



N A R U C  
National Association of Regulatory Utility Commissioners

*NOTICE VIA ELECTRONIC FILING*

*January 23, 2014*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**RE:** *Notice of Oral and Written Ex Partes filed in the proceedings captioned:*

***In the Matter of Technology Transitions Policy Task Force Seeks Comment on Potential Trials, GN Docket No. 13-5***

Secretary Dortch:

Today, I forwarded the attached e-mail (See Attachment 1) to **Ruth Milkman**, FCC Chief of Staff, Office of the Chairman, **Gigi Sohn**, Special Counsel for External Affairs, Office of the Chairman, **Daniel Alvarez**, Legal Advisor, Wireline, Public Safety, & HS, Office of the Chairman, **Rebekah Goodheart**, *Legal Advisor, Wireline, Office of Commissioner Clyburn*, **Nicholas Degani**, Office of Commissioner Pai, **Priscilla Delgado Argeris**, Legal Advisor, Office of Commissioner Rosenworcel, **Amy Bender**, Legal Advisor, Wireline, Office of Commissioner O'Rielly, **Julie Veach**, Chief, Wireline Competition Bureau, and **Patrick Halley**, Deputy Bureau Chief, Wireline Competition Bureau. NARUC's August 2013 Comments filed in this docket were appended to that e-mail.

Also I spoke with Mr. Degani and discussed the voluntary nature of the trials and the possibility of trial applicant stipulations and/or presumptions to forestall any impact on State authority and to assure no inappropriate advantage is given to trial proponents on specific service classification issues. I also mentioned other advocacy points raised in the attached e-mail.

**Respectfully Submitted,**

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**Enclosure:**

## APPENDIX A – TEXT OF THE E-MAIL

**TO:** Ruth Milkman, FCC Chief of Staff, Office of the Chairman  
Gigi Sohn, Special Counsel for External Affairs, Office of the Chairman  
Daniel Alvarez, Legal Advisor, Wireline, Public Safety, & HS, Office of the Chairman  
Rebekah Goodheart, Legal Advisor, Wireline, Office of Commissioner Clyburn  
Nicholas Degani, Office of Commissioner Pai  
Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel  
Amy Bender, Legal Advisor, Wireline, Office of Commissioner O’Rielly  
Julie Veach, Chief, Wireline Competition Bureau  
Patrick Halley, Deputy Bureau Chief, Wireline Competition Bureau

**FR:** Brad Ramsay, NARUC General Counsel

**RE:** *In the Matter of Technology Transitions Policy Task Force Seeks Comment on Potential Trials, WC Docket No. 13-5*

Brad here...because sunshine closes later today, I wanted to get in a few reminders before outside-initiated advocacy is cut off. I wanted too also extend my personal thanks (and the thanks of NARUC leadership) for early outreach to NARUC on crucial issues raised by the trials notice. That said, there are a few points in NARUC’s earlier comments in this proceeding, which are attached, that are worth reiterating - much of what follows is lifted from those comments verbatim but sans the footnotes:

[1] *As a preliminary observation, NARUC is on record, more than once, as saying ideally, FCC legal classifications should precede any trials.*

The Trials Notice suggests the FCC may allow participants to negotiate “without a backstop of regulations or specific parameters and provide updates, reports, and data to the Commission regarding any technical issues as well as any other issues of dispute.” This statement highlights the need for the FCC to provide several very long overdue clarifications. The FCC’s inability to provide needed certainty by classifying VoIP services as either a “telecommunications service” or an “information service” is at least one key driver for of the trials suggested. NARUC, the States, and the industry stakeholders continue to waste significant resources, all at the ultimate expense of the taxpayer and ratepayers, on proceedings that would be unnecessary if the FCC acted. In the context of the Trials Notice, a “real-world VoIP interconnection trial” will not help the Commission clarify the statutory basis for incumbent LECs’ duty to provide VoIP interconnection. That clarification begins and ends with an interpretation of the statute. The only evidence available strongly suggests that the biggest obstacle to establishing VoIP interconnection agreements is incumbent LECs’ unwillingness to do so—not any technical issues related to VoIP interconnection. AT&T’s “real-world wire center deregulation trial” raises the same issue. An FCC ruling on the classification of VoIP services will resolve all the “issues” that this “trial” is apparently designed to “test.” ... Congress has already established the framework for negotiating interconnection agreements. As Commissioner Rosenworcel testified: “Congress, in laying out the definitions at the front of the Communications Act, speaks to telecommunication services regardless of the technology used.” A change in technology to provide the very same service cannot allow carriers to escape State and federal universal service, service quality and interconnection obligations. If the FCC is truly interested in facilitating rollout of IP services, and saving taxpayers/ratepayers money, the best thing it can do is provide legal certainty – not open-ended trials. The FCC should immediately and certainly before any trial moves forward, clarify the legal status of managed IP-based voice services as well as the applicability of the interconnection duties imposed on carriers in the statute.

**\*\*\*Failing that, the FCC should include safeguards/stipulations in any voluntary trials order that assure the physical trial cannot be used to advance the legal case for one classification over another.**

**[2] *The FCC must also assure, to the extent a trial is approved, that trial participants cooperate with the impacted jurisdictions.***

As NARUC's attached comments make clear, this is far from a hypothetical concern. It appears the procedural order under consideration will not make legal classifications. To the extent that included safeguards/stipulations referenced earlier do not otherwise obviate the need/assure cooperation with State authorities, the Order should include a strong presumption that State laws and obligations apply. As the Comments of the California Public Utilities Commission point out, at page 11, that any trial that affects service offered by a State franchised or certificated carrier must respect State law. Obviously, the relevant commission must retain authority to approve any withdrawal of service contemplated. NARUC also agrees generally with Massachusetts and New York's comments that the FCC must assure that any proposed "trials" do not interfere with ongoing "State proceedings" and that "trials" are in-fact "trials" and not, as they appear to be, efforts to indirectly bypass open State dockets or override existing State service obligations.

**\*\*\*EXPLICIT STATEMENTS OUTLINING THESE CONDITIONS IN ANY ORDER SETTING CONDITIONS FOR TRIAL PROPOSALS WOULD BE VERY WELCOME.**

**[3] *Partnership not Preemption - Trial Specific Joint Board Referrals.***

All the State Commission comments filed in this docket reference the importance of protecting the Federal-State partnership evident in the provisions of the Telecommunications Act. What Congress intended is obvious on the face of the 1996 legislation. It expected States and the FCC to work together to facilitate competition, broadband deployment, and universal service. It is no accident that the definition of "telecommunications services" is technologically neutral. Congress did not expect either federal or State regulators to intervene in the market to protect competitors based on the technology they use to provide service. Congress also specified that States, which have both the experience and the resources, should handle interconnection negotiations. Indeed, in the single most preemptive provision in the 1996 legislation, Congress specifically reserved State authority over both universal service and service quality. Moreover, the Joint Board provision increased in importance, as Congress required a specific type of Joint Board to address universal service issues. Congress recognized the FCC's limited resources along with State commissions proximity and long experience in oversight. Indeed, the FCC to, in several contexts has also "recognize[d] . . . that [S]tates play a vital role in protecting end users from fraud, enforcing fair business practices, and responding to consumer inquiries and complaints." It is only logical that that partnership form the foundation for any technology trials. NARUC commends the FCC for asking the right question. The Trials Notice, mimeo at 12, specifically seeks comment on the right procedural vehicle to assure proper State input.

**\*\*\*The Comments of the Nebraska Public Service Commission, at 1, and those filed by Minnesota point out accurately that affected State commissions must be given the opportunity to assist in these lection of the geographic trial areas, evaluate the trial-related data, and offer assistance to residential and business consumers.**

**\*\*\*The best vehicle to address all these concerns while identifying the preconditions and required State interactions needed for any particular type of technology transition trial, is a referral to an adequately funded Federal-State Joint Board on Universal Service.** This was the express recommendation of the resolution that passed NARUC without opposition (last) July. Unquestionably, the universal service Joint Board is well suited to engage in the needed collaborative review regarding the design, geographic application, selection of applicants and evaluation of the trials and any subsequent policy recommendations necessary to maintain and advance the statutorily protected universal service concept.

**[4] Data Collection and Sharing.**

We understand the FCC is going to be collecting data to examine the impacts of the trials on consumers and the market. This is another place where State-FCC coordination and cooperation is crucial. Ideally, as suggested, *supra*, and in NARUC's August 2013 comments, the USF joint board would be the logical vehicle for such coordination.

NARUC looks forward to working more closely with the FCC as particular trials are proposed.

**Call with any questions and...Have a great day.**

BRAD

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**Plan to attend the NARUC 2014 Winter Committee Meetings, February 9 - 12, in Washington, DC! Registration Opens December 6.**