BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Eliminating *Ex Ante* Pricing Regulation and Tariffing of Telephone Access Charges	WC Docket No. 20-71

REPLY COMMENTS OF
THE CALIFORNIA PUBLIC UTILITIES COMMISSION

AROCLES AGUILAR
HELEN M. MICKIEWICZ
KIMBERLY J. LIPPI

Attorneys for the California
Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-5822
Email: kimberly.lippi@cpuc.ca.gov

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I. INTRODUCTION

The California Public Utilities Commission ("CPUC" or "California") submits these reply comments in response to the Federal Communications Commission's ("Commission" or "FCC") March 31, 2020 *Notice of Proposed Rulemaking* (*NPRM*) proposing forbearance of *ex ante* pricing regulation and tariffing of five interstate Telephone Access Charges assessed on local telephone service.[1] The comments filed to date raise serious concerns with the *NPRM*'s proposals to (1) incorporate the interstate Telephone Access Charges with local intrastate voice rates, and (2) implement a 25 percent (or higher) safe harbor proposal on local voice rates to help calculate federal Universal Service Fund (USF) contributions. The CPUC shares these concerns and opposes both of these proposals, as discussed in further detail below.[2]

II. DISCUSSION

A. The Safe Harbor Proposal Undermines Contributions to State Universal Service Programs and Would Not Stabilize Contributions to the Federal Universal Service Fund.

Many of the parties raise several concerns about the *NPRM* proposal to implement a 25 percent safe harbor on local voice services for the purpose of calculating federal USF contributions.[3] The CPUC agrees with the Pennsylvania Public Utility Commission (Pennsylvania PUC) and the Kansas State Corporation Commission that the FCC should not adopt a safe harbor on local voice service as it could harm contributions to State universal service programs that are funded through assessments on those same services.

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[1] In the Matter of Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges *Notice of Proposed Rulemaking,* WC Docket No. 20-71 (rel. April 1, 2020) (*NPRM).*

[2] These reply comments are not exhaustive. Silence with respect to any party's comments should not be construed as assent or dissent.

[3] *See e.g.*, Ad Hoc Telecom Users Committee Comments (7/6/20); Concerned Rural LECs Comments (7/6/20); INCOMPAS Comments (7/6/20); Kansas State Corporation Commission Comments (6/30/20); Multi-State RLEC Group Comments (7/6/20); Nebraska Public Service Commission Comments (7/6/20); Pennsylvania Public Utility Commission Comments (7/6/20); Small Company Coalition Comments (7/6/20); USTelecom Comments (7/6/20); Zingaretti Enterprises Comments (7/6/20).

The CPUC administers five universal service programs that are funded through assessments on local voice service.[4] California opposes any proposal that could increase contributions to federal USF and/or lower contributions to State programs. The Concerned Rural LECs provide an analysis showing the safe harbor could increase California rural LECs' federal USF contributions and reduce State contributions.[5] Further, Zingaretti Enterprises' analysis demonstrates that higher local service rates will result in a larger interstate revenue base.[6] This means federal contributions will be higher in States, like California, with higher local service rates than in States with lower rates. The safe harbor shifts the contribution burden to States with higher local service rates. The FCC should not adopt this inequitable approach and should maintain the current approach of assessing federal contributions on interstate revenues that are separate from local revenues.

Moreover, the safe harbor is not guaranteed to stabilize federal USF contributions. As other parties have noted, the FCC needs broader contribution reform. The overall revenue base for federal USF continues to decline and requires comprehensive contribution reform that includes broadband revenue assessment.[7] The existing assessable revenue base fell from $15,046,095,311[8] in the third quarter of 2015 to $10,219,123,520[9] in the third quarter of 2020, a 32 percent decrease. This downward trend will likely continue and necessitates the FCC perform

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[4] California's universal service programs include the California High Cost Fund-A, California High Cost Fund-B, California Lifeline, California Teleconnect Fund, California Advanced Services Fund, and California Deaf and Disabled Telecommunications Program. The CPUC is also funded by a user fee assessed on local voice services.

[5] Concerned Rural LECs Comments at 11.

[6] Zingaretti Enterprises Comments at 14 – 17.

[7] To assess broadband revenues, the FCC must reconsider its Title 1 classification of broadband.

[8] Universal Service Administrative Company Report, *Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Third Quarter 2015* at 5.

[9] Universal Service Administrative Company Report, *Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Third Quarter 2020* at 4.

comprehensive reform to address the serious issues with the USF revenue base through its reform contribution proceeding and in consultation with the Federal-State Joint Board on Universal Service.

B. The FCC Cannot Recover Interstate Costs Through Intrastate Rates.

The CPUC agrees with parties that the *NPRM* fails to address jurisdictional separations issues in proposing to incorporate the interstate Telephone Access Charges with intrastate rates.[10] To the extent the FCC intends to detariff interstate Telephone Access Charges and unilaterally incorporate them into intrastate local services rates, that proposal amounts to an impermissible invasion of the intrastate ratemaking jurisdiction of the States.

The CPUC agrees with the Pennsylvania PUC that neither section 201(b) nor section 203 of the Communications Act (Act) provide the FCC with authority to usurp State jurisdiction and transform federal Telephone Access Charges into local service rates.[11] Also, as the Nebraska Public Service Commission and others note, section 410 of the Act requires the FCC to refer to the Federal-State Joint Board on Jurisdictional Separations any proceeding regarding jurisdictional separations of common carrier expenses between interstate and intrastate operations. These concerns must be addressed.

III. CONCLUSION

The FCC should not move forward with this *NPRM* as it raises broader issues with jurisdictional separations and contribution reform. The *NPRM* proposals will harm rate-of-return

[10] *See e.g.* Kansas State Corporation Commission Comments (6/30/20); Nebraska Public Service Commission Comments (7/6/20); Pennsylvania Public Utility Commission Comments (7/6/20).

[11] Penn. PUC Comments, at 4. As Penn. PUC correctly notes, nothing in the federal Communications Act of 1934 as amended (Act) "shall be construed to apply or to give the Commission jurisdiction with respect to (1) *charges*, classifications, practices, *services*, facilities, or regulations for or in connection with *intrastate communication service* by wire or radio of any carrier." Penn. PUC Comments, at 6, citing 47 U.S.C. § 152(b) (emphasis added).

carriers, create jurisdictional issues, and undermine State universal service programs. Further, as the CPUC noted in comments, the *NPRM* will decrease transparency in customer billing by making explicit charges implicit. The CPUC appreciates this opportunity to submit reply comments.

Respectfully submitted,

AROCLES AGUILAR
HELEN M. MICKIEWICZ
KIMBERLY J. LIPPI

/s/ KIMBERLY J. LIPPI
KIMBERLY J. LIPPI

Attorneys for the
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, California 94102
Phone: (415) 703-5822
Fax: (415) 703-2262
Email: kimberly.lippi@cpuc.ca.gov

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