

Resolution on Federalism and the Connect America Fund Phase II

WHEREAS, The Federal Communications Commission (FCC) issued a comprehensive order reforming universal service and intercarrier compensation in the *In re: Connect America Fund* Report and Order and Notice of Further Rulemaking in Docket 10-90 on November 18, 2011, 26 FCC Rcd 17663, 17973-74 (¶¶ 883-884) (FCC 11-161) (2011) (“*USF/ICC Transformation Order*” or “*FNPRM*”) proposing, among other things, to reform the federal universal service fund (USF), to revise the existing high-cost support universal service mechanism, and to focus such support so as to deploy broadband network facilities capable of providing voice and broadband services to all Americans; *and*

WHEREAS, The *USF/ICC Transformation Order* was upheld in its entirety by the federal courts in *In re FCC*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Aug. 27, 2014, *cert. denied*, 83 U.S.L.W. 3835, May 4, 2015 (Nos. 14-610, *et al.*); *and*

WHEREAS, The *USF/ICC Transformation Order* established the Connect America Fund (CAF) intended to provide support to two incumbent wireline carrier groups, the federal price-cap and rate-of-return carriers, so that all Americans have access to broadband network facilities and services; *and*

WHEREAS, The *USF/ICC Transformation Order* proposed to provide offers of model-based support for universal service to the two incumbent wireline carrier groups to ensure that all Americans have access to broadband network facilities and services using separate model-based offers of support that were subsequently developed for the price-cap and rate-of-return incumbent wireline carrier groups; *and*

WHEREAS, The *USF/ICC Transformation Order* initiated two phases of support for the deployment of broadband-capable networks for price cap carriers, CAF Phase I and CAF Phase II; *and*

WHEREAS, CAF Phase II consisted of statewide offers of model-based support to incumbent price-cap carriers and, in those instances where the incumbent price-cap carrier declined the statewide model-based offer of support, the model-based offer of support would be subject to and awarded via an auction process; *and*

WHEREAS, The FCC published a list of potentially eligible areas for model-based support for price-cap carriers under the *USF/ICC Transformation Order* and CAF Phase II by notice issued August 29, 2014, at DA 14-1260; *and*

WHEREAS, The FCC made comprehensive offers of long-term, statewide model-based support to eligible price-cap carriers in a notice issued on April 29, 2015, at DA 15-509, in which the eligible price-cap carriers offered model-based support had to state if they accepted or declined the CAF Phase II support within a 120-day election period that ended on August 27, 2015; *and*

WHEREAS, The FCC identified 10 eligible price-cap carriers or their respective holding companies that had accepted long-term, statewide model-based offers of support that totaled \$1.5 billion under CAF Phase II on August 27, 2015; *and*

WHEREAS, On May 26, 2016, the FCC issued the *CAF Phase II Auction Order*, 31 FCC Rcd 5949, establishing the bidding rules and parameters governing the auction of the remaining model-based support in those areas where the model-based offer of support had been declined by incumbent price-cap carriers; *and*

WHEREAS, The CAF Phase II Auction Order established a process for determining the successful bidders based on the difference between the reserve and auction bid prices on a nationwide basis, effectively allowing support offered initially to price-cap carriers for State-specific census blocks or tracts to migrate from those State-specific census blocks or tracts to census blocks or tracts in other States; *and*

WHEREAS, The State of New York petitioned for a waiver of the rules so that State-specific census block or tract offers of support declined by price-cap carriers in New York State under CAF Phase II would remain in New York State in furtherance of joint New York-FCC efforts to promote the deployment of broadband network facilities and services throughout New York; *and*

WHEREAS, Other State commissions, including Pennsylvania, California, and Massachusetts, have filed in support of the New York State waiver so that the CAF Phase II model-based offers of support declined for State-specific census block or tract not migrate from the supported census blocks or tracts in New York State to out-of-state census blocks or tracts; *and*

WHEREAS, The FCC released an order on January 26, 2017, that granted the Expedited Petition of the State of New York and waived the FCC's program rules regarding the rapid deployment of advanced broadband services to unserved areas, subject to conditions described therein; *and*

WHEREAS, The general principles of federalism set out by the National Association of Regulatory Utility Commissioners (NARUC) in its 2013 Federalism Paper envision a joint federal-State partnership in, among other things, the deployment of broadband network facilities and service to all Americans; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2017 Winter Committee Meetings in Washington, D.C., in February 2017 reiterates its support for the federal-State partnership envisioned in its 2013 Federalism Paper; *and be it further*

RESOLVED, That, consistent with NARUC's 2013 Federalism Paper, NARUC urges the FCC to act consistently with the principles of federalism endorsed, as they apply to the federal-State partnership underway to deploy broadband network facilities and service to all Americans under the *USF/ICC Transformation Order* generally and the CAF Phase II process in particular; *and be it further*

RESOLVED, That NARUC applauds the FCC's grant of the waiver needed for New York State so that the price-cap model-based offers of support in CAF Phase II declined by carriers in New York State will remain in New York State; *and be it further*

RESOLVED, That NARUC urges the FCC to provide the waivers or changes in rules and policies needed so that the model-based support declined by price-cap carriers in State-specific census blocks or tracts in the CAF Phase II list, as it exists or may come to exist, remains within the respective State or State-specific census blocks or tracts so that the bidders and States affected by a price-cap carrier's refusal of model-based support know that the model-based support will remain within the State or the State-specific census blocks or tracts, thereby avoiding the negative universal service impact triggered by any increase in rates that would occur to recover that loss of federal support.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors on February 15, 2017