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National Association of Regulatory Utility Commissioners

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 4, 2001

EX PARTE OR LATE FILED

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, DC 20554

RE: Ex Parte Comments - To be filed in the proceeding captioned " *In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*," CC Docket No. 00-199.

Dear Ms. Salas:

In accordance with Section 1.1206(b)(1) of the FCC's rules, the National Association of Regulatory Utility Commissioners ("NARUC") submits for filing this notice of *ex parte* contacts for inclusion in the public record of this proceeding. For the October 2 contacts, I respectfully request any waivers needed to make that aspect of this filing out of time.

October 2, 2001: NARUC's General Counsel Brad Ramsay spoke with Matthew Brill, Sam Feder, and Jordan Goldstein by phone. Generally, on one or more of those calls, Mr. Ramsay (1) reiterated arguments pointing out the illogic of the majority of the USTA proposed "answers" to NARUC's ex parte as filed in the record. The USTA responses in large part either completely ignored the relevant NARUC argument,[1] are counter to RBOC long and strongly held positions before this commission and currently in the courts,[2] or are not arguments at all.[3] Most assume that

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[1] For example, in response to the problem expressed by a Virginia commission representative that if the workpapers are not already in existence – he cannot compel their production, the USTA answers: "States can continue to get information through interrogatories." Yes it's true that some States can continue to get information. That is not an argument that NARUC or the Virginia Staffer made. The question is not the ability to get some information – it's the ability to get access *specific* and *useful* information (both instate – and, for comparative purposes – out of state data) that will not be available without proper federal accounts. The USTA response then alleges that "many states can require carriers to provide additional data or new reports if necessary." Again, this statement on its face is not responsive to the Virginia Commission argument. The Virginia Commission representative asserts they cannot get needed data. The USTA response does not rebut that assertion. Apparently, the Virginia Commission is not alone. The fact that "many can", doesn't answer the question from the Virginia commissions perspective.

[2] For example, on page two of their "responses," USTA suggests that State UNE proceedings do not rely heavily on data from the FCC's Part 32 accounts. This position is counter to the positions the ILECs have taken on TELRIC before the Supreme Court and in arguments before this commission. Moreover, its also inconsistent with the fact that in most state jurisdictions, the cost studies the ILECs proffer are explicitly based on embedded costs via the USOA accounts – something the USTA "response" partially acknowledges by noting "There are some cases where data that supports the USOA becomes the starting point for additional calculations..." The USOA is meant to evolve to account for new technologies – as it has in the past. Yes, additional information is provided by the ILECs in UNE proceedings – but it has to "true-up" with the USOA – which allows for some ability to cross-check the ILEC presentations on a consistent basis across companies as well as jurisdictions.

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the ILECs or the USAC can provide the needed access to data.[4] Mr. Ramsay also reiterated the importance of the forecast use rule, the new interconnection accounts, and the various other new accounts proposed by the States and NARUC.

October 3, 2001:

(1) Idaho Commissioner Marsha Smith and NARUC's General Counsel Brad Ramsay met with FCC Commissioner Martin and his advisor Sam Feder. We reiterated State concerns about the need for the new accounts, the impact of the change in the forecast use rule, and the role that Congress intended States and the FCC to play with respect to accounting and reporting procedures as suggested by Section 220 of the 1934 Act.

(2) Idaho Commissioner Marsha Smith and NARUC's General Counsel Brad Ramsay met with Commissioner Abernathy and her advisor Matt Brill. We reiterated State concerns about the need for the new accounts, the impact of the change in the forecast use rule, and the role that Congress intended States and the FCC to play with respect to accounting and reporting procedures as suggested by Section 220 of the 1934 Act.

(3) NARUC's General Counsel met with Jordan Goldstein briefly discussing again previous NARUC filings in this proceeding.

(4) FCC Commissioner Michael Copps and his advisor Jordan Goldstein joined NARUC General Counsel Brad Ramsay on a conference call with Florida Commissioner Leon Jacobs (and Pat Lee also from the Florida PSC), New Hampshire Commissioner Nancy Brockway, Nebraska Commissioner Anne Boyle, Gretchen Dumas from the California Commission, Julie Musselman from the Illinois Commission, John Burg from the Vermont Commission, Nancy Zearfoss from the Maryland Commission, Chris Harris from the Virginia Commission David Sapper from the Tennessee Commission, Karl Henry from the Indiana Commission, Bridget Paschal from North Carolina, Joyce Davidson from Oklahoma, and Jessica Zufolo from NARUC. Aside from positions discussed in previous filings in this docket, State members on the call suggested that the FCC should not combine (1) the submarine cable with the buried cable account – because the material prices of the cables and associated maintenance costs are significantly different and it will distort costs or (2) the private line, directory revenue and other basic revenue accounts into a single basic revenue account.

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[3] For example, in response to the suggestion that ARMIS allows states to determine if certain carriers are over-recovering overheads via misallocations of the same costs to more than one state, the USTA response suggests GAAP requires that a cost be recorded once. Respectfully, I believe State commission staffs are aware of the GAAP rules and their requirements. The focus is – are misallocations, mistaken or otherwise, occurring (as they have in the past), and does the comparison of state to state data help either the state or the FCC in that inquiry. The experience of the State staffs suggests access to such data is very useful.

[4] Both solutions have very real practical barriers. Historically, the ILEC can be counted on to protect its interests in maximizing its profit - a fiduciary duty to its shareholders. Typically, this understandable focus guarantees the ILEC will fight, and fight hard, in both the legislatures and in response to direct State commission requests, to provide as little information has possible about their operations. USTA also suggests USAC as a source of "confidential" data whose use will be restricted. The restrictions on "use" and access to other state's data will also make such reports of limited utility or relevance in State proceedings on universal service.

***Significantly, with respect to the forecast use rule, the FCC has already found based on record evidence that "...apportioning plant cost based on current relative use would not adequately assure that non-regulated activities bear their full share of the risks of investment." Paragraph 147, Report and Order, FCC 86-564, In the matter of separations of costs of regulated telephone service from costs of non-regulated activities, Docket No. 86-111 (December 23, 1986).

October 4, 2001: NARUC's General Counsel spoke with Kyle Dixon, Sam Feder, Matthew Brill, and Paul Margie reiterating NARUC's earlier arguments in this proceeding.

NARUC's General Counsel e-mailed the attached documents and this letter to all four FCC Commissioners and Kyle Dixon, Sam Feder, Matthew Brill, Jordan Goldstein, Paul Margie, Dorothy Attwood, Carol Mattey, Ken Moran, and Timothy Peterson.

If you have any questions about these or any other NARUC positions, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Respectfully Submitted,

James Bradford Ramsay
NARUC General Counsel

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OCT - 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MEMORANDUM

OCTOBER 4, 2001

TO: CHAIRMAN MICHAEL POWELL
COMMISSIONER KATHLEEN ABERNATHY
COMMISSIONER KEVIN MARTIN
COMMISSIONER MICHAEL COPPS

cc: Kyle Dixon [Office of the Chairman]
Matt Brill [Office of Cmr. Abernathy]
Sam Feder [Office of Cmr. Martin]
Jordan Goldstein [Office of Cmr. Copps]

FR: Brad Ramsay
General Counsel
National Association of Regulatory Utility Commissioners
1101 Vermont Avenue, Suite 200
Washington, DC 20005 Phone: 202.898.2207

RE: ***LATEST EX PARTE COMMENTS FILED IN THE PROCEEDING CAPTIONED: "In the Matter of 2000 Biennial Regulatory Review - Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers," CC Docket No. 00-199.***

Thanks again to each FCC Commissioner and Staff for meeting with NARUC and NARUC State representatives this week. In spite of those visits, though the status of the new accounts suggested in the summer notice are still up for discussion, as is the forecast use rule, I'm sure there remains significant State concern about the form this order may take. I wanted to take this opportunity to point out the most recent in a series of State "*ex partes*" on this issue. Just since August, FIFTEEN States have filed supporting NARUC's positions on the new accounts. This does not include those of the original 17 states that filed earlier in the proceeding supporting with most supporting one or more of NARUC's positions.

With respect to action on the forecast rule, it is significant from NARUC's perspective, that the FCC has *already found* based on record evidence that "...apportioning plant cost based on current relative use would not adequately assure that non-regulated activities bear their full share of the risks of investment." Paragraph 147, Report and Order, FCC 86-564, *In The Matter Of Separations Of Costs Of Regulated Telephone Service From Costs Of Non-Regulated Activities*, Docket No. 86-111 (December 23, 1986).

THIS WEEK: All three Kansas Corporation Commissioners personally signed an *ex parte* to each of you urging the FCC to move forward with the changes in the USOA - AS SET FORTH IN THE JUNE NOTICE, i.e., with the new accounts. The President of the California Commission also just signed a letter to Chairman Powell advocating the same thing. I've also attached another *ex parte* letter from Michigan Commissioner and NARUC 1st Vice President David Svanda

supporting NARUC positions. This is both Kansas's and California's first on the record pleadings filed in this docket.

Since August, *at least* 15 states have filed *ex parte* comments - several after making direct attempts to contact /or successfully contacting each of you - urging similar action. So far, by my count, almost half - around 23 – of the States (representing conservatively at least 65 Republican and Democratic Commissioners dedicated, just as each of you are, to serving the public interest) have filed in this docket - all agreeing with one or more of NARUC's positions - and bulk of them agreeing with the key issues concerning, *inter alia*, the new proposed accounts and the forecast rule.

As noted in my earlier memo to each of you, NARUC and its State Commission members have ALWAYS coordinated very closely with the FCC on accounting matters. Even back in the days of the "Louisiana" decision (when the FCC and States disagreed on depreciation policy), we still held joint depreciation meetings (and historically had an FCC person integrally involved with our Depreciation staff subcommittee) and otherwise discussed accounting policy. We also historically have participated in joint audits. It is not a coincidence that Section 220(i) of the Telecommunications Act (unchanged by the 1996 legislation) states "The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations."

I've attached just the three most recent *ex partes* that I am aware of to this e-mail.

I am anticipating that at least two more states (that have not yet filed any pleadings in this proceeding) will be filing in support of the NARUC position if time constraints permit.

Again, below I have just listed the States that have filed since AUGUST that have supported one or more of the NARUC positions. I've not had an opportunity to go through all the initial comments filed in this proceeding to ascertain positions on the new accounts still "in play." But of the *ex partes* I've seen since August, TWELVE 12 of these states *specifically* endorse NARUC's positions across the board. THREE MORE that filed since August – and listed below all generally support the new accounts suggested in the June FCC notice, e.g., the Illinois Commerce Commission's filing, though it doesn't reference NARUC's positions, does specifically endorse the new interconnection and USF accounts - along with a few additional recommendations not addressed in NARUC's comments. Similarly, the New Hampshire comments endorse the new interconnection and universal service accounts, but do not specifically mention NARUC's comments or positions.

Not surprisingly, most of these 13 States were among the 17 that filed their own very specific comments earlier in this proceeding.

Recent *ex partes* include filings from the following commissions:

(1) CALIFORNIA (CPUC President Loretta Lynch)

(2) FLORIDA (Chairman Leon Jacobs),

(3) INDIANA (Chairman William McCarty, Cmr. David Hadley, Cmr. Judith Ripley, Cmr. Camie Swanson-Hull, Cmr. David Ziegner),

(4) ILLINOIS (Myra Karegianes, General Counsel - for the Commission),

(5) KANSAS (Chairman John Wine, Commissioner Cynthia L. Claus, Commissioner Brian J. Moline)

(6) MARYLAND (Cmr. Gail McDonald),

(7) MICHIGAN (Cmr. Robert Nelson, Cmr. David Svanda),

(8) NEBRASKA (Cmr. Frank Landis, Cmr. Anne Boyle, Cmr. Lowell Johnson, Cmr. Rod Johnson, Cmr. Gerald L. Vapp),

(9) NEW HAMPSHIRE (Chairman Douglas Patch, Cmr. Susan Geiger, & Cmr. Nancy Brockway)

(10) NEW MEXICO (Chairman Tony Schaefer)

(11) NORTH CAROLINA (Chair Jo Anne Sanford),

(12) NORTH DAKOTA (Commissioner Susan Wefald),

(13) SOUTH DAKOTA (Commissioner Pam Nelson [Listed in NARUC's 090601 *ex parte*]

(14) UTAH (Chairman Steve Mecham, Lowell Alt, Director & Ingo)

(15) WASHINGTON (Chairman Marilyn Showalter, Cmr. Richard Hemstad, Cmr. Patrick Oshie),

Thanks again for your continued careful consideration of NARUC and its State member views.

Respectfully Submitted,
Brad Ramsay

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October 2, 2001

Mr. Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20024

Re: Accounting Requirements and ARMIS Reporting Requirements
For Incumbent Local Exchange Carriers, CC Docket No. 00-199

Dear Mr. Powell:

I appreciate the FCC's willingness to work with the states as the FCC considers accounting reforms and ARMIS reporting requirements in its Biennial Regulatory Review docket. As the CPUC said in our previously filed comments in this docket, California supports "the effort to streamline accounting and reporting requirements where appropriate." (See the CPUC's Comments in CC Docket No. 00-199.) There are, however, a few areas where current-reporting requirements should be retained. Further, new accounts should be created where additional detail is needed, as proposed by NARUC and in the comments filed by individual states. These accounts will ensure that the accounting system reflects recent technological changes and allows both federal and state regulators to carry out their mandate under the 1996 Act.

Specifically, the CPUC would like you to consider three points:

(1) Retaining the information expense and revenue accounts for UNE and interconnection is necessary for states to administer prices for these services.

An appropriate level of detailed accounting and reporting for UNE pricing and interconnection is important for state regulators to help understand the cost basis of UNEs and is useful as an analytical tool to help assess the reasonableness of ILEC UNE cost and pricing studies and interconnection agreements. Additionally, adopting the UNE and interconnection accounts will help regulators better understand and evaluate the allocation of utility costs to non-regulated and competitive services.

(2) The states need detailed accounting of the costs of development and deployment of packet and ATM switch technology in order to follow developments in this area.

Accounting data provides regulators with information to assess whether an ILEC is engaged in anti-competitive behavior regarding the pricing of advanced services and whether the costs of these activities are properly booked (e.g. above-the-line or below-the-line). Appropriate accounting and operational data related to the revenues and costs of providing advanced services will also help states to monitor market development and market conditions.

(3) States need expense and revenue accounts in order to properly review universal service funding, reciprocal compensation, resale, and collocation activities.

Detailed expense and revenue accounts are critical to analyzing carriers' funding of Universal Service programs as well as to evaluate the reasonableness of carriers' claims for reimbursement in connection with such programs. This information can also help analyze reciprocal compensation issues and assess other carrier claims. Appropriate accounting data can also be used to evaluate the reasonableness of an ILEC's costing and pricing studies regarding resale services and collocation.

For these reasons, I urge that the accounts noted above, which reflect new technologies under the requirements of the 1996 Act (e.g., universal service support, UNE pricing, number portability) be adopted by this Commission.

If you have further questions, contact Tom Long of my staff at 415-703-4953.

Sincerely,

Loretta M. Lynch

c: Kathleen Q. Abernathy, FCC Commissioner
Michael J. Copps, FCC Commissioner
Kevin J. Martin, FCC Commissioner

October 3, 2001

Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Ex Parte Comments - To be filed in the proceeding captioned "*In the Matter of 2000 Biennial Regulatory Review - - Comprehensive Review of The Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers,*" CC Docket No. 00-199.

Dear Commissioners:

In accordance with Section 1.1206(b)(1) of the FCC's rules, the Michigan Public Service Commission (MPSC) submits this written *ex parte* communication for inclusion in the public record of this proceeding.

The MPSC appreciates the efforts made by the FCC to include all of the state regulatory commissions in discussions on the issues surrounding reform of the FCC's Class A accounting system. We support and applaud the FCC's effort to reduce unneeded or obsolete regulatory requirements as we move to a competitive telecommunications environment. We fully support the 40% reduction in the number of accounts and the addition of new competitive accounts which were the tentative outcomes of those earlier discussions. We do, however, request that you delay further reduction in the number of accounts until careful review of individual and collective comments filed by members of the National Association of Regulatory Commissioners (NARUC).

The MPSC has had the opportunity to review comments filed by NARUC members in CC Docket No. 00-199 and notes the concern expressed for the potential loss of data the states require to carry out their statutory responsibilities. We share this concern. We believe the proposed changes presume a vibrant marketplace in local telephone services. As we all know, this has not been achieved on a national scale. We have done enough in anticipation of that marketplace but we must now wait until other parties have delivered on the promise of that marketplace before relinquishing more of our tools.

Michigan is on the road to competition in the local exchange but we are not yet there. While Michigan's telecommunications statute provides a sound framework encouraging local competition, our efforts will be hindered without critical information included in the ARMIS reporting data. The ability to identify expenses and revenues as they relate to wholesale and retail operations is an important point of comparison utilized to determine forward looking unbundled costs as well as interconnection rates, universal service funding levels, and pole attachment rates. Removal of reporting safeguards will provide incumbent local exchange providers with an opportunity for cross-subsidization that will undoubtedly hamper competitors and stifle competition. Since the merger of SBC with Ameritech,

ARMIS data is now our only source of individual state by state financial information available for review. Furthermore, institutional memory is being further eroded by early retirement and corporate consolidation. Elimination of state by state ARMIS reporting data will make it impossible for individual states to ascertain the level of investment necessary to provide reliable service or to compare state by state infrastructure development efforts. This is especially critical in Michigan and other Ameritech states where service quality continues to vacillate. Also, the ability of all states to meet pre or post Section 271 review obligations may be severely limited if additional ARMIS reporting requirements are eliminated or accounts combined before reasonable benchmarks are achieved. The lack of ARMIS data will likely increase the time required by state regulatory commissions to ascertain incumbent local exchange carriers (ILECs) progress toward local competition. This could potentially delay the entrance of new long distance competitors and the benefits of competition to consumers.

In Michigan, state government has encouraged deployment of broadband technology in order to maintain global competitiveness. The Michigan Economic Development Corporation (MEDC) has identified several telecommunications infrastructure issues facing the public and private sector. One of these issues is "little or no information on availability and accessibility of telecommunications infrastructure." MEDC established the *LinkMichigan* program to identify broadband resource availability to attract and retain business, education, and research investment. However, MEDC's ability to obtain or provide information on broadband deployment is extremely limited. In fact, on several occasions information currently available from the FCC was either insufficient or restricted by non-disclosure requirements. We have also had trouble responding to relevant data requests by others, including Representative Fred Upton, Chairman of the House Telecommunications Subcommittee. Needless to say, the MPSC supports the creation of new accounts to enable the states and the FCC to monitor deployment of broadband technology.

Finally, the MPSC has had to rely on ARMIS reporting data to defend its decisions in federal court. In Civil Action No. 00-73207 before the U. S. District Court for the Eastern District of Michigan, ARMIS data is key to ascertaining whether or not the Michigan Telecommunications Act is confiscatory. In its August 3, 2001 brief, Michigan (defendants) "*accept the Federal Communications Commission's ("FCC") Automated Reporting Management Information System (ARMIS) and requirements as perhaps the best practical, accepted, audited point of beginning.*" Without the ARMIS data there is no practical or accepted starting point.

The MPSC believes that, with the addition of several new accounts recommended by NARUC and its members, the proposed changes will achieve the correct balance necessary for Michigan to move forward. We are eager to continue to work with the FCC as a partner in the endeavor to nurture local competition and look forward to achieving additional progress through the Phase III reform discussions.

Sincerely,

Chairman Chappelle

Commissioner Svanda

Commissioner Nelson

cc: Magali Salas, Secretary