



N A R U C
National Association of Regulatory Utility Commissioners

NOTICE VIA ELECTRONIC FILING

February 24, 2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Notice of Oral and Written Ex Partes filed in the proceedings captioned:

In the Matter(s) of Universal Service Contribution Methodology, WC Docket No. 06-122, A National Broadband Plan For Our Future, GN Docket No. 09-51, the Connect America Fund, WC Docket No. 10-90, National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109

In the Matter(s) of the Open Internet Remand, GN Docket No. 14-28, Preserving an Open Internet, GN Docket No. 09-191, WC Docket No. 07-52

Secretary Dortch:

On February 24, 2014, Vermont Commissioner John D. Burke, State Chair of the Federal State Joint Board on Separations, met separately with **Priscilla Delgado Argeris**, Legal Advisor, Office of Commissioner Rosenworcel and with **Philip Verveer**, Senior Counselor to the FCC Chairman.

In both meetings, Mr. Burke discussed the recently passed February 2014 ***NARUC Resolution Supporting Reform of the Federal Universal Service Fund Contribution System***, (available online at: <http://www.naruc.org/Resolutions/Resolution%20Supporting%20Reform%20of%20the%20Federal%20Universal%20Service%20Fund%20Contribution%20System.pdf>.)

He provided both with a copy of that resolution (attached) and emphasized three points:

- [1] Universal Service contribution form is an absolute and overdue necessity;
- [2] Expanding the contribution base allows for a transition to a fairer assessment upon those benefiting from the broadband services to be supported in the future, regardless of whether or not it is appropriate to increase the overall size of the fund or fund expenditures; and
- [3] Any reforms should be coordinated through the Federal State Joint Board on Universal Service.

Mr. Burke also spoke extensively with **Counselor Verveer** about net neutrality, pointing to NARUC's long held support for the FCC's principles¹ and suggesting that it might be useful to coordinate any proposed action under Section 706 with the Federal State Joint Conference on Advanced Services. He also indicated, that at least from his personal perspective, the best way to assure net neutrality would be to apply Title II.

If you have any questions about the foregoing, do not hesitate to contact me at 202.898.2207 or at jramsay@naruc.org.

Respectfully Submitted,

JAMES BRADFORD RAMSAY,
GENERAL COUNSEL
**NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS**
1101 VERMONT AVENUE, SUITE 200
WASHINGTON, DC 20005
202.898.2207

Enclosures:

¹ See, e.g., *Resolution on Open Access to the Internet* (February 17, 2010) attached and also available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Net%20Neutrality.pdf>; *Resolution regarding Citizen Access to Internet Content* (November 13, 2002), online at: <http://www.naruc.org/Resolutions/2002%20Internet%20Content.pdf>; *Resolution on Information Services* (November 19, 2003), online at: http://www.naruc.org/Resolutions/info_services.pdf.

APPENDIX A – Resolution Supporting Reform of the Federal Universal Service Fund Contribution System

WHEREAS, Contributions by consumers to the existing federal Universal Service Fund (USF) have historically been based upon interstate and international end - user revenues from telecommunications services; *and*

WHEREAS, The Federal Communications Commission (Commission or FCC) stated in its 2012 Further Notice of Proposed Rulemaking (FNPRM) (WC Docket No. 06-122 and GN 09-51) on revising the contributions methodology, that “the evolution in the communications ecosystem has led to a series of stresses on the contribution system,” including added complexity and burdensome requirements for contributing telecommunications providers; *and*

WHEREAS, The FCC further observed that “some aspects of today’s contributions methodology may result in competitive distortions because different contribution obligations may apply to similar services depending on how a service is provided;” *and*

WHEREAS, The USF contribution base, largely comprised of assessable telecommunications service revenues reported by companies, has begun to shrink as residential and business customers have begun to migrate to communication services that do not contribute to the USF, such as broadband services; *and*

WHEREAS, The FCC observed in Paragraph 20 of its FNPRM that shrinkage in the revenues that form the contribution base has occurred at the same time that the communications market has grown and that demand for USF support has grown; *and*

WHEREAS, Under the FCC’s November 18, 2011, ICC/USF Transformation Order, In re Connect America Fund et al., (FCC, Rel. Nov. 18, 2011), WC Docket No. 10 - 90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11 - 161, 26 FCC Rcd 17663 (2011), the USF distributions must be used for the support of retail broadband access services, even though these services do not contribute to the federal USF mechanism; *and*

WHEREAS, Some have estimated that the cost of meeting the broadband deployment goals the Transformation Order indicated is far in excess of the amounts available under the current federal USF as established by the Commission; *and*

WHEREAS, Expanding the contribution base would allow for a transition to a fairer assessment upon those benefiting from the broadband services to be supported in the future, regardless of whether or not it is appropriate to increase the fund expenditures; *and*

WHEREAS, The State Members of the Federal - State Joint Board on Universal Service (State Members) submitted Reply Comments on the FNPRM on August 6, 2012, that stated that the expansion of the contribution base for the federal USF mechanism is an “absolute and overdue necessity;” *and*

WHEREAS, The State Members’ comments further endorsed the concept that those who benefit from a ubiquitous national network should contribute to the USF, including broadband services; *and*

WHEREAS, The State Members’ comments pointed out that a viable state - specific USF mechanism should function in concert with the operation of the federal USF mechanism and that the FCC can affirmatively and conclusively forestall interpretations of federal law that can negatively affect the continuing viability and robustness of State - specific USF mechanisms; *and*

WHEREAS, The FCC has not reformed the contribution methodology even though it has sought comment several times over the past decade, most recently more than a year ago; *now, therefore be it*

Resolved, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2014 Winter Committee Meetings in Washington, D. C., and urge the FCC to complete the Docket No. 06-122 rulemaking that was initiated in 2012; *and be it further*

RESOLVED, That the Commission should expand the contribution base so that all communications services, including services such as broadband that are required to be offered in order to receive federal support, contribute to the USF; *and be it further*

RESOLVED, That the Commission should move forward on contribution methodology reform and ensure the fairest allocation of the contribution burden between residential and business consumers throughout the country and do so with dispatch since expanding the contribution base is a desirable option which has been set to the side for too long; *and be it further*

RESOLVED, That the Commission's implementation of any federal USF contribution base reforms be coordinated with the States through the Federal - State Joint Board on Universal Service.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors, February 12, 2014*

APPENDIX B - Resolution on Open Access to the Internet

WHEREAS, Broadband Internet is profoundly affecting the lives of Americans, through education, communications, health services, and numerous other applications; *and*

WHEREAS, Broadband Internet deployment and investment remains significant even though deployment is a capital-intensive process, which has led to barriers to access, particularly in rural America; *and*

WHEREAS, Over time, limiting, or otherwise degrading broadband access for users of the Internet, such as by blocking VoIP applications, denying access to political content, or implementing technical measures that degrade the performance of peer-to-peer software distributing lawful content has become widely agreed upon as an unfair practice and may reduce the Internet's value to consumers; *and*

WHEREAS, In a Resolution adopted at its 2002 Annual Convention in Chicago, Illinois, NARUC found that providers of broadband services or facilities have the technical capability to restrict Internet access to particular sites or content, which could prevent or limit consumers' ability to reach content of their choosing, thereby presenting significant concerns that free and open information exchange in the marketplace of ideas could be hindered; *and*

WHEREAS, NARUC concluded that the restriction of user access to the Internet and its effect on an informed public is an issue of real significance to Americans; *and*

WHEREAS, In the 2002 Resolution, NARUC endorsed the right of all Internet users, including broadband wireline and cable modem users to:

- Have access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications); *and*
- Receive meaningful information regarding the technical limitations of their broadband service; *and*

WHEREAS, In 2005, the Federal Communications Commission (FCC) issued a Policy Statement in which it announced as principles on Internet access, subject to reasonable network management, that consumers are

entitled to (1) access the lawful Internet content of their choice; (2) run applications and use services of their choice, subject to the needs of law enforcement; (3) connect their choice of legal devices that do not harm the network; and (4) be able to choose among competing network providers, application and service providers, and content providers; *and*

WHEREAS, The FCC Chairman endorsed these principles in September 2009 and added the two following principles that he considers essential to the openness of the Internet: (5) broadband providers cannot discriminate against particular Internet content or applications and (6) providers of broadband Internet access must be transparent about their network management practices; *and*

WHEREAS, Members of Congress have expressed concerns over restricting consumers' open access to the Internet and Congress could act to protect such interests; *and*

WHEREAS, Providers of Internet services have raised concerns that limitations placed upon the manner in which they offer services could stifle legitimate business goals, harm their abilities to earn a reasonable return on investment, and chill their incentive to innovate; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 2010 Winter Committee Meetings in Washington, D.C., continues to support the right of all Internet users, including broadband wireline, wireless, cable modem, and application-based users, to have access to and the use of the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content; *and be it further*

RESOLVED, That NARUC supports the principles (1) through (4) and (6) and supports principle (5) as adjusted consistent with all the NARUC stated Resolves on Internet access set forth above and encourages the FCC and/or Congress to adopt such principles with deference to the following considerations; *and be it further*

RESOLVED, That NARUC recognizes that there are differences in markets, bandwidth, spectrum resources, and other factors between providers, whether cable, wireless, landline, application-based or otherwise; *and be it further*

RESOLVED, That notwithstanding these differences, NARUC encourages the FCC and/or Congress, when crafting rules and regulations in this area to define what constitutes unreasonable restrictions or unreasonable discrimination, strive to be as technologically neutral as possible, continue to give providers incentive for innovation and a fair return on their investment, without jeopardizing the goals of ensuring that all consumers have access to and use of affordable and reliable broadband services; *and be it further*

RESOLVED, That the NARUC General Counsel should include these principles in NARUC comments filed in all relevant FCC broadband proceedings.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors February 17, 2010

Resolution Regarding Citizen Access to Internet Content

WHEREAS, In a "cable modem" Declaratory Ruling and Notice of Proposed Rulemaking released on March 15, 2002, the FCC declared that cable modem service is an information service, and it sought comment on whether the threat of blocking subscriber access to Internet content or services is sufficient to justify regulatory intervention; *and*

WHEREAS, The Commission proposes to regulate broadband access to the Internet using its Title I "ancillary jurisdiction" authority; *and*

WHEREAS, Customers using a telecommunications common carrier today have the ability to send and receive lawful information of their own design and choosing; *and*

WHEREAS, Title II of the Communications Act's prohibition against unreasonable discrimination has historically protected the rights of American citizens to transmit and receive information without change in its form or content; *and*

WHEREAS, Some citizens today use broadband services and facilities as their chief source of information and news, even to the point of replacing newspapers, and more may do so in the future; *and*

WHEREAS, Some citizens can get broadband service only through wireline telephone facilities, and others can get broadband service only through cable modems; *and*

WHEREAS, Providers of broadband services or facilities have the technical capability to create a "walled garden" or "fenced prairie," that is designed to attract customers to preferred content but that also could keep consumers from reaching content other than those of the providers' choosing; *and*

WHEREAS, It is conceivable that some providers of broadband services or facilities may have an incentive to restrict Internet access to favored news sources, and if they chose to do so, it could significantly harm free and open information exchange in the marketplace of ideas; *and*

WHEREAS, Although the issue of "open access" has been debated largely as a question of fairness among different kinds of broadband providers, the restriction of user access and its effect on informed citizenship is an issue of real significance to citizens; *now, therefore, be it*

RESOVLED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its 2002 Annual Convention in Chicago, Illinois, agrees that all Internet users, including broadband wireline and cable modem users should: 1. Have a right to access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications); and 2. Receive meaningful information regarding the technical limitations of their broadband service; *and be it further*

RESOLVED, That where a broadband facilities provider furnishes facilities on a nondiscriminatory basis to ISPs, including an affiliated ISP, nothing here prohibits the affiliated ISP from promoting or preferring particular content; and be it further

RESOLVED, That the NARUC General Counsel should include these guiding principles in NARUC comments filed in all relevant FCC broadband proceedings.

Sponsored by the Committee on Telecommunications
Adopted by the Committee of the Whole November 13, 2002