



N A R U C
National Association of Regulatory Utility Commissioners

April 12, 2013

Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: NOTICE OF WRITTEN AND ORAL EX PARTE
FILED IN THE PROCEEDINGS CAPTIONED:**

In the Matters of Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Rules and Regulations Implementing the Truth in Caller ID Act of 2009, WC Docket No. 11-39;

AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition & Petition of the National Telecommunications Cooperatives Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, WC Docket No. 12-353;

Meetings with the FCC's Technology Transitions Policy Task Force, GN Docket No. 13-5;

Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Lifeline and Link Up, WC Docket No. 03-109, Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Madam Secretary:

The undersigned is filing the following notice of ex parte contacts based on a conference call earlier today involving representatives of the National Association of Regulatory Utility Commissioners (NARUC) with the FCC's Sean Lev and Rebekah Goodheart from the FCC's Technology Transitions Task Force.

On the call for NARUC were the Chair of NARUC's Telecommunications Federalism Task Force, Commissioner Isiogu (MI), Commissioner James H. Cawley (PA), Chairman Ronald Brise (FL), Commissioner Catherine Sandoval (CA), Commissioner Paul Kjellander, Commissioner Chris Nelson (SD) and Commissioner Ryan Palmer (WV), along with State staffers Rebecca Beaton (WA Staff to President Jones), George Young (VT Staff to Commissioner Burke), Gene Hand (NE staff to Commissioner Boyle), Labros Pilalis (PA Staff to Commissioner Cawley) and Anne-Marie Clark (MI staff to Commissioner Isiogu), Beth Salak (FL Staff to Commissioner Brise), Lynn Notarianni (CO staff), Brad Ramsay (NARUC General Counsel), Brian O'Hara (NARUC Director of Legislative Affairs for Telecommunications), and Sherry Lichtenberg (National Regulatory Research Institute or NRRI).

Mr. Lev and Ms. Goodheart provided an overview of the FCC Task Force's current activities and pointed out there is a blog post by Zachary Katz (FCC Chief of Staff) that includes FCC Task Force principles that may overlap in some areas with those of the NARUC Task Force. There is also a separate workshop website that includes links to all the materials presented to the FCC so far. There was a lot of good data in those materials. Mr. Horrigan's presentation to the FCC Task Force contains some useful aggregations of relevant data. It seems principles might be an area where there could be some overlap, but it is a Commissioner level decision on what might be a proper division of labor between the FCC and the States.

NARUC Commissioners were pleased that there was some overlap in principles and described the NARUC Task Force process – the calls to take comments – the outreach to academics, consumer, and industry sectors, as well as the solicitation of written comments by interested parties. In response to a relevant inquiry, the NARUC Task Force concept of “regulatory diversity” was addressed as follows:

The concept of “regulatory diversity expresses in part the ability of local authorities to respond/be responsive to consumer concerns, i.e., subsidiarity – the idea that a matter ought to be handled by the smallest or least centralized authority capable of addressing it effectively. The *Oxford English Dictionary* defines subsidiarity as the idea that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level. There are efficiency losses associated with ignoring that principle. For example, often for States in different time zones – it is difficult for consumers to contact the FCC as the FCC’s offices close on east coast by 5:00 eastern time. Also there is the potential, which should be avoided, of preemption measures eliminating or severely constraining State consumer and infrastructure protections measures and/or inadvertently creating gaps in coverage or support, e.g., California protects customer unlisted phone numbers. There are no corresponding federal regulatory protections. It appears, that the FCC has not yet applied regulatory safeguards regarding slamming for end-user consumers that subscribe to retail VoIP services, in contrast to California’s protective measures.

Moreover, a cooperative approach is more desirable – as the perspective of people on the ground near where policies have direct impacts often can provide more realistic/fact-based input as to the likely efficacy of specific measures. FCC initiatives are much more likely to work as intended and avoid practical implementation problems if they rely more on input from States as Congress intended by creating the Federal-State Joint Boards and the cooperative regulatory oversight reflected in the Telecommunications Act of 1996. Because States actually do function as “laboratories of democracy” on regulatory policy, their input into national decision making will assure less mistakes and better outcomes. Indeed, States provide a market view that might be obscured by a national picture. For example, an examination of national or average rates might obscure rate problems in specific locals, e.g., whatever the national rates and levels of competing infrastructures, in California, more than 75% of special access lines are provided by a single carrier.

It was pointed out that States also have parallel responsibilities with the FCC. For example, the concept of universal service is enshrined both in federal and independent State law. States are also involved in the deployment of retail and wholesale broadband networks and services, e.g., Pennsylvania’s statutorily driven broadband deployment by the majority of its incumbent local exchange carriers that has been taking place since 1993 and 2004. These are bi-jurisdictional responsibilities that are being implemented under the overall rubric of cooperative federalism.

The NARUC Task Force is trying to define the concept of cooperative federalism and the appropriate State role in the middle range between the boundaries of “complete federal preemption” and “dual federalism.” For example, under the federal Telecommunications Act of 1996 (TA-96), the FCC prescribed standards for the total element long-run incremental cost (TELRIC) method for deriving reciprocal compensation and the States recognized and implemented such standards. The States should not operate in fear of complete federal preemption in matters such as those currently on appeal before the U.S. Court of Appeals for the 10th Circuit. The NARUC Task Force is examining how the States can work together with the FCC and better define the respective “lead” roles in a number of issues based on the law and just plain common sense.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. I have made a good faith effort to cover all of the arguments raised during these conversations. I am copying the participants in the contacts to assure that the notice is adequate. If any of those that participated in the designated conversations believes the notice is incomplete in any particular, upon being contacted I will immediately amend this notice to cover any oversight.

If you have any questions about the foregoing, please contact the undersigned.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

cc: *Sean Lev, FCC General Counsel*
Rebekah Goodheart, Associate Chief of the Wireline Competition Bureau