NOTICE OF ORAL EX PARTE PRESENTATION (47 C.F.R. § 1.1204(10))

October 28, 2008

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

RE: ***In the Matter(s) of Developing a Unified Intercarrier Compensation Regime,* CC Docket 01-92, *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption,* CC Docket 08-152, *IP-Enabled Services,* WC Docket 04-36, *Universal Service Contribution Methodology,* WC Docket 06-122, *Petition for Declaratory Ruling Filed by CTIA,* WT Docket 05-194, *Jurisdictional Separations & Referral to the Federal-State Joint Board,* CC Docket 80-286.**

Ms. Dortch:

On October 27, 2008, NARUC leadership, and other commissioners that signed the October 21 letter, spoke for about 30 minutes by conference call with FCC Chairman Kevin Martin and his staff – FCC Chief of Staff Dan Gonzalez, Wireline Competition Bureau Advisor Amy Bender, and Wireline Competition Bureau Chief Dana Shaffer. NARUC members present on the call included:

Marsha Smith (ID)	NARUC President
Ray Baum (OR)	Chair, NARUC Telecommunications Committee
	State Chair – Federal State Joint Board on Universal Service
	Former Chair – NARUC Task Force on Intercarrier Compensation
Maureen Harris (NY)	CoVice Chair – NARUC Telecommunications Committee
Daryl Bassett (AR)	CoVice Chair – NARUC Telecommunications Committee
Anne C. Boyle (NE)	Chair, NARUC Consumer Affairs Committee
Eddie Roberson (TN)	Vice Chair – NARUC Consumer Affairs Committee
Larry S. Landis (IN)	*State Chair, Federal State Joint Conference on Advanced Services*
	Member, Federal State Joint Board on Universal Service
	Former Vice Chair – NARUC Task Force on Intercarrier Compensation
Mark K. Johnson (AK)	*State Chair, Federal State Joint Board on Separations*
Philip B. Jones (WA)	Chair, Legislative Subgroup, NARUC Telecommunications Committee
	Alumnus – NARUC Task Force on Intercarrier Compensation
Tony Clark (ND)	Former Chair, NARUC Telecommunications Committee
	Alumnus – NARUC Task Force on Intercarrier Compensation
Steve Kolbeck (SD)	*Member, Federal State Joint Board on Separations*
Lisa Edgar (FL)	*Member - Federal State Joint Board on Universal Service*
Krista Tanner (IA)	Telecommunications Committee
Betty Anne Kane(DC)	Member – Federal State Joint Conference on Advanced Services
John Burke(VT)	Member, Federal State Joint Board on Universal Service

Member, Federal State Joint Board on Separations
Chair, Ad Hoc Committee on Wireless Consumer Protection
Alumnus – NARUC Task Force on Intercarrier Compensation

A number of State staff were also on the call including Rolayne Wiest, Sue Vanecheck, Mike Hible, Jennifer Richardson, Gene Hand, John Ridgeway, Christine Kelly, Jonathan Feinberg, Roberta Bass. NARUC Executive Director Charles Gray and the undersigned, NARUC's General Counsel Brad Ramsay, were also on the call.

Concerns

Yesterday's call with the Chairman was the second opportunity for those on the call to confirm the rumors about the broad contours of the FCC *DRAFT ORDER*. However, the FCC's ex parte rules require any statements to an FCC decision maker that may be construed to support or oppose any particular position must be disclosed via a written ex parte. The Chairman is clearly an FCC decision maker. There were some exchanges between the individual commissioners and the Chairman that had clear advocacy overtones. They are briefly outlined below.

Fixed and Nomadic VoIP as "Information Services"

The Chairman indicated that the *DRAFT ORDER* finds fixed and nomadic VoIP services to be "information services." Curiously, he also maintained, in response to questions, even though they are not telecommunications services, ***that State universal service programs would still be able to assess carriers*** – apparently based upon the degree of intrastate traffic – as the current precedent[1] requires. It is unclear what impact this might have on State authority generally or over intrastate rate design in particular. Case law confirms that States retain jurisdiction over severable intrastate information services.[2]

Wireless Access to USF Funds

Several commissioners appeared concerned that wireless carriers will have a minimum cost – like the 125% of national average figure for wireline – that their costs will have to meet before they qualify for any support.

Parent Trap

One Commissioner asked if the "Parent Trap" was addressed and it was discussed if that were the type of thing that could be included in a Joint Board referral in the item.

The Commission's Analysis of The Potential of Overearnings for Mid-size Carriers.

As on the previous call, this issue generated a lot of discussion. There was some talk about the benchmark of 11.2% return that is apparently in the order. The FCC still has concerns about mid-size

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[1] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 447 (5th Cir. 1999), cert. granted, *GTE Corp. v. FCC*, 530 U.S. 1213 (2000), cert. dismissed, 531 U.S. 975 (2000)(Fifth Circuit held the FCC overstepped its authority by assessing intrastate revenues for determining carriers' contribution to federal universal service fund).

[2] See, e.g., *California v. FCC*, 905 F.2d 1217, 1240 (9th Cir. 1990) (overturning FCC preemption of state regulation of intrastate enhanced services).

carriers and potential overearnings. Several commissioners, based on information available to them as State regulators, remain skeptical of those concerns.

State Enforcement Role

There was some discussion as to whether the draft should include some State enforcement role.

Concerns That the Draft Order Does Not address Broadband Rollout in Areas Serviced by the Large Bell Operating Companies.

As on the last call, there were some exchanges between the Chairman and individual commissioners that indicated the *DRAFT ORDER* is deficient and the FCC should consider just going to the Joint Board's RD. Again the reason cited by at least one commissioner, the draft order does not provide *any* incentives to roll out broadband in the significant areas of the country served by large carriers, and, compounds that deficit by assuring those same carriers will realize significant cost savings if the framework in *DRAFT ORDER* is adopted.

If you have any questions about this letter, please do not hesitate to contact any of the undersigned or J. Bradford Ramsay at 202.898.2207 or jramsay@naruc.org.

Respectfully Submitted,

/s/ James Bradford Ramsay

James Bradford Ramsay
NARUC General Counsel