

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

In the Matter of	)	
	)	
NARUC Petition for Clarification	)	
or Declaratory Ruling That No	)	WC Docket 09-193
FCC Order or Rule Limits State	)	
Authority to Collect Broadband Data	)	
	)	

**Reply Comments of the United States Telecom Association**

USTelecom respectfully files these brief Reply Comments in connection with the *NARUC Petition for Clarification or Declaratory Ruling Regarding State Authority to Obtain Broadband-Related Data (NARUC Petition)*.<sup>1</sup>

Only two entities filed timely comments in support of the NARUC Petition—both state utility commissions that are members of NARUC itself.<sup>2</sup> But these comments underscore the primary concern raised by USTelecom in its comments—that the *NARUC Petition* and the Commission’s *Public Notice* bypass the essential question of whether state commissions have jurisdiction to mandate the provision of broadband data. Indeed, the comments of both state

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<sup>1</sup> See *Comments Sought on NARUC Petition for Clarification or Declaratory Ruling Regarding State Authority to Obtain Broadband-Related Data*, DA 09-2286 (October 22, 2009) (*Public Notice*).

<sup>2</sup> See Comments of the Michigan Public Service Commission, WC Docket 09-193; Comments of the California Public Utilities Commission and the People of the State of California, WC Docket 09-193. The Chairman of the Public Service Commission of the District of Columbia has also filed in the docket an ex parte notice indicating support for the petition but without discussion.

commission commenters emphasize that “state commissions generally do not have authority over broadband issues.”<sup>3</sup>

Implicit in their comments supporting the *NARUC Petition*, it appears, is that the state commission commenters are seeking more than a declaration that the Commission has not preempted them from collecting broadband data as suggested by the *Public Notice*. Rather these state commissions appear to be asking the Commission for an affirmative grant of jurisdiction where it does not presently exist. That is something the Commission has no authority to do.<sup>4</sup>

Furthermore, there is no basis to the implicit argument in these comments that the state commissions were somehow granted such authority by Congress in the American Recovery and Reinvestment Act or the Broadband Data Improvement Act. While recognizing a state role in encouraging broadband adoption and applauding *voluntary* public-private efforts such as Connect Kentucky,<sup>5</sup> those legislative acts establish a very specific *federal* effort that places very specific responsibilities with NTIA, the Rural Utilities Service and the FCC.

NTIA’s Notice of Funding Availability implementing the BDIA awards grants to a single entity within each state as determined by NTIA (and which in most cases is not the state commission) to gather from various sources the specific broadband data detailed by NTIA. But, as the resolution attached to the *NARUC Petition* itself acknowledges, other than those providers which voluntarily commit to submitting data as a condition for receiving stimulus funds pursuant

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<sup>3</sup> Comments of Michigan Public Service Commission at p.2. *See also* Comments of California Public Utilities Commission at p. 4.

<sup>4</sup> This is particularly obvious in states that have passed legislation expressly restricting the state commission’s jurisdiction over broadband services. *See, e.g.,* Alabama Statutes Section 37-2A-4; Florida Statutes Section 364.011; Georgia Code Section 46-5-222; Indiana Code Section 8-1-2.6-1.1; Oklahoma Statutes Section 17-139.110; South Carolina Code Section 58-9-280(G)(1); Tennessee Code Section 65-5-203. But it is no less true for states that have simply limited the jurisdiction of the state commissions through definition of their authority or by basic concepts of federalism.

<sup>5</sup> *See* BDIA at Section 102(4).

to the ARRA, there is no statutory authority created in the BDIA requiring broadband service providers submit mapping data.<sup>6</sup> And recognizing the lack of such authority either for itself or the state mapping agents, NTIA explained that it reserved the right to “*request that the FCC exercise its authority to compel data production from any broadband services provider subject to its jurisdiction.*”<sup>7</sup> If such authority was not given to NTIA, it most certainly was not given to the state commissions. But neither the NARUC Petition nor the state commission commenters point to any other source for state commission authority to mandate that broadband providers submit information concerning these interstate information services.<sup>8</sup> Nor, to the best of our knowledge, has any mapping grant awardees sought to identify any specific difficulties with obtaining data with NTIA, which is the specific step established by their arrangement with NTIA pursuant to the mapping NoFA.

Indeed, neither the *NARUC Petition* nor the state commission commenters have identified any actual specific problem that requires some sort of “solution.” USTelecom member companies have worked together with numerous states to successfully undertake state broadband mapping projects through voluntary cooperative public-private partnerships similar to the Connect Kentucky model. Moreover, states have access to data gathered by the Commission through the Form 477 reporting, and will have access to data gathered by NTIA under BDIA.

Neither NARUC nor the state commission commenters have given any reason why they might

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<sup>6</sup> See *NARUC Petition* at Attachment A, p. 8 (recognizing that “there likely will be many broadband service providers that do not apply for BTOP or BIP funding and will, thus, not be required to submit necessary broadband mapping data to the states”)

<sup>7</sup> NTIA Mapping NoFA at p. 39 (emphasis added).

<sup>8</sup> See *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 (2002); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005); *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, FCC 06-165 (2006).

need data different than being provided to the federal agencies or why there would be any public benefit from encouraging fifty-plus separate and distinct data collection efforts on top of those already being undertaken by the Commission and NTIA.<sup>9</sup> To the contrary, such a chaotic scheme would simply serve to frustrate the primary federal goals of encouraging broadband deployment and adoption by imposing tremendous unnecessary costs on broadband providers and ultimately on consumers.

In short, the *NARUC Petition* and supporting comments have completely failed to identify a controversy that merits the exercise of the Commission's discretionary declaratory ruling authority. But to the extent the Commission chooses to act on the *NARUC Petition*, it must expressly emphasize that neither the Commission nor other any federal agency or statute has created any authority for states to mandate providers of broadband services to supply data outside of the state commission's jurisdiction.

Respectfully submitted,



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<sup>9</sup> In contrast, USTelecom has heard reports of some state agencies or designated mapping grantees that have received tens of millions of dollars under BDIA to develop state broadband maps and then simply sought to have the broadband service providers bear most of the burden and expense of developing all of the data required by NTIA, irrespective of whether such information was available from other sources. NTIA has made clear that state broadband mapping grantees are to look to such other sources and bears the responsibility for investigating alternative sources of information.