

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the) DOCKET FILE COPY ORIGINAL
Communications Act of 1934, as amended)
_____)

INITIAL COMMENTS OF
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully files these comments addressing the March 21, 1996 adopted "Notice of Proposed Rulemaking" ("NPRM") released in the above captioned proceeding March 25, 1996 [FCC 96-123]. NARUC, inter alia, respectfully suggests that (i) what ever the FCC determines with regard to its tentative proposal to forbear on its tariff filing requirements, it should assure that consumers have timely access to tariff information, and (ii) the FCC assure that States retain maximum flexibility with regard to averaging intrastate toll rates.

In support of these requests, NARUC states as follows:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, the NARUC is composed of, inter alia, State and territorial officials charged with regulating telecommunications common carriers within their respective borders. In that capacity, they must assure that those communications services and facilities required by the public convenience and necessity are established. NARUC is also the body that nominates state commission members to the Federal-State Joint Boards as specified in Section 410 of the Communications Act. NARUC actively represents the interests of its membership both in Joint Board proceedings and other FCC dockets impacting on state regulatory initiatives. NARUC also collaborates with the CCB in matters of common interest.¹

As the FCC proposals in this proceeding to, inter alia, issue a preemptive pronouncement as to intrastate toll services raises issues of interest to NARUC's state commission membership.

¹ According to 47 C.F.R. § 0.91 (c) one of the "functions" of the Common Carrier Bureau is to "[c]ollaborate with representatives of state regulatory commissions and with the National Association of Regulatory Utility Commissioners in cooperative studies of common carrier and related matters."

II. DISCUSSION

- A. **The FCC should assure that States retain maximum flexibility with regard to intrastate toll services rate averaging and related intrastate Universal Service requirements.**

In Part VI. of the order, titled, "RATE AVERAGING AND INTEGRATION REQUIREMENTS OF 1996 ACT", ¶¶ 64 - 68, mimeo at 35 - 38, the FCC notes that § 254(g) of the Communications Act, as amended by the 1996 Act, requires the FCC to "Adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas." According to the FCC, this section requires the FCC to adopt rules to require geographic rate averaging for inter- AND intrastate, interexchange telecommunications services.

NARUC does not necessarily agree that the issuance of an FCC preemptive rule is required by the express terms of the statute.

However, to the extent preemption is mandated, NARUC agrees with the FCC suggestion that any preemption be limited so as to invalidate such laws only to the extent such laws or regulations are inconsistent with the Statute's requirements.²

² See, NARUC's 1994 "Federal Telecommunications Legislative Policy Principles:" "During the transition to competition, States must not be prevented from imposing [rules] necessary to preserve universal service," and that "States must retain.. flexibility to establish..conditions under which services are provided, as long as those policies are not inconsistent with federal statutes."

As the FCC acknowledges, the statute "...does not appear to foreclose consistent state action in this area." The NPRM suggests that State approaches that are inconsistent with the FCC's rules implementing this section must be preempted also. NARUC respectfully suggests, however, that consistency with the statutory text should be the yardstick by which State regulations are evaluated.

- B. The FCC should require telecommunications carriers to provide current as well as proposed tariffs/terms and conditions of service, on-line as soon as economically and technically feasible.**

In part III. of the NPRM, titled "REGULATORY FORBEARANCE", the FCC suggests, in ¶¶ 18 - 19, that, given the current domestic, interstate, interexchange market, the 1996 Act requires the Commission to forbear from requiring non-dominant interexchange carriers to file tariffs for domestic services. NPRM, mimeo at 13. In arriving at this tentative conclusion, the FCC suggests that "applying tariff filing requirements to non-dominant interexchange carriers is not necessary for the protection of consumers" and also notes that "we do not address here the issue of forbearance from applying Section 226 of the Act, which requires operator service providers to file informational tariffs."

NARUC has not taken a position on this FCC proposal. However, in November of 1995, NARUC did pass a "Resolution Concerning On-line Tariffs" addressing tangentially related matters.

That resolution notes, that with the FCC's determination that AT&T is "non-dominant", all interstate interexchange communications carriers can change their rates on one day notice. For a the free and efficient market envisioned by Congress in the 1996 Act to exist, telecommunications consumers must have timely access to tariff information. Current price discovery methods are not conducive to this type of market since carriers are not obligated to provide tariff information to their customers.

Since many carriers now use internal on-line services to disseminate tariff information within their own company, NARUC urges the FCC to require that all telecommunications carriers provide current as well as proposed tariffs on-line as soon as economically and technically feasible.

IV. CONCLUSION

For the foregoing reasons, NARUC respectfully requests that the FCC incorporate the positions outline, supra, in the final rule issued in this proceeding.

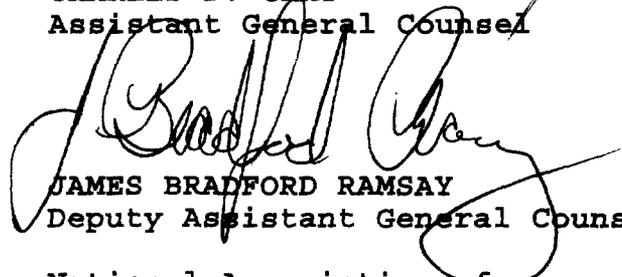
Respectfully submitted,



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