Resolution Urging the Federal Communications Commission to Refrain from Implementing Quantile Regression Analysis on Rural Rate-of-Return Carriers Until Concerns Are Resolved, and To Engage State Regulators in Consideration of Next Steps

WHEREAS, The November 18, 2011, Universal Service Fund/Intercarrier Compensation Order (USF/ICC Transformation Order) adopted a specific mechanism, the Quantile Regression Analysis (QRA) as a proxy for identifying appropriate costs in "ensuring" that companies do not receive more support than necessary for prudent capital and operating costs, as set forth by the Federal Communications Commission (FCC) in Appendix H of the USF/ICC Transformation Order; *and*

WHEREAS, The FCC also issued a Further Notice of Proposed Rulemaking (FNPRM) with the Transformation Order that contemplates additional changes to USF and ICC systems, including further ICC rate reductions; *and*

WHEREAS, On February 17, 2012, the Rural Broadband Alliance filed reply comments with the FCC asserting that the QRA Model is not properly crafted to be transparent, predictable, and did not consider the effects of its implementation on universal service so that it provides no impacts on rural carriers' opportunity to recover the lawful expenses they have incurred in the provisions of universal service; *and*

WHEREAS, On April 25, 2012, the FCC Wireline Competition Bureau issued an order (sometimes referred to as the Benchmarks Order) using a particular QRA model for capital and operating expenses and implementing, without any further review of the assumptions, methodology and impact (except the output of the unproven statistical tool), certain reductions in USF support for some USF recipients beginning July 1, 2012; *and*

WHEREAS, The QRA Model of April 25, 2012, continues to use a ninetieth percentile to apply limits which, despite questions about its methodology, assumptions, and applications, operates to potentially impair carriers from completing infrastructure projects begun before QRA Model adoption, and may not provide all carriers with sufficient and predictable support consistent with basic principles of universal service mandated by Congress; *and*

WHEREAS, On May 8, 2012, CoBank, a key lender to rural rate-of-return carriers, sent a letter to the FCC asking that the FCC abandon its use of QRA to cap USF support to carriers, citing potential errors and inconsistencies in the model's assumptions that cause it to produce counter-intuitive and surprising results that would penalize rate-of-return carriers that have made substantial good faith commitments to providing broadband networks; *and*

WHEREAS, On June 21, 2012, USTelecom filed an Application for Review with the FCC requesting a brief delay of the QRA in order to resolve concerns related to transparency, accuracy, and predictability, in particular citing the expense and complexity of determining the impact of using the QRA Model on carriers, the inaccuracy of the study area boundaries, concern within the rate-of-return community that the QRA methodology and its application may be arbitrary and capricious and the fact that other petitions for stay have been filed with the FCC and federal court; *and*

WHEREAS, Accurate study area boundaries are particularly important to the regression-based model used by the FCC and the FCC has not yet determined the process for obtaining accurate study area boundaries; *and*

WHEREAS, State commissions are uniquely situated to fully comprehend the local geography, population density, cost characteristics and other factors which contribute to the determination of universal service needs; *and*

WHEREAS, The Federal–State Joint Board on Universal Service (USF Joint Board), which is made up of FCC Commissioners, State commissioners and consumer advocate representatives, was created by the Telecommunications Act of 1996 (TA96) for the purpose of making recommendations to implement the universal service provisions of the Act; *and*

WHEREAS, The FCC did not make a referral of the USF reform issues (including ICC issues that affect universal service) contained in the Transformation Order to the USF Joint Board and formally declined a request of the State members for a referral of the Further Notice and Proposed Rulemaking (NPRM); *and*

WHEREAS, The QRA Model's retroactive impact on carriers may trigger avoidable litigation alleging retroactive ratemaking in violation of Section 205, 47 U.S.C. § 205, contrary to prior FCC decisions, including *In re: ACC Long Distance v. Yankee Microwave, Inc.*, 8 F.C.C.R. 85, aff'd 10 F.C.C. R. 654 (1995), and federal precedent in *Ohio Bell v. FCC*, 949 F.2d 864, 867 (6th Cir. 1991); *and*

WHEREAS, On June 21, 2012, the Rural Broadband Alliance (RBA) representatives met with FCC representatives to outline RBA's continuing concerns that the QRA Model has created uncertainty about the level of USF support that is preventing rate-of-return carriers from developing meaningful budgets for 2014 and beyond; *now, therefore be it*

RESOLVED, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Summer Meeting in Portland, Oregon, acknowledges the need for the FCC to forgo implementation specifically of QRA-based caps on capital and operational expense for rural rate-of-return carriers, until the resolution of the Application for Review, Petition for Stay, and Application for a federal court stay, and widespread concerns about the accuracy of the study area boundaries and the QRA's legal assumptions, methodology, application, accuracy, predictability, randomness, and appropriateness are resolved; *and be it further*

RESOLVED, The FCC should refer the consideration of whether to adopt any additional ICC and USF reforms to the USF Joint Board, other than the FCC's pending implementation of items already adopted by rule in the USF/ICC Transformation Order, in lieu of proceeding with present and further FNPRMs; *and be it further*

RESOLVED, The FCC should commit to USF support that is predictable, methodologically sound, and includes a prohibition of retroactive application of the Model; *and be it further*

RESOLVED, Congress is urged to support: 1) the suspension of the QRA Model implementation by the FCC until questions about its impact and appropriateness are resolved in collaboration with State commissions so as to dramatically reduce the difficulty in transitioning to a new form of reimbursement for capital and operating expenses for rate-of-return rural carriers that receive USF support; and (2) the referral of matters relating to adoption of any further ICC and USF reforms, other than pending implementation of items already adopted by rule in the USF/ICC Transformation Order, to the USF Joint Board.

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