



N A R U C  
National Association of Regulatory Utility Commissioners

**NOTICE VIA ELECTRONIC FILING**

March 10, 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 Numbering Policies for Modern Communications, WC Docket No. 13-97, IP-Enabled Services, WC Docket No. 04-36; Telephone Number Requirements for IP-Enabled Services Providers, WC Docket No. 07-243; Telephone Number Portability, CC Docket No. 95-116; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Connect America Fund, WC Docket No. 10-90; Numbering Resource Optimization, CC Docket No. 99-200.***

***In the Matter of Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of Non-Aggregate Call Records by Telecommunications Providers without Consumers' Consent Violates Section 222 of the Communications Act, WC Dkt 13-306***

Secretary Dortch:

On March 7, 2014, the undersigned met very briefly with **Daniel Alvarez, Legal Advisor to the Chairman on Wireline, Public Safety and Homeland Security.**

I mentioned the usefulness of joint board referrals both in terms of substantive content and from a process perspective, mentioning in particular that the FCC should consider immediately referring to the appropriate federal-State Joint Board:

- [a] The issue of contribution reform, as per the 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>), which accurately points out that Universal Service contribution reform is an absolute and overdue necessity and any reforms should be coordinated through the Federal State Joint Board on Universal Service; and

[b] The issue of a replacement model to implement the Connect America Phase II, given the decision to discard the prior model, as per the November 2012 NARUC Resolution Seeking Joint Board Referrals (<http://www.naruc.org/Resolutions/Resolution%20Seeking%20Joint%20Board%20Referrals.pdf>).

I also emphasized the significant costs to industry and ratepayers of the FCC's reluctance, through multiple administrations, to classify VoIP voice services as either "telecommunications services" or something else. I provided Mr. Alvarez with a copy of NARUC's March 4<sup>th</sup> filed comments on the six-month trial of direct assignment of numbering resources to interconnected VoIP providers, available online at: <http://apps.fcc.gov/ecfs/document/view?id=7521088293>, **which point out that the recent D.C. Circuit decision on "net neutrality" imposes a barrier to continued FCC inaction.**

I also provided Mr. Alvarez with a copy of NARUC's March 4<sup>th</sup> filed reply comments on the December 2013 Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of Non-Aggregate Call Records by Telecommunications Providers without Consumers' Consent Violates Section 222 of the Communications Act, which are online at: <http://apps.fcc.gov/ecfs/document/view?id=7521087953>.

Those comments argue that the FCC should immediately:

- investigate whether carriers that have supplied data, call and/or text records, Internet data, voice communications, correspondence and materials to the NSA, acted in compliance with their obligations under Section 222 of the Act and the FCC's CPNI rules;
- investigate whether such carriers acted reasonably in providing data to the NSA, apparently without challenge; and
- re-examine its CPNI rules and other rules related to privacy of consumer data, including consideration of whether carriers should be obligated to regularly (at least annually) notify consumers that CPNI data call and/or text records, Internet data, voice communications, correspondence and materials maintained by those providers may be released.

I also forwarded a copy of this notice to Mr. Alvarez today to assure that I have adequately covered all advocacy matters I raised during our conversation. If Mr. Alvarez points out any deficiencies in this notice, I will correct them and refile immediately.

If you have any questions about the foregoing, do not hesitate to contact me at 202.898.2207 or at [jramsay@naruc.org](mailto:jramsay@naruc.org).

**Respectfully Submitted,**

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**Enclosures:**

***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.

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*Sponsored by the Committee on Telecommunications*

*Adopted by the NARUC Board of Directors, February 12, 2014*

#### ***Resolution Seeking Joint Board Referrals***

**WHEREAS**, On November 18, 2011, the Federal Communications Commission (FCC) released the *USF/ICC Transformation Order*, in which it adopted a framework for providing ongoing Universal Service Fund support to areas served by price cap carriers known as "Connect America Phase II," and specifically stated that it will provide ongoing support to these areas through "a combination of a forward-looking cost model and competitive bidding;" *and*

**WHEREAS**, Section 254(b) of the Communications Act provides that matters regarding the establishment of policies for the preservation and advancement of universal service shall be considered by a Federal-State Joint Board and shall be based on principles set forth in Section 254(b) of the Act; *and*

**WHEREAS**, The determination of federal universal service support on the basis of a forward-looking cost model and competitive bidding will impact the level of the total costs of a carrier incurred to provide both interstate and intrastate services that are allocated to and recovered from the interstate jurisdiction; *and*

**WHEREAS**, The Supreme Court noted in *Louisiana Public Service Commission v. Federal Communications Commission, et al*, that "[t]he Communications Act not only establishes dual State and federal regulation of telephone service; it also recognizes that jurisdictional tensions may arise as a result of the fact that interstate and intrastate service are provided by a single integrated system. Thus, the Act itself establishes a process designed to resolve what is known as "jurisdictional separations" matters, by which process it may be determined what portion of an asset is employed to produce or deliver interstate as opposed to intrastate service. 47 U.S.C. §§ 221(c), 410(c);" *and*

**WHEREAS**, In a public notice dated June 8, 2012, the FCC's Wireline Competition Bureau sought comments from the public regarding the development of a model to implement Connect America Phase II, and subsequently held a cost model workshop on September 13, 2012, but the FCC and its Staff have not formally sought the input of State regulators or consulted on this matter with the Federal-State Joint Boards; *now, therefore be it*

**RESOLVED**, The National Association of Regulatory Utility Commissioners (NARUC), convened at its 2012 Annual Committee Meetings in Baltimore, Maryland and requests that the FCC refer to the USF Joint Board the

consideration of the development of a cost model to determine Connect America Fund Phase II support; *and be it further*

**RESOLVED**, That consistent with Resolution TC-3 adopted by the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Summer Committee Meetings in Portland, Oregon, NARUC urges that the FCC should commit to USF support that is predictable and methodologically sound; *and be it further*

**RESOLVED**, That subsequent to the transmission of recommendations from the Universal Service Joint Board on the development of a cost model to be used to determine Connect America Fund Phase II support, and prior to the adoption of any such model, NARUC requests that the FCC refer the proposed model to the Separations Joint Board to determine whether the adoption of the model would effectively result in jurisdictional cost allocation changes and, if so, to provide the recommendations of the Separations Joint Board in accordance with the requirements of Section 410(c) of the Communications Act.

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*Sponsored by the Committee on Telecommunications*

*Adopted by the NARUC Board of Directors, November 13, 2012*

*Adopted by the NARUC Committee of the Whole, November 14, 2012*