N A R U C

National Association of Regulatory Utility Commissioners

NOTICE VIA ELECTRONIC FILING

November 25, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Notice of Written and Oral Ex Partes filed in the proceedings captioned: *In the Matter(s) of Wireless E9-1-1 Location Accuracy Requirements*, PS Docket 07-114; *PSHSB Inquiry Into Circumstances of Major 911 Outage Centered in Washington State April 9-10, 2014*, PS Docket 14-72; *911 Governance and Accountability, PS Docket No. 14-193; Improving 911 Reliability*, PS Docket No. 13-75.

Secretary Dortch:

On November 24, 2014, the undersigned spoke with **Daniel Alvarez**, **Legal Advisor, Wireline Public Safety, and Homeland Security, Office of the Chairman.** Citing NARUC's November 14th *ex parte* in these proceedings, I pointed out again, that it apparent the Chief Simpson, the FCC's enforcement Bureau, and the FCC understand and appreciate the crucial oversight State commissions and other State authorities play with respect to 9-1-1 and other services. Whatever technology or the mode of service – working voice or data 911 service is unquestionably an intrastate telecommunications services funded at the State level.[1] States play a continuing and crucial role in oversight and maintenance of these and related voice services. I reiterated that (i) the FCC lacks the staff and financial resources to protect consumers from 911 service lapses and other problems alone, (ii) there is no reason to undermine State authority in this area, which can only limit or obstruct state oversight and enforcement, (iii) if the FCC's intent is to coordinate with State authorities and assure maximum pressure and oversight on carriers to provide working and reliable E9-1-1 and other services, one option is to make crystal clear (in the text of the order) to all carriers that if a State asserts jurisdiction over or imposes rules to ensure reliability/service quality of E9-1-1 and related services, the FCC will strongly support the State action, (iv) statements that the FCC is taking no position on the scope of State authority historically has proven to be nothing more than an incentive for wasteful litigation at ratepayer (and taxpayer) expense - by bad actors and a disincentive for State enforcement action, (v) forceful statements reserving State authority – but that apply that reservation to only a limited type of State authority invite litigation over the scope of the reservation, and (vii) while the FCC cannot grant in any statement - authority that the State legislature has not, the agency can, however, make clear that as a matter of federal law, States have authority and the FCC will strongly support States that exercise that authority.

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[1] *See, e.g.*, 47 U.S.C. 153(28) ("The term "interstate communication" or "interstate transmission" . . . shall not. . . include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.")

I also provided Mr. Alvarez with a copy of the attached: *Amicus Curiae Brief of the National Association of Regulatory Utility Commissioners in support of the Michigan Public Service Commission,* filed in Federal District Court, Western District of Michigan on August 19, 2014.

With respect to E9-1-1 provided using IP technology – I pointed out that the AMICUS outlines how the FCC has already conceded, and the 10th Circuit recently confirmed, that interconnected VoIP is a telecommunications service.

I also noted that regardless of how E9-1-1 services using IP technology are ultimately classified - according to a June 2006 FCC order, if the traffic is severable, which by definition a working E9-1-1 call is, it is already subject to State jurisdiction, whatever the classification.[2]

I have attempted to cover all the key advocacy points raised during the oral contacts in the e-mail that might impact any open FCC proceeding. I am copying all listed FCC personnel with this notice. If any indicate I have inadvertently left out some advocacy, or have not filed this letter in a relevant docket, I will immediately refile a corrected notice that includes the omitted discussions/proceedings in any additional docket. If you have questions about this or any other NARUC advocacy, please do not hesitate to contact me at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.

Respectfully Submitted,

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[2] See Universal Service Contribution Methodology, WC Docket 06-122; CC Dockets 96-45, 98-171, 90-571, 92-237; CC Dockets 99-200, 95-116, 98-170; WC Docket 04-36, *Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518 (2006), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-94A1.pdf (Contribution Order), aff'd in part, vacated in part, *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007), at ¶ 56, mimeo at 29 ("While . . .interconnected VoIP providers may report their actual interstate telecommunications revenues . . . some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and . . . . Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries [note 188 *See Vonage Order*, 19 FCC Rcd at paras. 23-31.] Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor . . . in calculating its federal universal service contributions. Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. [Footnote omitted] . . . ***an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation.*** This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider."