



N A R U C
National Association of Regulatory Utility Commissioners

July 26, 2011

NOTICE OF WRITTEN EX PARTE CONTACT

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

Re: Notice of written NARUC *ex parte* request to put the anticipated industry-mediated plan out for comment along with the State Member Plan and ask commenters to compare and contrast them in the proceedings captioned:

In the Matter(s) of the Connect America Fund, WC Docket No. 10-90, National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Dkt. 01-92, Federal-State Joint Board on Universal Service, CC Dkt. 96-45, Lifeline and Link-Up, WC Dkt. 03-109

Dear Secretary Dortch:

On July 27, 2011, the Chair of NARUC's Committee on Communications, Vermont Commissioner **John Burke**, sent via e-mail the attached letter request to FCC Chairman **Julius Genachowski**. **Copies were sent via e-mail to the other Commissioner offices copying, in particular, Zac Katz**, Legal Advisor to the Chairman, **Angela Kronenberg**, Wireline Legal Advisor to Commissioner Clyburn, **Margaret McCarthy**, Wireline Policy Advisory to Commissioner Copps, Christine Kurth, Wireline Policy Advisor to Commissioner McDowell, **Sharon Gillett**, Chief, Wireline Competition Bureau, **Carol Matthey**, Deputy Chief Wireline Competition Bureau, and **Kim Scardino**, Attorney, Wireline Competition Bureau.

If the widely anticipated USTA-moderated industry plan is filed, the letter urges the FCC to seek comment on it and the *State Plan* simultaneously, and ask commenters to contrast the industry proposal with the *State Plan*. If you have any questions about this letter, please do not hesitate to contact the undersigned at 202.898.2207 or jramsay@naruc.org.

Respectfully Submitted,

**James Bradford Ramsay
NARUC General Counsel**



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National Association of Regulatory Utility Commissioners

July 26, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: NARUC request to put the *State Member's Plan* out for comment,
along with any anticipated industry-mediated plan.**

Dear Chairman Genachowski:

As a *State Member* of the Federal State Joint Board on Universal Service and also as Chair of NARUC's Committee on Communications, I wanted to write to thank you for taking the time to come all the way out to NARUC's Los Angeles meetings to meet with a diverse group of commissioners. We understand, perhaps better than most, how incredibly busy the Chair of a Commission is – and the plethora of competing interests you must balance. Everyone at NARUC appreciated the opportunity to interact with you, Commissioner Clyburn, Commissioner Cops and key FCC staff on universal service and intercarrier compensation issues. Mr. Katz, Ms. Gillett, Ms. Matthey, and Ms. Scardino, along, of course, Commissioner Clyburn's advisor Ms. Kronenberg and Mr. Copp's advisor Ms. McCarthy, have all been very generous with their time and patient responding to various Joint Board-related inquires.

I am also writing today to reiterate a specific request that was made during that meeting in Los Angeles, that was subsequently the subject of the attached "***Resolution Strongly Supporting the Proposals Submitted on Universal Service Reform by the State Members of the Federal State Joint Board on Universal Service***" which passed the NARUC Board of Directors without opposition last Wednesday.

The resolution has three key aspects.

First it urges the FCC to “. . . always take advantage of the expertise and insight of State commissioners on key issues, acknowledge and give appropriate weight and deference to the carefully considered and record-based State Members' comments, and refuse to place undue reliance on the *ex parte* process or disregard the formal notice-and-comment procedure to the extent such practice would marginalize either the opportunity for meaningful participation in any reform efforts by the States or effective deliberation on the part of the commissioners.”

Second, the resolution commends the State Members of the USF Joint Board and their staff for the thoughtful and thorough evaluation of the USF/ICC NPRM, and *specifically endorses* the State Members' plan with one caveat.

Finally, the resolution recognizes that industry – without any input from either the consumer community or public service commissioners charged with protecting the public interest – are expected to file a proposal that is endorsed by the two largest incumbent local carriers and four midsize carriers, and perhaps a few others. According to the resolution:

[S]hould an industry supported “settlement” proposal be filed in the USF/ICC NPRM and subsequently released by the FCC for public comment, that the FCC is urged to jointly offer the State members’ plan for comment simultaneously and include a request to contrast the two plans.”

Please consider this letter NARUC's request for you to do so.

If you have any questions about this letter or NARUC's positions, please do not hesitate to call me or Brad Ramsay, NARUC's General Counsel at 202.257.0568 or via e-mail at jramsay@naruc.org.

Sincerely,

John Burke
Chair, NARUC Committee on Communications

cc: *The Honorable Michael Copps, FCC Commissioner*
The Honorable Robert M. McDowell, FCC Commissioner
The Honorable Mignon Clyburn, FCC Commissioner
Zachary Katz, Chief Counsel & Senior Legal Advisor to the Chairman
Josh Gottheimer, Senior Counselor to the Chairman
Margaret McCarthy, Wireline Policy Advisor to Commissioner Copps
Christine D. Kurth, Policy Director & Wireline Counsel to Commissioner McDowell
Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn
Sharon Gillett, Chief, Wireline Competition Bureau

Resolution Strongly Supporting the Proposals Submitted on Universal Service Reform by the State Members of the Federal State Joint Board on Universal Service

WHEREAS, Congress, in enacting the Telecommunications Act of 1996 (the Act), specifically created and tasked the Federal-State Joint Board on Universal Service (the Joint Board), with a key role in recommending the regulatory changes necessary to implement the central universal service provisions of the Act by, *inter alia*, in Section 254, tasking the Joint Board with explicit authority to recommend, “from time to time,” modifications of the definition of supported services, and among other duties, the responsibility to ensure that federal universal service policies are based on a list of articulated principles; *and*

WHEREAS, In early 2009, at section 6001(k) of the American Recovery and Reinvestment Act, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan (NBP or Plan) to ensure every American has “access to broadband capability,” in response to which the FCC created and released the *Connecting America: The National Broadband Plan*, March 16, 2010; *and*

WHEREAS, In building on the NBP, the FCC issued a Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) Regarding the Connect America Fund (CAF) – A National Broadband Plan for our Future (the CAF NPRM), through which the FCC sought comment on the use of a model to determine universal service support levels, on the best way to accelerate targeting of funding toward unserved areas, and on specific reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms; *and*

WHEREAS, The FCC issued a NPRM (the Mobility Fund NPRM) on October 14, 2010, concerning the development of a Mobility Fund, and sought comment on using Universal Service Fund (USF) “reserves” to improve mobile voice coverage and wireless broadband access to the Internet in un- and underserved areas, and to do so by supporting private investment through a reverse auction process; *and*

WHEREAS, The FCC adopted on February 8, 2011 (the 15th Anniversary of the Act), and released February 9, 2011, an NPRM with proposed reforms of both the Federal Universal Service Fund and Intercarrier Compensation (the USF/ICC NPRM), through which the FCC sought comment on the overhaul of intercarrier compensation schemes, the transition of the USF in a manner to “accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile networks” to the CAF, on reducing fraud and waste in the USF, and the use of market-driven policies to maximize use of scarce resources; *and*

WHEREAS, The Joint Board’s *2007 Recommended Decision* laid the groundwork for much of what is contained in the USF/ICC NPRM, as well as in the NBP, including and certainly not limited to adding “mobility” to the list of supported services; *and*

WHEREAS, On February 10, 2011, President Obama announced his plan to “Win the Future Through Wireless Innovation and Infrastructure Initiative” (the WIN Initiative, subsequently

found in OMB Budget for Fiscal Year 2012, pp. 39-40), to double the spectrum available for mobile broadband, to provide access to 4-G mobile broadband to 98% of Americans, to develop a Wireless Innovation Fund with specified purposes, and to develop and deploy a nationwide, interoperable wireless network for public safety; *and*

WHEREAS, At the invitation of the FCC, the State Members of the Federal State Joint Board on Universal Service – which constitute a majority of the Joint Board - expended significant resources developing a comprehensive USF/ICC reform proposal (State Members’ Comments) filed with the FCC; *and*

WHEREAS, The State Members, upon establishing that federal preemption proposals are unlawful and undesirable, propose three new mechanisms to support broadband and mobility through a Provider of Last Resort (POLR) Fund, a Mobility Fund, and a Wireline Broadband Fund, recommend changes to reduce fraud and waste through specific proposals for the POLR Fund, recommend expansion of the contribution base of the federal USF by those using the national Public Communications Network, present compelling evidence that a nationally uniform ICC rate will be detrimental and recommend that Voice over the Internet Protocol (VoIP) services be classified and/or treated as telecommunications services for ICC purposes; *and*

WHEREAS, A House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet authored “Federal Communications Commission Process Reform Act of 2011” discussion draft, released in June 2011, memorializes the frequent criticism by academic legal experts of the FCC’s heavy reliance on ex parte submissions by proposing “the Commission may not rely, in any order, decision, report, or action, on . . . an ex parte communication or any filing with the Commission, unless the public has been afforded adequate notice of and opportunity to respond to such communication or filing;” *and*

WHEREAS, A group of carriers is expected to file an industry supported “settlement” in the USF/ICC NPRM proceeding purporting to provide a reasonable solution to the FCC-identified issues; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Summer Committee Meetings in Los Angeles, California, recognizing the critical role specifically assigned to States by Congress in the Act, including in part through the mechanism of the Joint Board, and upon review and consideration of the State Members’ comments and recommendations, commends the State Members and their staff for the thoughtful and thorough evaluation of the USF/ICC NPRM, and specifically endorses the State Members’ plan, subject always to the doctrine of federalism and the privilege of States to take exception to selected provisions thereof; *and be it further*

RESOLVED, That should an industry supported “settlement” proposal be filed in the USF/ICC NPRM and subsequently released by the FCC for public comment, that the FCC is urged to jointly offer the State members’ plan for comment simultaneously and include a request to contrast the two plans; *and, be it further*

RESOLVED, That the FCC should always take advantage of the expertise and insight of State commissioners on key issues, acknowledge and give appropriate weight and deference to the carefully considered and record-based State Members' comments, and refuse to place undue reliance on the *ex parte* process or disregard the formal notice-and-comment procedure to the extent such practice would marginalize either the opportunity for meaningful participation in any reform efforts by the States or effective deliberation on the part of the commissioners therein.

Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors July 20, 2011