

***Resolution Urging the Federal Communications Commission to Act Transparently in
Deploying Formal CAF-II Rules and to Direct Funding to Ensure Comparable Voice and
Broadband Services to Customers in the Nation's Highest-Cost Areas***

WHEREAS, The Federal Communications Commission (FCC) has limited federal Universal Service Fund (USF) high-cost support to no more than \$1.8 billion annually in areas served by price cap carriers and \$2 billion in areas served by rate-of-return (ROR) carriers, even though it is widely understood that the cost of providing and maintaining comparable voice and broadband services to rural consumers in high-cost areas requires considerably more support; *and*

WHEREAS, The FCC's USF/ICC Transformation Order will also bring intercarrier compensation payments to the rural local exchange carriers (RLECs) for terminating traffic to a zero level through a series of reductions, resulting in "bill and keep" by July 1, 2020; *and*

WHEREAS, In their June 2013 "State USF White Paper: New Rural Investment Challenges," experts Michael Balhoff and Bradley Williams explain that by 2020 the cumulative reduction of support to price-cap carriers (excluding AT&T and Verizon) will be approximately \$6 billion and to small carriers (presumed to be ROR) will be \$5.2 billion; *and*

WHEREAS, Balhoff and Williams describe the risk of losing and/or limiting the availability of critical voice and broadband services in rural areas that require federal and State USF support to meet the reasonable and comparable access to service standards included in Section 254(b)(3) of the federal Communications Act as amended, 47 U.S.C. § 254(b)(3); *and*

WHEREAS, That increased risk of non-investment is supported by the projections from financial institutions showing the FCC's USF/ICC Transformation Order (FCC 11-161) has actually reduced broadband investment in areas served by ROR carriers that are the ostensible target of the FCC's stated CAF II broadband deployment and federal USF reform objectives; *and*

WHEREAS, The FCC is implementing the second phase of its Connect America Fund (CAF-II) to determine a methodology for distributing federal Universal Service Fund (USF) support in unserved and underserved rural areas served by price cap carriers; *and*

WHEREAS, The FCC's apparent objective of its CAF-II model exercise is to expand the availability of broadband services to customers in those areas; *and*

WHEREAS, Despite the comprehensive effort to develop an appropriate cost model for deriving the appropriate level of CAF II support for eligible price cap carriers, this cost model has not yet been finalized and there is no indication as to when the model might be completed, let alone released, made public and subject to independent transparent scrutiny, verification and replication; *and*

WHEREAS, The FCC has accorded a proprietary designation for both the CostQuest Connect America Cost Model (CACM) internal logic and its output results. Access to the model and the output results is generally limited to those who execute the requisite confidentiality agreements. According to the National Association of State Utility Consumer Advocates (NASUCA) this

FCC approach: (1) Unduly constrains national and public debate on issues that have a monetary impact on end-user consumers and involve broadband deployment and availability; (2) sharply contrasts with past FCC approaches where cost models associated with the derivation of federal USF high-cost support were open, transparent and replicable in the public domain; and, (3) is inconsistent with the FCC's own professed strategic goals to the U.S. Congress including "a commitment to transparent and responsive processes" (NASUCA May 9, 2013 Ex Parte to the FCC on CAF II Model Design and Data Inputs); *and*

WHEREAS, While the FCC has decided to use a cost model to distribute CAF-II USF support in areas served by price cap carriers, the FCC is also considering use of a model to distribute CAF USF support in rural areas that are served by smaller ROR carriers that typically face different economic and operational challenges and generally serve an even greater preponderance of high-cost customers than the largest ROR carriers, more akin to rural-focused price cap carriers; *and*

WHEREAS, The FCC has signaled only modest changes to the Quantile Regression Analysis (QRA) cost model it proposes to use, despite a comprehensive analysis that has indisputably demonstrated the model to be deeply, if not fundamentally, flawed, with 14 of the 16 variables used by the model found to be flawed in one or more of six ways, resulting in unpredictable results even for similarly situated ROR carriers; *and*

WHEREAS: As FCC Commissioner Ajit Pai indicated in his comments associated with the 6th Order on Reconsideration of the USF/ICC Transformation Order: "Unpredictability also undermines the stated purpose of the QRA benchmarks, which is to incentivize efficient and prudent decision-making by rate-of-return carriers. The High Cost Loop Support (HCLS) mechanism is a backward-looking mechanism within the Universal Service Fund, meaning that support received today is based on—and is payment for—historical, two-year-old expenditures. Yet a rural carrier cannot even guess its 2015 QRA benchmarks because they will be based on an entirely new model and may or may not (today's order leaves that to the Bureau's discretion) bear some relation to the 2014 benchmarks" (FCC 13-16, Feb. 27, 2013, slip op., at 30, emphasis added); *and*

WHEREAS, Former FCC Chairman Genachowski declined to refer the federal USF contribution base reform to the Federal-State Joint Board on Universal Service (Joint Board), purportedly due to fear of delaying the process that led to the adoption of the USF/ICC Transformation Order, yet it was the FCC that has caused a two-year delay in reforming the contribution base of the federal USF mechanism in the wake of a recommended solution originally proposed by the State members of the Joint Board in May 2011; *and*

WHEREAS, The FCC's Wireline Competition Bureau (WCB) purports to utilize a "virtual cost workshop" to elicit public input into the CAF-II modeling process with all submissions then placed in the record; *and*

WHEREAS, A review of "virtual cost workshop" posts indicates few parties are participating, and the submission of such posts and their impact on how the WCB may alter updated model

releases and relevant inputs is uncertain, thus creating questions regarding the transparency of this new procedure; *and*

WHEREAS, State commissions share responsibility for preserving universal service and enforcing carrier-of-last-resort obligations where such obligations exist, and will be the agencies to which rural customers turn for assistance when those customers are left without service; *and*

WHEREAS, State commissions that wish to play an active role through their own State-specific USF mechanisms, or through some other State-sponsored initiative to address the revenue gaps that are left for rural price cap and ROR ILECs because of reduced federal USF support and intercarrier compensation revenue, are hampered because of the existing unpredictability of the federal USF support levels generally, the lack of transparency and the availability of CAF II support in particular; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2013 Summer Meetings in Denver, Colorado, urges the FCC to ensure the directives of Congress are met and that universal service support is distributed so as to (i) assure reasonably priced, comparable and affordable voice and broadband services in the highest-cost rural areas and (ii) encourage investment in networks required to meet those objectives; *and be it further*

RESOLVED, That to meet the FCC's objectives of broadband deployment in unserved and underserved rural areas of the nation, the FCC must at a minimum ensure that: (1) any CAF-II USF model targets USF disbursements to higher-cost rural areas before lower-cost, relatively non-rural areas and (2) that rural customers have access to broadband services that are reasonably comparable to services customers receive in non-rural areas; *and be it further*

RESOLVED, That NARUC urges the FCC to implement a process that affords interested parties and State commissions a fully open, transparent and meaningful opportunity to review and comment on all changes to the CAF-II USF model and subsequent models which might be adopted for application to the smaller ROR carriers that will be recommended to the FCC prior to any such WCB recommendations; *and be it further*

RESOLVED, That the WCB Staff at a minimum should place in the public record both the existing and future CACM model run results consistent with the NASUCA request of May 9, 2013; *and be it further*

RESOLVED, That in recognition of the widely accepted economic and operational differences in maintaining and advancing universal service in the smaller rural ROR carrier service areas, in any action that the FCC may take with respect to CAF-II USF models applicable to price-cap carrier rural areas that the agency also make an explicit factual determination that such action will not impact nor prejudice any action that the FCC may take on federal USF high-cost support mechanisms for the areas served by ROR carriers.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors July 24, 2013*