



N A R U C  
National Association of Regulatory Utility Commissioners

EX PARTE NOTICE VIA ELECTRONIC FILING

April 25, 2014

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

**RE:** *NARUC Notice of Oral Ex Parte Contacts filed: In the Matter(s) of the Connect America Fund, WC Docket No. 10-90, WCB Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply with the New Rate Floor; The Report on FCC Process Reform, GN Docket No. 14-25; Technology Transitions, GN Docket No. 13-5;*

Dear Ms. Dortch:

On Thursday, April 24, 2014, the Honorable **Geoffrey G. Why**, Commissioner, Massachusetts Department of Telecommunications and Cable, and **Joseph P. Tiernan**, Research Analyst, Competition Division, Massachusetts Department of Telecommunications and Cable, and **James Bradford Ramsay**, General Counsel, the National Association of Regulatory Utility Commissioners, participated in a series of face-to-face meetings with

- (1) Commissioner **Michael O’Rielly** and **Amy Bender**, *Wireline Legal Advisor to Commissioner O’Rielly*;
- (2) **Priscilla Delgado Argeris**, *Legal Advisor to Commissioner Rosenworcel*, and **Valery Galasso**, *Confidential Assistant & Special Advisor*;
- (3) **Timothy Stelzig**, *Deputy Division Chief, Competition Policy Division, Wireline Competition Bureau*, **Madeleine Findley**, *Associate General Counsel, Front Office, Office of General Counsel*, **Marcus Maher**, *Assistant General Counsel, Office of the General Counsel*, and **Richard Mallen**, *Attorney Advisor, Office of the General Counsel*;
- (4) Commissioner **Mignon L. Clyburn**, **Rebekah Goodheart**, *Wireline Legal Advisor to Commissioner Clyburn*, and **Stefanie Frank**, *Legal Intern, Office of Commissioner Clyburn*;
- (5) **Daniel Alvarez**, *Legal Advisor to Chairman Wheeler on Wireline, Public Safety, & Homeland Security*;<sup>1</sup>

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<sup>1</sup> The State Member 706 comments discussed by Commissioner Why respond to the FCC’s order asking for trial proposals. Similarly, NARUC’s counsel made general arguments in the Technology Transitions docket that were touched upon in some of these meetings. Those arguments are not directed the specifics of AT&T’s proposed trials. In fact, AT&T’s proposals were not discussed in any of the meetings. In any case, the undersigned took particular pains to assure there were absolutely no references to or discussions of AT&T’s specific trial proposals in this meeting.

- (6) **Kris Monteith**, *Bureau Chief, Consumer & Governmental Affairs Bureau*, **Mark Stone**, *Deputy Bureau Chief, Consumer & Governmental Affairs Bureau*, and **Aaron Garza**, *Legal Advisor to the Bureau Chief*; and
- (7) Commissioner **Ajit Pai** and **Brendan Carr**, *Legal Advisor to Commissioner Pai, Wireless, Public Safety, and International*.

During the meetings, Commissioner Why, and Mr. Tiernan mentioned one or more of the following points:

- ***States have unique insights into local conditions and capabilities that will be essential to the success of IP Trials.***
  - States have important insights/role into the IP transition because of their ability to in-take complaints and monitor trends on the local level.
  - States have capacity to in-take complaints through variety of methods and sources, including complaints filed by individuals and communicated through local officials.
  - States have expertise on technical telecommunications issues and have the capacity to work one-on-one with consumers.
- ***States have a complementary role to the FCC and fill important gaps in FCC's capabilities.***
  - The FCC has indicated that it will concentrate on higher level trends and less on resolution of individual consumer complaints.
  - State commissions have capacity to resolve individual complaints. State commissions offer informal and formal individual adjudications to consumers. The overwhelming majority of the States that responded to NARUC's informal survey still handle consumer complaints and resolve a significant percentage of them. In Massachusetts, the Commission returned over \$110,000 to consumers last year responding to over 10,000 consumer inquiries.
  - States regularly conduct community outreach and consumer education functions on a local level.
- ***Federal-State cooperation has long been, and should remain, an important element of national telecom policy.***
  - States play an important role in consumer protection, public safety, universal service, and interconnection.
  - Cooperation of federal and State entities formalized in the 1996 Act: joint boards are created by Sec. 254, Sec. 214 & Sec. 410(c).
  - Precedent for federal/state partnership furthered through individual items not included in 1996 Act, including outreach/education/complaint efforts between states and FCC/NTIA on DTV transition.
  - States are *already* involved in IP transition issues: many states receive complaints about forced migration from copper to fiber.
  - Many States are willing to work with the FCC on IP trials.
- ***States like Massachusetts have been and continue to deal with Transition issues.***
  - Massachusetts is currently dealing with a Verizon proposed forced migration of some 500 access lines to fiber in a small area outside of Boston.
  - The State is interested, as all policymakers are, in promoting the deployment of advanced infrastructure.
  - With this particular rollout, the Massachusetts Department continues to have concerns in four areas – many of them founded the potential for customer confusion surrounding (1) medical device

compatibility with the new networks and any subsequent protocol changes, (2) consumers understanding concerning battery backup impacts and new customer responsibilities, (3) the continuity of pricing and service packages, (4) the substitution of a slightly higher priced broadband service for existing DSL services, (5) consumer understanding of the impact on existing consumer protections inherent in new choices provided by the roll-out.

In several of the meetings, Commissioner Why provided one or more attendees with a copy of the April 14, 2014 *Comments of the State Members of the Federal State Joint Conference on Advanced Services*, available online at <http://apps.fcc.gov/ecfs/document/view?id=7521098230>.

During the meetings, NARUC General Counsel mentioned one or more of the following points:

- ***Congress recognized in multiple provisions the importance of the State role particularly with respect to universal service policies and service quality/complaint resolution.***

When I was negotiating over, what was considered at the time, the most sweeping preemption authority granted to the FCC in the 1996 Act – 47 U.S.C. § 253 – which permits the FCC, in specific cases, to preempt ANY “State or local statute or regulation, or other State or local legal requirement, ... [that] prohibit[s] or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service” – everyone agreed, and the statute specifically preserves, State authority to impose “on a competitively neutral basis...requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” It is difficult to understand why any policy maker would want to eliminate an avenue of consumer redress, *i.e.*, “take State cops off the beat.” There is no corresponding provision in the Act addressing preemption of State authority with respect to information services.

- ***Generally speaking, an avenue for consumer redress can only be effective if the person seeking relief is aware of the option and if it has resources sufficient to handle the workload.***

It is fairly common for State Commissions to be mentioned prominently in State and local newspapers and new programs on utility/consumer protection issues that are usually of intense interest to local citizens. The FCC has some of the hardest working staff in Washington. Still, it’s not a stretch to say that many consumers in the country are not aware of its role with respect to voice and data services. But even if consumers are aware the agency can provide redress, a single agency in one time zone in a country the size of the United States will always lack sufficient human and financial resources to help consumers in all fifty States.

- ***The State role with respect to universal service and protection consumers could not be clearer, but some action is needed to preserve that role.***

The FCC is currently on a trajectory that at a minimum will require additional and unnecessary litigation, at ratepayer and taxpayer expense, to preserve these crucial State functions. NARUC has suggested in numerous comments that the FCC should immediately explicitly classify VoIP as “telecommunications services.” The agency has already, albeit *implicitly*, decided that VoIP service must be “telecommunications services.” NARUC recently filed comments pointing out that recent court decisions prohibit the FCC from providing numbering resources to entities that do not qualify as “telecommunications service” providers under the statute.<sup>2</sup> By the same token, many carriers have

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<sup>2</sup> See, March 4, 2014 *Comments of the National Association of Regulatory Utility Commissioners on the Report on the Six-Month Trial of Direct Assignment of Number Resources to Interconnected Voice Over Internet Protocol Providers*, available online at: <http://apps.fcc.gov/ecfs/document/view?id=7521088290>.

already qualified for federal universal service subsidies based solely on their provision of voice services using IP technology as common carriers.<sup>3</sup> Necessarily, as the FCC has conceded on brief in the related pending 10<sup>th</sup> Circuit litigation, those carriers are providing “telecommunications services.” As the Joint Petitioners, including NARUC, pointed out on reply in that pending litigation:

Petitioners argued that by adding “voice telephony service” to the list of supported services under section 254(c)(1), without limiting the definition of that service to “telecommunications services,” the *Order* violates §254(c)(1). USF Br. 17-18. Respondents denounce this argument as “wrong,” FCC Br. 24, but then concede virtually all its premises. They agree that “only ‘eligible telecommunications carriers’ are eligible for subsidies under section 254,” and that an ETC must be —a “common carrier” that offers supported services. FCC Br. 26, *citing* 47 U.S.C. §214(e)(1)(A). They also agree that an entity can be designated as an ETC under the statute only if it “complies with appropriate federal and state requirements” applicable to telecommunications carriers under Title II of the Act. *Id.*, *quoting IP-Enabled Services*, 20 F.C.C.R. 10245, 10268 (2005) (subsequent history omitted). This concession was not apparent on the face of the *Order*, as the FCC specifically included VoIP in the definition of “voice telephony service” without classifying VoIP as a telecommunications service. *Order*, ¶63 (JA at 412); FCC Br. 26.<sup>4</sup>

The very same voice service, offered in exactly the same way by other carriers, cannot – without exceedingly arbitrary and/or capricious agency action – be considered as providing an “information” service. Other than the FCC’s inexplicable reticence to classify any VoIP services, without exception, since Computer II, the FCC has always treated all voice service that utilizes the public switched network as common carrier services – whatever protocols were utilized – because, as the definitions in the Act specify, the voice communication from the end-user’s standpoint undergoes no change in the form or content of the information as sent and received. *See, e.g., Computer and Communications Industry Ass’n. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983). *See also, NARUC v. FCC*, 525 F.2d 630, 643 (D.C. Circuit 1976) “[W]e reject those parts of the Orders which imply an unfettered discretion in the Commission to confer or not confer common carrier status on a given entity, depending upon the regulatory goals it seeks to achieve . . . A particular system is a common carrier *by virtue of its functions.*” {emphasis added}

The FCC should state explicitly what it has necessarily already found as a matter of law - by allowing VoIP provider access to federal universal service funds, fee –based voice services offered to the public, whether they use TDM or VoIP, are “telecommunications services.”

➤ ***The FCC should present its consumer service complaint information in a publicly available searchable database on its website.***

In response to a question from Commissioner Pai, NARUC’s Counsel mentioned that NARUC also specifically supports, via a July 25, 2012 Resolution, the creation by the FCC of an online publically searchable database of consumer complaints. NARUC included this request in its March 31, 2014

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<sup>3</sup> Alternatively, the FCC could be knowingly allowing carriers to commit fraud by illegally accessing funds that Congress reserved to Title II *common carriers*, i.e., carriers to the extent that they are providing “telecommunications services.”

<sup>4</sup> Joint Universal Service Fund Reply Brief, at page 11, filed July 30, 2013, In Re: FCC11-161, 10<sup>th</sup> Circuit Case No. 11-9900.

Comments filed in the proceeding captioned *In the Matter of The Report on FCC Process Reform*, GN Docket No. 14-25, online at: <http://apps.fcc.gov/ecfs/document/view?id=7521096593>.<sup>5</sup>

NARUC's counsel also thanked Commissioner Pai for referencing NARUC's Petition in his statement at the April agenda meeting in CC Docket 10-90 and noted NARUC issued a press release after that meeting expressing similar sentiments.<sup>6</sup>

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<sup>5</sup> See, *Resolution Regarding the Federal Communications Commission's Complaint Procedure*, online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Access%20to%20Numbering%20by%20VoIP%20Service%20Providers.pdf>. As per Commissioner Pai's request, I'm including in this ex parte notice information on one State's public reporting on competing utilities complaint data. For competing telecom and electric utilities in New York, the State Commission provides an easy link to the *Monthly Archived Complaint Statistics by Company*, which is online at: <http://www3.dps.ny.gov/W/PSCWeb.nsf/ArticlesByTitle/448C499468E952C085257687006F3A82?OpenDocument>. The archived documents shows by company "Initial Complaints" (raw number and "rate" of complaints), "Escalated Complaints" (raw number and rate), the "Escalation Rate" (see the preface to the report for definitions) and the rolling "12 Month Escalated Complaint rate" by company. This is the link to the latest (MARCH 2014) report: [http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/448c499468e952c085257687006f3a82/\\$FILE/March%202014%20MR.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/448c499468e952c085257687006f3a82/$FILE/March%202014%20MR.pdf), which notes that the PSC has already required \$1.4 million dollars in refunds to consumers in the first three months of 2014. The NY PSC also has a "how to shop for utility services" webpage at: <http://www.askpsc.com/askpsc/page/?PageAction=renderPageById&PageId=1a61f1a12b499bcd7ebe2a1bc9e3f253>. The NY PSC's section on competing electric utilities is another useful approach/tool to help consumers. That webpage gives more detailed information for competing electricity providers (at least those serving at least 1000 customers in NY) giving ESCO's (competing electricity providers) a different ranking system from the one mentioned in the monthly reports mentioned earlier. This so-called "Residential Complaint Rate Scorecard" ranks electric companies at 3 levels: <http://www.askpsc.com/askpsc/page/?PageAction=renderPageById&PageId=b64def33f7a06ba2d519bcda3ffa7050>. The NY PSC's website allows New York consumers to sort companies by Complaint Rate or alphabetically: <http://www.askpsc.com/askpsc/page/?PageAction=renderPageById&PageId=360bbfbc699bb59ad98013c45ef1a92d>, or <http://www.askpsc.com/askpsc/page/?PageAction=renderPageById&PageId=fccc92c693fed071d7325b96424c1042>. ESCOs are scored into three groupings of approximately the same size. Significant changes in the complaint rate may occur from quarter to quarter for smaller ESCOs based on only a few complaints. The complaint rate is based on an average of the total number of complaints received during the reporting period, irrespective of whether or not the ESCO was determined to be at fault or adequately resolved the consumer's complaint.

<sup>6</sup> See, the text of NARUC's April 23, 2014 Press Release: **States Applaud FCC's Action on Universal Service Reform** WASHINGTON—The National Association of Regulatory Utility Commissioners issued the following statements after the Federal Communications Commission took action on reforming Universal Service: "We are awaiting release of the text of the universal service item approved by the Federal Communications Commission today. From the agenda presentation, it is clear this decision eliminates one controversial methodology for distributing universal service funding. The Quantile Regression Analysis (QRA) discourages network investment by rural carriers. NARUC has pressed for suspension of the QRA since early in 2012 and we are very pleased with that FCC decision. We also commend the agency for delaying and phasing in increases to the urban rate floor for basic telephone service. Many NARUC members represent States with sizable rural populations; this decision will help limit any rate shock in those areas. On a personal note, I'd like to thank Senator Mark Pryor of Arkansas for his focus on this important issue. Any significant increase in the rate floor negatively impacts many consumers, and I am pleased that the FCC responded to our concerns." --NARUC President Colette D. Honorable of Arkansas "These actions by the Federal Communications Commission are long overdue. I applaud FCC Chairman Wheeler and his colleagues for eliminating the Quantile Regression Analysis. NARUC members raised concerns that the QRA may trigger litigation and other unintended consequences. I am pleased the agency acknowledged our worries and acted. Moreover, I commend the FCC and the Wireline Competition Bureau for releasing the data and methodology underlying the urban rate floor calculation as well as for substantially delaying the phase in of the new rate-floor. NARUC sought a freeze of the rate floor to allow interested parties to examine the data and calculations that resulted from the agency's urban rate survey. This welcome delay will give everyone time to examine the released data to determine if the rate increase is justified. South Dakota is a largely rural State and this decision should help protect our consumers. We hope the agency will still favorably consider NARUC's petition to seek comment on the benchmark calculations and methodology." --NARUC Committee on Telecommunications Chair Chris Nelson of South Dakota.

As is my custom, after filing this notice, I will forward via e-mail copies of this ex parte to the FCC representatives attending the covered meetings and ask them to assure that I have adequately covered the arguments presented. If they notify me of any deficits or inadequate detail, I will make an updated filing.

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

cc: *Commissioner Michael O'Rielly c/o  
Amy Bender, Wireline Legal Advisor to Cmr. O'Rielly;*

*Commissioner Mignon L. Clyburn c/o  
Rebekah Goodheart, Wireline Legal Advisor to Cmr. Clyburn, and  
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