



N A R U C  
National Association of Regulatory Utility Commissioners

January 09, 2017

The Honorable Thomas Wheeler, Chairman  
The Honorable Mignon Clyburn, Commissioner  
The Honorable Ajit Pai, Commissioner  
The Honorable Michael O’Rielly, Commissioner  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**RE:** *In the Matter of Connect America Fund (WC Docket No. 10-90), A 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), Universal Service Reform – Mobility Fund (WT Docket No. 10-208).*

**Clarification Request re: Process to permit States to Dispute Carrier-Submitted Data.**

Mr. Chairman and Commissioners:

The preservation of universal service has long been a federal-State partnership as envisioned by Congress in 1996 and explicitly recognized by the Federal Communications Commission (FCC). For the FCC, consumers and the market, it is essential that State, Tribal and territorial authorities have timely access to data to oversee the use of these public monies.

We are writing in part to thank the FCC for its recent actions to strengthen that partnership, and to urge the Commission to take additional steps to enhance the efficacy of its certification process.

In November 2016, NARUC passed a resolution urging the FCC to ensure that State, Tribal, and territorial authorities’ have timely access to CAF eligible telecommunications carriers (ETCs) reporting data so that they can perform their congressionally mandated universal service oversight and annual certification functions. That resolution is attached as Appendix A.

The resolution specifies that the FCC can best accomplish this by, at a minimum:

(1) retaining the Section 54.313 requirement that CAF ETCs report data directly with relevant State, Tribal, and Territorial authorities;

(2) revising Section 54.316 to explicitly require CAF ETCs to also report this data directly to “the relevant state commission,” Tribal and Territorial authorities;

(3) specifying that data reported by CAF ETCs under the FCC’s regulations must be made available to these relevant authorities upon request;

(4) specifying what the law (and an efficient enforcement regime) already require that State, Tribal, and Territorial authorities may require the submission of additional information they judge necessary to ensure that CAF ETCs are using universal service support consistent with federal law;

(5) directing USAC to implement a process in consultation with NARUC to ensure that State commissions and other relevant authorities will be notified of data revision requests made by USAC to CAF ETCs and to any revisions to data made by CAF ETCs; and

(6) clarifying how State commissions and relevant Tribal and Territorial authorities may dispute the accuracy of data being reported by CAF ETCs to USAC and the FCC.

Less than a month later, on December 8, 2016, the Wireline Competition Bureau issued a [Public Notice](#) providing guidance to CAF recipients regarding their obligation to report geo-located broadband information and make service milestone certifications to the USAC. The notice, at page 3, specified that:

To assist the states and Tribal governments perform their oversight function, by July 1 of each year, USAC will provide states and Tribal governments with access to location information filed through the end of the prior calendar year and submitted in the report due March 1 by carriers within their jurisdiction. Providing HUBB data to states and Tribal governments each July 1 is consistent with the July 1, 2016 due date for location data previously filed with the Commission, states, and Tribal governments on FCC Form 481. In the near term, USAC may provide carrier location information to states and Tribal governments through a means other than direct HUBB access (e.g., in a spreadsheet sent by USAC to states and Tribal governments). As it implements additional functionality in the HUBB, USAC expects also to provide states and Tribal governments with the ability to query the HUBB itself to request and view location data for carriers in their jurisdiction. We expect USAC to work with states and Tribal governments as it implements additional functionalities in the HUBB to increase the familiarity of all interested parties with the HUBB.

Additionally, in December, the USAC reached out directly to NARUC to discuss State access to HUBB data and the construction of the data portal. We would like to thank both the Commissioners and relevant staff at the FCC (and the USAC) for this clarification and outreach.

These measures were more than welcome. We hope this collaborative approach will continue. It appears that almost all of the requests in the NARUC resolution have already been addressed in the FCC's actions to-date.

One crucial request that remains outstanding, is the critical need for some clarification of how State commissions and relevant Tribal and territorial authorities can dispute the accuracy of data being reported by CAF ETCs to USAC and the FCC.

The benefits of such a process to maintaining the integrity of the federal program is obvious. States have been an integral part of protecting consumers by addressing waste, fraud and abuse in the universal service fund. We can continue to play an integral role if provided with timely access to the necessary data. Similarly, the FCC should consider specifying that carriers file the same data directly with the relevant certifying State commission.

Going forward the FCC should, at a minimum, create a process for States to dispute the accuracy of carrier reported information and consider specifying carriers provide the same data directly with the certificating authority. Both actions are a pre-requisite to a State, Tribal, and territorial authority's ability to efficiently fulfill their congressionally mandated universal service oversight and annual certification functions. If you have any questions, please do not hesitate to contact me at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org).

Sincerely,

James Bradford Ramsay  
NARUC General Counsel

cc: *Lisa Hone, Legal Advisor, Wireline, Office of Chairman Wheeler*  
*Claude Aiken, Legal Advisor, Wireline, Office of Commissioner Clyburn*  
*Nicholas Degani, Legal Advisor, Wireline, Office of Commissioner Pai*  
*Amy Bender, Legal Advisor, Wireline, Office of Commissioner O'Rielly*  
*Matt DelNero, Bureau Chief, Wireline Competition Bureau*  
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*Garnet Hanley, Special Counsel, Telecommunications Access Policy Division, WCB*  
*Jonathan Lechter Special Counsel, Telecommunications Access Policy Division, WCB*

## *Appendix A - Ensuring Timely State Access to CAF ETC Reporting Data*

**WHEREAS**, The preservation of universal service has long been a federal-State partnership as envisioned by Congress in 1996 at 47 U.S.C. § 254 and explicitly recognized by the Federal Communications Commission (FCC); and

**WHEREAS**, The FCC in a November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking, 26 F.C.C. Rcd. 17663, in part: (1) created the Connect America Fund (CAF) substantially revising the federal Universal Service Fund (USF) legacy high-cost support mechanisms; (2) adopted new reporting obligations for all eligible telecommunications carriers (ETCs) receiving CAF support; and (3) sought comment on additional reform measures; and

**WHEREAS**, Through the new CAF ETC reporting and certification obligations, the FCC “establish[ed] a national framework for oversight that will be implemented as a partnership between the Commission and the States . . . [that] will provide federal and [S]tate regulators the factual basis to determine that all USF recipients are using support for the intended purposes, and are receiving support that is sufficient, but not excessive[.]” (Id. at 17850, ¶ 573 (emphasis added)); and

**WHEREAS**, The FCC specified that (1) the new reporting obligations are “a floor rather than a ceiling” for any State actions consistent with the 47 U.S.C. § 254(f) framework, and (2) “[S]tate commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute[.]” (Id. at 17850-51, ¶ 574); and

**WHEREAS**, The FCC CAF ETCs’ reporting obligations in Section 54.313 of its rules (47 C.F.R. § 54.313; 26 F.C.C. Rcd. at 17852, ¶ 580) are currently largely satisfied by FCC Form 481 submissions by carriers; and

**WHEREAS**, The FCC mandated that CAF ETCs submit the data reported under Section 54.313, and the corresponding FCC Form 481s, directly with the FCC, the Universal Service Administrative Company (USAC), “and the relevant State commission, relevant authority in a U.S. Territory, or Tribal government” on an annual basis (47 C.F.R. § 54.313(i); 26 F.C.C. Rcd. at 17853, ¶ 581); and

**WHEREAS**, The FCC expected the Section 54.313 reporting obligations to “provide the factual basis underlying the annual section 254(e) certification by the [S]tate commission . . . by October 1 of every year that support is being used for the intended purposes” (47 U.S.C. § 254(e); 47 C.F.R. § 54.314; 26 F.C.C. Rcd. at 17851, ¶ 575); and

**WHEREAS**, As of October 2016, at least 30 State, Tribal, or Territorial authorities provided annual certifications on behalf of CAF ETCs to the FCC and USAC attesting to those carriers’ use of federal universal service support; and

**WHEREAS**, If a relevant State commission or Tribal or Territorial authority fails to make the requisite annual certification to the FCC and USAC, or fails to make a timely certification, then CAF support to those ETCs will be reduced or eliminated by an amount dependent on the filing date (47 C.F.R. § 54.314); and

**WHEREAS**, Since 2011, the FCC has implemented additional changes to CAF ETC reporting and certification requirements, including through a March 30, 2016, Report and Order, Order and Order on Consideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087, and which included further inquiries on whether to: (1) eliminate specific reporting required under Section 54.313 and FCC Form 481 (e.g., outages, unfulfilled service requests, complaints per 1,000 subscribers); (2)

eliminate the requirement for ETCs to submit copies of their FCC Form 481 filings “with states and/or Tribal governments”; and (3) modify or eliminate “any other reporting requirements applicable to all ETCs that have broadband obligations” (31 FCC Rcd. 3087, 3162-71, 3229-30, ¶¶ 205-225, 387-393); and

**WHEREAS**, The March 2016 CAF ETC reporting reforms included: (1) implementation of a new FCC regulation, Section 54.316, through which CAF ETCs’ broadband deployment reporting, including geolocation data, and certain certification obligations, will be required going forward; and (2) a directive to USAC to create a new database/online portal for CAF ETCs to report Section 54.316 information and other information otherwise reported via the FCC Form 481, with some of this information to be reported as early as January 2017 with a March 2017 filing deadline, and, otherwise, on a rolling basis – referenced by USAC as the “High Cost Universal Broadband” or Broadband HUBB (47 C.F.R. § 54.316(c); 31 FCC Rcd. at 3162-71, ¶¶ 205-225; USAC High Cost Reporter – Aug. 2016); and

**WHEREAS**, The FCC specified that “[S]tates and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access . . . through the online database” and proposed that “[o]nce these updated systems are operational, we would no longer require ETCs to submit duplicative [FCC Form 481] information through ECFS [the FCC’s Electronic Filing System] and with [S]tate commissions[,]” because, while all the information would be filed with USAC directly, “federal and [S]tate regulators, and Tribal governments,” would have “full access” (31 FCC Rcd. at 3168-69, 3229-30, ¶¶ 222, 392); and

**WHEREAS**, Unlike Section 54.313, new Section 54.316 does not explicitly require CAF ETCs to submit this data directly to the relevant State, Tribal, or Territorial authority; and

**WHEREAS**, USAC currently does not notify State commissions of revisions made by CAF ETCs to the data reported under Section 54.313, and FCC Form 481 or revisions it requires specific CAF ETCs to make to data reported under Section 54.313 and FCC Form 481; and

**WHEREAS**, As envisioned by the FCC, State, Tribal, or Territorial authorities may rely on reported CAF ETC data mandated by the FCC to provide required certifications and for purposes of ETC oversight; and

**WHEREAS**, Some State, Tribal, or Territorial authorities may require CAF ETCs to submit Sections 54.313 and 54.316 and other data directly as part of an official record, to facilitate oversight, and/or for other purposes related to federal and State universal service initiatives; and

**WHEREAS**, It is unclear when State, Tribal or Territorial authorities will be able to access the data to be reported through the online portal being developed by USAC or whether that data will be made available in time for the annual State certification process or will be delayed as currently occurs for State commission access to carrier reported data in the FCC’s Form 477 online portal; and

**WHEREAS**, Any delay in accessing data reported by CAF ETCs will certainly impact State, Tribal, or Territorial authorities’ ability to annually certify those carriers’ use of universal service support by October 1 (47 C.F.R. § 54.314); and

**WHEREAS**, It is unclear whether or how State, Tribal or Territorial authorities can seek clarifications or dispute the accuracy of data reported by CAF ETCs; now, therefore, be it

**RESOLVED**, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 128th Annual Meeting in La Quinta, California, urges the FCC to (1) preserve State, Tribal, and Territorial authorities' universal service oversight and annual certification function; and (2) ensure those authorities' continued timely access to CAF ETC reporting data; and be it further

**RESOLVED**, That the FCC can best accomplish this by, at a minimum: (1) not eliminating the Section 54.313 requirement that CAF ETCs report data directly with relevant State, Tribal, and Territorial authorities; (2) revising Section 54.316 to explicitly require CAF ETCs to also report this data directly to "the relevant state commission," Tribal and Territorial authorities; (3) otherwise specifying that data reported by CAF ETCs under the FCC's regulations must be made available to these relevant authorities upon request; (4) specifying what the law (and an efficient enforcement regime) already require that State, Tribal, and Territorial authorities may require the submission of additional information they judge necessary to ensure that CAF ETCs are using universal service support consistent with federal law; (5) directing USAC to implement a process in consultation with NARUC to ensure that State commissions and other relevant authorities will be notified of data revision requests made by USAC to CAF ETCs and to any revisions to data made by CAF ETCs; and (6) clarifying how State commissions and relevant Tribal and Territorial authorities may dispute the accuracy of data being reported by CAF ETCs to USAC and the FCC.

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*Sponsored by the Committee on Telecommunications*

*Recommended by the NARUC Board of Directors on November 15, 2016*

*Adopted by the NARUC Committee of the Whole on November 16, 2016*