

October 15, 2019

FCC Commissioners  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

RE: August 7, 2014, FCC Referral to the Joint Board on Universal Service Relating to USF Contribution Methodology

Dear FCC Commissioners:

In 2014 the Commission, recognizing an ever-increasing USF contribution factor on consumers' telephone bills, wisely referred the question of reforming the USF contribution methodology to the federal-state Joint Board on Universal Service.

Through 2016 the Joint Board worked diligently and collaboratively on this referral by evaluating numerous scenarios for a revised contribution methodology. Other than a meeting in the summer of 2017 with Commissioner O'Reilly to share thoughts on how to proceed, no progress was made in 2017 toward forming a recommendation.

This lack of progress in 2017 was frustrating to the State Members of the Joint Board. We have taken this referral seriously and are committed to seeing reform of the contribution methodology. Given the extent of analysis conducted by Joint Board members and staff and the desire to jump start the Joint Board process, the State Members of the Joint Board submitted our proposed contribution methodology recommendation to our federal colleagues on January 30, 2018. No response was received from our federal colleagues to this proposal nor was any further work done on the referral in 2018.

In February of 2019 the State Members met with our federal colleagues for the first time since the summer of 2017. Commissioner O'Reilly made it clear that he would not consider the State Member recommendation. We discussed other options to research and agreed to meet again to evaluate those options in July of 2019. Unfortunately, that meeting did not occur and the State Members have not received any communication from our federal colleagues since the meeting in February.

After five years of work on this issue the State Members believe we have completed our obligation under the 2014 referral. We see nothing productive coming from prolonging the silence between the State Members and our federal colleagues. The attached recommendation (the same that was provided to our federal colleagues in January 2018) is our final product.

The USF fee percentage at the time of the 2014 referral was 15.7%. Today it is 25%. That continued increase is unsustainable and patently unfair to telephone subscribers. We encourage the FCC to move forward with the State Member recommendation.

To be clear, we still strongly believe in the value of the Joint Board process. We believe that the best decisions can be made through thorough give and take discussions between state and federal

commissioners who respect each other and each other's points of view. We look forward to a time when that process can once again be vigorous, vibrant, and productive.

This communication is signed by the three remaining members of the Joint Board. The attached recommendation was also supported by former State Members Elin Katz and Gregg Sayre, who have moved on to other positions.

Sincerely,



Chris Nelson  
South Dakota Public Utilities Commission



Sally Talberg  
Michigan Public Service Commission

(Signature Authorized)

Steve Bloom  
Oregon Public Utilities Commission

Enc.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal State Joint Board on Universal Service	)	WC Docket No. 96-45
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan For Our Future	)	WC Docket No. 09-51
	)	

**RECOMMENDED DECISION**

**Released:** October 15, 2019

By the State Members of the Federal-State Joint Board on Universal Service: Honorable Chris Nelson (SD), Honorable Sally Talberg (MI), Honorable Stephen Bloom (OR)

**I. INTRODUCTION**

1. In this Recommended Decision, the State Members of the Federal-State Joint Board on Universal Service recommends that the Federal Communications Commission (the Commission) revise the existing contribution mechanism for federal universal service programs. The State Members of the Joint Board find that the Commission has the authority, and that it is in the public interest, to expand the contribution base to include a broader class of services that touch the public communications network, including Broadband Internet Access Service (BIAS). The State Members of the Joint Board recommends the Commission adopt a connections-based assessment on residential services and an expanded revenues-based assessment on business services.

2. We are also mindful that it is consumers who must pay universal service contributions. Despite our strong interest in providing adequate funding, we also want to avoid significantly increasing the burden on consumers. Therefore, we also recommend that the Commission establish a firm budget for each of the four universal service fund programs with those budgets not growing any more than the Consumer Price Index for any given year.

3. Finally, we recommend the Commission take specific steps to assure the continued viability of state universal service mechanisms promoted by Congress in the 1996 Act.

**II. BACKGROUND**

4. In its *USF/ICC Transformation Order* the Commission implemented major reforms in the federal universal service fund (USF) mechanism as well as in interstate and intrastate intercarrier compensation (e.g., terminating switched access charges).<sup>1</sup> The Commission has refocused the High-Cost support component of the federal USF mechanism — currently known as the Connect America Fund (CAF) — on the deployment of broadband access networks to qualifying geographic locations and recipients. The Commission has also proceeded with additional reforms in other components of the federal USF mechanism, including the Low-Income program that supports the provision of voice and broadband access services to eligible consumers and households.

5. In the context of the Commission’s initiative that led to the adoption of the *USF/ICC Transformation Order*, the State Members of the Federal-State Joint Board on Universal Service (State Members) had proposed a simultaneous and parallel reform of the contribution base for the federal USF mechanism.<sup>2</sup> On April 30, 2012 the Commission released its Further Notice of Proposed Rulemaking (FNPRM) focusing on the contribution base and methodology of the federal USF seeking “comment on a variety of proposals to reform the system by which universal service demand is met.”<sup>3</sup> The April 2012 FNPRM focused on the following broad policy goals:

- Who should contribute to the federal USF mechanism
- How contributions should be assessed
- How the administration of the contribution system can be improved
- Recovery of universal service contributions from consumers

6. The Commission also solicited comments on its specific proposals regarding the federal USF contribution base and methodology for the relevant assessments. The Commission has pursued the following major lines of inquiry:

- Retention of the current revenues-based system with associated reforms in order to promote “efficiency, fairness, and sustainability.”<sup>4</sup>
- Assessing contributions based on connections, where “providers would be assessed based on the number of connections to a communications network provided to customers.”<sup>5</sup>
- Assessing contributions based on numbers, where “providers would be assessed based on their count of North American Numbering Plan (NANP) phone numbers.”<sup>6</sup>

<sup>1</sup> See generally *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, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014), *petitions for cert. denied*.

<sup>2</sup> *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, filed May 2, 2011 (State Plan).

<sup>3</sup> *In re Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, (FCC, Rel. Apr. 30, 2012), Further Notice of Proposed Rulemaking, FCC 12-46, 27 FCC Rcd 5357 (2012) (*April 2012 FNPRM*), ¶ 3 *slip op.* at 3.

<sup>4</sup> *April 2012 FNPRM*, ¶ 98 *slip op.* at 43.

<sup>5</sup> *April 2012 FNPRM*, ¶¶ 219, 220 *slip op.* at 80.

<sup>6</sup> *April 2012 FNPRM*, ¶¶ 284, 285 *slip op.* at 100.

- Using a hybrid system with a numbers-component where, for example, under prior “2008 proposals, consumer numbers would be assessed on a numbers-based methodology, and business lines would be assessed on a connections-based methodology.”<sup>7</sup>

7. Numerous participating parties submitted comments and reply comments. The State Members submitted Reply Comments in the same proceeding. The State Members pointed out the following:

Regardless of the Commission’s chosen method and service boundaries for the contribution base of the federal USF, numerous practical implementation issues will require appropriate consultation with State utility regulatory commissions. If the experience of implementing the *USF/ICC Transformation Order* is any guide... such practical implementation issues are likely also to affect numerous State USFs that operate in concert with the federal USF mechanism. The Federal-State Joint Board on Universal Service is the appropriate statutorily-founded vehicle for such consultations. The State Members urge the Commission to use it in a substantive and constructive manner.<sup>8</sup>

### III. REFERRAL TO THE JOINT BOARD

8. Through its August 7, 2014 Order, the FCC referred “to the Joint Board the record developed in response to the Commission’s 2012 Further Notice of Proposed Rulemaking in the contribution methodology proceeding (*2012 FNPRM*), and asked the Joint Board to develop recommendations, with a particular focus on how any modifications to the contribution system would impact achievement of the statutory principle that there be state as well as federal mechanisms to preserve and advance universal service.”<sup>9</sup> The Commission acknowledged in its *Referral Order* that although “it chose to assess contributions based on end-user revenues” when it implemented the federal Telecommunications Act of 1996 (TA-96), since that time “network convergence and technological innovation have transformed the telecommunications industry, and the contribution system has become increasingly complex and difficult to administer.”<sup>10</sup>

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<sup>7</sup> *April 2012 FNPRM*, ¶ 322 *slip op.* at 115 (citation omitted).

<sup>8</sup> *In re Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Reply Comments of the State Members of the Federal State Joint Board on Universal Service, August 6, 2012, at 15 (citations omitted).

<sup>9</sup> *In re Federal State Joint Board on Universal Service; Universal Service Contribution Methodology et al.*, WC Docket Nos. 96-45, 06-122 *et al.*, (FCC, Rel. Aug. 7, 2014), Order, *slip op.* FCC 14-116 (*Referral Order*), ¶ 1 at 1 (citation omitted).

<sup>10</sup> *Referral Order*, ¶ 2 at 1 (citations omitted).

9. The Joint Board and its staffs have deliberated on the issues covered by the *Referral Order* and the State Members concludes that full Commission reform of the federal contribution mechanism can no longer be delayed. Both Commission inaction and the needed contribution reform directly affects both federal and state funding mechanisms. The present contribution base of the federal USF mechanism that is largely based on the interstate and international revenues of wireline and wireless telecommunications services continues to shrink. This revenue-based contribution base has declined from \$72.27 billion in 2005 to \$60.45 billion in 2015.<sup>11</sup> At the same time the federal USF mechanism disbursements increased from \$1.46 billion in 2001 to \$8.37 billion in 2015.<sup>12</sup> This results in ever increasing contribution assessment factors that are imposed on conventional telecommunications services, while the corresponding support distributions are targeted on the deployment and the availability of broadband access networks and services. For example, the federal USF contribution assessment factors have increased from 8.9% in the fourth quarter of 2004 to 17.4% in the fourth quarter of 2016.<sup>13</sup> Lately, the same quarterly contribution assessment factor at times has exceeded 19.5%.<sup>14</sup> These increases in the assessment factor have a corresponding impact on the end-user consumers of the contributing wireline and wireless telecommunications services.

10. The State Members of the Joint Board also conclude that the domain of services that contribute to the federal USF mechanism needs to expand. For example, wireline and wireless retail BIAS currently do not provide contribution assessments to the federal USF. Where such retail BIAS may still contribute (e.g., certain BIAS of rural incumbent local exchange carriers or ILECs), there is at least one forbearance petition to temporarily cease such contributions.<sup>15</sup> The conclusion to expand the domain of services that contribute to the federal USF is driven by a number of considerations. These include but are not limited to the following:

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<sup>11</sup> FCC, Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report 2016*, CC Docket No. 96-45 *et al.*, (FCC, Jan. 12, 2017), (Data Through Sept. 2016) (*2016 Monitoring Report*), Table 1.5 at 14. This revenue base has declined at an annual compound rate of 2.17% in 2005-2015.

<sup>12</sup> FCC, *2016 Monitoring Report*, Table 1.10 at 19. The total amount of federal USF mechanism disbursements increased at a compound annual growth rate of 2.53% between 2005 and 2015.

<sup>13</sup> FCC, *2016 Monitoring Report*, Table 1.6 at 15. The quarterly contribution assessment factor value has increased at an annual compound rate of 5.75% between the fourth quarter of 2004 and the fourth quarter of 2016.

<sup>14</sup> See FCC Public Notice, Proposed First Quarter 2018 Universal Service Contribution Factor, CC Docket No. 96-45, DA 17-1203, Dec. 14, 2017, at 3-4.

<sup>15</sup> See generally *Petition of NTCA – The Rural Broadband Association and the United States Telecom Association for Targeted Temporary Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Broadband Internet Access Transmission Services Pending Universal Service Fund Comprehensive Contributions Reform*, WC Docket Nos. 17-206 and 06-122, filed June 14, 2017; FCC Public Notice, Pleading Cycle Established for Comments on NTCA and USTelecom’s Petition for Forbearance from USF Contribution Requirements, WC Docket No. 17-206, DA 17-765 (rel. Aug. 14, 2017).

- In accordance with the principles of the Commission’s *USF/ICC Transformation Order*, the availability and provision of retail BIAS is an inherent component of the universal service concept.
- Numerous comments in response to the *April 2012 FNPRM* have already indicated that the federal USF and CAF mechanism is used to support the universal deployment of broadband access networks and services, while the same retail BIAS are largely and critically absent from the contribution base of the federal USF. This approach needs to be fundamentally changed through the expansion of the federal USF contribution base and the inclusion of wireline and wireless BIAS.<sup>16</sup>
- The inclusion of additional services in the contribution base of the federal USF will lead to its long-term sustainability, sufficiency, adequacy and predictability.
- The expansion of the federal USF contribution base will lower the periodic contribution assessment factors to more manageable and affordable levels for all end-user consumers if the federal USF mechanism disbursements generally remain at the same level.
- Potential reclassification of services (e.g., telecommunications to broadband access and BIAS reclassification<sup>17</sup>), will not affect their eligibility for contribution assessments to the federal USF.
- The federal USF contribution assessments and subsequent disbursements (including CAF outlays), as well as parallel state USF mechanism disbursements, “are essentially designed to support ever evolving physical network facilities that are utilized for a number of purposes and by various types of traffic (e.g., inclusive of the wholesale transmission of information services traffic that is broadly characterized as a common carrier telecommunications service).”<sup>18</sup>

#### IV. RECOMMENDED REVISIONS TO THE CONTRIBUTION MECHANISM

##### A. Revisions to Assessment Base/Assessable Services.

11. In paragraph 3 of the *Referral Order*, the Commission requested the Joint Board consider how to further the goals of improving the efficiency, fairness and sustainability of the contribution system when making its recommendation to the Commission.<sup>19</sup> The Joint Board considered those three goals throughout its deliberative process.

<sup>16</sup> See generally State Members Reply Comments, August 6, 2012, at 14; National Association of Regulatory Utility Commissioners (NARUC) Reply Comments, August 6, 2012, at 4; National Association of Utility Consumer Advocates (NASUCA) Comments, at 7; Pennsylvania Public Utility Commission (Pa. PUC) Reply Comments, August 6, 2012, at 9; California Public Utility Commission (Ca. PUC) Comments, July 9, 2012, at 4; National Telecommunications Cooperative Association (NTCA), Comments, July 9, 2012, at 15-24; AARP Comments, July 9, 2012, at ii-iii, 11-14.

<sup>17</sup> See generally *In re Restoring Internet Freedom*, WC Docket No. 17-108, (FCC Rel. Jan. 4, 2018, Declaratory Ruling Report and Order, and Order, slip. op. FCC 17-166 (*Internet Freedom Order*); (FCC, Rel. May 23, 2017), Notice of Proposed Rulemaking, FCC 17-60, 82 Fed. Reg. 25568 (June 2, 2017), ¶ 192 at 116.

<sup>18</sup> State Members Reply Comments, August 6, 2012, at 11.

<sup>19</sup> *Referral Order*, ¶ 3 at 2.

12. The Board first considered who should contribute to universal service as set forth in the April 2012 FNPRM.<sup>20</sup> Section 254(d) of the Act requires “[E]very telecommunications carrier that provides interstate telecommunications” to contribute to the universal service fund. In addition, the Commission’s permissive authority extends to “any...provider of interstate telecommunications...if the public interest so requires.”<sup>21</sup> The Commission sought comment on how to interpret the scope of its permissive authority and whether to broaden the assessment base to include the following providers of specific services: enterprise communications services, text messaging, one-way VoIP service, and broadband Internet access service (BIAS).<sup>22</sup> The Commission has broadly interpreted “provider of telecommunications” to include services which have a telecommunications component regardless of how it is offered as a finished product.<sup>23</sup> Commenters responding to the Commission’s FNPRM generally agree the Commission could use its permissive authority under Section 254(d) to expand the contribution base.<sup>24</sup> It is clear the Commission has the legal authority to extend contribution requirements to a broader class of providers of interstate telecommunications where it is in the public interest.

13. The question then becomes whether the use of the Commission’s permissive authority to expand the contribution base to include a broader class of services that touch the public communications network, including BIAS, is in the public interest. Expansion of the defined contribution base is a necessary step to achieve the Commission’s articulated goals of efficiency, fairness and sustainability. It is in the public interest. As discussed below, the record supports this conclusion.

14. *Sustainability.* An overwhelming majority of commenters with varied interests agree that expanding the federal USF contribution assessment base to include the services supported in a broadband-centric environment is the best way to ensure sustainability and sufficiency.<sup>25</sup> Some

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<sup>20</sup> April 2012 FNPRM, 27 FCC Rcd at 5376-5393, ¶¶ 31-74.

<sup>21</sup> April 2012 FNPRM, 27 FCC Rcd at 5376 (citing 47 U.S.C. § 254(d)).

<sup>22</sup> See *id.* at 5378, ¶ 38.

<sup>23</sup> See AT&T Comments, WC Docket No. 06-122 at 4 (July 9, 2012); COMPTTEL Comments, WC Docket No. 06-122 at 5 (July 9, 2012); ACS Comments, WC Docket No. 06-122 at 8-9 (July 9, 2012); and GVNW Comments, WC Docket No. 06-122 at 5-6 (July 9, 2012). (All comments in this recommendation refer to the comments filed in WC Docket No. 06-122, which were filed on or around July 9, 2012 unless otherwise indicated.)

<sup>24</sup> See Google, Inc. Comments at 8; Earthlink Comments at 6; see also Reply 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 at 3 (August 6, 2012)(collectively referred to as the “Rural Associations”).

<sup>25</sup> See generally, Reply Comments of the Rural Associations; and Reply Comments of AARP (August 6, 2012)(discussing the comments filed by Alexicon Telecommunications Consulting, AT&T, CenturyLink, COMPTTEL, Critical Messaging Association, Earthlink, Integra, TW Telecom, GVNW Consulting, Information Technology Council, MetroPCS, and NASUCA).



commenters indicated it was the *only* path to sustainability.<sup>26</sup> Others argued the Commission must develop “future proof” rules that include services to which customers have migrated.<sup>27</sup> As the Commission noted in its April 2012 FNPRM, a general list of services and providers required to contribute could produce a more sustainable contribution system.<sup>28</sup> It is clear that extending contribution obligations to broadly include the services proposed by the Commission is necessary to achieve a sufficient and sustainable mechanism.

15. *Fairness.* Many commenters also acknowledged that expanding the contribution base would achieve the goal of fairness as consumer impact could be more equitably distributed.<sup>29</sup> The current structure where companies can use different technologies to compete for the same customers and pay into the fund in different ways is harmful and inequitable. The Commission should remove these harmful incentives to evade the contribution obligations by broadening the base to include a broad base of services that touch the public communications network.<sup>30</sup> The State Members of the Joint Board recommend the Commission include all services that touch the interconnected communications network which relies on public rights of way or licensed frequencies for wireless communications.<sup>31</sup>

16. *Efficiency.* Inefficiencies in the current system are caused by continued and persistent attempts to avoid assessment.<sup>32</sup> As the Commission recognized, the contribution system that was put in place more than a decade ago has become increasingly complex.<sup>33</sup> The bundling of different kinds of services and a blurring of the line between local and toll service make it more challenging for contributors to allocate revenues as required under the current contributions methodology.<sup>34</sup> Additionally, the emergence of new services has complicated contribution obligations. In many cases, the lack of clarity

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<sup>26</sup> See e.g., CenturyLink Comments at 10; AARP Comments at 11-16; AT&T Comments at 4; Comments of the California Public Utilities Commission and the People of the State of California at 4 (hereinafter referred to as CPUC Comments); and Reply Comments of Vonage Holdings Corp. at 3 (August 6, 2012).

<sup>27</sup> See Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking, at 5 (NASUCA Comments); see also AT&T Comments at 4 (stating it is no longer sustainable to impose the lion’s share of the contribution burden on traditional “telecommunications carriers” now that consumers have turned increasingly to Internet-based information services to meet their communications needs and the Commission must place heavier reliance on its permissive authority.)

<sup>28</sup> See April 2012 FNPRM at 27 FCC Rcd at 5393, ¶ 74.

<sup>29</sup> See United States Telecom Association Comments at 4-6; NASUCA Comments at 8 (stating the alternative to not requiring contribution for BIAS is not competitively neutral); AT&T Comments at 13-14; and COMPTTEL Comments at 16.

<sup>30</sup> See CenturyLink Comments at 10 (stating permissive authority can and should be used here to ensure that all types of services that rely on broadband networks contribute their fair share toward the cost of maintaining them where USF support is necessary); Alaska Communications Systems Group, Inc. (ACS) Comments at 8-9; see also AARP Comments at 16 (stating the public interest requires that the Commission utilize a broad perspective when establishing the contribution base).

<sup>31</sup> See Comments by State Members of the Federal State Joint Board on Universal Service, WC Docket 10-90, at 118 (May 2, 2011); and Reply Comments of the State Members at 14 (August 6, 2012).

<sup>32</sup> GVNW Consulting, Inc. Comments at 9.

<sup>33</sup> April 2012 FNPRM, 27 FCC Rcd at 5373, ¶23.

<sup>34</sup> *Id.*

has led providers to avoid contribution requirements based on how they market their product. The result is that some providers contribute on specific services, while other providers do not.<sup>35</sup> The Commission has been required to address these questions on a case-by-case basis, many of which take years to resolve.<sup>36</sup> Expanding the base and closing existing loopholes will make the program more efficient. There is widespread agreement that the methodology for universal service contributions should be dynamic enough to keep pace with changes in the marketplace.<sup>37</sup> The majority of commenters agreed and endorsed expansion of the contribution base to accomplish this goal.<sup>38</sup>

17. The State Members of the Joint Board is unpersuaded by comments opposing the expansion of the contribution base to include BIAS.<sup>39</sup> The main objection to expanding the base is the speculation that including such services may deter broadband investment or adoption. There is little in the record to demonstrate that broadening the contribution base as recommended would have that effect.<sup>40</sup> Broadband access is widely considered an essential service and an equitable assessment is not going to dissuade customers from subscribing.<sup>41</sup> Expanding the contribution base to include all services that touch the public communications network, particularly with budgetary control measures in place, will result in a reduced contribution assessment factor, causing the burden placed on existing telecommunications services and their respective consumers to decrease.<sup>42</sup> Moreover, there is no viable solution offered by commenters opposed to broadening the base that address the issues of fairness and sustainability. Aside from the fact that universal service support is now explicitly directed to broadband networks, the Commission has incentives in place to make broadband access service available for

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<sup>35</sup> See *id.*; see also ¶¶ 41-42.

<sup>36</sup> One commenter observed that the administration of the current revenues-based contribution system exceeds \$100 million annually. See Google, Inc. Comments at 4.

<sup>37</sup> *April 2012 FNPRM*, 27 FCC Rcd at 5373, ¶ 25. See also ¶ 20 (Changes to the telecommunications marketplace also have led to a decline in the contribution base at the same time that the communications market has grown.)

<sup>38</sup> See *e.g.*, Reply Comments of COMPTTEL at 1 (August 5, 2012)(stating there is near universal agreement on the need to broaden the base); and Reply 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 at 3 (August 6, 2012).

<sup>39</sup> See NCTA Comments at 4-5; and Time Warner Comments at 9-10 (recommending the base be broadened to include enterprise services, one-way VoIP, and text messaging but not broadband internet access service).

<sup>40</sup> See *e.g.* ADTRAN Comments at 6, Comcast Comments at 16, FTTH Comments at 5, NTCA Comments at 4-5. See also *contra*. AARP Comments at 4 (August 6, 2012)(stating that Comcast's use of the conclusions of the Goolsbee study is highly questionable as the time period studied and data sources utilized are not reasonable).

<sup>41</sup> Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, at ii.

<sup>42</sup> See Google, Inc. Comments at 7 (noting its preliminary analysis of existing data indicates a connections-based mechanism would be sufficient to meet the distribution demands of the fund and result in a lower monthly assessment on residential and business customers than any other contribution proposal, including suggested reforms to the current revenues-based system.)

eligible low-income consumers, and increase adoption where it lags.<sup>43</sup> Moreover, barriers to broadband deployment and usage are being increasingly addressed by technological innovation and better use of spectrum.<sup>44</sup>

18. Expanding the contribution base to include BIAS, as well as the enterprise services discussed below, would serve the public interest. Accordingly, the State Members of the Joint Board recommend broadening the contribution assessment base to include assessments on the principal beneficiaries of a broadband-centric federal universal service fund.

### **B. How Contributions Should be Assessed**

19. The Commission also asked the Joint Board to review the methodology for carrier contributions to universal service.<sup>45</sup> The Joint Board was presented with and weighed a number of alternatives to the current revenues-based mechanism in light of the stated goals for reform, *i.e.*, efficiency, fairness and sustainability in developing its recommendation regarding the manner in which contributions should be assessed.

20. Since 2014, the Joint Board has convened numerous meetings and conference calls and examined roughly 45 separate use cases that looked at the effect of contribution reform on low-income, mid-volume, and high-volume users. Throughout these discussions, the Board considered five different approaches: pure numbers-based, pure connections-based, expanded revenues, hybrid connections/revenues and hybrid numbers/revenues. Data and assumptions were provided by the Commission staff and discussed by the Joint Board relative to each of these options.

21. After a thorough and thoughtful review of all options presented, the State Members of the Joint Board recommend the adoption of a hybrid connections/revenues methodology as described further below.

#### **i. FCC Should Adopt a Connections-based Assessment on Residential Services.**

22. The State Members of the Joint Board recommend the Commission adopt a connections-based assessment on residential services. The comments in response to the FNPRM were not unanimous;

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<sup>43</sup> See *2012 Lifeline Modernization Order*. State commissions have a vested interest in increasing broadband deployment and adoption rates for consumers. In addition, the Commission has sought comment on the option of exempting low-income subscribers from paying the USF assessment. See *April 2012 FNPRM*, 27 FCC Rcd 5357, 5493 at ¶ 404. If broadband adoption is perceived to be harmed by the modified contribution requirements, the Commission could adopt its proposed revision to § 54.712. See *id.*

<sup>44</sup> See Reply Comments of Google at 3.

<sup>45</sup> *Referral Order*, 29 FCC Rcd at 9785, ¶ 3.

however, many commenters provided a convincing case that a connections-based mechanism offers advantages to maintaining or making incremental adjustments to the current revenues-based mechanism that are not present in the other approaches.<sup>46</sup> The State Members of the Joint Board find those arguments have merit. A connections-based mechanism will provide stability for the Commission, administrative efficiency for carriers, and transparency for consumers.<sup>47</sup> Commenters recognized the benefits of a connections-based contribution system particularly for residential services.<sup>48</sup>

23. The State Members of the Joint Board recommend the Commission determine the connection fee based on residential connections reported on FCC Form 477. This per-connection fee should be assessed separately for voice and broadband. The Commission should structure the mechanism such that the revenues obtained from residential connections would support 50 percent of the overall federal universal service fund demand. Based upon the Commission staff reported data, as of 2015, the estimated per-connection surcharge for residential wireline and wireless services connections (including broadband access connections), would initially be set around 55 to 60 cents (\$0.55 - \$0.60) per connection.

**ii. FCC Should Adopt an Expanded Revenues-based Assessment on Business Services.**

24. As applied to the enterprise market, the State Members of the Joint Board recommend the Commission assess contributions using an expanded revenues mechanism. The Commission should determine the contribution factor for the enterprise market based on an expanded revenues system that includes current and future generation virtual private network (Gen VPN) services, Video Conferencing, Web Conferencing, Unified Communications, and business wireless broadband access services. As discussed above, the record evidence supports including these services in the contribution base. The State Members of the Joint Board recommend the Commission structure the mechanism so that revenue-based fees would fund the remaining 50 percent of demand. Based on the Commission staff's estimated units and demand, the revenues-based contribution assessment rate would be reduced to around 8 percent, which is about half of what the revenues-based assessment factor is today.

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<sup>46</sup> See AT&T Comments at 3 (stating that a long-term solution required a departure from today's revenue-focused approach); *Id.* at 17 (If history is any guide, any Commission "fixes" to its revenues methodology will be short-lived. One only needs to look at the size of the current contribution factor and market trends to validate that statement.) See also Google, Inc. Comments at 4-6; and Vonage Holdings Corp. Comments at 2 (supporting a capacity-based connections methodology).

<sup>47</sup> See Comcast Corporation Comments at 19 (stating a connections-based assessment could be more transparent than a revenues-based system providing consumers with the ability to better understand the connection method... a connections-based system also may be better suited to an industry that is characterized by ongoing rapid changes in service offerings).

<sup>48</sup> See also Sprint Nextel Corporation Comments at 26 (stating a connections-based methodology would be equitable, nondiscriminatory, consumer friendly, more efficient, more sustainable and less regulatory intrusive.)

25.. This hybrid approach presents a number of advantages in comparison to other alternatives. For example, the use of telephone numbers for contribution assessment purposes has the inherent disadvantage that retail broadband access service connections and high-capacity special access circuits are not associated with specific telephone numbers. Similarly, the retention of a modified revenue approach for enterprise services presents the advantage that revenue allocations may not necessarily need to take place among individual types or classifications of services.

26. Establishing different contribution methodologies for residential and business services is both equitable and nondiscriminatory. Section 254(d) of the Act requires all providers of telecommunications services to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. However, it does not require that all services be assessed in the same manner. There are valid justifications for subjecting residential and enterprise market services to a differing, but equitable, contribution structure. As indicated above, moving to a connections-based contribution mechanism for the residential market provides a number of advantages, including sustainability to the fund. At the same time, a connections-based mechanism applied to businesses would permit certain significant contributors could escape contribution requirements entirely. Such a result would be inconsistent with the obligation that all providers of interstate telecommunications services contribute to universal service, and would impose an unfair burden on the providers, and ultimately the consumers, paying for services subject to contributions.

**iii. Need for Additional Reporting Metrics in Forms 499/477.**

27. The Commission should update its reporting requirements to collect the data needed to determine accurate reporting. The Commission should revise Form 477 by collecting residential connections separate from business connections. The Commission should also require carriers to certify to the accuracy of the data reported.

28. The State Members of the Joint Board further recommend that the Commission adopt a notice and comment process for updating the Telecommunications Reporting Worksheet, Form 499, to make needed revisions in how that data is reported. For example, the relevant reporting worksheets should be revised so that residential, business, and total revenue figures are separately reported. The Commission should require business VoIP revenues that may not be currently reported to be reported in the future. Finally, the Commission should require the Universal Service Administrative Company

(USAC) to develop and adopt an updated plan to oversee and verify the accuracy of any changes to the contribution system.

## **I. OTHER ISSUES**

### **A. Budget**

29. The Joint Board is particularly mindful of the concerns articulated by Commissioner O’Rielly in his *Referral Order* statement about a budget. Contribution reform should go hand in hand with a budgetary control mechanism so that ratepayers are not unreasonably burdened. The Commission has already taken steps to limit the growth of the universal service fund.<sup>49</sup> Yet, as Commissioner O’Rielly observed in 2014, ratepayers were assessed approximately 16 percent of interstate revenues on their phone bills, which has subsequently risen to roughly 19 percent today. The recommendations set forth herein minimize that burden and more fairly distributes that responsibility for all users of the various communications networks. However, it is difficult to predict what changes may again precipitate an increase to the assessment base.

30. Accordingly, the State Members of the Joint Board recommend that the Commission establish a firm budget for each of the four universal service fund programs with those budgets not growing any more than the Consumer Price Index for any given year. The initial budget for the high-cost program should be set to fully fund the existing high cost mechanisms.<sup>50</sup> The initial budgets for the rural health, and E-rate programs should be set at their current budget levels. The initial budget for Lifeline should be set at the current soft budget level.<sup>51</sup>

### **B. Preservation of State USF Mechanisms**

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<sup>49</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17710-11, ¶ 123 (2011) (establishing a budget for the high-cost component of the fund); see also *Lifeline and Link Up Reform and Modernization Order* et al., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, 27 FCC Rcd 6656, 6808 at ¶¶ 357-259 (rel. February 6, 2012) at ¶ 357-359 (*2012 Lifeline Modernization Order*).

<sup>50</sup> There are outstanding requests for the Commission to increase the size of the high-cost budget for rate-of-return carriers. The Board does not comment on those specific requests in this recommendation as it is outside the scope of the *Referral Order*; however, the Board supports fully funding the high-cost support mechanism consistent with the Commission’s goals to preserve and advance universal service.

<sup>51</sup> See *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket No. 11-42; WC Docket No. 09-197; WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3965, ¶10 (rel. April 27, 2016)(*2016 Lifeline Modernization Order*)(setting the budget at \$2.25 billion with a mechanism for the Commission to consider adjustments to the budget if demand reaches a certain threshold).

31. As many have acknowledged, the “preservation and advancement of national universal service policies continue to be joint enterprises between the States and the federal government.”<sup>52</sup> 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.”<sup>53</sup> The existence and operation of state-specific USF mechanisms in no less than twenty-one (21) states is crucial to the Congressional scheme. 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.”<sup>54</sup> It is obvious that the “continuous and robust viability of State-specific USFs preserves, enhances and complements the role of the federal USF mechanism — inclusive of the CAF parameters”, and that “the preservation of viable and robust State USFs, where determined to be necessary, on a going-forward basis continues to play a fundamental role in maintaining and enhancing the national universal service goals.”<sup>55</sup>

32. Accordingly, the State Members of the Joint Board recommend that “the Commission’s contemplated reforms should explicitly adopt the principle that the *federal USF contribution mechanism should be compatible with, do no harm to, and promote state universal service contribution and support mechanisms where determined to be necessary.*”<sup>56</sup>

33. The requirements for the long-term viability and robustness of the state USF mechanisms parallel those for the sustainability, sufficiency, adequacy and predictability of the federal USF. The regulatory classification of broadband access services does not present a barrier on the contribution assessment of these services by both the federal and the state USF mechanisms. It clearly falls within the permissive exception in the Act. That said, the FCC should take affirmative action with respect to the state USF mechanisms as further explained below.

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<sup>52</sup> State Members Reply Comments, August 6, 2012, at 2, citing *April 2012 FNPRM*, ¶ 6 at 4; and, *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*).

<sup>53</sup> State Members Reply Comments, August 6, 2012, at 2.

<sup>54</sup> State Members Reply Comments, August 6, 2012, at 2, citing 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).

<sup>55</sup> State Members Reply Comments, August 6, 2012, at 6-7.

<sup>56</sup> State Members Reply Comments, August 6, 2012, at 7 (emphasis in the original), citing NRIC Comments at 7; NTCA *et al.* Comments, at 43; and *First USF Order*, ¶ 3 at 6.

34. In the *Title II Order* the Commission reaffirmed its “longstanding conclusion that broadband Internet access service [BIAS] is jurisdictionally interstate for regulatory purposes.”<sup>57</sup> The Commission retained that conclusion in its *Internet Freedom Order*.<sup>58</sup>

35. The underlying analysis in both recognizes, as it must, the obvious: BIAS includes intrastate communications and implicitly supports state universal service initiatives – even if it impacts both inter- and intrastate communications,<sup>59</sup> which is an explicit federal goal. The *Title II Order* also stated “that the imposition of state-level contributions on broadband providers that do not presently contribute would be inconsistent with [the Commission’s] decision *at the present time* to forbear from mandatory federal USF contributions, and therefore we [the Commission] preempt any state from imposing any new state USF contributions on broadband — *at least until the Commission rules on whether to provide for such contributions.*”<sup>60</sup> Although the Commission in its 2015 *Title II Order* exercised partial forbearance from a requirement to assess federal USF contributions on BIAS, it nevertheless noted that “...newly applying universal service contribution requirements on broadband Internet access service potentially could spread the base of contributions to the universal service fund, providing at least some benefit to customers of other services that contribute, and potentially also to the stability of the universal service fund through the broadening of the contribution base.”<sup>61</sup> The Commission also noted the pendency of its *April 2012 FNPRM* proceeding and its *Referral Order* to the Joint Board.<sup>62</sup> The Commission’s *Internet Freedom Order* continues “to preempt any state from imposing any new state universal service fund contributions on broadband access service.”<sup>63</sup> However, it does not deprive “the states of any functions expressly reserved to them under the Act... or authority

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<sup>57</sup> *Title II Order*, ¶ 431, *slip op.* at 203 (citation omitted). The Commission has established this regulatory classification but it “has previously found that, ‘...broadband Internet access service traffic may include an intrastate component...’” *Id.* and n. 1277 citing *NARUC Broadband Data Order*, 25 FCC Rcd at 5054, ¶ 8 n. 24 (citing *GTE Order*, 13 FCC Rcd 22475, para 16).

<sup>58</sup> *See generally Internet Freedom Order*, ¶ 199 at 120 (citations omitted). The Commission also acknowledged that “both interstate and intrastate communications can travel over the same Internet connection (and indeed may do so in response to a single query from a consumer)...” *Id.*, ¶ 200 at 120.

<sup>59</sup> *See, e.g.* 47 U.S.C. § 253(a) and (b). Permitting the FCC to preempt any state law or regulation that “may prohibit . . . the ability of any entity to provide any **interstate** or intrastate telecommunications service,” while simultaneously specifying that even if the designated regulation has that effect – if the state is imposing “requirements necessary to preserve and advance universal service,” under Section 253(b), preemption is not permitted.

<sup>60</sup> *Title II Order*, ¶ 432, *slip op.* at 203-204 (citation omitted) (emphasis added). The Commission noted that it was not “aware of any current state assessment of broadband providers for state universal service funds, as we understand that those carriers that have chosen voluntarily to offer Internet transmission as a Title II service classify such revenues as 100 percent interstate.” *Id.*, n. 1282, *slip op.* at 204.

<sup>61</sup> *Title II Order*, ¶¶ 488-489, *slip op.* at 235-236, 30 FCC Rcd at 5835-5836.

<sup>62</sup> *Title II Order*, ¶ 489 and n. 1471, *slip op.* at 236, 30 FCC Rcd at 5836.

<sup>63</sup> *Internet Freedom Order*, n. 736 at 119, citing 47 U.S.C. § 254(h), and *Title II Order*, 30 FCC Rcd at 5836-5837, ¶ 490 n. 1477.



to adopt state universal service policies not inconsistent with the Commission’s rules under section 254.”<sup>64</sup>

36. The State Members of the Joint Board recommend the Commission take affirmative action to reverse the results of its previous federal preemption and classification of wireline and wireless broadband Internet access services as interstate for the purpose of contribution assessments by the state USF mechanisms. Such affirmative Commission action is necessary in order to “conclusively forestall varying interpretations of federal law that can negatively affect the continuing viability and robustness of State USF mechanisms.”<sup>65</sup> Furthermore, such an affirmative declaration by the Commission can obviate relevant legal risks (and the attendant waste of taxpayer/ratepayer resources) and conclusively confirm that appropriate state USF contribution assessments on broadband access services “do not rely on or burden Federal universal service support mechanisms” under the statutory requirements of Section 254(f) of TA-96, 47 U.S.C. § 254(f).<sup>66</sup> Such an affirmative declaration is compatible with the joint statutory responsibility of the Commission and the states to “preserve and advance universal service” under Sections 254(d) and 254(f) of TA-96, 47 U.S.C. §§ 254(d) and 254(f), with the redefined universal service concept containing a broadband access service component, and where such joint responsibility has specifically been acknowledged by the Commission. Since the Commission has continued to acknowledge that “broadband Internet access service traffic may include an intrastate component”<sup>67</sup>, the Commission possesses the requisite statutory authority to make such an affirmative declaration. Finally, such a declaration is fully compatible with the statutory goals of Section 706(a) of TA-96, 47 U.S.C. § 1302(a), regarding the joint federal and state responsibility for the deployment of advanced services and broadband access.

37. The State Members of the Joint Board recommend the FCC confirm that state USF mechanisms can assess appropriate contribution assessments on broadband access services without relying on or burdening the federal USF mechanism. Such state USF contribution assessments can follow the hybrid method of connections and enterprise revenues that the State Members of the Joint Board

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<sup>64</sup> *Internet Freedom Order*, ¶ 196, at 119. *Cf.* note 60 *supra*.

<sup>65</sup> State Members Reply Comments, August 6, 2012, at 8. The State Members also noted their previous May 2, 2011 State Plan proposal where: “To the extent that federal or State support induces carriers to install and maintain communications facilities in the public communications network, the benefits flow to all regulated and unregulated ‘telecommunications services’ (interstate and intrastate) and ‘information services’ that traverse that network... Those who benefit from the universal service funding in the future should contribute equitably to its ongoing deployment.” *Id.*, quoting State Plan at 123-124, and citing *April 2012 FNPRM* ¶ 130, *slip op.* at 52.

<sup>66</sup> State Members Reply Comments, August 6, 2012, at 11, citing NRIC Comments at 13.

<sup>67</sup> *Title II Order*, ¶ 431, *slip op.* at 203 (citation omitted).

hereby recommends for the federal USF contribution base, or they can be based solely on connections or revenues. To the extent that a state USF mechanism utilizes a hybrid connections and enterprise revenues method that parallels the federal USF contribution base, the use of appropriate state USF surcharges on assessable connections and services should be a non-issue.<sup>68</sup> However, a state USF's continuous use of a solely revenues-based contribution assessment method may require a jurisdictional allocation or "safe harbor" use on what can be contribution assessed on an intrastate basis for broadband access services.

## **V. Recommendation Clause**

38. For the reasons discussed herein, the State Members of the Federal-State Joint Board on Universal Service, pursuant to section 410(c) of the Communications Act of 1934 as amended, RECOMMEND that the Commission adopt the proposals set forth herein concerning modifications to the federal universal service fund contribution base and methodology.

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<sup>68</sup> Any final FCC order must provide clarity that analogous connections-based State funding mechanisms do not burden the federal fund, by specifying safe harbor allocations of intrastate- interstate revenues and that State set fixed universal service fee's that remain below any fraction of the intrastate safe harbor percentage, by definition do not burden the federal program.