

**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

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| <i>In the Matters of</i> |) | |
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| <i>Connect America Fund</i> |) | WC Docket No. 10-90 |
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| <i>A National Broadband Plan for Our Future</i> |) | GN Docket No. 09-51 |
| |) | |
| <i>Establishing Just and Reasonable Rates for Local Exchange Carriers</i> |) | WC Docket No. 07-135 |
| |) | |
| <i>High-Cost Universal Service Support</i> |) | WC Docket No. 05-337 |
| |) | |
| <i>Developing an Unified Intercarrier Compensation Regime</i> |) | CC Docket No. 01-92 |
| |) | |
| <i>Federal-State Joint Board on Universal Service</i> |) | CC Docket No. 96-45 |
| |) | |
| <i>Lifeline and Link-Up</i> |) | WC Docket No. 03-109 |
| |) | |
| <i>Universal Service Reform Mobility Fund</i> |) | WC Docket No. 10-208 |

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these brief reply comments on Carrier of Last Resort (COLR) issues raised by responses to the Federal Communications Commission’s (FCC) or (Commission) November 18, 2011 released “Further Notice of Proposed Rulemaking” (*FNPRM*).¹

¹ See, *Connect America Fund*, WC Dkt 10-90, *A National Broadband Plan for Our Future*, GN Dkt 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Dkt 07-135, *High-Cost Universal Service Support*, WC Dkt 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

DISCUSSION

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,² energy, and water utilities. Congress and the courts³ have consistently recognized NARUC as a proper entity to represent the collective interests of the State public utility commissions. In the Federal Telecommunications Act,⁴ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁵

03-109, Universal Service Reform- Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011 at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.doc).

² NARUC’s member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage LECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

³ See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), rev’d on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

⁴ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁵ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.)

NARUC has generally endorsed, by resolution, the comments filed by the State members of the Federal State Joint Board on Universal Service.⁶ Those comments, on page viii, encourage the FCC to work closely with the States to fund and administer universal service programs. This involves a coordinated approach that “build[s] on State COLR policies” and “avoid[s] preemption.” On page 129 of their comments they are even more specific stating: “State members agree with the past FCC Commissioners who state that compliance with State COLR obligations should be a precondition of ETC designation, and we so recommend, if State law allows.” On page 136, speaking of broadband “provider of last resort” (POLR) duties – State members indicate that States “should continue to have a broad role in defining and administering POLR duties...Given the resource limitations of the FCC, and the manner in which it conducts its business, it is hard to imagine the FCC effectively administering a nationwide POLR system.

Moreover, the Congressional vision of universal service policy clearly reserves a crucial and explicit role for State commissions enshrined in Sections 254, 214,⁷ and 706 of the statute, as well as in the express reservations of state service quality and universal service options in Section 253.

Unfortunately, quite a few of the initial comments responding to the FNPRM appear to ignore both the State member’s recommendation and the specific requirements of the statute. For example, Verizon, at page 4 of its comments, opposes the continuation of the federal voice service obligation. According to

⁶ See, *Comments by State Members of the Federal State Joint Board on Universal Service*, filed in the above captioned proceeding on May 2, 2011 and available online at:

⁷ The Courts have held that the FCC cannot prohibit states from imposing additional requirements on carriers otherwise eligible for ETC designations. See, *Texas Office of Public Utilities Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999), *cert. dismissed sub nom. GTE Serv. Corp. v. FCC*, 531 U.S. 975, 121 S.Ct. 423, 148 L.Ed.2d 327 (2000).

Verizon, the Commission violates Section 214 by perpetuating eligible telecommunications carrier ("ETC") obligations for carriers that do not receive legacy high cost support or CAF support and "forcing an unsupported competitor to provide service at a loss in competition with a CAF recipient would violate both the Takings Clause and Section 254's mandate that universal service policies be 'equitable and nondiscriminatory. Id. at 5. The rationale underlying Verizon's proposal appears to impact all COLR obligations however imposed. AT&T's comments, at 3 & 6 also ask the FCC to "clarify" that ETCs do not have legacy ETC obligations where they do not receive federal high-cost support and asserts that the Commission should "immediately sunset all ETC service obligations for those ETCs providing service in geographic areas that are ineligible for high-cost support." CenturyLink's comments, at 9, recommend that wherever legacy high-cost support is reduced or eliminated, ETC voice service obligations should also be reduced or eliminated. By emphasizing the purported cost and burden of legacy obligations without acknowledging the benefits that have accompanied those burdens – which include substantial revenues, century-long customer relationships, and brand recognition (which also uniquely benefit carriers' broadband and wireless affiliates), these commenters present a somewhat slanted view.

The impact of such FCC action on State COLR obligations is unclear. However, such requests seem inconsistent with the State role in federal ETC designations and the specific requirements of Section 214.

Conclusion

NARUC's respectfully requests the FCC to re-examine and carefully consider the comments filed by the State Members of the Federal State Joint Board before acting on the numerous and broad requests to modify COLR obligations.

Respectfully Submitted,

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