



EX PARTE NOTICE VIA ELECTRONIC FILING

December 10, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

RE: Notice of Oral Ex Parte Contacts filed in the proceedings captioned:

In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, Developing a Unified Inter-Carrier Compensation Regime, CC Docket No. 01-92, In the Matter of Preserving the Open Internet Broadband Industry Practices GN Docket No. 09-191, WC Docket No. 07-53, In the Matter of Framework for Broadband Internet Service, GN Docket No. 10-127.

Secretary Dortch:

On Thursday, November 9, 2010, NARUC's General Counsel Brad Ramsay met with FCC Commissioner Michael Copps and his Wireline Policy Advisory Margaret McCarthy and separately with Angela Kronenberg, the Wireline Legal Advisor for FCC Commissioner Mignon Clyburn. Mr. Ramsay reiterated NARUC's previous arguments about net neutrality outlined in detail in pleadings filed in GN Docket No. 09-191.¹

Generally, with respect to the net neutrality proceedings, Mr. Ramsay pointed out the following:

NARUC is on record supporting the *uniform* adoption of all six regulatory principles outlined in the FCC's October 22, 2009 Notice of Proposed Rulemaking² on a *technology-neutral* basis.

NARUC's supports clarification in the final order of what constitutes unreasonable discrimination.

Since 2005, NARUC has consistently endorsed a "functional focus" model of jurisdiction that allocates State and federal regulatory responsibilities based on their core competencies.

Our August 2010 comments strongly suggest use of the NARUC "functional focus-core competency" paradigm to analyze any federal State jurisdictional issues raised in this proceeding.

¹ See, generally, the April 25, 2010 filed *Reply Comments of the National Association of Regulatory Utility Commissioners*, available online at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020437477>, and the August 12, 2010 filed *Comments of the National Association of Regulatory Utility Commissioners*, available online at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020706547>.

² *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Notice of Proposed Rulemaking, 24 FCC Rcd 13064 (rel. Oct. 22, 2009), online at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.doc.

As NARUC's October 28, 2008 filed Notice of Written Ex Parte Presentation in, *inter alia*, the CC Docket 01-92 proceedings suggests, whatever legal theory the Commission chooses to support its final rules, it should be careful not to inadvertently prejudice outstanding questions of state authority.

If the language of the draft is subject to such a preemptive interpretation with respect to state authority to assist the FCC to fulfill clear Congressional mandates to protect consumers or promote universal service with respect to broadband or related voice services, the FCC should include an explicit statement or statements that the draft is not addressing such issues nor should it be used to imply preemption of any existing state authority.

Generally, with respect to the intercarrier compensation proceeding, Mr. Ramsay pointed out the following:

NARUC recently passed a resolution, which is appended to this notice, urging quick FCC action on traffic pumping issues.

It is clear from that record that these – as our resolution terms them “transparently abusive” arbitrage schemes have hurt consumers and skewed existing compensation data.

The FCC has the record it needs to act in its pending docket on interstate traffic. Many of the participants in these schemes are recipients of federal (and sometimes state) universal service subsidies.

A fast answer on this narrow set of issues can only provide a better basis for comprehensive reform of both universal service and intercarrier compensation.

The FCC should immediately issue a declaratory ruling on traffic pumping and consider further efforts to limit or prohibit similar schemes of intercarrier compensation arbitrage as recommended in the National Broadband Plan.

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

Respectfully Submitted,

/s/

**James Bradford Ramsay
NARUC General Counsel**

cc: *Rick Kaplan, Chief Counsel and Senior Legal Advisor to the Chairman*
Zac Katz, Legal Advisor for Wireline Communications and Internet Issues to the Chairman
Margaret McCarthy Wireline Policy Advisor to Commissioner Copps
Christine Kurth, Shewman, Policy Director and Wireline Counsel to Commissioner McDowell
Angela Kronenberg - Wireline Legal Advisor to Commissioner Clyburn
Brad Gillen, Legal Advisor Wireline Issues to Commissioner Baker
Sharon Gillett, Chief, Wireline Competition Bureau

Attachment - Resolution Supporting Expedient FCC Action on Traffic Pumping Schemes

WHEREAS, Various State commissions have opened investigations into allegations that some local exchange carriers (LECs) have entered into contracts with third parties to create services (e.g., free adult chat-lines, free conference calling, etc.) that result in large increases in one-way terminating traffic which significantly enhance the LEC's revenues via the inter-carrier compensation regime – arrangements often referenced as “traffic pumping schemes;” *and*

WHEREAS, Most State commissions have authority to address key aspects of traffic pumping schemes, but recognize that the Federal Communications Commission (FCC) is well positioned to resolve the increasing number of interstate traffic pumping complaints uniformly; *and*

WHEREAS, The FCC has tentatively concluded in the Traffic Pumping NPRM1 that a rate-of-return carrier which “shares revenue, or provides other compensation to an end user's customer, or directly provides the stimulating activity, and bundles those costs with access is engaging in an unreasonable practice that violates Section 201(b) of the federal Telecommunications Act and the prudent expenditure standard;” *and*

WHEREAS, A minority of LECs continue to create new traffic pumping schemes resulting in continuous disputes among carriers on whether compensation is owed for termination of traffic associated with free conference calling, international bypass calling, chat-lines, re-homing numbers to create calls subject to the access regime, or other novel arrangements to generate higher volumes of terminating traffic; *and*

WHEREAS, Traffic Pumping does not include traffic imbalances arising from legitimate transport and termination service for discrete, wholesale, or retail service arising from State or federal law; *and*

WHEREAS, Those LECs, whose business plans center on traffic pumping, have received millions of dollars in federal Universal Service support from the High Cost Fund; *and*

WHEREAS, These schemes have negatively impacted consumers and all segments of the telecommunications industry, including but not limited to: other incumbent LECs, interexchange carriers, and wireless providers by diverting finite resources to proceedings related to limiting or eliminating such transparently abusive arbitrage activities; *and*

WHEREAS, This activity has created a significant increase in the number of disputed access billings, even for LECs with legitimate billings; *and*

WHEREAS, There have been cost estimates provided to the FCC by various segments of the telecommunications industry that calculate the cost of this activity to be hundreds of millions of dollars annually and growing; *and*

WHEREAS, The National Broadband Plan (NBP) has established a schedule to begin efforts to address comprehensive inter-carrier compensation reform in late 2010, but has not provided definitive dates for resolution of this issue; *and*

WHEREAS, The NBP recognizes the estimated costs to achieve broadband deployment goals and thereby adopted recommendations including Recommendation 8.7, which commits the FCC to adopt

interim rules to eliminate or reduce the growing costs borne of the telecommunications industry with inter-carrier compensation arbitrage; *and*

WHEREAS, Segments of the telecommunications industry have called for the FCC to address this issue expeditiously rather than waiting until a comprehensive inter-carrier compensation program is finalized; *and*

WHEREAS, Industry segments have also recommended, among other proposals, that the FCC declare that traffic pumping, coupled with revenue sharing or other compensation to increase traffic volumes, is an unjust and unreasonable practice and either prohibit it outright or impose rigid, clear, and broad constraints on such practices; *and*

WHEREAS, A number of State commissions have generally acknowledged the significant costs borne by the various industry segments and consumers impacted by this inter-carrier compensation arbitrage, as well as the demand on the limited human resources of State Public Utility Commissions in such investigations and arbitrations, especially at this time of severe fiscal constraint by State governments; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 2010 Annual Meeting in Atlanta, Georgia, acknowledges the need for the FCC to act immediately to address the issue of traffic pumping and not wait for the finalization of comprehensive inter-carrier compensation reform; *and be it further*

RESOLVED, That the NARUC General Counsel should convey that NARUC supports the FCC moving immediately in WC Docket 07-135 to issue a declaratory ruling on traffic pumping; and to consider further efforts to limit or prohibit similar schemes of inter-carrier compensation arbitrage as recommended in the National Broadband Plan.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors November 16, 2010

Adopted by the NARUC Committee of the Whole November 17, 2010