N A R U C
National Association of Regulatory Utility Commissioners

October 5, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

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

RE: Errata - Ex Parte Notice/Comments – Two copies 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:

Yesterday I filed a notice of *ex parte* contacts. The notice contained two errors. On the first page of the memo attached to the pleading, the word "though" was substituted for the correct word "as." Also, the following paragraph was inadvertently placed on the wrong page:

"It was also suggested that, 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)."

The attached copy moves this paragraph from the top of page 3 to its correct place on page 2 of the filing. It also includes the other correction.

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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Respectfully Submitted,

James Bradford Ramsay
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 4, 2001

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, DC 20544

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 "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.

[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

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. It was also suggested that, 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*

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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.

The Matter Of Separations Of Costs Of Regulated Telephone Service From Costs Of Non-Regulated Activities, Docket No. 86-111 (December 23, 1986).

(5) 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

M E M O R A N D U M

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, as 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