

Resolution on Utilities' Access to Spectrum to Promote Public Safety

WHEREAS, Utilities and other critical infrastructure industries (CII) provide electric, gas, water and oil services that are essential for light, heat, communications and water for the health and welfare of the public at large and for police, fire and rescue to carry out their public safety services; *and*

WHEREAS, Utilities and other CII rely on their own extensive private communications networks to support the safe, reliable and secure delivery of these essential electric, gas, water and oil services; *and*

WHEREAS, Utilities and other CII use these private internal communications systems for applications such as Supervisory Control and Data Acquisition (SCADA) and smart grid communications systems, which are mission critical systems that are necessary to ensure the operational safety, reliability and security of electric, gas, water and oil transmission and distribution infrastructure; *and*

WHEREAS, Utilities and other CII frequently need these private internal communications systems to meet high standards for reliability, resiliency and security in order to maintain the safe, reliable and secure delivery of essential electric, gas, water and oil services; *and*

WHEREAS, Utilities and other CII frequently need direct access to spectrum, licensed by the Federal Communications Commission (FCC), to enable their private internal communications systems to meet their high standards for coverage, capacity and mobility, as well as reliability, resiliency and security; *and*

WHEREAS, Utilities and other CII lack an allocation to dedicated licensed spectrum to support their private internal communications systems; *and*

WHEREAS, Utilities and other CII have sought to acquire spectrum licenses on the secondary market from licensees who are willing to sell those spectrum licenses to them; *and*

WHEREAS, Utilities and other CII have been prevented by the FCC from receiving reassignment approval for and from acquiring certain spectrum licenses from a licensee, without the utilities and other CII being subject to inclusion in a hearing to review the licensee's basic character qualifications to hold the licenses; *and*

WHEREAS, The FCC has released two separate decisions (*See Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (*OSC/HDO*); *see also* *Maritime Communications/Land Mobile, LLC, Memorandum Opinion and Order*, WT Docket No. 13-85, released September 11, 2014 (*MCLM MO&O*)) in which it denied requests from utilities and CII to be removed from a hearing on a licensee's basic character qualifications in order to expeditiously acquire a portion of the licensee's spectrum licenses -- while the FCC has in these decisions granted requests from certain railroad entities for the same relief; *and*

WHEREAS, The FCC explained in the *MCLM MO&O* (at ¶36) that its disparate treatment of the utilities and CII in comparison to the railroad entities in these decisions was justified by stating that:

“Although the CII Companies’ proposals to use the spectrum licenses for SCADA, smart grid and similar applications would be beneficial to the public, unlike PTC [positive train control], those other services are not dedicated to communications to prevent human injury and property damage, but are also used for day-to-day facilities management and other purposes that primarily serve the business needs of the licensee;” *and*

WHEREAS, The FCC has ignored State utility regulatory mandates for smart grid systems that use wireless communications systems, on the basis, as explained in the OSC/HDO (at ¶37), that they were not federal statutory mandates which were “grounded principally in a specific public safety concern with an imminent statutory deadline,” like the federal mandate for railroads to implement PTC systems; *and*

WHEREAS, The FCC has minimized the relevance and significance of utilities and CII using licensed spectrum in wireless communications systems for SCADA and smart grid systems to meet federal regulatory mandates, including but not limited to: U.S. Pipeline Hazardous Materials Safety Administration requirements governing control room management of pipelines (49 CFR §192.631); U.S. Environmental Protection Agency standards for hazardous air pollutants (40 CFR §§63.1 et seq.); and North American Electric Reliability Corporation standards applicable to electric utilities’ smart grid and other electric distribution operations (Standard COM-001-1.1 Telecommunications & Standard COM-002-2 Communications and Coordination); *and*

WHEREAS, State regulators have a direct and tangible interest in the safety, reliability and security of electric, gas, and water utilities and other CII, and they have authorized utilities to invest billions of dollars (including funds derived from federal grants from the U.S. Department of Energy) in SCADA and smart grid systems in order to promote, among several public interest objectives, the safety, reliability and security of utilities and other CII, many of which were authorized pursuant to State statutory mandates and deadlines; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 126th Annual Meeting in San Francisco, California, recommends that the FCC reexamine the precedential effects of its finding that SCADA and smart grid systems are not dedicated to protecting the public safety and the prevention of human injury and property damage; *and be it further*

RESOLVED, That NARUC urges the FCC to allow utilities and other CII access to spectrum licenses when they support the specific uses of SCADA and smart grid systems needed for protecting the safe, reliable and secure delivery of essential electric, gas and water services, upon which the public at large depends upon for electricity, light, heat, communications and water and which police, fire, emergency rescue and homeland security entities depend upon to carry out their public safety services.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors November 18, 2014

Adopted by the NARUC Committee of the Whole November 19, 2014