

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Universal Service Contribution Methodology

A National Broadband Plan for Our Future

WC Docket No. 06-122

GN Docket No. 09-51

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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The Massachusetts Department of Telecommunications and Cable (MDTC)¹ respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (Commission) on April 30, 2012, in the above-referenced dockets.² Through the FNPRM, the Commission seeks comment on reforming the Universal Service Fund (USF) contributions methodology. Primarily, the Commission broadly asks: who should contribute to the USF; how contributions should be assessed; how the administration of the contribution system can be improved; and whether and how to modify aspects of contributions recovery from consumers by providers.³ To answer definitively such questions now would be premature, however, because the Commission does not yet have adequate data to address them. Instead, the focus at this point in time should be upon improving data collection processes and enabling states to participate in the contributions reform discussion.

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

² *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122 and GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012) (FNPRM).

³ *Id.* at ¶¶ 1, 5.

The Commission’s underlying rationale for reform is that the current contributions system, which was first implemented shortly after passage of the Telecommunications Act of 1996, “has not kept pace” with the evolution of the communications ecosystem, “has become increasingly complex for the Commission and the Universal Service Administrative Company (USAC) to administer and burdensome for contributing ... providers to comply with.”⁴ The MDTC agrees with the Commission’s rationale, but urges the Commission not to rush into the reform process using only insufficient data. Moreover, the Commission should not engage in overly hasty reform at the expense of abandoning its longstanding practice of making the universal service program a joint federal-state partnership.

I. SUMMARY

The MDTC urges the Commission to take a measured and responsible approach to contributions reform to ensure that it avoids any unintended negative consequences resulting from a rushed process. To accomplish this goal, the MDTC makes three recommendations.⁵ First, the Commission needs to substantially reform its data collection framework and mandatory data reporting before it implements comprehensive contributions reform. This revised framework will address existing data limitations and help to avoid issues arising from voluntarily-submitted data. Second, the Commission should not move forward on comprehensive reform without substantive state input and through a referral of the issue to the Federal-State Joint Board on Universal Service (Joint Board). This would better align the process with the well-established federal-state partnership on universal service as well as the process for reform envisioned by Congress. Finally, the MDTC supports certain targeted

⁴ *Id.* at ¶¶ 3-4, 18-21 (citations omitted).

⁵ To the extent that it does not address every question raised in the FNPRM, the MDTC’s silence on any particular issue should not be construed as support of or opposition to that issue.

reforms and endorses the Commission's proposal to prohibit all eligible telecommunications carriers (ETCs) from passing certain contribution assessments onto their Lifeline subscribers. These narrowly-targeted reforms will enable the Commission to revise appropriately the contributions system and help to stabilize the USF better, both key issues to Massachusetts.

II. THE COMMISSION MUST FIRST REFORM ITS DATA COLLECTION FRAMEWORK BEFORE IMPLEMENTING MAJOR CONTRIBUTIONS REFORM.

It would be premature for the Commission to overhaul USF contributions before it reforms its mandatory data reporting requirements, because current data is insufficient to support any type of long-term, comprehensive contributions reform. Instead, the Commission should amend its reporting requirements: (1) to include state level and other more granular data in order to remove ambiguities within the existing contributions reporting framework; and (2) to include connections-based and numbers-based reporting for a finite period, in order to have more uniform, reliable data on which to consider possible changes to the current revenues-based methodology.

Approximately two years ago, the Commission launched a Data Innovation Initiative (Initiative) "to modernize and streamline how it collects, uses, and disseminates data."⁶ Tied to this Initiative, three of the Commission's Bureaus initiated a so-called "zero-baseline" examination of their data practices with the goal of eliminating unnecessary data collection while ensuring that the Commission has needed information "for sound analysis and policy making."⁷

Chairman Genachowski touted the Initiative by stating that "Smart policies depend on quality

⁶ Commission Press Release, "FCC LAUNCHES DATA INNOVATION INITIATIVE *Agency Appoints Data Officers and Releases Public Notices of Review*" (issued Jun. 29, 2010) ("Data Innovation Press Release"); Commission Data Innovation Initiative Webpage, available at: <http://www.fcc.gov/data/data-innovation-initiative> (last viewed Jun. 14, 2012).

⁷ Commission Zero-Based Data Review Webpage, available at: <http://www.fcc.gov/data/data-review> (last viewed Jun. 14, 2012). The Bureaus' inquiries sought comment on their existing data collections and forms. These forms include the FCC Forms 499-A and 499-Q.

data[.]”⁸ It is entirely consistent with the Initiative for the Commission to engage in comprehensive reform of data reporting requirements relevant to assessing how to reform the USF contributions methodology.

A. The Commission’s Contributions Reporting Requirements Should Include State Level and Other More Granular Data to Improve Transparency.

Current contributions reporting contains major gaps and reflects a lack of transparency that needs to be rectified, such as through state level and other more granular data reporting. For instance, the Commission does not require providers to break out interstate revenue or USF contribution totals at the state level.⁹ Instead, the Commission bases those totals on broad Commission staff estimates utilizing a compilation of data sources.¹⁰ The Commission needs to eliminate this ambiguity and lack of transparency by requiring providers to submit state-specific information and more granular explanations on how contributions are allocated between end-users.

The Commission should require that state-by-state reporting include a breakout of total actual contributions paid by carriers in each state, and indicate the total amount that the carrier recovered through universal service line items on customer bills. Currently, the Commission does not require providers to account for how they actually allocate their contribution assessments between their end-users – business versus residential consumers, assessed versus non-assessed services, or state-by-state breakdowns.¹¹ As a result, there appears to be little or no

⁸ Data Innovation Press Release at 1.

⁹ See generally FCC Forms 499-A and 499-Q.

¹⁰ Commission staff bases their state-by-state contributions estimates on staff estimates of interstate revenues utilizing data from FCC Forms 499-A and 477, interstate access tariffs filings, and data from the National Exchange Carrier Association’s (“NECA”) minutes of use data. Technical Appendix: Estimating End-User Telecommunication Revenue by State, *Universal Service Monitoring Report 2011*, CC Docket No. 96-45 (Dec. 2011) (*USF Monitoring Report*) at 1 (indicating that “estimates of end-user interstate revenues are used as a basis for estimating contributions” for the Report’s calculations).

¹¹ See generally FCC Forms 499-A and 499-Q.

available data on how carriers choose to allocate their contributions obligations between different customer classes.¹² This ambiguity is further enhanced by the fact that providers may choose to recover their contribution obligations by incorporating the cost directly into their service rates (whether or not those services are assessable), through a separate federal USF line item on customer bills that may be less than but “may not exceed the interstate telecommunications portion of that customer’s bill times the relevant contributions factor,”¹³ or through a combination of both methods.¹⁴

To ensure that it receives useful data from which to evaluate USF contributions, the Commission should amend its FCC Forms 499-A and 499-Q (Telecommunications Reporting Worksheets)¹⁵ to require state-by-state reporting, similar to the state-by-state requirements reflected in FCC Form 497 (Lifeline and Link Up Worksheet) and FCC Form 477 (Local Telephone Competition and Broadband Reporting). This process will help to bring greater accountability and transparency into the contributions system and would provide additional data for the Commission to better analyze revenues-based contributions going forward. Further, compiled summaries of this data in the *Annual USF Monitoring Report* would reflect more accurate information, helping to better inform state commissions, like the MDTC, of more specific USF funding sources and breakdowns. The Commission, consequently, should revise FCC Form 499 to reflect state-level and end-user contribution allocation data.

¹² See generally *USF Monitoring Report*.

¹³ 47 C.F.R. § 54.712(a). As a corollary point, a carrier may choose to not recover the full amount of its permissible assessment through the line-item.

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) (“*First USF Order*”) at ¶ 853 (allowing carriers “the flexibility to decide how they should recover their contribution” by not mandating an end-user surcharge).

¹⁵ The Commission requires all providers of interstate telecommunications, with very limited exceptions, to file these worksheets, which largely reflect the carriers’ interstate revenues. The Commission and program administrators use these forms to assess any necessary contributions for the federal USF, interstate telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration.

B. The Commissions Should Update Its Reporting Requirements for a Limited Time to Include Numbers-Based and Connections-Based Data.

The Commission should also amend its FCC Forms 499 to include numbers-based and connections-based data, for a finite period to limit the burden on carriers, before considering a major change to the current revenues-based contributions methodology. The Commission acknowledges that it lacks sufficient, up-to-date, and consistent data,¹⁶ and, consequently, requests that interested parties voluntarily-submit data with their comments in order to refresh the record.¹⁷ The Commission also contemplates long-term retention of the current revenues-based system or potential adoption of an entirely new contributions methodology before adopting changes to its FCC Form 499 data reporting requirements.¹⁸ Such an approach seems inefficient and unnecessary, when the Commission could instead simply expand its current FCC Form 499 reporting requirements for a defined time period in order to encompass numbers-based and connections-based reporting.

Specifically, the Commission could incorporate (or expand upon) elements of data currently reported through its FCC Form 502 (North American Numbering Plan Numbering

¹⁶ For instance, as the Commission discusses, it has received comment and data on contributions reform via the rulemaking process numerous times over the past decade, and much of the data and positions previously submitted are now obsolete and outdated due to changes in the communications marketplace and to other recent Commission reforms. *See, e.g.*, FNPRM at ¶¶ 96, 126, 222, 246, 284, and 288.

¹⁷ *Id.* at ¶¶ 30, 48, 52, 54, 56, 61-62, 67, 69, 84, 86, 96-97, 105, 131, 134, 136, 139, 157, 167, 189, 202, 222, 245, 248, 274, 275, 277, 288, 301-303, 305-306, 310, 314-315, 318-321, 326, 335-336, 343, 346-347, and 407. The Commission generally requests, for instance, that interested parties submit supporting data for their arguments, particular data that would help the Commission evaluate how its proposals would impact the contributions base, or data on the potential impact that certain reforms would have on the parties themselves.

¹⁸ In particular, the Commission seeks comment on “the value of requiring dual reporting during all or some of the transition time [to the new methodology] – where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system.” *Id.* at ¶¶ 283, 341. It acknowledges that changes to a new contributions methodology “may affect other programs that currently report on the FCC Form 499, including Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration.” *Id.* at ¶¶ 270, 338

Resource Utilization/Forecast Report)¹⁹ and FCC Form 477 into its Form 499 requirements. By imposing mandatory, relatively uniform data-reporting requirements on potential contributors through the Form 499, the Commission will gain broader and more reliable data on which to base further reforms. Absent the imposition of such requirements the Commission will be left to rely upon data provided voluntarily, which it previously acknowledged can be unreliable and incomplete.²⁰

The Commission need not implement these proposed, new reporting requirements indefinitely. A finite reporting period of up to two to three years would permit the capture of a significant amount of more uniform data and would also help to ensure that the Commission does not unduly burden filers while it considers a final contributions methodology. To the extent that the Commission determines that it needs to refine the data gathered, then the Commission (or the Wireline Competition Bureau) could amend the FCC Form 499 after the first year in order to address any shortcomings. This is consistent with the Commission's proposal in the

¹⁹ This form requires reporting carriers to include company and contact information, as well as certain number utilization and forecast data.

²⁰ See, e.g., *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Notice of Proposed Rulemaking, FCC 11-74 (rel. May 13, 2011) at ¶ 57 (noting that previous participation in voluntary network-outage reporting was "spotty," the "quality of information obtained was very poor," and there was "no persuasive evidence in the record that ... all covered communications providers would voluntarily file accurate and complete outage reports for the foreseeable future or that mandatory reporting is not essential to the development, refinement, and validation of best practices"); *In the Matter of Local Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, FCC 04-266 (rel. Nov. 12, 2004) (*2000 Data Reporting Order*) at ¶ 12 (indicating that "[t]he record in this proceeding supports our view that the information collection program adopted here will directly and materially advance our ability to develop, evaluate, and revise broad policies and specific regulations affecting the development of local telephone competition and the deployment of broadband services" and concluding that "the data collected in this proceeding will serve as a valuable benchmark for comparison with data filed by commenters -- often with vested interest in particular outcomes -- in discrete proceedings. We believe that the data collected here [through mandatory data reporting on the Form 477] will improve and better inform our analysis in a variety of proceedings").

FNPRM to authorize the Wireline Bureau to update the FCC Forms 499-A and 499-Q and their accompanying instructions as needed.²¹

C. A Rushed Process Without Adequate Data May Further Unfairly Burden Massachusetts Consumers.

The MDTC's primary concern with any comprehensive federal contributions reform, however, is that it will be conducted without sufficient, concrete data, and through a rushed process that unfairly benefits or burdens a subset of particular providers, services, or states.²²

The MDTC is also particularly concerned with any unintended consequence that would expand the contributions burden on consumers and carriers in states like Massachusetts.²³ The MDTC believes that Massachusetts is particularly susceptible to such an outcome due to its existing inequitable contributions burden,²⁴ to the state's unique characteristics,²⁵ and to the

²¹ FNPRM at ¶ 346. The proposed rule states that:

The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.

Id. and at Appendix A, proposed § 54.711(d).

²² Like state commissions and industry, each of the Commissioners and the Chairman appropriately advocate for overhauling the contributions system. However, Commissioner McDowell urges that a Commission decision for this proceeding be issued "no later than this fall." Statement of Commissioner Robert M. McDowell, FNPRM at 181. Similarly, Commissioner Pai urges that the Commission "take swift action to reform the outdated universal service contribution mechanism once the comment cycle ... closes." Commission Press Release, "Statement of Commissioner Ajit Pai on the Proposed Third Quarter 2012 Universal Service Contribution Factor" (re. Jun. 11, 2012). The MDTC believes that that it would be premature and inadvisable for the Commission to push through a comprehensive reform order by the end of the year but also believes that the Commission may have sufficient information by that time to address certain, discrete contributions issues to assist with ongoing sustainability of the USF. *See, e.g.*, New England Conference of Public Utilities Commissioners Ex Parte Comments, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122 *et al.* (filed Oct. 17, 2008), at 11-13 (arguing against a "rushed decision" because "interested parties such as state commissions and consumer groups will not have had a meaningful opportunity to review, analyze, and comment on the multitude of competing proposals that may affect them and the consumers they represent [[and] because the consequences could be highly detrimental to the industry and the public interest. Sudden sweeping reform without proper study and comment could unfairly advantage a certain class of carriers and be detrimental to a competitive marketplace").

²³ *See e.g.*, MDTC Comments, WC Docket No. 10-90 *et al.* (filed Aug. 24, 2011) at 11, 16-19.

²⁴ Massachusetts is a net-payor state for which the contributions burden has disproportionately affected its consumers for over a decade. *Id.* at 16-20.

Commission's apparent failure to contemplate amended data-reporting requirements prior to consideration of substantial changes to contributions.²⁶

The MDTC certainly recognizes that the USF contributions framework is in need of substantial reform, and it agrees that the contribution base needs to be expanded, because the current system disproportionately and unfairly burdens a subset of consumers.²⁷ But, the MDTC urges the Commission not to let the desire for needed reform outpace the need for a thoughtful process utilizing comprehensive data.

²⁵ Relative to other states, Massachusetts ranks high in terms of population density, median household income, and quality and volume of educational institutions, and it is a leader in terms of sciences, technologies, and research and development. *See, e.g.*, Report by the Information Technology & Innovation Foundation and the Kauffman Foundation, "The 2010 State New Economy Index – Benchmarking Economic Transformation in the States" (Nov. 2010) (ITIF Report), available at: http://www.kauffman.org/uploadedfiles/snei_2010_report.pdf (last viewed Jun. 12, 2012), at 12 (showing that Massachusetts "[b]oast[s] a concentration of software, hardware, and biotech firms supported by world-class universities ... in the Route 128 region around Boston"); *Resident Population Data – 2010 Census*, United States Census Bureau, available at: <http://2010.census.gov/2010census/data/apportionment-dens-text.php> (last viewed Jun. 25, 2012). With these factors in mind, Massachusetts, through data estimates, has one of the highest household broadband adoption rates in the country and a higher level of broadband and advanced services access than other states. However, most of the broadband concentration exists in the eastern part of the Commonwealth. *See* National Telecommunications & Information Administration, *National Broadband Map*, available at: <http://www.broadbandmap.gov/technology> (last viewed Jun. 25, 2012); Massachusetts Broadband Institute, *Wireline Broadband Availability in Massachusetts (Services As of December 31, 2011)*, available at: http://www.massbroadband.org/maps/Wireline_Techs_Available_Statewide_20120423.pdf (last viewed Jun. 25, 2012). These latter services and, consequently, those service providers, are not generally subject to the current contributions requirement.

²⁶ Discussion *supra* at 6-8.

²⁷ Specifically, voice services and a subset of data services have subsidized the deployment of and access to broadband and other advanced services through high-cost support for nearly a decade, and this uneven burden will grow due to the Commission's recent reforms refocusing much of USF funding to broadband access. *See In the Matter of Connect America Fund*, WC Docket No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) at ¶ 52 (pointing out that certain smaller carriers in rural areas had been able "to largely finance [telephone] network upgrades to provide high speed Internet access and, increasingly, video services, in many communities" through the Commission's "no barriers to advanced services policy") (citation omitted); *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (re. Nov. 18, 2011). Since 3rd Quarter 2002, the carrier contribution assessment has increased from 5.54% of carriers' assessable interstate revenues to as much as 17.4% for 2nd Quarter 2012. Compare Public Notice, *Proposed Third Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 00-1272 (Jun. 9, 2000) with Public Notice, *Proposed Second Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 12-396 (Mar. 13, 2012). *See also* FCC Webpage, "Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support," available at: <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support> (last viewed Jun. 22, 2012).

Many of the Commission’s considerations, if implemented hastily and without sound data and consideration, have the potential for expanding the undue contributions burden on states with characteristics like Massachusetts. For instance, utilizing its permissive authority under Section 254(d),²⁸ the Commission proposes to expand the contribution base using either the current service-specific approach or a broader definitional approach in order to encompass a broader range of unclassified services and information services with a “telecommunications” component.²⁹ The Commission also considers whether to retain the current revenues-based contributions methodology, with amendment, or to move to one that may be numbers-based, connections-based, or one that may reflect a hybrid approach.³⁰ If the Commission hastily expands the contributions base or substantially revises the existing contributions methodology without sufficient and robust data, then states like Massachusetts, which have higher population densities, higher broadband adoption rates, and are very technology- and research-driven, may experience the consequence of shouldering an even greater contributions burden than currently exists between the states.³¹ The Commission should ensure that any reforms meet the stated goal of “ensuring fairness and competitive neutrality in the contribution system.”³²

²⁸ Section 254(d) of the Act requires “[e]very telecommunications carrier that provides interstate telecommunications” to contribute to the USF, and grants permissive authority to the Commission to expand the requirement to “[a]ny other provider of interstate telecommunications.” 47 U.S.C. § 254(d). Section 254(d) also permits the Commission to allow exemptions to the mandatory contributions requirement.

²⁹ FNPRM at ¶ 29. Examples of these types of services include broadband Internet access, text messaging, one-way VoIP, and more modern “enterprise” communications services which are not generally subject to contributions (or may be under dispute), and interconnected voice over Internet Protocol (“VoIP”) services, which are. *Id.* at ¶¶ 36-73.

³⁰ *Id.* at ¶ 95.

³¹ *See generally* ITIF Report and *supra* at n.25.

³² FNPRM at ¶ 24.

The MDTC encourages the Commission to move forward with a collaborative rulemaking approach³³ consistent with the process described above. The Commission should initiate comprehensive data reform, accessible to state commissions, in order to better substantiate any future comprehensive reforms, including estimating the financial impact of its proposals. If sufficient data exists to address any discrete contributions issues, then the Commission may take final action on those issues at the same time. Utilizing all of the gathered data and analyses, the Commission should then draft a final, comprehensive reform proposal that strives to benefit consumers and not unfairly favor one segment of the industry.

III. THE COMMISSION SHOULD WORK CLOSELY WITH THE STATES TO REFORM CONTRIBUTIONS.

The Commission should not move forward on comprehensive contributions reform without substantive state input. States are best-positioned to analyze the potential effects of reform on the competitive marketplace and on consumers within their states. In addition, the Commission should refer the matter of comprehensive contributions reform to the Joint Board, since any comprehensive contributions reform has ramifications not only on the federal universal service scheme but also on state universal service mechanisms.³⁴ Such a tactic would conform

³³ MDTC Comments, WC Docket No. 06-122 *et al.*, at 3 (filed Nov. 26, 2008) (citations omitted).

³⁴ Congress envisioned an ongoing role for the Joint Board in USF reform. *See, e.g.*, Joint Board State Member Comments, WC Docket No. 10-90 *et al.* (filed May 2, 2011) (“State Member Comments”) at 18-19; 47 U.S.C. §§ 254 and 410. In particular, Congress directed the Commission to “complete any proceeding to implement ... recommendations from any Joint Board on universal service within one year after receiving such recommendations” and mandated that “the Joint Board and the Commission ... base policies for the preservation and advancement of universal service” on the principles enumerated in Section 254(b), including “[e]quitable and nondiscriminatory contributions.” 47 U.S.C. §§ 254(a)(2) and 254(b). The Joint Board consists of three Commissioners from the Commission, four State commissioners nominated by NARUC, and one State consumer advocate nominated by NASUCA. 47 U.S.C. §§ 254(a)(1) and 410(c). Over 20 federal and appointed state staff are also named to participate in and assist with Joint Board activities. *See* Universal Service Federal-State Joint Board Listing (May 15, 2012), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-314134A1.pdf (last viewed Jun. 25, 2012). The Joint Board reflects a diversity of federal and state interests and expertise. The Joint Board process typically involves a request for comment and data, en banc hearings, as well as substantial deliberation and analysis of available information between and among Joint Board members and staff. Together, the Joint Board members issue a recommended decision to the Commission. The Commission then seeks comment on the recommendation

with the historic federal-state partnership on universal service that has existed for decades, and it would better align with the intent envisioned by Congress when it passed the 1996 Act.

The Commission should garner state input through both the rulemaking process and through granting states direct access to FCC Form 499 filings. The Commission already grants similar access to carrier-specific FCC Form 477 data, previously acknowledging that state commissions can provide “a valuable and unique view into the state of local competition and broadband deployment in their states.”³⁵ Although current FCC Form 499 reporting may not be state-specific, direct access to the data would provide states with valuable insight into current federal contributions reporting. Without this information, states will not be able to obtain sufficient, reliable data on which to make recommendations involving federal contributions reform.³⁶

If the Commission adopted the MDTC’s recommendation above to amend the FCC Form 499 to reflect state-specific data,³⁷ then the Commission could contemplate limiting each state’s access to its own state-specific data, and it could require carriers to submit this data directly to

and issues a final decision within one year of the recommendation. Massachusetts, through the MDTC, can express its position by participating in Joint Board actions and commenting separately to the Joint Board and to the Commission.

³⁵ *2000 Data Reporting Order* at ¶ 95 (permitting the Common Carrier, now Wireline, Bureau Chief to grant state commissions access to granular, state-specific data); *In the Matter of Local Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, FCC 04-266 (rel. Nov. 12, 2004), at ¶ 26 (deciding to retain the policies and procedures with regard to data-sharing arrangements and pointing out that few commenters opposed retention of this practice).

³⁶ *See, e.g.*, State Member Comments at vi and 93-97 (indicating that the State Members were able to obtain only “very limited data” from carriers and carrier representatives, and that only a small portion of the data received was in the form originally requested). The MDTC believes that access to confidential data filed in the instant rulemaking would be an effort in futility due to the limited timeframe for analysis and because the data may be unreliable and incomplete at best. *Supra* at 8-11.

³⁷ Discussed *supra* at 4-5.

the states at the same time as they submit it to the Commission. This would minimize any lag time that states may experience, as they currently do for FCC Form 477 reporting.³⁸

If the Commission does not work with states to implement comprehensive reform, then it will be acting in contravention of a well-established federal-state partnership on universal service as well as the process for reform envisioned by Congress.³⁹ States have traditionally promoted universal service, and federal universal service policy has typically complemented those efforts (at least until recently).⁴⁰ After passage of the 1996 Act and the Commission adoption of many of the initial Joint Board’s recommendations, the Commission committed itself to continue working closely with the states and the Joint Board going forward.⁴¹ The Commission indicated that:

We fully appreciate and support the continuation of the historical informal partnership between the states and the Commission in preserving and advancing the universal service support mechanisms envisioned by section 254. **Indeed, we believe that section 254 envisions the continuation of this [federal-state] partnership.** [] [A]lthough section 254 anticipates a federal-state universal service partnership, section 254 grants the Commission primary responsibility for defining the parameters of universal service. Indeed, the recognition of this fact presumably led Congress to require Joint Board involvement in that **Congress recognized that it was important for the Commission to consider the states' recommendations because the regulations ultimately adopted inevitably would affect the states' traditional universal service programs.**⁴²

³⁸ The current lag time for state commission receipt of state-specific FCC Form 477 filings stands at 12 months (and growing) from the date that the Commission received the filings.

³⁹ 47 U.S.C. § 254; *First USF Order* at ¶¶ 818, 823.

⁴⁰ Indeed, as the State Members of the Joint Board (“State Members”) have pointed out, “[t]he nation’s universal service policies have been [a] joint enterprise between the States and the federal government. []States are the original authors of carrier-of-last-resort policies for voice services, and they are the source of many other fiscal and regulatory policies that have been and will continue to be important to universal service.” State Member Comments at 13.

⁴¹ See *First USF Order* at ¶ 3 (specifying that “[b]y adopting in large measure the recommendations of the Federal-State Joint Board and referring several issues to the Joint Board for further review, we commit ourselves to working in close partnership with the states to create complimentary federal and state universal service support mechanisms”) (emphasis added).

⁴² *Id.* at ¶¶ 818, 823 (emphasis added). See also 47 U.S.C. § 254(b)(4) (directing the Commission and Joint Board to “base policies for the preservation and advancement of universal service on the following principles” including “[e]quitable and nondiscriminatory contributions”) and § 254(a)(2) (mandating that “the Commission shall complete

Since 1996, the Commission has sought the Joint Board's input numerous times.⁴³ In this rulemaking, however, the Commission has not chosen an approach that is in accordance with the well-established federal-state partnership and Congressional intent by failing to refer the matter to the Joint Board.

The MDTC strongly urges the Commission to work with the state commissions and to refer the matter of comprehensive contributions reform directly to the Joint Board. This will better ensure viable long-term reform, as envisioned by Congress and the Commission.

IV. THE COMMISSION SHOULD EXEMPT ALL LIFELINE CONSUMERS FROM CONTRIBUTIONS.

Although the MDTC does not advocate for immediate, comprehensive reform, the MDTC believes that the Commission can take certain, narrow actions now. In particular, the MDTC endorses the Commission's proposal to expand to all ETCs its rule that prohibits ILEC ETCs from recovering contribution costs from Lifeline subscribers on Lifeline-eligible services.⁴⁴ In 2002, the Commission acted to expand this rule to all ETCs previously, noting that the rule's expansion would help to "promote equitable and nondiscriminatory contributions," "increase subscribership," and "further the universal service goals of the Act by helping to ensure that low-income consumers have access to telecommunications and information services."⁴⁵ But in 2003, the Commission then reversed course, rescinding its action on

any proceeding to implement subsequent recommendations from any Joint Board on universal service [after 1996] within one year after receiving such recommendation").

⁴³ See generally Commission Webpage, *FCC Encyclopedia – Universal Service, Federal-State Joint Board*, available at: <http://www.fcc.gov/encyclopedia/universal-service-federal-state-joint-board> (last viewed Jun. 25, 2012).

⁴⁴ FNPRM at ¶¶ 404-410; 47 C.F.R. §§ 69.131, 69.158 (prohibiting ILECs from passing through USF contributions to Lifeline customers).

⁴⁵ *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, Report & Order & Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) at ¶ 62.

reconsideration.⁴⁶ The Commission has the opportunity now to expand the rule again, and should do so, for all the reasons it stated originally in 2002.

The Lifeline program is designed to provide discounted telecommunications service to low-income individuals who otherwise may not be able to afford such service, consistent with the universal service affordability principle.⁴⁷ It is both counterintuitive and administratively inefficient to permit ETCs to require Lifeline subscribers to pay into the USF on Lifeline-eligible services when those contributions will inevitably be returned to those consumers through discounts on those same services.⁴⁸ Moreover, the Commission's current practice of permitting a select group of ETCs to recover contributions in this way, while prohibiting other ETCs from doing so is at odds with the competitive neutrality principle for universal service.⁴⁹ The Commission should streamline both the contributions process and its effect on Lifeline subscribers by expanding its current rule to prohibit *all* ETCs from recovering contributions on eligible services from Lifeline subscribers.

V. CONCLUSION

For these reasons, the Commission should reform its data collection framework and mandatory data reporting before it implements comprehensive contributions reform. In addition, the Commission should not move forward on comprehensive reform without substantive state input and referral of the matter to the Joint Board. Finally, although the MDTC does not

⁴⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Order & Second Order on Reconsideration, FCC 03-58 (rel. Mar. 14, 2003) at ¶¶ 10-12 (eliminating in its entirety the recently adopted expanded rule, thereby allowing non-ILEC ETCs to continue to recover *all* contributions from Lifeline subscribers rather than the Commission's stated objective of allowing non-ILEC ETCs to recover *only* those costs associated with services not supported by Lifeline).

⁴⁷ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), at ¶ 14; 47 U.S.C. § 254(b)(1).

⁴⁸ Ohio PUC Reply Comments, CC Docket No. 96-45 *et al.*, (filed May 10, 2002) at 7; Alaska Communications Systems Reply Comments, CC Docket No. 96-45 *et al.* (filed May 13, 2002) at 10-11.

⁴⁹ *First USF Order* at ¶¶ 21, 43, 46-52 (adopting the competitive neutrality principle recommended by the Joint Board, pursuant to Section 254(b)(7)).

advocate for immediate, comprehensive reform, the MDTC believes that the Commission can take certain, narrow actions now. In particular, the MDTC endorses the Commission's proposal to prohibit all ETCs from passing certain contribution assessments onto their Lifeline subscribers. These narrowly-targeted reforms will better assist the Commission in appropriately revising the contributions system and help to better stabilize the USF, both key issues to Massachusetts.

Respectfully submitted,

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