Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555

In the Matter of	)	
	)	
Eliminating Ex Ante Pricing	)	**WC Docket No. 20-71**
Regulation and Tariffing of	)	
Telephone Access Charges	)	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners (NARUC) is recognized by Congress in several statutes[1] and consistently by the Courts[2] as well as a host of federal agencies,[3] as the proper entity to represent the collective interests of State utility commissions. For over 125 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with, *inter alia*, overseeing certain operations of telecommunications utilities.

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1 See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains "Carriers, to get the cards, applied to…(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

2 See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc*., 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (where the Supreme Court notes: "The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

3 Compare, NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) ("We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers' interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members' injury-in-fact.")

NARUC respectfully submits these brief comments to respond to comments filed July 6, 2020 on the Federal Communications Commission's (FCC) April 1, 2020 Notice of Proposed Rulemaking (***NRPM***) in the above-captioned proceeding.[4]

DISCUSSION

The April 1, 2020 ***NPRM*** suggests mandatory elimination of *ex-ante* pricing regulation and detariffing of certain Telephone Access Charges (TAC), including the Subscriber Line Charge (SLC), the Access Recovery Charge (ARC), the Presubscribed Interexchange Carrier Charge (PICC), the Line Port Charge, and the Special Access Surcharge. Among other things, the *NPRM* advances the novel theory that the FCC may have authority to require the inclusion of these detariffed interstate fees in interstate rates that remain subject to state oversight.

Twenty-two initial comments were filed on July 6, 2020. Four were filed by NARUC member Commissions from Kansas, New York, California, Pennsylvania and Nebraska.[5] NARUC generally supports the critiques of the FCC's actions presented in those five State commission comments.

Literally all the twenty-two filed comments found some critical fault in the ***NPRM's*** proposals, either opposing it outright[6] or supporting modifications that are, on their face,

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[4] ***In the Matter of Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges***, WC Docket 20-71, Notice of Proposed Rulemaking) (rel. April 1, 2020), available online at: https://docs.fcc.gov/public/attachments/FCC-20-40A1.pdf.

[5] *See,* the July 6, 2020 filed ***Comments of the State Corporation Commission of Kansas*** (***Kansas CC Comments***) at https://www.fcc.gov/ecfs/filing/107061432626318, ***Comments of the New York Public Service Commission*** (***NY Comments***) at https://www.fcc.gov/ecfs/filing/10706194600904, ***Comments of the California Public Utilities Commission*** (***CPUC Comments***) at https://www.fcc.gov/ecfs/filing/10706782604973, ***Comments of the Pennsylvania Public Utility Commission*** (***PA PUC Comments***) at https://www.fcc.gov/ecfs/filing/1070673733610, and ***Comments of the Nebraska Public Service Commission*** (***NE PSC Comments***) at https://www.fcc.gov/ecfs/filing/1070685405931.

[6] ***Nebraska PSC Comments*** at iii, ("[the PSC] voices concerns with a number of the [NPRM] proposals and urges the Commission to refrain from adopting them.), ***Comments of the Multi-State RLEC Group***, at page 2 ("NPRM should be abandoned based on the lack of supporting facts and conflicts with existing policies.); ***Comments of Zigaretti Enterprises***, at p. 20, ("The [] proposal to eliminate [TACs] as line items on customer bills creates an unnecessary burden on [ILECs] that may not apply to their competitors . . . [t]he FCC should close this proceeding and focus its efforts on helping to ensure affordable broadband service through comprehensive universal service contribution reform."); ***PA PUC Comments*** at p. 2 ("Pa. PUC disagrees with the *NPRM* [proposals] because it contains serious legal and technical flaws that violate applicable law.") ***Comments of JS, LLC***, at 1 ("JSI strongly urges the Commission to not adopt the NPRM . . . Even with . . . changes . . . JSI recommends that the Commission not adopt the NPRM without affirmative referrals from both the Federal-State Joint Board[s]."); ***Comments of InCompas***, at 2 ("[T]he Commission's own analysis suggests that competitive voice offerings in the retail market abound. Thus . . . [no] action is needed as there is not a problem here for the Commission to solve. INCOMPAS urges the Commission to reconsider the need to move forward in this proceeding."); ***Comments of the California Public Utilities Commission***, at p. 4 ("The FCC should not grant forbearance of the interstate access charges. It would unduly burden

inconsistent with the NPRM's stated (albeit flawed) rationale for acting. The most common modification suggested? Creation of a permissive separately listed interstate surcharge to replace the existing ones listed on customer bills that the ***NPRM*** proposes to eliminate entirely with the stated goal of reducing consumer confusion.[7]

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and complicate, not simplify, the local service rates for rate-of-return carriers that receive state high-cost support in California."); ***Comments of the Kansas Rural Local Exchange Carriers*** at p. 1 ("If the Commission were to eliminate *ex ante* pricing regulation and tariffing of telephone access charges it would be devastating to Kansas RLECs."); and ***KCC Comments***, at 1 ("detariffing and deregulating Telephone Access Charges (TACs) should only be done in a manner that prevents harm to states and overburdening state Universal Service Funds (USFs).")

[7] ***Comments of Centurylink*** at p. 16, ("[The FCC] should create a rule establishing that carriers may include a new, single interstate charge on customers' bills . . . carriers should be permitted to include such a line item wherever and for whatever services the carrier determines on a nationwide basis, without regard to the specific details of the state's regulatory regime."); ***Comments of Windstream***, at p. 7 ("[T]he Commission should enable carriers to include a separately identified charge on the bill . . . that represents the interstate charges."); ***Comments of NCTA – the Internet and Television Association***, at p. 1 & 3 (At p. 1 the comments indicate "there is no justification" in the record "for mandatory detariffing in the commercial context," but suggest at p. 3, in the alternative the FCC should make clear that a provider may offer "an offsetting charge" to commercial customers.); ***Comments of Ad Hoc Users Committee***, at pp. 11-13 (Ad Hoc does support detariffing and, as a purchaser of services, is unconcerned about how or if carriers recover the funds, but makes clear, at p. 11 its support for detariffing is to limit the contributions of multiline business subscribers to the federal Universal Service fund. It also notes its support "for any of the solutions proposed . . .in the NPRM" is conditional, at pp. 12-13, as the support for detariffing is "only as an interim step toward fundamental reform of the USF contribution methodology."); C***omments of the Alabama Rural Local Exchange Carriers***, at p. 2 ("Mandatory detariffing would be an arbitrary, capricious, and confiscatory measure, adversely affecting rural providers and, in turn, rural consumers. Such a result defeats the very goals the *NPRM* seeks to accomplish. Instead, the [FCC] should adopt a permissive detariffing framework.") ***Comments of the Puerto Rico Telephone Company***, at p. 22 ("PRTC supports the Commission's . . . proposal, but (1) asks that the Commission take note of potential restrictions under state law that may frustrate some of its assumptions about the implementation of its proposal."); ***Comments of USTelecom*** at p. 9 ("Commission should adopt permissive, rather than mandatory, [TAC] detariffing . . .Price cap incumbent LECs should be permitted to detariff those charges in none, some, or all, of the states in which they operate."); ***Comments of the Small Company Coalition***, at p. 1 ("While the SCC appreciates the apparent deregulatory approach being proposed . . . shifting such levels of cost recovery to the intrastate jurisdiction on a mandatory basis is inadvisable . . . [g]iven that there is no apparent need for the deregulation and detariffing action as proposed in the *NPRM* at present, the SCC urges the Commission to adopt a permissive, instead of a mandatory, policy for recovery of TACs."); ***Comments of the Concerned Rural LECs,*** at p 1, 2, 9, & 10 (CRL argue at p. 1 that tariffing provides benefits for many rate of return (ROR) ILECs, at 9, that there is no need to simplify bills for many ROR ILECs, at p. 10, that the NPRM "solutions . . .could produce unintended consequences." They also suggest, at p.2, if detariffing is permitted – it should be optional; ***Comments of NTCA – The Rural Broadband Association,*** at p. i ("Commission should decline to mandate detariffing of [SLCs] and [ARCs] for RLECs, and instead should grant operators . . .a permissive detariffing regime."); ***Comments of WTA- Advocates for Rural Broadband,*** at pp. 1, 15 (At p 1. arguing "there are not current problems, needs or benefits that warrant mandatory detariffing of TACs" and at p. 15 that the FCC should "adopt a more flexible permissive detariffing of TACs."); ***NY Comments*** at p. 3 ("NYPSC supports the proposal insofar as it relates to the detariffing of interstate end user charges that are currently related to the recovery of LECs' costs in the interstate jurisdiction. However, the NYPSC believes that the FCC must ensure that its final rule ensures that carriers do not recover these interstate costs through intrastate rate increases.") (Emphasis added);

But, as the comments filed by twenty three Kansas carriers recognizes, those proposals for a separate and new surcharge are - on their face - inconsistent with the NPRM's stated aims.[8] The additional of new separate federal surcharge is unlikely to decrease any alleged consumer confusion – a confusion that is documented nowhere in the record of this proceeding.[9] Moreover, as many commenters pointed out – and as logic clearly indicates, the ***NPRM*** proposal is far more likely to increase confusion over customer bills than reduce it. Eliminating a surcharges that, like

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[8] ***Comments of Kansas Rural Local Exchange Carriers***, at p. 5, noting: "The Commission asked, at para. 65, "if a carrier is precluded by state regulations from changing its local service rates, what steps do we need to take to ensure that a carrier has flexibility to charge its customers for the interstate component of the service currently collected through Telephone Access Charges?" At least under current Kansas statutes and regulation the Commission would need to provide express authority for RLECs to charge one or more new line-item flat fees to replace the revenue lost through detariffing TACs, ***thereby effectively negating the proposed detariffing***." {Emphasis added.}

[9] *See* **Comments of JS, LLC**, at p. 6 ns. 16 & 17 (N. 16 "NPRM does not provide any evidence from consumers that the explanations of these various terms are confusing and causing customers not to purchase services. The EUCL charge has been on customer bills for over three decades. JSI does not see any large-scale consumer clamor that would support abandoning interstate cost recovery because there is a EUCL charge, however described, on monthly consumer bills." N. 17 "The Commission supposes that some of its annual billing complaints include cramming and involve confusion with the ARC and EUCL charge . . . However, no data is provided to support this supposition."); ***Comments of InCompas,*** at pp. 2-3 ("there is significant risk that the prohibition of TACs could result in both confusion and higher fees for customers and/or potentially further loss of revenue by communications providers . . . Furthermore, it is not apparent that customers are currently so confused by their telephone bills."), at 10-11 ("The Commission points to no evidence, and there does not appear to be any, that prohibiting line-item charges that are accompanied by non-misleading descriptions would reduce customer confusion and promote competition. In fact, the opposite would appear to be the case, given that more accurate disclosure regarding the nature of end user charges would enable customers to make more informed choices, thereby yielding more efficient and competitive market outcomes. Moreover, the Commission asserts that, by reducing consumer confusion, eliminating line item charges will enable customers to compare rates with other telephone service offerings, thereby enhancing competition.[] But the Commission is not proposing to apply its policy to VoIP services, one of the primary sources of competition on which the Commission predicates its reform proposals in the *NPRM*."); and at p. 18 ("The Commission reiterate[s]…that competition in today's voice marketplace is "widespread"[] and therefore it no longer needs to regulate TACs, while also claiming that consumers experience significant confusion in reading and comparing their bills. . . it seems contradictory for the FCC to say that the voice market is sufficiently competitive, yet consumers need help in understanding their bills and switching providers.[] If the voice market is truly competitive, then the billing practices and TACs, in particular, are not hindering that competition."); ***Comments of The Concerned Rural LECS***, at p. 2, 8 ("RoR ILECs have not experienced material customer confusion related to Telephone Access Charges, as the two primary charges – the Subscriber Line Charge (SLC) and the Access Recovery Charge (ARC) – have been in place for 36 and eight years respectively."); ***NE PSC Comments*** at p. 2 ("In response to the Commission's order, the NPSC reviewed its records and ascertained that it did not have a single complaint about the SLC charge (or any of the other federal access recovery charges) recorded over the last year. Perhaps this is due to the fact that the SLC charge has been on the bill and unchanged for several decades. By now, consumers know what these charges are."); ***Comments of Multi-State RLEC Group***, at p.7 ("The Commission suggests that . . .bills are too complicated and difficult to read and understand", that the "terms" used for the SLCs "are meaningless to most consumers", and "may also lead consumers to mistakenly believe that the government mandates (the SLC) ..[t]hes assertions are in addition to FCC suggestions that such charges "reduces consumers' ability to compare the cost of different voice service offerings."' Absent from the NPRM, however, are facts to support the foregoing assertions.").

the SLC, have been around for 36 years while increasing (if allowed) the local rate is hardly a prescription for consumer clarity. As the *Comments of Incompas*, note at p. 18:

> it is likely that the Commission's proposal will result in the exact opposite of what it intends—simplification, understanding, and transparency. While the goal is to simplify consumer bills by removing federal TACs . . . carriers will still need to recover these costs elsewhere in the bill. Therefore, any recovered fees will likely be moved to somewhere else in the bill (if allowed by the state). As a result, consumers will now see rates without any breakdown of where these costs come from. This can lead to *more* confusion as consumers no longer know what they are paying for.[10]

Almost all commenters also either *implied* there are questions about the FCC ability to require the inclusion of interstate costs in intrastate rates – or noted statutory text and caselaw explicitly prohibiting such action.

For example, Centurylink correctly points out in its comments that some federal regulation of TACs remains necessary as "there are several states that still regulate CenturyLink's pricing to some degree such that CenturyLink would be unable to increase its rates to offset the elimination of TACs."[11] Similarly Windstream indicates that "many states continue to regulate and limit incumbent LECs' flexibility to adjust rates" and that "[a]s a result, incumbent LECs may be delayed or prevented from recovering Telephone Access Charges through their state rates."[12] This recognition of continued state jurisdiction as a barrier to the ***NPRM's*** proposal was common in the bulk of the comments.[13]

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10 *Compare*, ***Comments of NTCA- The Rural Broadband Association,*** at p. 4 ("[E]ven where . . . deregulation exists, substantial customer confusion is almost certain to ensue as charges swing wildly across bills from one category to another"); ***Comments of USTelecom*** at p. 2 ("[P]rohibiting carriers from separately listing interstate line items will *introduce* confusion and abrupt change into the current system."); ***CPUC Comments***, at p. 4 ("[T]he NPRM's proposal to prohibit carriers from listing these charges on bills will decrease billing transparency, rather than increase it."]; ***NE PSC Comments***, at p. 6 ("Adoption of the Commission's proposal would create significant problems for carriers and confusion for consumers.).

11 ***Comments of Centurylink*** at pp. 12-13.

12 ***Comments of Windstream***, at p. 3.

13 *See, e.g.,* ***KCC Comments*** at p. 1 ("Kansas - like many other states - may not have authority to blend interstate costs/revenues into intrastate rates."); ***Comments of the Kansas Rural Local Exchange Carriers***, at p. 1 ("Kansas' regulatory scheme for RLECs and RLEC end user rates is still highly regulated [for] the great majority of Kansas RLECs."); ***Comments of the Ohio Telecom Association*** at p. 1 ("Because of the [Ohio] price caps, a substantial portion of the revenues of Ohio [ILECs] are placed at risk if the FCC adopts the rule changes proposed in the NPRM."); ***NY Comments*** at p.2 ("NYPSC determines the rate-of-return for most Incumbent LECs, and the allowable . . . return is based solely on intrastate jurisdictional costs, expenses, and revenues. Insofar as interstate access charges are designed to recover jurisdictionally interstate costs . . . there is no legal mechanism in New York for the Incumbent

Significantly, none that recognized State authority as a potential problem also suggested that FCC preemption or forbearance would be either a permissible or useful remedy.

Others accurately point out statutory barriers to the FCC's proposed actions. For example, in response to the ***NPRM's*** ¶ 66 request for comment on if the FCC could preempt State laws to effectively require interstate costs be listed as part of the intrastate rate, the ***NE PSC Comments***, at p. 12, point out, citing 47 U.S.C. § 152, that:

> [t]he Commission's exercise of the impossibility exception referenced in the NPRM at paragraph 66 would wrongfully presuppose the existence of statutory authority where it does not exist. The impossibility exception cannot serve as a substitute for a delegation of power from Congress.

Similarly, in response to the ***NPRM's*** ¶ 88 reliance on 47 U.S.C. § 201(b) authority, to, *inter alia,* prohibit separate line items for interstate TACs, and ¶ 90 authority to "forbear" from apply Section 201(b), the ***PA PUC Comments*** explain at p. 6:

> The *NPRM*'s proposal involving the intrastate portion of local voice services and the adjustment of local rates for the absorption of the detariffed federal Telephone Access Charges such as the federal SLC and ARC is contrary to federal law. Nothing in the federal Communications Act . . . "shall be construed to apply or to give the Commission jurisdiction with respect to (1) *charges*, classifications, practices, *services*, facilities, or regulations for or in connection with *intrastate communication service* by wire or radio of any carrier."[] Thus, the FCC's proposals in this *NPRM* would violate this statutory prohibition under Section 2 of the Act, 47 U.S.C. § 152(b). Accordingly, the FCC does not possess the legal right under federal law to unilaterally transform the federal Telephone Access Charges such as the SLC and the ARC into intrastate charges and then conveniently and unilaterally "attach" them to state regulated rates for local services

LECs to recover their lost interstate revenues through increases to intrastate rates."); ***CPUC Comments*** at p. 2 ("[T]he proposal fails to account for rate-of-return carriers subject to CPUC regulation."); ***Comments of WTA- Advocates for Rural Broadband,*** at p. 2 ("[A] substantial number of Rural LECs and other LECs remain subject to state regulatory systems that impose restrictions and costs on pricing changes that far outweigh any actual or potential benefits of TAC detariffing."); ***Comments of NTCA – The Rural Broadband Association***, at p. 4 ("[T]here are of course a number of jurisdictions where providers do *not* have full and unfettered discretion to increase local service rates."); ***Comments of the Concerned Rural LECs***, at p. 4 ("It is not true that RoR carriers have been similarly deregulated in many of these same states."); ***Comments of the Small Company Coalition***, at 4 ("Not all states will automatically allow rate increases."); ***Comments of USTelecom,*** at p. 6 ("[States] may prevent incumbent LECs from sufficiently adjusting retail rates.")

Numerous comments also point out the direct and potentially destabilizing impact on both State and federal universal contribution mechanisms and the obvious separations impacts of the proposed FCC action.[14]

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[14] *See, e.g.*, ***Comments of CentuaryLink***, at p. 19 ("[I]t is crucial that the Commission adopt measures to ensure that deregulating TACs does not disrupt the current intrastate/interstate revenue allocation on which USF depends."); ***NE PSC Comments*** at pp. 15-16 ("[T]he Commission states that is goal is help ensure that carriers properly attribute revenues to the interstate jurisdiction and prevent carriers from avoiding contributions altogether by allocating all their revenues to the intrastate jurisdiction. How is adopting a safe harbor percentage based on decades old data a proper attribution of revenues? . . . the Commission's piecemeal approach to changing carrier contribution rules will unfairly harm some voice consumers of carriers already subject to benchmarked local rates and state universal service charges, while other contributors would remain free to artificially decrease or bundle certain services in order to escape contribution requirements."); ***Comments of Multi-State RELC Group*** at pp. ii, 2 ("NPRM fails to address how the proposal to shift interstate recovery to intrastate recovery is consistent with applicable Truth-in-Billing rules, other federal policies regarding the objective of making implicit charges explicit and why the NPRM's proposal does not constitute a change in the current separations rules. [also]. . the proposed federal Universal Service Fund ("USF") safe harbor proposal lacks detail sufficient to ensure compliance with the law and the avoidance of contribution gamesmanship . . . The lack of definition in such proposal raises a number of issues including whether the use of any such safe harbor may run afoul of the directives of The Texas Office of Public Utility Counsel v. Federal Communications Commission ("TOPUC')[] regarding the prohibition of assessing federal Universal Service Fund ("USF") on intrastate revenues or may represent an effort to circumvent the need for federal USF contribution reform."); ***Comments of Zingaretti Enterprises***, a p. 13 ("The proposed safe harbor allocation rate [] of 25% will have the impact of shifting revenues between the interstate and intrastate jurisdictions for purposes of calculating the required contribution to universal service support funds. Neither the industry nor the regulators know how this would impact federal or state universal service funds or the related contribution percentages. The appropriate venue for this analysis is the comprehensive review of the universal service contribution methodology."); ***PA PUC Comments***, at p. 16 ("[T]he *NPRM* proposals threaten the immediate and long-term stability and viability of the Pennsylvania USF and other similarly situated, state-specific USF mechanisms.); ***Comments of JS, LLC***, at p. 1 ("The matters presented in the NPRM seek to dramatically rearrange well established separations and universal service policies. JSI encourages the Commission to seek input from the state members of the two Federal-State Joint Boards."); ***Comments of InCompas***, at p. 19 ("Even though the NPRM proposes two safe harbor alternatives to continue the stability of USF and other federal programs, there is still concern that these will not be strong or reliable enough to combat the impact the Commission's proposal would have on USF contributions."); ***Comments of the Small Company Coalition***, at p. 6 ("While the Commission addresses various issues related to federal universal service funding and other programs, any changes to separations rules made necessary by the mandatory deregulation and detariffing of certain TACs are ignored. For example, if the recovery of the SLC is to be shifted to the states, there is a potential mismatch between those charges and the costs related to the service to be recovered."); ***Comments of Multi-State RLEC Group***, at p. 10 ("Basing federal universal service contributions on a safe harbor percentage could have material impacts on both state and federal universal service contributions as well as total end-use charges for voice service.); ***Comments of the Concerned Rural LECs***, at p. 10 ("Both the 25 percent safe harbor and the optional traffic study could be problematic for RoR ILECs and also have material impacts on the state and federal universal service funds to which they must contribute."); ***Comments of The Concerned Rural LECs***, at p. 17 ("If the Commission wants to shift interstate costs to the intrastate jurisdiction, it should follow the procedures set forth by statute. The Communications Act . . . requires that the Commission first refer separations proceedings to the Federal-State Joint Board."); ***Comments of WTC – Advocates for Rural Broadband,*** at p. 11 ("Mandatory nationwide detariffing of TACs may also entail other costs and problems, including disruptions to USF contributions and distributions and increases in customer dissatisfaction and educational needs."); ***Comments of Kansas Rural Local Exchange Carriers***, at p. 6 ("A general detariffing of T ACs could affect universal service in two additional ways: disruption of jurisdictional cost separations and the erosion of intrastate revenue through the adoption of proposed "safe harbor" treatment.")

The *Comments of the Zingaretti Enterprise Companies,* at page 3, provided the best summation noting, that "[a]t its core, the [*NPRM*] seems to search for a solution to a problem that does not exist." The one thing that is clear is that any version of the NPRM proposals will necessary impose additional significant costs on carriers and ultimately consumers. And, on its face, the ensuing changes are more likely to engender additional consumer confusion that to ameliorate it. As *Nebraska PSC Comments* point out at page ii:

> The adoption of the NPRM's proposals would be disruptive for carriers and cause unnecessary confusion . . . The harms resulting from the adoption of many of the Commission's proposals would outweigh any hypothetic benefit alluded to in the NPRM.

CONCLUSION

Taken together, nothing in the record before the agency, including the initial comments and the NPRM itself provide a justification or legal basis for the FCC to take additional action in this proceeding. At a minimum, before acting, the FCC should consider discussing the separations and universal service issues clearly implicated by the *NPRM* proposals with the two Joint Boards. The record is replete with examples of the impact in both areas. Avoiding or ameliorating such impacts on both the FCC and State universal service programs is exactly why Congress mandated the creation of both of those joint boards.

Respectfully submitted,

James Bradford Ramsay
GENERAL COUNSEL
Jennifer Murphy
ASSISTANT GENERAL COUNSEL
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, Suite 200
Washington, DC 20005
Telephone: 202.898.2207
E-mail: jramsay@naruc.org

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