

National Association of Regulatory Utility Commissioners

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APR 24 1997

EX PARTE OR LATE FILED

April 24, 1997

Mr. William Canton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: EX PARTE COMMENTS - Two Copies Filed In the following proceeding:

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45

In the Matter of Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21

In the Matter of MFS Communications Company, Inc. Petition for Preemption and Declaratory Ruling, File No. CCB/CPD 97-1

Dear Mr. Canton:

Yesterday, New Hampshire Commissioner and NARUC President Bruce Ellsworth, Missouri Commissioner and Communications Committee Chair Kenneth McClure, NARUC Executive Director Margaret Welsh, and NARUC Assistant General Counsel Brad Ramsay met with the following FCC representatives for approximately 30 minutes:

9:00 FCC Chairman Reed Hundt
10:00 FCC Commissioner Susan Ness and James Casserly
10:30 FCC Commissioner Rachelle Chong
11:30 FCC Commissioner James Quello and James Coltharp
12:00 FCC General Counsel William E. Kennard

Today, NARUC's Assistant General Counsel hand-delivered and/or mailed copies of this ex parte notice to every FCC Commissioners office and to the following FCC representatives: Gina Keeney, Richard Metzger, Kathy Levitz, Mary Beth Richards, John Nakahata, Richard Welch, Ken Moran, Debra Dupont, and Emily Hoffner.

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During some of the meetings, NARUC representatives touched upon some issues in dockets pending before the Commission. Accordingly, I am, pursuant to 47 C.F.R. § 1.1206(1), submitting, for the record, two copies of this letter for filing in each of the above-captioned proceedings. I have also attached a copies of relevant NARUC resolutions for your information and review.

During the majority of these meetings, NARUC representatives made the following points:

I. ON UNIVERSAL SERVICE:

- o **CONTINUATION OF THE JOINT BOARD:** NARUC strongly supports Hundt's plan to continue working with the Universal Service Joint Board on selection and modification of a Universal Service Fund model and other Universal Service issues.
- o **SELECTION OF THE INTERIM ADMINISTRATOR:** NARUC urged the selection of an interim universal service administrator as soon as possible.
- o **STATE REPRESENTATION ON FAC/ADMINISTRATOR BOARD:** NARUC urged the FCC to assure that State Commissions are represented on the board of any permanent USF administrator and on the federal advisory committee tasked with selecting and overseeing the permanent USF administrator.
- o **CONTINUATION OF THE MONITORING REPORT:** In accordance with a February 1997 resolution, NARUC urged the FCC to (1) continue the CC Docket 87-339 Monitoring report and to work with the States to make needed modifications. A copy of the February Resolution is attached.

II. ON SECTION 253: Based upon the attached February 1997 Resolution, NARUC suggested the following:

o **SECTION 253 GENERALLY:**

The States recognize that removal of barriers to entry is required for the development of competitive telecommunications markets;

In the spirit of cooperative federalism, the States and the FCC should work collaboratively to address the issues raised in § 253 petitions;

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Section 253 petitions should not be used as a vehicle to limit the legitimate authority of States under § 253(b) to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers;

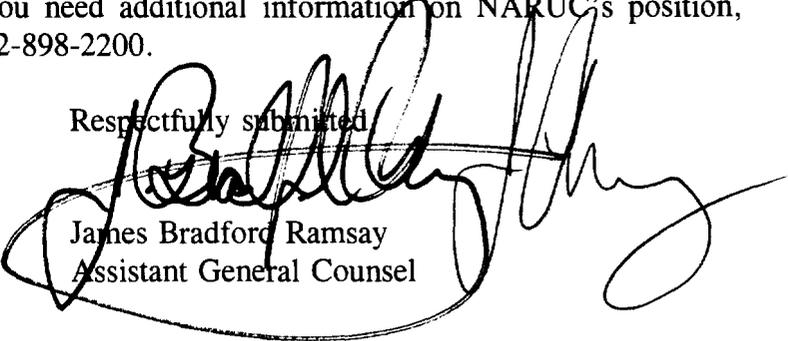
Section 253 petitions should only be granted if a petitioner can establish that a particular state regulation or law constitutes a barrier to entry.

o THE MFS SECTION 253 PETITION:

The MFS Petition should be rejected as being premature in light of the pending decision of the Eighth Circuit and pending the outcome of state proceedings to develop permanent prices.

NARUC respectfully requests that the Commission carefully examine and implement the proposals and requests described in this letter and the attached resolutions. If you have any questions concerning this filing, or you need additional information on NARUC's position, please do not hesitate to call me at 202-898-2200.

Respectfully submitted,


James Bradford Ramsay
Assistant General Counsel

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Resolution Regarding Section 253 Petitions for Preemption

WHEREAS, Section 253(a) of the Telecommunications Act of 1996 requires that no State or local statute or regulation or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service; and

WHEREAS, Section 253(b) also makes it clear that nothing shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers; and

WHEREAS, Since passage of the 1996 Act, several petitions have been filed with the Federal Communications Commission (FCC) claiming that certain state and local regulations and laws represent entry barriers, contrary to Section 253; and

WHEREAS, On December 30, 1996, MFS filed a Petition for Preemption and Declaratory Ruling, requesting the FCC declare that where there are significant geographic differences in the cost of providing interconnection or unbundled network elements, 1) rates for interconnection and unbundled elements that are not geographically deaveraged constitute a barrier to entry under Section 253; and 2) failure to geographically deaverage violates Section 252's requirement of cost-based pricing; and

WHEREAS, The FCC's rules to require geographic deaveraging of the prices of interconnection and unbundled elements pursuant to Section 252(d)(1) of the 1996 Act have been stayed by the United States Court of Appeals for the Eighth Circuit; and

WHEREAS, The FCC is required to scrutinize petitions brought under Section 253(d) on a case-by-case basis, consistent with subsections (a) and (b) of Section 253; and

WHEREAS, Several state commissions have approved interconnection agreements with interim pricing determinations and are undertaking generic proceedings to develop permanent prices, consistent with the requirements of Section 252(d); and

WHEREAS, Coordination by the States and the FCC in addressing petitions will enhance fulfillment of the objectives set forth in Section 253; now, therefore, be it

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RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Meetings in Washington, D.C., recognizes that removal of barriers to entry is required for the development of competitive telecommunications markets; and be it further

RESOLVED, That in the spirit of cooperative federalism, the States and the FCC should work collaboratively to address the issues raised in Section 253 petitions; and be it further

RESOLVED, That Section 253 petitions should not be used as a vehicle to limit the legitimate authority of States under Section 253(b) to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers; and be it further.

RESOLVED, That Section 253 petitions should only be granted if a petitioner can establish that a particular state regulation or law constitutes a barrier to entry, and be it further

RESOLVED, That the MFS Petition should be rejected as being premature in light of the pending decision of the Eighth Circuit and pending the outcome of state proceedings to develop permanent prices; and be it further

RESOLVED, That the NARUC General Counsel be directed to take any actions necessary to further the positions put forth in this resolution.

Sponsored by the Committee on Communications
Adopted February 26, 1997

Resolution Regarding the Monitoring Report

WHEREAS, The Federal Communications Commission (FCC), on August 27, 1987, initiated a monitoring program in CC Docket No. 87-339 to track the impact of changes to the separation rules contained in Part 36; and

WHEREAS, The FCC has released eighteen Monitoring Reports as part of the monitoring program; and

WHEREAS, The monitoring program was extended in 1992 for five years by the FCC pursuant to a Recommended Decision and Order of the Federal-State Joint Board established in CC Docket No. 80-286; and

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WHEREAS, The Monitoring Report has been modified since its inception and currently contains information on telephone subscribership, lifeline subsidies, high cost subsidies, network usage, rates, revenues, expenses and investments, pooling, infrastructure and new services; and

WHEREAS, Due to the important information the Monitoring Report provides to states, NARUC has supported and provided recommendations on the Monitoring Report; and

WHEREAS, The Monitoring Report will be discontinued in 1997 without further action by the Joint Board and the FCC; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1997 Winter Meetings in Washington, D.C., supports the continuation of the Monitoring Report; and be it further

RESOLVED, That the FCC and states work together to review the Monitoring Report and make any changes or modifications to this reporting mechanism to reflect changes in the telecommunications industry.

Sponsored by the Committee on Communications
Adopted February 26, 1997