Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Universal Service Contribution Methodology	))	WC Docket No. 06-122
A National Broadband Plan for Our Future	))	GN Docket No. 09-51

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING RELEASED APRIL 30, 2012

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SUMMARY OF COMMENTS

Since 1999, the Nebraska Universal Service Fund ("NUSF") has been of great importance to many rural Nebraska consumers. NRIC member companies rely heavily on the NUSF to restrain end user rates in high-cost areas and to create incentives for future investment, including broadband investment. In order for the Nebraska Public Service Commission to have continued ability to make assessments to support the NUSF, it must have an adequate base from which to raise those funds. The Commission can protect this assessment base in several ways.

First, the Commission should explicitly recognize the importance of the federal-state partnership to close the broadband availability gap. Today, more than ever before, state and federal high-cost programs are logically, financially, and administratively intertwined. The need to provide broadband only increases the need for and the fiscal demands imposed on state universal service funds ("USFs"). In the future, states will need to collect support for state USFs from broadband facilities and services for the same reasons that the 1996 Congress allowed states to collect USF support from voice services.

The Commission should define as an additional goal of contributions reform that the federal contribution mechanism should be compatible with and promote state USF contribution and support mechanisms.

In the current context, this goal would require the Commission to avoid jeopardizing state USFs or creating new legal issues regarding the ability of states to continue to operate existing USFs. Further, as the Commission ultimately makes changes regarding contributions for its own universal service programs, it should permit each state the right to make parallel changes to the base for its state USF as long as such changes do not burden federal programs or goals. States

should also have the discretion to refrain from changing their existing state USF contribution mechanisms.

Three statutory provisions in the Act are potentially problematic for state USFs. The Commission should properly interpret these three statutory provisions to protect state USFs. Foremost is the issue of state authority to require contributions from broadband facilities or services. If the Commission itself decides to impose surcharges on broadband connections or services using its "permissive authority" under subsection 254(d):

- It should also construe subsection 254(f) by declaring that a state may adopt regulations prescribing "additional definitions and standards" that impose surcharges on broadband connections or services to support state USFs on the same basis that the Commission ultimately imposes surcharges for federal programs on those connections or services.
- If the Commission also decides to "jurisdictionalize" a broadband contributions base (connections or service revenues) by dividing that base into interstate and intrastate components, the Commission should not claim an unduly large share of the assessment base for federal surcharges. NRIC recommends preserving a substantial share of the broadband base for state USFs so that state programs can continue their substantial and continuing role in supporting universal service.

Second, the Commission should construe the "equitable and nondiscriminatory basis" requirement in subsection 254(f). To minimize the risk to state USFs, once the Commission has established the new assessment basis for federal contributions, it should declare that state USFs may impose contribution requirements under subsection 254(f) on the same basis as the federal program, without violating the "equitable and nondiscriminatory" requirement.

Third, the Commission should construe the "rely on or burden federal universal service support mechanisms" prohibition in subsection 254(f). To minimize the risk to state programs, once the Commission has established the future assessment basis for federal contributions, it should declare that state USFs may impose contribution requirements under subsection 254(f) on a portion of broadband service complementary to the federal assessment, and that to do so would not violate the "rely on or burden" prohibition.

These statutory constructions would ensure that state USFs can remain viable at a time when many switched services are disappearing and being replaced by packet network protocols, including the Internet, and when retail services are shifting away from services that have a well-separated single jurisdictional basis.

After the Commission has adopted the new contribution basis for federal USF surcharges, it should give states broad discretion in prescribing the contribution basis for state USFs. Specifically:

- If the Commission adopts non-jurisdictionalized revenue-based contributions, it should protect state USFs by:
    - Declaring that a state contribution mechanism imposing a surcharge on all end user telecommunications services (without regard to regulatory ratemaking jurisdiction) and a surcharge only on intrastate end user telecommunications service are both equitable and nondiscriminatory, are not inconsistent with the Commission's rules, and do not rely on or burden Federal universal service support mechanisms.
    - Specifically as to interconnected VoIP services, declare that a state that imposes a contribution requirement based on the total end user revenues of

an interconnected VoIP provider would be acting in a manner that is equitable and nondiscriminatory, is not inconsistent with the Commission's rules, and does not rely on or burden Federal universal service support mechanisms.

- If the Commission adopts either a connection-based contributions system or a numbers-based contribution system, it should protect state USFs by explicitly declaring that any state contribution mechanism may impose a surcharge on 1) all end user telecommunications services without regard to regulatory ratemaking jurisdiction, 2) intrastate-only end user telecommunications service, or 3) connections or numbers (defined in the same way as the federal surcharge) is equitable and nondiscriminatory, is not inconsistent with the Commission's rules, and does not rely on or burden Federal universal service support mechanisms.

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COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("NRIC"),[1] which provide telecommunications and broadband access services to some of the most-rural, sparsely populated parts of America, appreciate the opportunity to submit these Comments in response to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (the "Commission").[2] The number of matters that are presented for comment in the *FNPRM* precludes NRIC from commenting on many issues. However, NRIC reserves the right to file reply comments on any matter raised in the comments on the *FNPRM.*

NRIC will focus these comments on the importance of state universal service funds ("USFs") to the ability of carriers, particularly those serving rural, high-cost areas of the country, to provide broadband to consumers in such areas. NRIC will provide a brief review of the activities of the Nebraska Universal Service Fund ("NUSF") to extend the availability of

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[1] The Companies, each of which is a Local Exchange Carrier ("LEC"), submitting these Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

[2] *See,* Further Notice of Proposed Rulemaking, WC Docket Nos. 06-122, GN Docket No. 09-51, released April 30, 2012 (the "*FNPRM*").

broadband service within Nebraska to underscore the continuing importance of state universal service funds. The remaining comments discuss how the Commission can tailor any revisions to the current revenues-based contribution mechanism to preserve the states' ability to collect assessments for support of state universal service funds.

I. CONTINUATION OF THE NEBRASKA COMMISSION'S ABILITY TO MAKE ASSESSMENTS TO SUPPORT THE NUSF IS CRITICAL TO FUNDING OF BROADBAND-CAPABLE NETWORKS IN NEBRASKA.

In 1999, the Nebraska Commission implemented the NUSF in accordance with the Nebraska Telecommunications Universal Service Fund Act.[3] NRIC has previously provided the Commission with a general description of the NUSF and its importance to the support of universal service in Nebraska.[4]

The importance of the NUSF is illustrated by the following background. As a part of the Commission's discussion of the modernization of federal USF programs and reform of the intercarrier compensation system, the Commission singled out the Nebraska Commission's creation of the NUSF as an example of a method to replace lost revenues due to required reductions in intrastate access charges.[5] The Commission noted that "after a transition period, the Nebraska Universal Service Fund was then directed to target support to high-cost areas."[6] With regard to the support provided by the NUSF to high-cost areas of Nebraska, NRIC has previously stated in comments to the Commission that "RIC members rely heavily on the

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[3] *Neb. Rev. Stat.* §§ 86-301 - 86-315 (Reissue 2008).

[4] *See,* Attachment B to Comments filed by NRIC on July 12, 2010 in response to the Notice of Inquiry and Notice of Proposed Rulemaking released by the Federal Communications Commission, FCC 10-58 (April 21, 2010).

[5] *See, Connect America Fund*, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, para. 589 (rel. Feb. 9, 2011).

[6] *Id.*

Nebraska Universal Service Fund to restrain rates in high-cost areas and to create incentives for future investment, *notably including broadband investment*." (emphasis added)[7]

The importance of the NUSF to the extension of networks to provide broadband to unserved and underserved areas of Nebraska has been brought front and center by the Nebraska Commission's recent orders approving direct funding grants for broadband projects.[8] In reaching its decision to provide grants of NUSF support for broadband projects, the Nebraska Commission stated:

> The Commission finds that making NUSF support available for broadband deployment will complement the Commission's existing goal to support networks that provide voice service as well as advanced services. As the National Broadband Plan (NEBP) recognized, closing the existing broadband availability gap is a state and federal responsibility which will require both state and federal financial support.[9]

The Nebraska Commission recognizes that closing the existing broadband availability gap will require a federal-state partnership. However, in order to implement the state's portion of this partnership, there must exist a viable contribution mechanism that can be applied "on an equitable and nondiscriminatory basis" and "in a manner determined by the State to the preservation and advancement of universal service."[10]

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[7] *See,* Comments of Nebraska Rural Independent Companies in Response to Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Public Notice, WC Docket Nos. 10-90, et al. (rel. Aug. 3, 2011) at 15 (Aug. 18, 2011).

[8] *See, In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund; Applications to the Nebraska Broadband Pilot Program,* Docket NUSF-77, P.O. No. 5, Sub-dockets NUSF-77.01 through 77.07, Orders Granting Funding Requests (June 26, 2012).

[9] *See, id.,* P.O. No. 3, p. 6 (June 14, 2011).

[10] 47 U.S.C. §254(f).

II. THE COMMISSION SHOULD DEFINE THE PROMOTION OF STATE UNIVERSAL SERVICE CONTRIBUTION AND SUPPORT MECHANISMS AS AN ADDITIONAL GOAL OF CONTRIBUTIONS REFORM.

In this section, NRIC advocates that a partnership is essential between state and federal universal service programs, and that the Commission should recognize the importance of this partnership by declaring that the promotion of state universal service contribution and support mechanisms is an additional goal of contributions reform.

A. State and Federal Programs Operate in Partnership

The Telecommunications Act of 1996 contemplated a universal service partnership between the Commission and the states. Subsection 254(d) of the Act authorizes the Commission to collect funds for federal USF programs. Similarly, subsection (f) authorizes states to collect funds for state USF programs.[11] Subsection (f) also prescribes that state program contributions may be required "in a manner determined by the State," language that normally grants wide discretion with regard to implementation of state programs.

The Commission's decisions in this proceeding are likely to affect the great majority of states. About 20 states have adopted universal service funds for high-cost purposes. In many states these high-cost funds fulfill an essential role in supporting universal service in high-cost and rural areas. State universal service funds are also used for other program purposes. Including state funds established for other purposes including intrastate access reform, broadband, Lifeline and Linkup, schools, hospitals and libraries, telecom access equipment, and

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[11] States need not rely exclusively on this authority in order to establish state programs. Several states had universal service programs before 1996, enacted under separate state authority.

Telecommunications Relay Service, more than 40 states collect universal service surcharges to support state funds.[12]

The intended partnership of state and federal programs is apparent in the structure of the statute. The most obvious manifestation of this Congressional intent is the parallel language used within subsections 254(d) and 254(f). Both authorize contributions from only a subset of all telecommunications carriers and both require contributions to be "equitable and nondiscriminatory." Although states are not required to have high-cost programs, any state program, like the federal program, must be "specific, predictable, and sufficient." The courts have also held that the Act "plainly contemplates" a state-federal partnership to support universal service.[13]

The Commission has itself repeatedly recognized the importance of ensuring that state and federal programs work together synergistically. Last November, the Commission's major restructuring order on universal service reform and intercarrier compensation was expressly constructed on a framework of existing state and federal USF programs that the Commission recognized "have supported networks in rural America for many years."[14]

Today, more than ever before, state and federal high-cost programs are logically, financially, and administratively intertwined. State and federal high-cost programs and policies

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[12] Somewhat dated information indicates that 21 states have high-cost funds. FCC, *Connecting America: the National Broadband Plan,* at 140 (released March, 2010). More recent survey work by NRRI suggests that a much larger number of states, about 40, raise funds for one or more universal service purposes (forthcoming report).

[13] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001), *accord, Qwest Communications Int'l Inc. v. FCC,* 398 F.3d 1222, 1232 (10th Cir. 2005).

[14] *Connect America Fund,* WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161,¶ 5 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

are mutually reinforcing in many ways.[15] Interdependence of such programs will only increase with the large fiscal demands of universal broadband build-out. The Commission has established budgets for high-cost programs, but at levels that are not sufficient to preserve and advance universal service. The Commission's own publications have reported an "investment gap" of approximately $23.5 billion with regard to the capital requirements for building ubiquitous broadband networks in the United States,[16] an estimate that NRIC believes understates the true cost.[17] This cost far exceeds the capacity of the current federal high-cost program budget.[18] This fiscal mismatch is exacerbated by the Commission's plan to use major portions of federal support to address new financial demands, such as replacing some revenues lost to new intercarrier compensation changes.

The need to expand networks to provide broadband only increases the need for, and the fiscal demands imposed on, state universal service funds. In the future, states will need to collect universal service funds from broadband facilities and services for the same reasons that the 1996

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[15] For example, both federal programs derive universal service benefits from state-imposed carrier-of-last-resort obligations. *Id.* at ¶ 75 (The Commission "will continue to work in partnership with the states on the future of [COLR-like] requirements as we consider the future of the PSTN"). Also, state universal service funds act as subsidies to replace lost intercarrier revenues. *Id.* ¶ 737 ("to the extent additional subsidies are necessary [to replace lost intercarrier revenues], such subsidies will come from the Connect America Fund, and/or state universal service funds"). Even the quantities defined to calculate the new federal mechanisms are measured in part by state USF surcharges. *Id.* at ¶ 238 (definition of urban rate floor depends in part on state universal service fees). 47 C.F.R. § 54.318(e).

[16] FCC, *The Broadband Availability Gap,* OBI Technical Paper No. 1, April, 2010, at 5.

[17] For example, the Commission assumed the widely available presence of platforms on which to place wireless transmitters and the large data-handling capacity of those wireless transmitters operating within limited spectrum allocations.

[18] The Commission recently adopted reforms that will limit growth of federal universal service funds over time. *See, e.g., USF/ICC Transformation Order* ¶ 123 (establishing a defined budget for the high-cost component of the universal service fund); *Lifeline and Link Up Reform and Modernization Order* at 170, para. 357 ("as the reforms adopted in this Order take effect, they will substantially constrain program growth").

Congress allowed states to collect universal service funds from voice services. Then and now, state commissions' abilities to continue state universal service programs are essential to achieve universal service goals and to develop a ubiquitous national communications network. Then and now, federal support is unlikely to prove sufficient by itself. Since federal USF support alone cannot deliver ubiquitous broadband, the Commission should intentionally reserve to the states a sufficiently broad contributions base to sustain state universal service funds.

In sum, state universal service programs will continue to play a key role in reaching the nation's universal service goals. As the Commission changes the basis for its own universal service programs, it should take great care to protect and strengthen the state-federal partnership. One important component of that partnership is a fair allocation of the contributions assessment base.

B. The Commission Should Define as an Additional Goal that the Federal Contribution Mechanism Must be Compatible with and Promote State Universal Service Contribution and Support Mechanisms.

The *FNPRM* proposes various goals for reforming universal service contributions: efficiency, fairness, and sustainability. The *FNPRM* seeks comment on these goals for contribution methodology reform and asks whether the Commission should be guided by any additional goals.[19] NRIC respectfully submits that the Commission should establish the following additional goal: *The federal contribution mechanism should be compatible with and promote state universal service contribution and support mechanisms.*

The Commission should do nothing to jeopardize state funds or to create new legal issues regarding the ability of states to continue to operate existing funds. As the Commission ultimately makes changes regarding contributions for its own programs, it should permit each

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[19] *FNPRM* ¶¶ 27, 127.

state the right to make parallel changes to the base for its universal service program as long as such changes do not burden federal programs or goals. States should also have the discretion to decide that they will make no changes to their existing state USF contribution mechanisms. Further, as discussed in Section II below, the Commission should expressly address the right of states to shift their own assessment base to one comparable with whatever the Commission selects as the federal USF contributions methodology and base.

III. THE COMMISSION SHOULD PROPERLY INTERPRET THREE STATUTORY PROVISIONS TO PROTECT STATE FUNDS.

While subsection 254(f) grants states broad authority to raise funds to support universal service, it also creates limitations. Each of these limitations contains legal pitfalls for state universal service programs, risks that will only increase after the Commission revises its own contribution requirements. This section discusses those limitations and recommends that the Commission issue a clarifying construction of each that supports state universal service programs by reducing legal risk.

A. Contributions from Broadband

The *FNPRM* indicates that the Commission's positions regarding contribution mechanisms have been informed by its desire to fund the expansion of broadband availability. Yet the Commission's prior rulings that broadband connections are "information services" and are "interstate"[20] create barriers to federal universal surcharges on either broadband service revenues or on broadband connections. These same Commission rulings create additional barriers for state universal service programs.

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[20] *See Nat'l Cable & Telecom Ass'n. v. Brand X Internet Services*, 125 S.Ct. 2688 (2005).

Because the Commission has previously classified broadband service as an "information service" rather than a "telecommunications service," it cannot now collect contributions from broadband providers under the traditional rubric, a surcharge on interstate end user telecommunications service. Yet the Commission has another tool readily available. Based upon its "permissive authority" under subsection 254(d), the Commission can require contributions from "any other provider of interstate telecommunications" if the public interest so requires.[21] Having already classified broadband as "telecommunications" but not as a "telecommunications service," the Commission can now use that permissive authority to impose universal service surcharges on broadband revenues or connections. But this is only part of the solution because subsection 254(f) does not include any parallel "permissive authority" for state programs.

1. Additional Definitions and Standards

Instead, subsection 254(f) authorizes something quite different for the states. The states may "adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State." This unique language is quite broad. It can and should provide a basis for a well-coordinated state and federal contribution system that does not impose undue burdens on service providers, even if the Commission itself shifts its contribution basis to include intrastate revenues, to connections, or to numbers.

If the Commission does decide to use its permissive authority to impose federal surcharges on broadband facilities or services, the Commission should also construe subsection 254(f) so that states may impose similar state surcharges, on the same basis, to support state universal service programs. Specifically, the Commission should declare that a state may adopt

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[21] *FNPRM* ¶ 31.

regulations prescribing additional definitions and standards that impose surcharges on broadband connections or services on the same basis that the Commission ultimately imposes surcharges on those connections or services.[22]

2. Jurisdictionalizing the Contribution Base

Current practice is to "jurisdictionally" divide the base of all end user telecommunications service revenues before any assessment is applied. As a result, the Commission assesses carriers based only on their interstate and international revenues. The *FNPRM* seeks comment on modifying or eliminating this requirement.[23] The Commission notes that while this traditional practice may have made sense when the Commission initially implemented the Act, the marketplace has changed dramatically since 1996 and will evolve with the continued deployment of IP-based networks.[24] As the *FNPRM* notes, the Joint Board and others have argued against continuing the current approach.[25]

On the other hand, the *FNPRM* poses a wide range of questions that assume the Commission will continue to require a pre-assessment jurisdictional split. For instance, the Commission asks whether it should adopt a standard allocator for all voice revenues, regardless of technology (fixed or mobile, traditional telephony or interconnected VoIP). Under such an approach, the Commission might specify that voice revenues should be allocated according to a specified ratio, such as, for example, 20 percent interstate and 80 percent intrastate.[26]

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[22] Of course, under the clear terms of the statute, no state may require a contribution from a carrier that is not providing intrastate telecommunications services in that state.

[23] *FNPRM* ¶ 127.

[24] *Id.*

[25] *Id.* ¶ 130.

[26] *Id.* ¶ 132.

If the Commission decides that it continues to be necessary to split broadband revenues according to regulatory jurisdiction, NRIC cautions that the Commission should not claim an unduly large share of the assessment base for federal surcharges. Where a universal service resource is jurisdictionalized, that means a portion of the base becomes unavailable to each jurisdiction.

As the *FNPRM* notes, the Commission is considering an allocator lower than 100 percent interstate for contribution purposes, in order to preserve an assessable revenue base for state universal service funds.[27] For example, if the Commission were to determine that 90% of broadband revenue is "interstate" and subject to federal universal service surcharge, then the corollary would be that states could assess only ten cents of every dollar of broadband revenue. While the Commission might be tempted to claim a large interstate percentage in order to lower the federal rate, any such decision would cause great harm to state programs. NRIC recommends preserving a substantial share of the broadband base for the state funds because, for the reasons stated above, state programs have a substantial and continuing role in supporting provision of universal service.

B. Equitable and Nondiscriminatory Contributions

The second sentence of subsection 254(f) requires that state contributions be collected "on an equitable and nondiscriminatory basis."[28] This clause has previously been used to invalidate a state's effort to require contributions from intrastate carriers based on both interstate

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[27] *Id.* ¶ 133.

[28] This same requirement applies under subsection 254(d) to collections for the federal program.

and intrastate revenue.[29] The equitable and nondiscriminatory clause therefore creates limitations for state funds, especially when set in a new factual context involving a new federal universal service assessment structure. Based on this precedent, a future petitioner could postulate a hypothetical carrier that pays a lower contribution because it does not participate in the intrastate service market, and then have a court declare the resulting different contribution amounts to be inequitable and discriminatory. Such a result could be calamitous for a state's universal service program, either by preventing the state from continuing to collect the revenues it now collects, or by preventing a state from making modifications to its own contribution rules that would better align state and federal programs and simplify administration of the state fund.

To minimize this risk, once the Commission has established the future assessment basis for federal contributions, it should declare that state universal service programs may impose contribution requirements under subsection 254(f) on the same basis as the federal program's contribution requirements, and that to do so would not violate the equitable and nondiscriminatory language of the Act.

C. Reliance and Burden on Federal Support Mechanisms

The final sentence in subsection 254(f) is complex. It authorizes "regulations to provide for additional definitions and standards to preserve and advance universal service within that State." The sentence then goes on to provide that no such state regulation may "rely on or burden Federal universal service support mechanisms." This clause has previously been used to

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[29] *AT&T v. Public Utility Comm'n of Texas*, 373 F.3d 641 (5th Cir. 2004) (invalidating Texas universal service surcharge based on intrastate and interstate revenues of carriers providing intrastate services in Texas).

invalidate a state's efforts to require contributions from intrastate carriers based on both interstate and intrastate revenue.[30]

The "rely on or burden" clause therefore creates limitations for state funds, and could especially do so when set in a new factual context involving a new federal universal service assessment structure. Based on this precedent, a future petitioner may seek to invalidate any duplication or overlap in the assessment bases for state and federal programs. The practical effect of avoiding any reliance on the federal assessment base would likely produce a state assessment base that is fiscally insufficient for state purposes.

To minimize this risk, once the Commission has established the future assessment basis for federal contributions, the Commission should declare that state universal service programs may impose contribution requirements under subsection 254(f) on a portion of broadband service complementary to the federal assessment, and that to do so would not violate the "rely on or burden" clause of the Act.

IV. AFTER THE COMMISSION HAS ADOPTED A NEW CONTRIBUTION BASIS FOR FEDERAL CHARGES, IT SHOULD GIVE STATES BROAD DISCRETION IN PRESCRIBING THE CONTRIBUTION BASIS FOR STATE UNIVERSAL SERVICE.

This section applies the analysis and arguments in Sections II and III above to specific questions asked in the *FNPRM*. It also recommends clarifying state fund authority over VoIP service.

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[30] *AT&T Commun. Inc. v. Eachus*, 174 F.Supp. 1119 (D. Oregon, 2001) ("relies on" and "burdens" language in subsection 254(f) prohibits states from using the same contribution base for state universal service programs that the Commission uses for federal universal service programs). *Contra, Office of Regulatory Staff v. Public Service Comm'n.*, 647 SE.2d 223, 231 (S.C. 2007) (state's surcharge on interstate service burdened interstate carriers but did not burden federal mechanisms).

A. If the Commission Adopts Non-Jurisdictionalized Revenue-Based Contributions, It Should Protect State Funds.

The *FNPRM* asks whether assessing all revenues from services that operate interstate, intrastate, and internationally without allocation for intrastate operations would advance the Commission's proposed goals for reform. It also asks how states would be affected by such a change.[31]

1. Common State Assessment Base

NRIC respectfully submits that if the Commission shifts the federal contribution mechanism to a non-jurisdictionalized basis, it should make parallel declarations giving states broad authority to follow the same path, if they so desire. The Commission should prospectively validate such decisions. Specifically, the Commission should declare that a state contribution mechanism imposing a surcharge on all end user telecommunications services, without regard to regulatory ratemaking jurisdiction, and a surcharge only on intrastate end user telecommunications service, are both equitable and nondiscriminatory, are not inconsistent with the Commission's rules, and do not rely on or burden Federal universal service support mechanisms.

2. The Commission Should Clarify State Authority to Require Contributions from Interconnected VoIP Providers.

In 2010 the Commission issued a declaratory ruling in response to a petition filed by the Kansas and Nebraska commissions allowing the states to extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over

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[31] *FNPRM* ¶ 131.

Internet Protocol (VoIP) service providers.[32] The Commission held that "the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them." The order permitted assessment on a divided jurisdictional basis. As a result, states can today assess 35.1% of the end user telecommunications revenues of VoIP providers who use the Commission's "safe harbor" provision.[33]

The *Kansas-Nebraska Declaratory Order* was limited to state universal service contribution requirements on nomadic interconnected VoIP providers where: (1) the state's contribution rules are consistent with the Commission's universal service contribution rules, and (2) the state does not apply its contribution rules to intrastate interconnected VoIP revenues that are attributable to services provided in another state.[34] Further, no state could impose assessments that are duplicative of those imposed by another state.[35]

The *Kansas-Nebraska Declaratory Order* assumed (but did not decide) that state commissions could impose contribution requirements only on the intrastate revenues of VoIP carriers. Therefore the order contained coordinating requirements, such as that:

> [A] state imposing universal service contribution obligations on interconnected VoIP providers must allow those providers to treat as intrastate for state universal service purposes the same revenues that they treat as intrastate under the Commission's universal service contribution rules.[36]

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[32] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185 (released Nov. 5, 2010) (the "*Kansas-Nebraska Declaratory Order*"). The federal safe harbor is 64.9%.

[33] *See FNPRM* ¶ 141.

[34] *Kansas-Nebraska Declaratory Order* ¶ 11.

[35] *Id.* ¶ 21.

[36] *Id.* ¶ 17.

If the Commission shifts the basis for federal contributions to include intrastate revenue, it should also clarify the foregoing aspect of the *Kansas-Nebraska Declaratory Order*. Specifically, the Commission should declare that a state that similarly imposes a contribution requirement based on the total end user revenues[37] of an interconnected VoIP provider would be acting in a manner that is equitable and nondiscriminatory, is not inconsistent with the Commission's rules, and does not rely on or burden Federal universal service support mechanisms.[38]

B. If the Commission Adopts Connection-Based Contributions, It Should Protect State Funds.

The *FNPRM* asks whether a connections-based approach would better meet the proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters.[39] The *FNPRM* also asks, if the Commission exercises its "permissive authority" to assess broadband Internet access connections, whether such connections should be "presumed" or "deemed" interstate for purposes of universal service contributions. It also asks whether such a rule would allow states to assess connections (or revenues associated with connections) to support state universal service funds?[40]

NRIC respectfully requests that if the Commission does adopt a connection-based contribution mechanism, it should explicitly declare that a state contribution mechanism imposing a surcharge on 1) all end user telecommunications services without regard to

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[37] If the Commission adopts a value-added approach, replacing the current end user revenues method, it should make a similar declaration.

[38] It would continue to be true that no state USF surcharge could duplicate USF charges imposed by another state on the same revenue, connection or number.

[39] *FNPRM* ¶ 219.

[40] *Id.* ¶ 268.

regulatory ratemaking jurisdiction, 2) only intrastate end user telecommunications service, and 3) connections (defined in the same way as the federal connection surcharge) is equitable and nondiscriminatory, is not inconsistent with the Commission's rules, and does not rely on or burden Federal universal service support mechanisms.

C. If the Commission Adopts Numbers-Based Contributions, It Should Protect State Funds.

The *FNPRM* asks whether numbers-based contributions would increase compliance burdens if states continue to employ a revenues-based assessment for state-based funds.[41] NRIC respectfully submits that, as with a connections-based federal mechanism, the burden would be imposed by the new federal mechanism, not existing state mechanisms with which the carriers are already complying.

If the Commission does adopt a numbers-based contribution mechanism, it should explicitly declare that a state contribution mechanism imposing a surcharge on 1) all end user telecommunications services without regard to regulatory ratemaking jurisdiction, 2) only intrastate end user telecommunications service, and 3) telephone numbers (defined in the same way as the federal connection surcharge) is equitable and nondiscriminatory, is not inconsistent with the Commission's rules and does not rely on or burden Federal universal service support mechanisms.

V. CONCLUSION

For the reasons provided in the foregoing Comments, NRIC respectfully requests that in connection with the Commission's consideration of reform and modernization regarding assessment and recovery of federal USF contributions, that the Commission should recognize the

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[41] *Id.* ¶ 332.

importance of the federal-state partnership to close the broadband availability gap by declaring that promotion of state universal service contribution and support mechanisms is an additional goal of contributions reform.

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Respectfully submitted,

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