

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
National Association of Regulatory Utility	)	
Commissioners Petition for Clarification or	)	WC Docket No. 09-193
Declaratory Ruling that No FCC Order or Rule	)	
Limits State Authority to Collect Broadband Data	)	
	)	
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**COMMENTS OF AT&T INC.**

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## I. INTRODUCTION AND SUMMARY

AT&T Inc. and its affiliated companies (collectively, AT&T) respectfully submit the following comments in response to the petition filed by the National Association of Regulatory Utility Commissioners (NARUC), which asks the Commission to declare that no Commission rule or order limits state authority to collect data directly from broadband providers.<sup>1</sup> AT&T recognizes the important role that state commissions and other state agencies can play in helping to achieve our national goals of ensuring 100 percent broadband availability and enabling 100 percent broadband deployment.<sup>2</sup> To that end, AT&T has been an active, voluntary participant in various state-level broadband mapping efforts across the country, including public-private partnerships sponsored by ConnectedNation and other state-sponsored entities as well as data collection programs administered by state agencies charged with broadband mapping duties. We look forward to participating in those and similar programs in the future, including state-level efforts to collect the data required by the National Telecommunications and Information Administration (NTIA) in connection with implementing the mapping provisions of the Recovery Act.<sup>3</sup>

To the extent NARUC's petition is intended to confirm that such voluntary programs are consistent with federal policy, AT&T agrees and we support NARUC's petition in this regard.

But to the extent NARUC's petition asks for a sweeping declaration that there are no "limits [on]

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<sup>1</sup> NARUC Petition, WC Docket No. 09-193 (Sept. 25, 2009).

<sup>2</sup> See AT&T Comments, WC Docket No. 09-51, at ii, iii, vi, 12 (June 8, 2009).

<sup>3</sup> See State Broadband Data and Development Grant Program, 74 Fed. Reg. 40569 (August 12, 2009) (*NTIA Broadband Mapping Clarification Notice*) ("clarify[ing] the exact level of detail required by the information collection"). See also Letter from Dorothy Attwood, AT&T, to Lawrence Strickling, NTIA, & Jonathan Adelstein, RUS, at 1 (Oct. 28, 2009) (*AT&T Letter*) ("AT&T and other broadband service providers committed in August to providing NTIA with broadband availability data at a granular census block level to facilitate the creation of a national broadband map.").

State authority to collect *any* data from any broadband infrastructure or service provider,”<sup>4</sup> the petition is misguided and should be denied for the reasons discussed below.

## II. DISCUSSION

### A. NARUC’s Petition Incorrectly Assumes that States Inherently Possess Jurisdiction to Collect Broadband Data.

By asking the Commission to “clarify that no FCC-issued order or regulation limits State authority to collect any data from any broadband infrastructure or service provider,” NARUC appears to presume that state commissions already possesses such authority today.<sup>5</sup> In many states, however, the state commission’s jurisdiction is limited by statute to the oversight of providers of intrastate telephone, telegraph or telecommunications service,<sup>6</sup> and/or the state commission is expressly prohibited from exercising jurisdiction over broadband services.<sup>7</sup>

Notwithstanding any suggestions by NARUC to the contrary, nothing in the Communications Act empowers this Commission to confer jurisdiction upon state commissions to impose data reporting obligations on broadband providers.<sup>8</sup> But any lack of formal state jurisdiction in this area has not been and should not be a cause for concern, as evidenced by the success of voluntary, state-level public-private partnerships such as ConnectedNation and other

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<sup>4</sup> NARUC Petition at 1 (emphasis added).

<sup>5</sup> NARUC Petition at 1.

<sup>6</sup> Because many broadband services, including broadband Internet access service, are interstate information services, such state commissions would lack jurisdiction to impose data reporting obligations on providers of these services. *See GTE Telephone Operating Companies*, CC Docket 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22,466 ¶¶ 1, 26 (1998) (*GTE Order*); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 ¶ 59 (2002).

<sup>7</sup> *See* Alabama Statutes § 37-2A-4 (“The commission shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the rates, charges, classifications, provision, or any aspect of broadband service, broadband enabled services, or information services.”). *See also* Florida Statutes § 364.011; Georgia Code § 46-5-222; Indiana Code § 8-1-2.6-1.1; Oklahoma Statutes § 17-139.110; South Carolina Code § 58-9-280(G)(1); Tennessee Code § 65-5-203.

<sup>8</sup> *See* 47 U.S.C. § 2.

state-sponsored broadband data collection and mapping initiatives.<sup>9</sup> Moreover, provided that states and/or their designees seek to collect the broadband data specifically required by NTIA for Recovery Act purposes, they should expect that AT&T and other broadband providers will continue to work with them in good faith to voluntarily produce the data they seek.<sup>10</sup>

**B. Although the Commission Has Not Specifically Restricted State Authority to Collect Broadband Data, It Could Do So in the Future if States Impose Burdensome or Overbroad Data Collection Requirements.**

Putting aside the initial question of whether a given state commission has jurisdiction to impose broadband data reporting obligations in the first place, NARUC is correct to the extent it argues that the Commission has not specifically acted to place “limits [on] State authority” to collect data from broadband providers.<sup>11</sup> And if NARUC’s petition was merely intended to confirm that it would be consistent with federal law and policy for states to request broadband providers to voluntarily provide them with the particular broadband data sought by NTIA for Recovery Act purposes, NARUC would be correct again. But to the extent that NARUC is asking the Commission to rule that states may “collect *any* data” they see fit from any broadband provider, NARUC’s petition goes too far.<sup>12</sup> Even assuming a state commission had jurisdiction to impose data reporting obligations on a broadband provider (which, as discussed, is often not

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<sup>9</sup> See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89, ¶ 34 (June 12, 2008) (*2008 Broadband Data Gathering Order*) (“We acknowledge the success of the ConnectKentucky initiative and its interactive mapping program. We note that the ConnectKentucky program, along with other efforts at the state level, has facilitated identification of areas without broadband service, and that this identification has resulted in public and private resources being focused to provide service to unserved areas.”).

<sup>10</sup> See *AT&T Letter* at 1.

<sup>11</sup> NARUC Petition at 1.

<sup>12</sup> Petition at 1 (emphasis added).

the case), that jurisdiction could not be stretched so far as to enable a state to compel the production of “any” data, as NARUC suggests.

Consistent with longstanding federal policies that have successfully fostered the growth of broadband services in a minimally regulated environment, this Commission has intervened to preempt state regulations that impose burdensome regulatory obligations on a provider of such services and therefore conflict with existing federal policies.<sup>13</sup> With respect to broadband data collection in particular, NTIA has specifically identified the data it requires for Recovery Act purposes and this Commission has already established its own comprehensive data collection program through Form 477.<sup>14</sup> In each case, broadband providers are asked to report extensive data about the broadband services they offer at a very granular level of detail. And in both cases, this data is available to a state that wants to review it, subject to confidentiality provisions.

Thus, to the extent NARUC is asking the Commission whether permitting individual states to promulgate additional rules on a state-by-state basis that modify and/or expand the already extensive scope of the data collected through Form 477 or NTIA’s data request, such rules would undoubtedly conflict with federal law. Indeed, permitting individual states to compel a broadband provider to produce “any” data the states desire, as NARUC requests, would result in a patchwork quilt of inconsistent and expansive state data reporting requirements across the nation, which would impose incredibly burdensome obligations on providers like AT&T that offer broadband services in all 50 states and the District of Columbia. Accordingly, to the extent NARUC is seeking such sweeping authority, its petition should be denied as inconsistent with

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<sup>13</sup> See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, ¶¶ 19-25 (Nov. 12, 2004) (discussing Commission and judicial precedent on preemption of state regulations).

<sup>14</sup> See *NTIA Broadband Mapping Clarification Notice; 2008 Broadband Data Gathering Order*.

Commission and Congressional policies that seek to promote broadband deployment with a light regulatory touch.

### III. CONCLUSION

To the extent NARUC is asking the Commission to confirm that voluntary, state-sponsored broadband data collection programs are consistent with federal policy, AT&T supports NARUC's petition. But to the extent NARUC is asking the Commission to declare that there are no "limits [on] State authority to collect *any* data from any broadband infrastructure or service provider,"<sup>15</sup> NARUC's petition should be denied.

Respectfully Submitted,

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<sup>15</sup> NARUC Petition at 1 (emphasis added).