

### ***Resolution on Federalism and the Mobilitie Petition***

**WHEREAS**, The Federal Communications Commission (FCC) issued a Declaratory Ruling on November 18, 2009, at WT Docket No. 8-163, DA 09-99, establishing definite timeframes for State and local action on wireless facilities siting requests which, while preserving the authority of States and localities to make the ultimate determination on local zoning and land-use policies, adopted federal timelines of 90 days for collocation applications and 150 days for siting applications; *and*

**WHEREAS**, The FCC Declaratory Ruling of November 18, 2009, at WT Docket No. 8-163, DA 09-99 was upheld by the Supreme Court in *City of Arlington v. Federal Communications Commission*, 133 S. Ct. 1862 (2013) through application of the *Chevron* doctrine, a legal principle that defers to a federal agency's interpretation of law, to federal agency interpretations of their federal statutory authority; *and*

**WHEREAS**, The FCC adopted *In re: Connect America Fund* a Report and Order and Notice of Further Rulemaking in Docket 10-90 on November 18, 2011, 26 FCC Rcd 17663, 17973-74 (¶¶ 883-884) (FCC 11-161) (2011) ("*USF/ICC Transformation Order*" or "*FNPRM*") proposing, among other things, to reform the federal universal service fund (USF) to revise existing high-cost support universal service mechanism and focus such support so as to deploy broadband network facilities capable of providing voice and broadband services to all Americans; *and*

**WHEREAS**, The *USF/ICC Transformation Order* preempted the States' traditional legal authority to establish rates for intrastate telecommunications access; *and*

**WHEREAS**, The FCC's preemption was upheld in its entirety by the federal courts in *In re FCC*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Aug. 27, 2014, *cert. denied*, 83 U.S.L.W. 3835, May 4, 2015 (Nos. 14-610, *et al.*); *and*

**WHEREAS**, Mobilitie, LLC filed a petition at WT Docket No. 16-421 addressing streamlining the deployment of small-cell infrastructure on November 15, 2016 (the Mobilitie Petition); *and*

**WHEREAS**, The FCC subsequently issued a Public Notice ("Public Notice") of the Mobilitie Petition on December 22, 2016 in Docket No. WT 16-421, DA 16-1427 stating that "[s]ections 253 and 332(c)(7) of the Communications Act and Section 6409(a) of the Spectrum Act are designed, among other purposes, to remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities"; *and*

**WHEREAS**, The FCC notice also asked for comments on how small cell deployment can be improved and expedited by the FCC issuing guidance on how federal law applies to local government review of wireless facility siting applications and local requirements for gaining access to rights of way, including requests for information on: 1) certain practices that prohibit or have the effect of prohibiting the provision of wireless service; 2) ways to improve the timeliness of right of way permit review; and 3) interpretation of the fair and reasonable compensation and non-discrimination requirements of 47 USC 253(c); *and*

**WHEREAS,** Prior decisions of the FCC in response to inquiries that examined State and local laws or policies, including those concerning facility siting or compensation, have resulted in truncating those State laws or policies, if not preempting them; *and*

**WHEREAS,** The general principles of federalism set out by the National Association of Regulatory Utility Commissioners (NARUC) in its 2013 Federalism Paper envision a joint federal-State partnership in, among other things, the deployment of broadband network facilities and service to all Americans; *now, therefore be it*

**RESOLVED,** That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2017 Winter Committee Meetings in Washington, D.C., reiterates its support for the federal-State partnership envisioned in its 2013 Federalism Paper; *and be it further*

**RESOLVED,** That, consistent with NARUC's 2013 Federalism Paper, NARUC urges the FCC to act consistently with the principles of federalism endorsed there as it applies to the federal-State partnership underway in the deployment of wireless and wireline facilities, including the deployment of small-cell infrastructure; *and be it further*

**RESOLVED,** That NARUC applauds the FCC and Chairman Ajit Pai for initiating the Broadband Deployment Advisory Committee (BDAC) and looks forward to an active role in that effort; *and be it further*

**RESOLVED,** That NARUC also encourages its members to engage State and local authorities managing rights-of-way, pole attachments, and other telecommunications facilities or services under examination in the Mobilitie Petition to understand the important role that public utility access provided by those State and local authorities plays in the deployment of the broadband infrastructure of public utilities; *and be it further*

**RESOLVED,** That NARUC opposes further efforts in petitions asking the FCC to preempt the traditional authority of the State and local authorities by replacing intrastate regulation of rights-of-way, Pole Attachments, and other telecommunications facilities or services of public utilities with comprehensive federal mandates imposed by the FCC; *and be it further*

**RESOLVED,** That NARUC directs the NARUC General Counsel, and urges fellow State members, to participate in FCC proceedings to oppose any preemption that supplants State regulation of intrastate telecommunications with FCC mandates and to provide input regarding the Public Notice that encourages the FCC to issue guidance, including what constitutes reasonable and nondiscriminatory and thus, permissible fees under federal law, consistent with the governing authority contained in federal law at 47 U.S.C. Section 332 and 47 U.S.C. Section 253 and the principles that State and local governments are charged with managing the public rights of way and that State and local governments must protect the health, safety, and welfare of their citizens.

---

*Sponsored by the Committee on Telecommunications*

*Adopted by the NARUC Board of Directors on February 15, 2017*