

**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
)	

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

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these Reply Comments responding to the Federal Communications Commission (FCC or Commission) Further Notice of Proposed Rulemaking on potential reforms of the federal Universal Service Fund (USF) contribution methodology.¹

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,² energy, and water utilities. NARUC is recognized by Congress in several statutes³ and consistently by the Courts⁴ as well as a host of federal agencies,⁵ as the proper entity to represent the collective interests 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), available online at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-46A1.doc.

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

³ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains "Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

utility commissions. In the Federal Telecommunications Act,⁶ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁷

The preservation and advancement of national universal service policies continue to be joint enterprises between the States and the federal government.⁸ Although the federal government and its federal USF mechanism collects and distributes the majority of the universal service funding in the country, the States frame, oversee, and enforce carrier-of-last-resort (COLR) obligations and policies for basic telecommunications services that are at the foundation of the national universal service concept.⁹ Congress reserved to State commissions regulatory tasks that promote federal universal service policies, e.g., through the designation of eligible

⁴ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

⁵ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁶ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁷ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system.)

⁸ FNPRM, ¶ 6 at 4 (acknowledging the historic partnership with State governments to ensure universal service). See also *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (FCC Rel. May 8, 1997), Report and Order, *slip op.* FCC 97-157, (*First USF Order*) (subsequent history omitted), ¶ 818 at 419 (indicating that “[w]e 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 partnership”), available online at: http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1997/fcc97157.zip.

⁹ *First USF Order*, ¶ 817 at 418-419 (noting that “the traditional core goal of universal service has been to ensure that basic residential telephone service, which is primarily in intrastate service, is affordable” and that “[i]n section 254(b), Congress made affordable basic service a goal of federal universal service”).

telecommunications carriers (ETCs) that can receive or otherwise participate in federal USF or Connect America Fund (CAF) support. These same entities also oversee the provision of federally supported Lifeline services.

Moreover, no fewer than twenty-one (21) States have their own USFs that provide high-cost support so that basic telecommunications services continue to remain affordable for end-user consumers.¹⁰ Depending on the jurisdiction, such State USF support is also used for broadband capital investment by carriers with COLR obligations in rural high-cost areas.¹¹ Similarly, at least twenty-two (22) States and the District of Columbia have funds that provide specific support to Lifeline services and their end-user consumers.¹²

Indeed, specifically as a result of the FCC's order, at least twenty States are considering changes to their universal service programs.¹³

The preservation and future viability of these State-specific USFs and their parallel operation with a reformed federal USF are crucial to maintain the universal service principles contained both in federal and State law.

In November 2011, NARUC passed a "*Resolution Strongly Supporting the Proposals Submitted on Universal Service Reform by the State Members of the Federal State Joint Board on Universal Service*" relevant to this proceeding.

That resolution specifically recognizes "*the critical role specifically assigned to States by Congress in the Act, including in part through the mechanism of the Joint Board, and upon review and consideration of the State Members' comments and recommendations, commends the State Members and their staff for the thoughtful and thorough evaluation of the USF/ICC NPRM, and specifically endorses the State Members' plan, subject always to the doctrine of federalism and the privilege of States to take exception to selected provisions thereof.*"

¹⁰ Sherry Lichtenberg, Kafui Akyea, Phyllis Bernt, *Survey of State Universal Service Funds 2012* (National Regulatory Research Institute, Silver Spring, MD, July 2012), at 3 (NRRI 2012 State USF Survey), available online at: <http://www.nrri.org/documents/317330/e1fce638-ef22-48bc-adc4-21cc49c8718d> .

¹¹ See generally Comments of the Nebraska Rural Independent Companies (NRIC), WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012, at 2-3 (NRIC Comments), available online at: <http://apps.fcc.gov/ecfs/document/view?id=7021984742>.

¹² NRRI 2012 State USF Survey at 3.

¹³ *Id.* at 82.

Generally, NARUC appreciates the efforts to date to conform reform efforts with the May 2, 2011 Comments of the State members of the Universal Service Joint Board¹⁴ filed on the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, which culminated in the FCC's *USF/ICC Transformation Order*.¹⁵

Consistent with that November 2011 resolution, NARUC endorses generally the contribution elements of the original State Plan, found at pages v-vi and 177- 124 of the May 2, 2011 State Comments.

Moreover, NARUC remains concerned, particularly given the increases pressures on State universal service programs driven by the FCC's global reform, that the FCC not, in this or related proceedings, inadvertently undermine funding streams for such crucial State programs.

Specifically, NARUC continues to urge the FCC to do nothing to jeopardize State funds or to create new legal issues regarding the ability of states to continue to operate existing funds. On this specific point, NARUC agree with those aspects of the comments filed August 6, 2012 by the State members, that:

[1] Regardless of how the Commission ultimately decides to collect funds for its own programs, States should have the right to make changes that do not harm federal programs or goals and also the discretion to decide that they will make no changes to their existing state USF contribution mechanisms; and

[2] When attempting to create novel new funding mechanisms for the federal universal service program, the FCC should include specific justification for such State authority – and specifically rebut contrary arguments raised or implied by the record.

¹⁴ *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Comments by State Members of the Federal State Joint Board on Universal Service, May 2, 2011 (State Members' Plan or State Plan), online at: <http://apps.fcc.gov/ecfs/document/view?id=7021344845> & <http://apps.fcc.gov/ecfs/document/view?id=7021344846>.

¹⁵ *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), available online at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.doc, and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *appeals pending*.

NARUC agrees with the comments and arguments of several parties,¹⁶ *but only to the extent they endorse these two specific positions.* The Section § 254(f) requirement that State regulations relating to intrastate USF mechanisms cannot “rely on or burden Federal universal service support mechanisms” has been used to “invalidate a state’s efforts to require contributions from intrastate carriers based on both interstate and intrastate revenue.”¹⁷ For years, NARUC has consistently urged the FCC to attempt to limit any negative impact on State programs, when raising novel funding mechanisms for the federal program, by also including an affirmative declaration 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.

Respectfully Submitted,

/s/ James Bradford Ramsay

James Bradford Ramsay
Counsel for the State Members
Federal-State Joint Board on Universal Service
1101 Vermont Avenue, N.W. Suite 200
Washington, D.C. 20005

Tel.: (202) 898-2207
E-Mail: jramsay@naruc.org

Dated: August 6, 2012

¹⁶ See generally, the August 6, 2012 Reply Comments of the State Members of the Federal State Joint Board on Universal Service, available online at <http://apps.fcc.gov/ecfs/document/view?id=7021996836>, and the Comments of the Nebraska Rural Independent Companies, WC Docket No. 06-122, GN Docket No. 09-51, July 9, 2012, at 2-3, online at: <http://apps.fcc.gov/ecfs/document/view?id=7021984742>; compare, Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 06-122, GN Docket No. 09-51, at 15, available online at: <http://apps.fcc.gov/ecfs/document/view?id=7021984557>.

¹⁷ See, e.g., NRIC Comments at 12-13 and n. 30 citing *AT&T Comm. Inc. v. Eachus*, 174 F.Supp. 1119 (D. Oregon, 2001).