

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

National Association of Regulatory Utility
Commissioners Petition for Clarification or
Declaratory Ruling that No FCC Order or
Rule Limits State Authority to Collect
Broadband Data

WC Docket No. 09-193.

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND
THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in support of the Petition for Clarification or Declaratory Ruling (Petition) filed by the National Association of Regulatory Utility Commissioners (NARUC) with the Federal Communications Commission (FCC or Commission) on September 25, 2009. In the Petition, NARUC asks the Commission to clarify or declare that no order or regulation the FCC has issued limits state authority to collect data directly from any broadband infrastructure or service provider.¹

I. INTRODUCTION

Congress intended the States to play a key role in the effort to promote the nationwide deployment and adoption of advanced services.² For states to ensure ubiquitous broadband deployment within their borders, state commissions must obtain an accurate understanding of broadband availability and subscribership in their respective territories. As far as the CPUC has been able to determine, the FCC to date has not issued any order limiting the authority of states to collect data *directly* from broadband facility and service providers. An FCC declaratory ruling acknowledging no such limit of state authority will help facilitate state efforts to identify unserved and underserved areas within their borders. The primary goal of the current broadband mapping project undertaken across the country on a state-by-state basis is to develop an accurate accounting of where broadband facilities exist and, commensurately, where they have not been deployed. An FCC declaratory ruling or clarification of state authority to obtain broadband data also will assist States in their efforts to collect the specific types of broadband data required by

¹ Petition for Clarification or Declaratory Ruling that No FCC Order or Rule Limits State Authority to Collect Broadband Data (filed Sept. 25, 2009).

² Petition, at p.4.

the American Recovery and Reinvestment Act of 2009 (ARRA),³ the Broadband Data Improvement Act (BDIA)⁴ and the National Telecommunications and Information Administration's (NTIA) State Broadband Data and Development Grant Program Notice of Funds Availability (NOFA).⁵

II. DISCUSSION

The Commission should clarify that it has not limited State authority to collect any data from any broadband infrastructure or service provider. As noted above, the CPUC knows of no such order and no such preemption. However, as NARUC points out in the Petition, some broadband providers have questioned the authority of states to gather data on broadband deployment and subscribership.⁶ Especially, in light of the new data collection requirements set forth in the ARRA, BDIA, and the NOFA, it is imperative that states be able to proceed with mandatory broadband data collection efforts with a clear understanding of their abilities to do so.

California has embarked on its own broadband data collection efforts over the past few years. For example, the California Legislature enacted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) creating a state video franchise scheme for video service within the state, as well as giving the CPUC the authority to collect and utilize broadband subscribership and availability data from holders of state video franchises.⁷ Further, the CPUC has developed its own rules, following enactment of DIVCA. For example, the CPUC requires state video franchise holders who provide broadband service to submit annually to the CPUC,

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA).

⁴ Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§1301-1304) (BDIA).

⁵ National Telecommunications and Information Administration's (NTIA) State Broadband Data and Development Grant Program Notice of Funds Availability, Docket No. 0660-ZA (July 8, 2009) (NOFA).

⁶ Petition, at p .2.

⁷ A.B. 2987, 2005-2006 Session (Ca. 2006); Cal. Pub. Util. Code, Division 2.5, The Digital Infrastructure and Video Competition Act of 2006 (DIVCA).

concurrent with submission to the FCC, a copy of their Form 477 filing.⁸ The Form 477 submission is required from these providers in lieu of providing broadband subscribership data for their video franchise areas.⁹

Under DIVCA, however, California currently can collect broadband data only from those providers that also are video franchise holders. Although this collection yields a great deal of broadband data, because it is linked to the provision of video service, it misses all broadband providers which do not also offer video service. In order for California to have a true understanding of the extent of broadband deployment within its border, the CPUC's collection efforts must go beyond video franchise holders only, and must reach all broadband service providers in California. An FCC declaratory ruling or clarifying order on this issue would avoid needless uncertainty and potential litigation from broadband service providers.

III. CONCLUSION

The CPUC firmly supports NARUC's Petition. The FCC should grant NARUC's request and issue a declaratory or clarifying ruling that the Commission has issued no order or regulation limiting State authority to collect any data from any broadband infrastructure or service provider.

⁸ *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Decision No. 08-07-007, *Decision Amending General Order 169* (Cal.P.U.C). July 14, 2008), at p. 12.

⁹ DIVCA provides that Video Franchise holders that provide broadband service within their video franchise territories submit data regarding broadband subscribership and availability to the CPUC on an annual basis. Cal. Pub. Util. Code §5960 (b).

Respectfully submitted,

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