



N A R U C  
National Association of Regulatory Utility Commissioners

***EX PARTE NOTICE VIA ELECTRONIC FILING***

*November 15, 2011*

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(s) of the Connect America Fund, WC Docket 10-90, National Broadband Plan for Our Future, GN Docket 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket 07-135, High- Cost Universal Service Support, WC Docket 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket 01-92, Federal-State Joint Board on Universal Service, CC Docket 96-45, Lifeline and Link-Up, WC Docket 03-109***

Dear Ms. Dortch:

On Tuesday November 15, 2011, Sharon Gillett, FCC Wireline Competition Bureau Chief and Carol Matthey, Deputy Bureau Chief of the Wireline Competition Bureau, appeared on a panel to discuss the outstanding FCC order and further notice in this proceeding at NARUC's annual meeting in Saint Louis, Missouri. The panel was titled Are We There Yet? The FCC, Universal Service/ICC Reform, and the Future and was moderated by the Honorable *John Burke*, a Commissioner with the Vermont Public Service Board. The reaction panel included *Joseph A. Gillan (JG)* - Gillan Associates, *Jonathan Banks (JB)* – Senior Vice President, Law and Policy - US Telecom, *Steven Morris (SM)* - VP & Associate General Counsel - National Cable Television Association, and *Ken Pfister (KP)* - VP Strategic Planning - Great Plains Communications. I do not have a list of the 100 plus attendee's of this session.

As per the instructions provided by the FCC General Council, and read by Deputy Chief Matthey at the beginning of the session, I am filing this ex parte to summarize the statements of the other panelists about the FCC's action. I AM FILING THIS AS AN ACCOMMODATION TO THE SCHEDULE OF THE PANELISTS WHO GRACIOUSLY ASSENTED TO PARTICIPATE IN THIS NARUC SPONSORED EVENT. OBVIOUSLY, THE OPINIONS/POSITIONS EXPRESSED BY THE INDUSTRY PANELISTS BELOW (which are clearly at odds with NARUC's on-the-record filed positions) CANNOT BE ATTRIBUTED TO NARUC OR ANY OF ITS MEMBERS.

Jonathan Banks said that the FCC should be complimented for moving the USF/ICC mechanisms into the twentieth century. What the FCC did increases certainty so that now we can start business planning with this “regulatory certainty.” It will allow companies to modify modernize their business plans. The current intercarrier compensation regime injects unnecessary costs into the system. The ordered changes will help prevent arbitrage and eliminate the costs associated with it. I believe that consumers will benefit significantly from this FCC order and also believe that the changes will result in more competition over the next years.

Ken Pfister noted the fact that certain segments of the industry are gleeful about this FCC order – mainly the largest carriers – AT&T and VZ – tells you all you need to know about the decision. For those of us that build network builders in rural areas – well I guess the big disclaimer is we will read the order and go from there – but when you know what has happened with your long distance carriers including 100 percent increases in wholesale toll rates, unregulated special access, well then on bill and keep we are greatly concerned about the agency’s lack of cooperation and failure to work with the States on this issue. This order, well I think you could say it maybe just blows off the states. I haven’t talked to many commissions that are happy about this. I have heard under the order that reciprocal compensation goes to zero immediately. The order also apparently goes to bill and keep for access over a nine year period. That doesn’t seem quite right. The touted cooperation with the States seems to be “in the rounding” and doesn’t really matter. For Rate of Return carriers there is a reduction in support from 3 to 2 billion. My advice for the State regulators in the crowd: you should look at establishing State USF because without the Nebraska State fund, we now would probably be out of business.

Steve Morris noted the order makes it more of a certainty where money might come from and where it might go to and that’s a net positive. For VOIP for compensation purposes – the order treats it like other traffic and that’s generally positive – though I am concerned that there is a departure in the early stages of the transition. Overall the ICC transition is a reasonable compromise and sets the industry on a path to the future. We are very pleased with the fact that the FCC stuck to its guns on keeping the fund size stable. A lot of our folks were worried about the transition to broadband accelerating growth in the contribution factor. I complement the FCC on for the first time having a real budget to limit expenditures. We are looking to see how that will actually work. On the price cap part of the USF program – which is targeted to areas where there is no unsubsidized carrier – well that is a positive too. It is not rational to subsidize where the market supports an unsubsidized competitor. We are hoping that will eventually be incorporated in the Rate of Return side. There are some baby steps in that direction in the order, but we are hoping for more on that. Our main concern remains the lack of competitive neutrality in distribution of the funding. There was a chart early on in the FCC’s powerpoint slides. There are several buckets of funds that our companies have no access to in any way, i.e., the funds for the Rate of Return carriers, we have no opportunity to get that funding, the ICC access

replacement money is also not available to other carriers. The funds for price cap areas are targeted to areas we don't serve. And the right of first refusal potentially locks us out of areas were we do.

Joe Gillan noted that small business markets are where CLECs have their most success – where the economy is likely to start the long road back and CLECs are important to the customer base they serve. CLECs think it's a net positive and proper for the FCC to bring all traffic under Section 251(b) (5) for specific economic reasons. The past is TDM, the future is IP and that means at some point that means all costs/the regime have to be redone to reflect a IP. Allowing the current regime – with different rates for similar traffic - prevents a rationale IP interconnection world. To get to a rational pricing system moving to a national scheme is a necessary pre-requisite. States should not try to retain your “1934 match” responsibilities (authority over simply intrastate access), but should instead grab the “candle” of IP oversight. You should not litigate the FCC's revised 251 classification of intrastate access because that's bad policy. The problem with what the FCC has done – they have not gone far enough. Section 251 applies to the transport and termination of traffic. Therefore transport should have been addressed in this order, not put in the further NPRM. That was a big mistake.

Commissioner John Burke thanked the FCC for keeping the States in the loop and for looking at the 2007 recommended decision as a basis for action, but he also noted he was concerned about the direction the order might be going. He had specific concerns about using technologies in remote areas that will not bring those areas into the 21<sup>st</sup> century. The statute requires even remote and rural areas to be served with comparable service at comparable rates. He was also concerned that VOIP is not classified as a telecommunications service. The failure to classify positions the States poorly long term to retain State COLR and service quality oversight. It may be that the failure to classify may position States so that only a short time may elapse before preemption of State authority and the elimination of even State COLR responsibilities. For states the details in the order are the crucial aspect. He also noted his long held view that this order should have addressed the outstanding contribution reform issues.

Please do not hesitate to contact the undersigned at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org) if you have any questions about this filing.

Respectfully submitted,

/s/

James Bradford Ramsay  
NARUC General Counsel