**BEFORE THE**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20544**

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| In the Matter of the Petition of  NTCA-The Rural Broadband Association and the United States Telecom Association for Targeted, Temporary Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contributions Obligations on Broadband Internet Access Transmission Services Pending Universal Service Fund Comprehensive Contributions Reform | )  )  ) WC Docket No. 17-206  )  ) WC Docket No. 06-122  )  )  )  )  ) |

**COMMENTS OF THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) submits these Comments in response to the Commission’s Public Notice that was released on August 14, 2017, in the above-referenced proceeding.[[1]](#footnote-1) The Public Notice established the deadlines of September 13, 2017, for comments and September 28, 2017 for reply comments.

On June 14, 2017, NTCA *‒* The Rural Broadband Association (NTCA) and the United States Telecom Association (USTA) (Joint Petitioners) filed a Joint Petition requesting the Federal Communications Commission (FCC or Commission) “for targeted, temporary forbearance from application of [federal] universal service fund (“USF”) contribution requirements . . . with respect to broadband Internet access transmission services provided by RLECs [rural local exchange carriers] pending the completion of comprehensive USF contributions reform.”[[2]](#footnote-2) In the Joint Petition, NTCA and USTA seek such forbearance “until such time as the Commission reaches a decision on whether *any and all* broadband services (and not just RLEC-provided broadband Internet access transmission services) should be required to contribute to support of federal USF programs or completes some other form of contributions reform.”[[3]](#footnote-3)

The Pa. PUC appreciates the opportunity to submit these comments. As an initial matter, these comments should not be construed as binding on the Pa. PUC in any matter that is pending before it. Moreover, these comments could change in response to later events, including *ex parte* filings or the review of other submitted initial and reply comments and legal or regulatory developments at the state or federal level.

NTCA and USTA explain in their Joint Petition that although past FCC rulings afforded certain relief from the assessment of federal USF contributions to broadband Internet access services, such relief essentially has been limited to RLECs that have selected model-based support from the Connect America Fund (CAF) mechanism, and have chosen to detariff such service offerings.[[4]](#footnote-4) However, the same type of relief is not universally available for all RLECs because “the rules governing cost recovery via USF distributions pursuant to HCLS [high cost loop support] and CAF-BLS (as well as the “Alaska Plan”) provide for recovery only of *regulated* costs by non-model RLECs.”[[5]](#footnote-5) The Joint Petitioners further argue that federal price cap incumbent local exchange carriers (ILECs) and CAF Phase II recipients do not face similar concerns, and that “in the absence of comprehensive reform [of the federal USF contribution base], RLECs are the only broadband providers required to recover the costs of USF contributions from consumers in order to receive USF support and/or charge regulated rates for special access transmission.”[[6]](#footnote-6)

The Pa. PUC emphasizes that it does not oppose or support the Joint Petition. The Pa. PUC notes that NTCA in the Joint Petition itself underlines the need for the timely reform of the federal USF contribution base reform through its repeated calls “to broaden and stabilize the ‘contribution base.’”[[7]](#footnote-7) The Pa. PUC fully shares this sentiment. The relief sought by Joint Petitioners at issue underlines the need for the Commission to reach a timely and comprehensive conclusion of its efforts to reform the federal USF contribution base and method, where the related proceeding commenced in 2012 and has also involved an appropriate referral to the Federal-State Joint Board on Universal Service (Joint Board) in 2014.[[8]](#footnote-8)

The Joint Petitioners demonstrate the disparate treatment of broadband Internet access services when it comes to the federal USF mechanism contribution assessments. As numerous comments in response to the Commission’s *2012 FNPRM* indicated, the federal USF and CAF mechanism is used to support the universal deployment of broadband access networks and services, while the same retail broadband access services are largely and critically absent from the contribution base of the federal USF. This disparate treatment continues, as the Pa. PUC and others await the conclusion of the federal USF contribution reform efforts. Through its reply comments in the *2012 FNPRM*, the Pa. PUC supported “the expansion of the federal USF contribution base through the inclusion of wireline and wireless retail broadband access services consistent with the State Plan proposals.”[[9]](#footnote-9) Generally, similar positions were expressed in response to the *2012 FNPRM* by numerous other parties including the State Members of the Joint Board,[[10]](#footnote-10) the National Association of Regulatory Utility Commissioners (NARUC),[[11]](#footnote-11) and the National Association of State Utility Consumer Advocates (NASUCA).[[12]](#footnote-12)

The Pa. PUC fully understands that the Commission’s federal USF contribution reform and the associated referral to the Joint Board are not simple tasks. However, the filing of the Joint Petition underlines the need to conclude the relevant efforts. Otherwise, the issue of what services should contribute to the federal USF mechanism will continue to be addressed in a piecemeal fashion that engenders unnecessary uncertainty among the service providers and their end-user consumers. A similar level of uncertainty will also continue to exist for the numerous state-specific USF mechanisms that jointly operate to preserve and enhance the redefined universal service concept that now includes broadband access under the Commission’s *USF/ICC Transformation Order.*[[13]](#footnote-13) Finally, the conclusion of the relevant federal USF contribution reform efforts of the Commission and the Joint Board does not need to be delayed by any other proceedings that may be currently pending.[[14]](#footnote-14)

The Pa. PUC appreciates the opportunity provided by the Commission for the submission of these Comments.

Respectfully Submitted On Behalf Of

The Pennsylvania Public Utility Commission

/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. FCC Public Notice, Pleading Cycle Established for Comments on NTCA and USTelecom’s Petition for Forbearance from USF Contribution Requirements, WC Docket No. 17-206, DA 17-765 (rel. August 14, 2017) (FCC Notice). [↑](#footnote-ref-1)
2. *Petition of NTCA ‒ The Rural Broadband Association and the United States Telecom Association for Targeted, Temporary Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contributions Obligations on Broadband Internet Access Transmission Services Pending Universal Service Fund Comprehensive Contributions Reform*, WC Docket Nos. 17-765 and 06-122 (Joint Petition) at 1-2 (footnotes omitted). [↑](#footnote-ref-2)
3. Id. at 2 (emphasis in the original). [↑](#footnote-ref-3)
4. Id. at 9-10. [↑](#footnote-ref-4)
5. Id. at 10 (emphasis in the original). [↑](#footnote-ref-5)
6. Id. at 10. [↑](#footnote-ref-6)
7. Id. at 2 n.8. [↑](#footnote-ref-7)
8. *See generally Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) (*2012 FNPRM*); *In re Federal State Joint Board on Universal Service; Universal Service Contribution Methodology, et al.*, WC Docket Nos. 96-45 and 06-122, *et al.* (rel. Aug. 7, 2014), Order, *slip op.* FCC 14-116 (*2014 Referral Order*). [↑](#footnote-ref-8)
9. *In re Universal Service Contribution Methodology*, *et al.*, WC Docket No. 06-122, *et al.*, Reply Comments of the Pennsylvania Public Utility Commission, August 6, 2012, at 9 (the State Plan refers to the Comments by State Members of the Federal State Joint Board on Universal Service, *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, filed May 2, 2011). [↑](#footnote-ref-9)
10. *In re Universal Service Contribution Methodology*, *et al.*, WC Docket No. 06-122, *et al.*, Reply Comments of the State Members of the Federal State Joint Board on Universal Service, August 6, 2012, at 14. [↑](#footnote-ref-10)
11. *In re Universal Service Contribution Methodology*, *et al.*, WC Docket No. 06-122, *et al.*, Reply Comments of the National Association of Regulatory Utility Commissioners, August 6, 2012, at 4 (endorsement of the State Plan). [↑](#footnote-ref-11)
12. *In re Universal Service Contribution Methodology*, *et al.*, WC Docket No. 06-122, *et al.*, Comments of the National Association of State Utility Consumer Advocates, July 9, 2012, at 7 (those “who benefit from a ubiquitous national network should contribute to the Fund, with as few exceptions as feasible” and that “if the USF is to support broadband, then broadband must support the USF”). [↑](#footnote-ref-12)
13. *See generally Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). *See also* WC Docket No. 06-122 *et al.*, Pa. PUC Reply Comments at 2-7, State Members of the Joint Board Reply Comments at 6-11, NARUC Reply Comments at 2-5. [↑](#footnote-ref-13)
14. *See generally In re Restoring Internet Freedom*, WC Docket No. 17-108 (rel. May 23, 2017), Notice of Proposed Rulemaking, FCC 17-60, 82 Fed. Reg. 25568 (June 2, 2017). *See also In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28, (FCC, Rel. March 12, 2015), Report and Order on Remand, Declaratory Ruling, and Order, *slip op.* FCC 15-24, 30 FCC Rcd 5601 (2015) (*Title II Order*), *aff’d United States Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), *reh’g en banc denied*, No. 15-1063, 2017 WL 1541517, at \*1 (D.C. Cir. May 1, 2017); *Title II Order*, ¶¶ 488-89 and n.1471, *slip op.* at 235-36 (forbearance from federal USF contributions for broadband Internet access services and pending FCC proceeding on federal USF contribution reform). [↑](#footnote-ref-14)