

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; (3) 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; (4) 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 (5) 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.

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