

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
_____)	

**REPLY COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments responding to the Federal Communications Commission (FCC or Commission) Further Notice of Proposed Rulemaking (FNPRM) on potential reforms of the federal Universal Service Fund (USF) contribution methodology,¹ and the associated FCC Wireline Competition Bureau Notice of June 7, 2012 (DA 12-905) that established deadlines for the submission of Comments on July 9, 2012, and of Reply Comments on August 6, 2012.

The Pa. PUC appreciates the opportunity to file these Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter brought before the Pa. PUC for adjudication. Moreover, these Pa. PUC Reply Comments could change in response to later events, including permit but disclose Ex Parte submissions to the Commission, the review of other Reply Comments, and other legal or regulatory developments at the state or federal level.

The Pa. PUC generally supports the initial Comments in this proceeding that put forward the proposition that the contemplated reform of the federal USF contribution mechanism should not harm the viability, robustness, and continuous operation of State

¹ *In re Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, GN Docket No. 09-51, (FCC Rel. April 30, 2012), Further Notice of Proposed Rulemaking (FNPRM).

USFs including the Pennsylvania USF (Pa. USF). The Pa. PUC along with other commenting State utility commissions and the National Association of State Utility Consumer Advocates (NASUCA), generally supports continuing the use of a reformed revenue-based contribution mechanism for the federal USF. However, the Pa. PUC also believes that the FCC should take affirmative actions so that the contemplated reforms of the federal USF contribution mechanism — irrespective of the underlying contribution method — permit the state USFs to operate in concert with and along the same contribution assessment parameters as the federal USF mechanism.

Although the Pa. PUC's Reply Comments rely on and reference the Commission's USF/ICC Transformation Order,² they should not be construed as a waiver of any appellate rights that the Pa. PUC maintains against this FCC ruling.³

I. Interests of the Pa. PUC and Operation of the Pa. USF

The Pa. PUC through its administrative regulations oversees and operates the Pa. USF mechanism. The Pa. USF mechanism has underpinned intrastate carrier access reforms and provides annual support to rural incumbent local exchange carriers (ILECs) that serve some of the rural high-cost areas in Pennsylvania. The Pa. USF in part assures the affordability and availability of universal service in Pennsylvania in accordance with the provisions of independent State statutory law and the applicable mandates of the federal Telecommunications Act of 1996 (TA-96). The Pa. PUC has a direct interest in the viability, robustness, and continuing operation of the Pa. USF since it plays a fundamentally important role in the preservation and enhancement of the universal service concept.

The preservation and enhancement of universal service is a national goal and a joint enterprise between the federal government and the States. This federal-state partnership is reflected in the parallel operation of the individual federal and state USF

² *In re Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *appeals pending*.

³ *Pa. Pub. Util. Comm'n v. FCC*, Docket No. 11-9585 (10th Cir., December 5, 2011).

mechanisms. No less than twenty-one (21) states have their own state-specific high-cost support USFs, while at least twenty-two (22) states and the District of Columbia have their own funding mechanisms that support Lifeline services.⁴ Most importantly, state utility commissions including the Pa. PUC frame, regulate and enforce carrier of last resort (COLR) obligations that are the base of the national universal service concept. The same state agencies also actively assist or otherwise enforce universal service policies of the Commission, e.g., through the designation and monitoring of wireline and wireless eligible telecommunications carriers (ETCs).

The continuous viability and robustness of the Pa. USF and its parallel operation with the federal USF mechanism is of increased importance since the Commission decided to provide support to networks that deliver both voice and advanced services with its *USF/ICC Transformation Order*. The Pa. PUC welcomes the Commission's initiative to reform the contribution base of the federal USF.⁵ However, the Pa. PUC remains concerned that certain reform alternatives suggested in the FNPRM may have adverse effects on state USF mechanisms in the absence of certain affirmative actions that the FCC must take in order to protect the long-term viability and robustness of the Pa. USF and other state USFs.

II. Jurisdictional Boundaries for the Contribution Base of the Federal and State USFs and the Requirement for Affirmative Commission Actions

The Pa. USF currently has a contribution base that is based on the intrastate retail revenues of regulated wireline telecommunications services providers. The contribution base of the Pa. USF is jurisdictionally compatible with the revenue-based interstate contribution base for the federal USF mechanism. The FNPRM contains proposals for the assessment funding of the federal USF contribution base that will involve both

⁴ Sherry Lichtenberg, Kafui Akyea, Phyllis Bernt, *Survey of State Universal Service Funds 2012*, (National Regulatory Research Commission, Silver Spring, MD, July 2012), at 3 (NRRRI 2012 State USF Survey).

⁵ The Pa. PUC notes its previous support for the Comments by State Members of the Federal State Joint Board on Universal Service, *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, filed May 2, 2011 (State Plan), that proposed the expansion of the contribution base for the federal USF mechanism ahead of the FCC's *USF/ICC Transformation Order* and the present FNPRM.

interstate and intrastate revenues. Such an outcome will eliminate the jurisdictional boundaries that currently exist for the respective contribution bases that fund the federal and state USF mechanisms. Such an outcome will raise numerous legal and regulatory issues and can adversely impact the viability of state USF mechanisms including the Pa. USF.

As a number of initial comments have already indicated, the viability of the state USFs will be adversely impacted because of a shrinking intrastate revenue base if carriers designate a high proportion of their revenues as interstate and prefer to pay only a single assessment contribution to the federal USF.⁶ Other comments point to the significance of various types of broadband service revenues for the respective contribution bases of the state and federal USF mechanisms. The potential Commission classification of high percentages of such revenues as “interstate” may lower the overall federal USF contribution assessment rate, but it will also inevitably lead to the shrinkage of the revenue contribution base for state USF mechanisms including the Pa. USF.⁷

Continuing with the use of an albeit reformed revenues-based contribution assessment system coupled with strict adherence to jurisdictionalization of the related service revenue bases may not avoid future harm to the viability and the robustness of the Pa. USF and other state USF mechanisms. For example, retail wireline and wireless broadband access services are often not subject to the regulatory jurisdiction of state utility commissions and, thus, the corresponding revenues are not part of the intrastate revenue base subject to assessment for state USFs. State statutes affecting the regulation of retail Internet Protocol (IP) based services may also negatively affect the inclusion of retail services such as Voice over the Internet Protocol (VoIP) within assessable state USF contribution bases unless specific statutory exceptions have been adopted.⁸ In

⁶ Comments of the Corporation Commission of the State of Kansas on the Federal Communications Commission’s April 30, 2012 Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012, at 2 (Kan. CC Comments).

⁷ Comments of the Nebraska Rural Independent Companies, WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012, at 10-11 (NRIC Comments).

⁸ See generally 73 Pa.C.S. §§ 2251.4 and 2251.6(1)(iii). No less than nine (9) States have USF contribution assessments for VoIP providers while in three (3) states some VoIP providers voluntarily contribute to State USF mechanisms. NRRI 2012 State USF Survey at 6, 10.

addition, a specific Commission ruling was required that clarified whether states could assess the revenues of nomadic interconnected VoIP services under certain conditions.⁹ Therefore, simple adherence to the well-established legal principle of revenue jurisdictionalization for the purpose of establishing federal and state USF contribution assessments in accordance with the *TOPUC* court ruling may not adequately preserve the intrastate revenue bases of state USFs.¹⁰ Rather, explicit and affirmative FCC action is needed in the context of the present FNPRM in order to limit uncertainty regarding the jurisdictional boundaries of the respective contribution bases for the federal and state USF mechanisms, and prevent future unnecessary litigation.

The NRIC Comments suggest the use of the Commission's "permissive authority" under Section 254(d) of TA-96, 47 U.S.C. § 254(d), if "the Commission itself decides to impose surcharges on broadband connections or services":

- [The FCC] 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 the 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.

⁹ NRIC Comments at 15 and n. 32; Kan. CC Comments at 5 and n. 9, citing *In re Universal Service Contribution Methodology – Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, (FCC, Rel. Nov. 5, 2010), Declaratory Ruling, slip op. FCC 10-185, 25 FCC Rcd 15651 (2010) (FCC Kansas-Nebraska Declaratory Order). *Contrast Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm'n*, 564 F.3d 900 (8th Cir. 2009).

¹⁰ *Texas Office of Public Utilities Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (limiting the FCC from imposing universal service surcharges on intrastate telecommunications services). *See also* Kan. CC Comments at 2-4; Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012, at 14 and n. 67 (NASUCA Comments).

NRIC Comments at iii.¹¹

The NRIC Comments also suggest that the Commission should undertake the following affirmative actions to minimize potential risks to state USFs that may arise from alternative and differing interpretations of the “equitable and nondiscriminatory basis” standard contained in Section 254(f) of TA-96 that applies to assessment contributions for state USFs. The FCC “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.”¹² Similarly, the Commission should undertake affirmative action to minimize potential risks to state USFs that may arise from differing interpretations of the “rely on or burden federal universal support mechanisms” prohibition that is contained in Section 254(f) of TA-96, where such prohibition may negatively affect the long-term viability and robustness of state USFs. The FCC should affirmatively “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.”¹³

According to the NPIC Comments, after the FCC “has adopted the new contribution basis for federal USF surcharges, it should give states broad discretion in prescribing the contribution basis for state USFs”:

- 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,

¹¹ The Pa. PUC clarifies that it favors a revenues-based contribution base for the federal USF mechanism. See further discussion *infra*.

¹² NRIC Comments at iii.

¹³ NPIC Comments at iv.

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 contribution system or a [telephone] 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 non-discriminatory, is not inconsistent with the Commission's rules, and does not rely on or burden Federal universal service support mechanisms.

NRIC Comments at iv-v.

III. Reforming and Expanding the Contribution Base of the Federal USF Mechanism

The Pa. PUC is in broad agreement with a number of commenting parties that advocate the continuation of a revenues-based, albeit reformed, contribution mechanism for the federal USF. A revenues-based contribution method for the federal USF is compatible with the method used by the Pa. USF and numerous other state USFs. The Pa. PUC notes NASUCA's argument that "the current mechanism, which bases USF contribution on carriers' revenues, despite problems, *works*, especially **as a gauge of how the network is used**" while "proposed substitutes for the revenues-based mechanism — basing assessments on telephone numbers or on 'connections' — charge companies and customers USF contributions for mere **access** to the network."¹⁴ The California Public Utilities Commission adopted the same position and states:

¹⁴ NASUCA Comments at 1 (emphasis added, footnote omitted).

A revenues-based system is still preferable at this time to other proposed systems because it is more equitable than a numbers-based, a connection-based, or a hybrid-based system. Under a revenue-based system the burden is relative to the volume of the service consumed. Those consumers who use the most services have the greatest burden. According to Keep USF Fair Coalition (Coalition), which represents consumer advocacy groups, a change to a numbers or connections-based contribution methodology would most negatively impact low income, seniors, disabled, and rural Americans.

Comments of the California Public Utilities Commission and the People of the State of California, WC Docket No. 06-122, GN Docket No. 09-51, at 8-9 (Cal. PUC Comments, footnote omitted).

The Rural Associations pointed out, “revenues are easily verifiable through providers’ accounting statements,” while “neither numbers nor connections, however defined, are subject to the sort of known and standardized process by which revenues may be accounted as of specific periods and over time.”¹⁵ The Rural Associations also indicated that the use of telephone numbers for the development of federal USF contribution assessments is likely to have “a regressive impact, potentially placing a relatively greater burden on consumers (many of whom have multiple telephone numbers) than on large enterprise users that procure ‘big pipes’ for data transmission,” e.g., where “a family has ten telephone numbers” as compared to “a business with five telephone numbers buying a 100 Mbps data service.”¹⁶

The Rural Associations also emphasized that “continuing the use of a revenues-based contribution mechanism also meets the Commission’s oft-uttered commitment to technological neutrality” since this method “best captures the value that consumers place on competing services that use underlying telecommunications networks without regard to the specific technology used to deliver the service.”¹⁷ Furthermore, reliance on a

¹⁵ Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012 at 36 (Rural Associations Comments).

¹⁶ Rural Associations Comments at 36-37.

¹⁷ Rural Associations Comments at 37.

revenues-based method “is effectively immune to changes in technologies or services that may arise from time-to-time.”¹⁸

Nevertheless, the Pa. PUC recommends that in the event that the Commission adopts a telephone numbers or connections-based contribution assessment system, it should still affirmatively act to preserve the viability and robustness of the state USF mechanisms by taking the affirmative actions advocated in the NRIC Comments.

The Pa.PUC supports the expansion of the federal USF contribution base through the inclusion of wireline and wireless retail broadband access services consistent with the State Plan proposals. The Pa. PUC does not agree with proposals that certain services should be excluded from the contribution base of the federal USF — and potentially the contribution base of state USFs as well — where such services rely on and utilize wireless and wireline telecommunications networks but are portrayed as being “information services.” The NASUCA Comments succinctly pointed out that the “public interest requires the broadest lawful class of contributors to the USF,” i.e., those “who benefit from a ubiquitous national network should contribute to the Fund, with as few exceptions as feasible.”¹⁹ Furthermore, the inescapable conclusion reached by the *USF/ICC Transformation Order* is that “if the USF is to support broadband, then broadband must support the USF.”²⁰

IV. The Federal-State Joint Board on Universal Service Must Have Continuous and Substantial Involvement

The Pa. PUC agrees with the comments that propose the continuous and substantial involvement of the Federal-State Joint Board on Universal Service (Joint Board) in these matters. The reform of the federal USF contribution base and its interaction with the state USFs, including the Pa. USF, will result in a number of issues that will need to be resolved in a cooperative fashion between the Commission and the states. The Joint Board provides the proper and statutorily endorsed vehicle for the

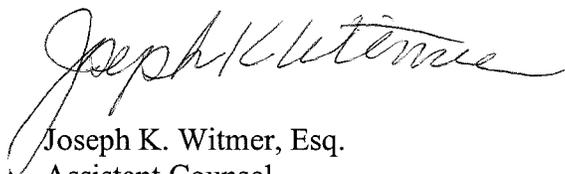
¹⁸ Rural Associations Comments at 37.

¹⁹ NASUCA Comments at 7.

²⁰ NASUCA Comments at 7.

relevant deliberations so that the continuous viability and robustness of state USF mechanisms can be appropriately safeguarded.

Respectfully Submitted,
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