group and bad public relations for the federal government. The private agency suffers because they could lose the funding and the possibility of future contracts (despite the fact that in most accountability problems, the federal agency is at fault). The universal service partnership is a perfect example of how a “hybrid” partnership is not exempt from accountability problems. As mentioned at the beginning of this thesis, the accountability problems in the universal service partnership mainly affected only one of the four funds, the Schools and Libraries (E-Rate) fund.48

As discussed in Chapter 2, the definition of accountability revolves around “...controls that were envisioned as a way to prevent the arbitrary exercise of power by leaders.”49 Additionally, accountability raises two other issues, “… accountability for

47Goldsmith and Eggers, Governing by Network, 122.


what and to whom.”\textsuperscript{50} The “what” in accountability focuses on “… oversight mechanisms necessary to ensure that the goals set forth in statutes and regulations are in fact being achieved.”\textsuperscript{51} An example of two oversight mechanisms are adding procedures to ensure that funds are spent for their intended use and special interest groups adding procedures or rules to make sure a program supports their constituents.\textsuperscript{52} Evidence of the “what” in accountability reveals how the universal service partnership started processing applications for the funds but the applicants did not receive the funds. The second issue occurred when the funds did go directly to an applicant, but were not applied to schools and libraries, instead the funds went directly to the personal bank accounts of the applicants.\textsuperscript{53} Congress started to take notice of the new universal service partnership and the problems and requested that the Government Accountability Office audit the partnership. As early as 1998, two years after the creation of the program, the Government Accountability Office reported that sufficient oversight mechanisms were not in place and they feared that additional problems would surface down the road if the FCC did not strengthen oversight of the program.\textsuperscript{54} The issue of “whom” focuses on who

\textsuperscript{50}\textit{Ibid.}

\textsuperscript{51}\textit{Ibid.}

\textsuperscript{52}\textit{Ibid.}


is responsible for the accountability programs. Additionally, the “whom” of accountability points to how “… political interests will frame the debate over the program as well as its objectives.” As noted in Chapter 3, even though Congress passed legislation that created the current universal service program, the FCC is the caretaker of the universal service partnership and ultimately is to blame for accountability problems.

Donald Kettl believes that accountability problems occur because the federal government “does not fully control its private partners.” This is not the case with the universal service partnership because the federal agency (FCC) does have control over its private partner.

An underlying cause of accountability problems involves political authority. Political authority is evident in the universal service program because Congress decided that the telecommunications industry needed updating. During the 1996 telecommunications act re-write, Members of Congress did not want to lose the universal service program that was in place, so they opted to revise the existing program and codify

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56 Ibid.


58 Ibid.


60 Aufderheide, *Communications Policy*, 58.
the new one.\textsuperscript{61} During the re-write of the Telecommunications Act of 1996, neither the FCC nor Congress considered that the partnership could have problems.

As noted in Chapter 2, there are five consequences stemming from a lack of accountability that can exist in public and private partnerships; however, the universal service partnership only experienced three of the five accountability consequences. The accountability consequences are: goal diversion, fiscal windfalls, moral hazards, perverse fiscal incentives, and the attraction of opportunistic partners.\textsuperscript{62} Regarding goal diversion, Salamon notes, “Federal regulatory programs have been observed to be vulnerable to considerable goal slippage, as regulatory entities seek to reopen the initial decision through active co-optation of federal regulators or passive resistance.”\textsuperscript{63} Universal service succumbed to goal diversion because it began as a program created and supported by the federal government. The problem surfaced when it created and used a private partner to meet the goals of the program. The FCC enacted rules and regulations that would prevent problems from occurring with the fund as well as enlisting the help of the FCC Enforcement Bureau and OIG. However, despite the fact that the FCC monitored the partnership, it still encountered accountability problems.\textsuperscript{64}

\textsuperscript{61}Ibid.

\textsuperscript{62}Salamon, The Tools of Government, 529-531.

\textsuperscript{63}Ibid., 529.

The next challenge, fiscal windfall, does not apply to the universal service program because fiscal windfall involves the use of a tax expenditure or federal government subsidy; however, because the previous universal service program relied on long distance revenues and the current universal service program relies taxes on telecommunications services, the program cannot receive a fiscal windfall. Perverse fiscal incentive, another accountability problem, does not apply to the universal service partnership either because according to the definition of perverse fiscal incentives, there are no “sufficient incentives to promote efficient programs.” According to the bylaws of USAC, the FCC and USAC do not have a financial stake to collect the funds that they disburse and there is no mention of a “financial stake” in the document.65

Moral hazards result from a lack of regulatory controls that foster risky behavior, often because there is an assumption that the federal government would cover any loses. Despite the FCC’s rules and regulations, illegal behavior took place in the form of fraud, waste, and abuse.66 In a 1999 GAO report, one of the concerns that surfaced dealt with “high-risk applicants.” High-risk applicants usually requested a large sum of funds from the program. Unfortunately, insufficient regulatory controls could not prevent large financial awards given to the applicants.67 In the universal service program, once illegal

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activity takes place, the government does not step in and recover any losses. The Office of the Inspector General at the FCC investigates misappropriated funds from the universal service partnership fund are recovered through fines placed on the applicant or organization. The FCC did work with USAC to set up a hotline to report any illegal use of funds. The FCC’s OIG also works with federal, local, and state law enforcement when investigating fraudulent universal service cases.

Finally, the last consequence is attraction of opportunistic partners. Opportunistic or third party partners enter into the arrangement for financial purposes—they have no real interest in the program. Universal service does have an opportunistic partner, the National Exchange Carrier Association (NECA). The bylaws of USAC reveal that NECA has a silent yet visible connection to the current universal service program, which could possibly cause problems if the program is reformed. Since 1984, NECA’s universal service fund responsibilities have diminished. A GAO report published in 1998

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explains the original role of NECA and USAC as well as the difference between them. With the breakup of AT&T, the FCC believed that AT&T could not carry out the new universal service program. The Universal Service Administrative Company continues to remain a subsidiary of NECA.

As public and private partnerships continue to grow, government tools play an important role in the accountability discussion. It does not matter whether it is a traditional public and private partnership or a “hybrid” partnership, accountability problems will surface; however, there are some ways that the partnership can be proactive and stop the problems in advance. According to Goldsmith and Eggers, there are several ways to prevent and/or eliminate accountability problems: “setting goals between all of the parties involved, aligning values, creating trust in the partnership, structuring incentives, sharing risk, measuring and monitoring performance, and managing change.” Regarding goal setting, the universal service partnership created bylaws to spell out the goals and mission of the USAC partnership. The bylaws state that the FCC is responsible for any changes or problems within the program.

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The next two methods used to address accountability, aligning values and establishing trust, build on each other through commonalities. An example involves trust and like values among all of the parties involved in the partnership to meet a common goal.\textsuperscript{77} The FCC created USAC, the private partner in the partnership, so trust and values are met; however, the FCC still had to show that this partnership would meet the public program goal. Once the partnership began, the FCC had to show that there were open lines of communication regarding goals and values with USAC, especially when accountability issues occurred. The fourth way of preventing accountability issues relies on incentives. Based on a review of documents, the FCC created no incentives for USAC to prevent accountability problems; therefore, further research is needed. Regarding the measurement of performance to prevent accountability problems, because performance is measured in real time and the focus is on input instead of quality.\textsuperscript{78} An example of this occurred when the universal service partnership started in 1998. Applications for universal service funds were not processed in a timely manner, prompting Congress to address the lapses with the FCC.\textsuperscript{79} The FCC corrected the lapses by giving USAC the authorization to hire additional staff and address the application process problems.\textsuperscript{80} Periodically, GAO performs audits on the universal service partnership to identify any

\textsuperscript{77}Goldsmith and Eggers, \textit{Governing by Network}, 128.

\textsuperscript{78}Ibid., 145-146.


\textsuperscript{80}Ibid.
issues. Congress then reviews the GAO audits and requests reports by the Congressional Research Service to address issues that the GAO audit does not cover.\textsuperscript{81} The next accountability prevention method involves risk sharing. Risk sharing blames all of the parties involved in the partnership when accountability problems surface.\textsuperscript{82} Risk sharing does not happen in the universal service partnership because the FCC assumes responsibility for problems that occur.\textsuperscript{83} Finally, Goldsmith and Eggers draws on strategies created by Behn and Kant for the last accountability prevention method that deals with managing change within the partnership. Throughout the course of the partnership, there are changes that develop that have to be addressed in order for the partnership to continue.\textsuperscript{84} Since the universal service partnership began, there have not been any changes or updates to the program; however, with the recent passage of a universal service reform bill, the partnership could change in the future.\textsuperscript{85} When that happens, the FCC and USAC will need to address changes to the program.

While there are ways of preventing issues with accountability, sometimes the inevitable happens and accountability problems occur. On the other end of the spectrum


\textsuperscript{82}Goldsmith and Eggers, \textit{Governing by Network}, 136.


\textsuperscript{84}Goldsmith and Eggers, \textit{Governing by Network}, 147.

of accountability, the creation of policy can help prevent accountability problems and can help to address them when they occur, but the accountability policy usually needs changes to fit the situation and must be revised over the duration of the partnership. In the case of the universal service partnership, once the FCC created USAC, the bylaws delegated the FCC to address any problems that occurred. Within two years of the start of the partnership, accountability issues surfaced which led to congressional audits by the GAO. The FCC addressed accountability problems by adding a hotline and whistleblower section on the USAC homepage to report any illegal activity. The FCC also works with their Office of the Inspector General (OIG) to stay on top of any new accountability issues within the partnership, but the accountability problems continued.

Additionally, Salamon cites Posner who points to several “approaches” used to address accountability problems once they surface: tool selection, tool design, administrative oversight, tracking money and outcomes, and provider selection. This discussion will touch on only three of the five approaches, leaving out the two that do not apply to the universal service partnership.

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The first accountability approach, tool selection, focuses on choosing the right tool to address accountability problems through political and public policy. The previous and current universal service partnership incorporates the economic regulation tool. Economic regulation played a role that led to the universal service program in 1960s as well as to the re-write of the Telecommunications Act of 1996 that led to the current universal service partnership. However, the economic regulation tool did not prevent accountability problems from occurring in the current universal service partnership.

The second accountability approach, tool design, focuses on tool creation to prevent management and performance problems. This accountability approach does not apply because the tools used were not designed specifically for this partnership.

The third accountability approach, administrative oversight, focuses on correcting accountability problems that surface because of the wrong tool selection. Oversight is the responsibility of the federal agency that oversees the partnership and occurs after a performance audit. The FCC is responsible for oversight and compliance when accountability problems surface; however, in some cases, when a high profile federal agency is involved, oversight and compliance is limited. Christopher Hood notes that

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91Ibid.

92Ibid., 535.

93Ibid., 538.

“… the larger the clientele, the more government will switch from active to passive strategies as a way to reduce bureaucratic burdens.”95 The clientele that Hood references are the recipients of the universal service funds in this thesis. With respect to tool selection and accountability, as noted in Chapter 2, the appropriate government tools exist within the universal service partnership, but the federal agency connected to the USAC partnership, the FCC, is responsible for oversight and compliance when accountability problems surface.96 The clientele involved in this partnership consists of a large number of public and private schools and universities and other educational facilities.97 The FCC has testified before Congress regarding oversight issues and promised to address problems and strengthen oversight.98 To date, the FCC has eliminated some of the problems that existed in the universal service partnership; however, they still deal with accountability issues. Oversight strategy builds on the fourth approach: tracking money and outcomes in the partnership. Stronger oversight and tracking funds can eliminate the illegal use of the funds in the partnership.

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Tracking the use of funds and performance in public programs and partnerships is the responsibility of the federal government. Tracking where funds go and how they are used is important because if a program or partnership receives any of its funding from congressional appropriations, Members of Congress want to know if a program should continue to receive funds and if it is meeting its intended goals. This allows Members to show results to their constituency and demonstrate that they are working on their behalf in Washington, DC. With the current political and economic climate, it is especially important for Members to show that they are holding government agencies and corporations accountable.

In the universal service partnership, yearly reviews focus on how much money each fund receives and disburses to applicants. The yearly review also focuses on how much each state receives in universal service funding and any changes to the application process. A new program aimed at strengthening oversight at USAC began in August 2010. The “Payment Quality Assurance Program,” identifies questionable payments. As noted in Chapter 3, funding for the universal service program does not come from Congress, so Members of Congress are not responsible for explaining to their

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100Ibid.


102Ibid.

constituencies how the money is spent because its public knowledge. The fifth and final approach, provider selection, focuses on specific third parties that support a program or partnership. This accountability strategy does not apply to the universal service partnership because the FCC created USAC with the help of NECA. If the FCC had chosen an outside private partner such as IBM or another private partner to carry out the mission of the program and to support the program’s success, then the approach would apply.

While public and private partnerships show no sign of stopping, despite the fact that they come with their own set of strengths and challenges, fortunately, “hybrid” partnerships similar to the universal service partnership are built on two strong government tools, government corporation and economic regulation. These two tools allow the universal service partnership to grow based on its needs. As universal service has evolved from a subsidy to partnership over the years, the government corporation and economic regulation tools played a critical role, despite the accountability issues that surfaced with the current universal service program. Accountability issues are going to surface in just about every industry as long as there are large sums of money and several parties involved. Use of the right government tool may or may not cause the accountability problems; it just depends on the rules and regulations created by the parties involved.

The next section, Chapter 5, is an analysis of Chapters 2, 3, and 4 and conclusion of this thesis.

\footnote{Salamon, \textit{The Tools of Government}, 536.}
CHAPTER 5

FINDINGS AND RECOMMENDATIONS

This thesis examined the performance standards within public and private partnerships, government tools, and who is to blame when accountability issues surface in the public and private partnership. The case study analyzed in this thesis was the “hybrid” public and private partnership that exists between the FCC and USAC to facilitate the universal service program. The Communications Act of 1934 created stronger public policy that allowed AT&T and the telephone monopoly to continue through regulation. The Communications Act of 1934 laid the foundation for what would eventually become the universal service subsidy program in the 1960s by allowing long distance profits to defray the cost of delivering telecommunications services to rural communities. The FCC continued to approve and support all telecommunications legislation and regulation related to universal service.

Eventually, the monopolistic environment in telecommunications started to unravel in the late 1970s due in large part to de-regulation of the telecommunications industry. The next significant piece of legislation, the Modified Final Judgment of 1982, broke up the Bell Telephone Companies and weakened AT&T’s telephone monopoly; however, the universal service subsidy was spared until the next overhaul of the Communications Act of 1934 that occurred in 1996. This overhaul led to the Telecommunications Act of 1996 that ushered in a new era of competition and eliminated the monopoly model. While the new era of competition in the telecommunications
industry opened the doors for expanded telecommunications services, it changed the universal service program from a subsidized program into a “hybrid” public and private partnership funded through taxes placed on the bills of consumers and telecommunications companies instead of on long distance profits.

While the Communications Act of 1934, the MFJ of 1982, and the Telecommunications Act of 1996 all played important roles in shaping the telecommunications industry and the previous and current universal service program, the FCC could have delivered the current partnership through an outside private partner and limited their role.

While public and private partnerships continue to help the federal government meets its goal of delivering public programs, these partnerships often come with their own set of problems. At first glance, many believe that the private partners are at fault for the problems; however, as noted in Chapters 2, 3, and 4, evidence suggests that the FCC assumes the blame because it created the private partner to facilitate the program.

Based on the literature that I discussed in this thesis, partnerships will continue to expand as long as the government continues to create public programs to meet public needs. Additionally, hybrid partnerships similar to the universal service partnership will grow because government agencies like the FCC (regulatory agency) will look for new and efficient ways to deliver public programs.

As discussed in Chapter 2, regarding governance, public and private partnerships have become a new way of governing. If public and private partnerships are used as an alternative to governing, Kettl’s five imperatives, which are discussed in Chapter 2, can
be used as a model for governing. The five imperatives focus on efficient and better ways of delivering government programs by achieving the following: 1.) eliminating burdensome hierarchy; 2.) heightening accountability; 3.) solving problems using partnerships instead of trying to fix the agency delivering the program; 4.) engaging elected officials to help solve public problems; and 5.) strategizing with citizens to look for various ways to solve and deliver public programs. These five imperatives can help public and private partnerships in the wake of dissolving federal agencies and staff and budget cuts. Additionally, the partnerships can flourish with the application of the correct government tool. Government tools have been in use since the Revolutionary War and they continue to support public and private partnerships. ¹

The use of government tools to create a new form of governance is a theory that several of the scholars in this thesis support. Regarding the government tools, the use of the government corporation tool discussed in Chapter 2 is still the best way to deliver a public and private partnership because it allows for flexibility. Using this tool also helps when trying to figure out who does “what” and “who” is responsible when things go wrong. In the case of the universal service partnership, the FCC and not USAC, assumes responsibility for the facilitation of the partnership. The FCC is responsible for any changes made to the initial program, and changes to the legislation and regulation associated with public and private partnerships. Government tools similar to the government corporation must continue, especially with the possibility of changes in federal government agencies. Government corporations would allow flexibility, and

increase non-traditional partnerships, allowing the government to meet the high demand for public programs; however, my recommendation would be to expand criteria for government corporations to allow for special circumstances (partnerships between state and federal agencies, third-party partners and non-traditional partnerships), similar to the “hybrid” partnership between the FCC and USAC.

With respect to the universal service partnership, the tool of economic regulation played an important role in the previous and current universal service program. The tool of economic regulation has to continue in partnerships. Based on the research presented in Chapter 3, I believe that legislation and regulation that began in the 1880s set the tone for the future of the telecommunications industry. Unfortunately, all of the regulation that existed over the years led to an era of de-regulation in the 1970s by several industries. The effect of de-regulation on the telecommunications industry did usher in an era of competition that led to advanced services and introduced new technologies; however, stronger regulation needs to return to telecommunications if only to address special circumstances that surface with universal service.

Before the current USF program, the program operated because of regulation and AT&T’s monopoly in the telecommunications industry. While some industries may need de-regulation, some still need regulation. The recent universal service reform should contain stronger oversight mechanisms until the FCC can detect any flaws in the new program. Future partnerships can learn from mistakes that were made with the universal service program.
Based on the literature and evidence presented in this thesis, the FCC is ultimately responsible when it comes to accountability issues, because the FCC has full control over the partnership and wrote the rules and regulations for this partnership. If the federal government wants to continue to use private and third party vendors, they will need to relinquish control. In order for this to happen, the partnership agreement will have to specify who is responsible when things go wrong. All of the parties would need to agree to stronger oversight mechanisms instead of adopting a “let’s wait and see what happens” attitude.

Sharing the responsibility is the key to accountability problems. According to research presented in Chapters 2 and 4, Goldsmith and Eggers and Kettl reveal that in order to solve accountability issues, sharing responsibility and open communication are a must. If the federal government changes the way it governs in the future, then accountability issues can be addressed in a timely manner. By identifying the issues before they happen, all of the parties involved in the partnership have an opportunity to address and assume responsibility when things go wrong. While the universal service partnership has strengthened its oversight since 1996, fraud, waste, and abuse are still a concern for the FCC and USAC. According to USAC, a new procedure known as “Payment Quality Assurance,” ensures the integrity of the program.² The partnership will need to continue oversight, especially with the recent passage of the Universal Service Reform plan. The new universal service reform could alter how the corporation

operates. While the FCC continues to work with its Inspector General and other law enforcement agencies to monitor fraud, waste, and abuse, USAC needs scheduled and unscheduled external audits done by a private firm. Additionally, the FCC should increase fines and jail time for individuals and groups that abuse the system and embezzle universal service funds. As for the issue of waste, the funds and/or services and equipment given to eligible applicants need to be withdrawn. They should also reimburse the funds and be barred from applying for similar funding.

**Conclusion**

In conclusion, the use of Kettl’s five imperatives as an alternative to governing embraces open communication, sharing risk, and flexibility which are needed in traditional and non-traditional partnerships. Overall, public and private partnerships, whether traditional or non-traditional, benefit if the government corporation and economic regulation tools are used. Regarding legislation and public policy, the FCC and Congress have to strengthen regulation as needed to avoid a repetition of the accountability problems that surfaced at USAC. With respect to the government tools, they should be revised as needed to accommodate special circumstances similar to the “hybrid” partnerships discussed in this thesis. As for accountability, partnerships have to increase oversight and all of the parties involved should share responsibility and practice open communication.

All of the scholars discussed in this thesis agree that in order for public and private partnerships to continue and succeed, a new form of governance is useful.
Additionally, a new way of governing could possibly eliminate performance problems by removing the current hierarchy model and limiting government’s role.
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