NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

VIA ELECTRONIC DELIVERY

October 23, 2008

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission (via e-mail)

Re: Support for NARUC Motion/Request for Public Comment on Recently Circulated "Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking" on Intercarrier Compensation and Universal Service; Ex Parte Communication, WC Dockets Nos. 08-152, 06-122, 05-337, and 04-36, CC Dockets Nos. 01-92, 96-45, and 80-286, WT Docket No. 05-194

Dear Chairman Martin and Commissioners:

On October 21, 2008, the National Association of Regulatory Utility Commissioners ("NARUC"), in response to reports of a draft order being circulated at the Federal Communications Commission ("FCC" or "Commission") that, in NARUC's words, "fundamentally, and irrevocably, alters the structure for federal and state oversight" of the telecommunications industry,[1] filed a motion requesting the FCC to:

[1] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, CC Docket No. 08-152, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, *In the Matter of Petition for Declaratory Ruling Filed by CTIA*, WT Docket No. 05-194, *In the Matter of Jurisdictional Separations & Referral to the Federal-State Joint Board*, CC Docket No. 80-286, NARUC Motion (October 21, 2008) ("NARUC Motion") at 2.

1. Decide the future treatment of compensation for termination of ISP-bound traffic before the November 5 court deadline.

2. Issue a Further Notice of Proposed Rulemaking (FNPRM) summarizing the many discrete issues raised in the record, and enunciating the Commission's tentative conclusions, and proposed legal theories and factual determinations on each such issue.

3. Given the breadth of the proposed action, provide interested parties at least 90 days to consider and comment.[2]

The National Association of State Utility Consumer Advocates ("NASUCA")[3] hereby expresses its emphatic support for NARUC's motion. Granting the motion will benefit consumers, their representatives (including NASUCA members), regulators (both federal and state, including NARUC members) and the telecommunications industry, by allowing adequate review of the "thirteen billion dollar problem"[4] presented by the interrelationship of ICC and the high-cost universal service fund ("USF").

NASUCA has attempted to address some of the issues revealed in news accounts of the draft order.[5] Like NARUC, NASUCA has been frustrated by the "inconsistent media/financial analyst reports, or more accurately, rumors -- of what the order contains."[6]

Quite apart from NASUCA's disagreements on behalf of consumers with many of the policy positions expressed in the draft order,[7] NASUCA agrees with NARUC on the premises for its motion:

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[2] Id. at 5.

[3] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] NARUC Motion at 1, addressing $8 billion in intercarrier compensation ("ICC") and $5 billion in high-cost universal service support.

[5] WC Dockets Nos. 08-152, 07-135, 06-122, 05-337, and 04-36; CC Dockets Nos. 01-92, 99-68, 96-262, and 96-45, NASUCA ex parte letter (October 21, 2008) (discussing meeting between NASUCA representatives and staff of the Wireline Competition Bureau).

[6] NARUC Motion at 1, n.2.

[7] See NASUCA ex parte cited in footnote 5, supra; see also NASUCA ex parte in WC Dockets Nos. 08-152, 07-135, 06-122, 05-337, 05-195, 04-36, 03-109, and 02-60; CC Dockets Nos. 02-6, 01-92, 00-256, 99-68, 96-262, 96-45, and 80-286 (filed September 30, 2008).

- "The … draft raises a host of issues that no-one -- including the majority of the FCC Commissioners that are expected to vote on the document in two weeks -- has had (or will have) time to fully assimilate. As with any new proposal, it raises a host of unanswered -- and unanswerable on the current record -- questions…."[8]

- "[T]hose who have critical information needed to answer these questions, including the FCC's State commission colleagues, cannot obtain any authoritative information about the details of the proposals. If the FCC insists on addressing this comprehensive proposal so quickly, it will necessarily do so on the basis of an incomplete record."[9]

- "Moreover, as NARUC suggested earlier this month, [this] will dramatically increase the odds of a successful appeal – which will perversely delay reform which is clearly within reach."[10]

- An appeal will be certain, and its success will be likely, because "if the FCC chooses to move forward on this proposal without providing an additional opportunity for comment, it will do so in clear violation of the Federal Administrative Procedures Act."[11]

- NARUC details the ways in which that violation will occur: lack of notice, lack of opportunity to comment, and lack of record to support the order, all in violation of 5 U.S.C. § 500, et seq.[12]

NASUCA has long been supportive of comprehensive USF and ICC reform, but that reform must be based on a proper record and adequate consideration of the multitudinous and controversial issues that such reform entails. A course of action that involves voting on the draft order is not appropriate. As suggested by NARUC and many others, including NASUCA,[13] "The FCC can easily respond to the Core remand on November 4th separately and then later address broader issues after all Commissioners have an opportunity to understand the draft proposal, and the FCC has an opportunity to solicit public input and to create a proper record for action."[14] NASUCA urges the FCC to grant NARUC's motion.[15]

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[8] Id. at 2.

[9] Id. at 2 (footnote omitted).

[10] Id.

[11] Id. at 3.

[12] Id. at 3-4.

[13] See NASUCA ex parte letter cited in footnote 5, supra.

[14] NARUC Motion at 1.

[15] Other parties who have recently raised APA issues and recommended issuance of a FNPRM include COMPTEL (ex parte in 01-92, 05-337, 06-112, 99-68, 07-135, filed October 21, 2008) and Cavalier Telephone (ex parte in 99-68, 01-92, filed October 20, 2008).

Respectfully submitted,

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