



N A R U C
National Association of Regulatory Utility Commissioners

Attn: Broadband Opportunity Council

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4626
Washington, DC 20230.

RE: Comments of the State members of the Federal-State Joint Conference on Advanced Services and NARUC on the April 29, 2015 Broadband Opportunity Council Notice and Request for Comment¹

Council members:

On behalf of the State members of the Federal-State Joint Conference on Advanced Services and the National Association of Regulatory Utility Commissioners, we thank the Broadband Opportunity Council for their outreach. While neither NARUC nor the State Joint Conference members have had an opportunity to formally consider the specific questions raised by this request for comment, we respectfully submit for your consideration NARUC's Federalism Task Force Report: Cooperative Federalism and Telecom in the 21st Century.² NARUC unanimously adopted this report at our November 2013 Annual Meetings via a resolution adopting seven principles to guide telecommunications regulation in the 21st Century: Consumer Protection, Network Reliability and Public Safety, Competition, Interconnection, Universal Service, Regulatory Diversity, Evidence-based Decision-making, and Broadband Access, Affordability, and Adoption. We commend these principles and this report to the Broadband Opportunity Council as you coordinate federal support to expand broadband access and work with State and local regulators, non-profit organizations, businesses, and communities to promote robust broadband access.

The State members of the Joint Conference are: State Chair, Catherine Sandoval, Commissioner, California Public Utilities Commission; State Vice-Chair, Gregg Sayre,

¹ Broadband Opportunity Council Notice and Request for Comment, RIN 0660-XC-19, 80 Federal Register 23785 (rel April 29, 2015), available online at: http://www.ntia.doc.gov/files/ntia/publications/fr_boc_notice_and_rfc_4-29-15.pdf.

² NARUC Resolution on Federalism (adopted November 2013), available online at: <http://www.naruc.org/Resolutions/Resolution%20on%20Federalism.pdf>. The text of the report, appended to this letter, is also available online at: <http://www.naruc.org/Publications/20130825-final-DRAFT-Federalism-Task-Force-Report.pdf>.

Commissioner, New York Public Service Commission; Betty Ann Kane, Chair, D.C. Public Service Commission; Paul Kjellander, Commissioner, Idaho Public Service Commission; Lynn Slaby, Commissioner, Ohio Public Utilities Commission. The Joint Conference hosted a conference in November 2014 at the California Public Utilities Commission after NARUC's Annual Meetings to discuss: 1) Innovative Internet Uses and the Open Internet; 2) FCC Open Internet Proposals, Section 706 of the Communications Act, and the Role of the States, and; 3) Internet Access and Adoption, Programs and Strategies. Information about the November 2014 Section 706 conference and a streaming video of the conference is available here: http://www.cpuc.ca.gov/PUC/aboutus/Commissioners/Sandoval/events/11192014_CommAct706_Conf.html.

On July 15, 2015, the Section 706 Committee will convene another conference to discuss broadband access, adoption and innovation following NARUC's Summer Committee Meetings. We invite the Broadband Council to participate in this public conference, and view the streams and presentations submitted at these conferences convened to share ideas and models about how to expand broadband access and adoption, to identify and discuss strategies to remove barriers to broadband, and discuss relevant policy issues.

The Broadband Opportunity Council's request for comment and the responses to it will be the topic of a report to the NARUC Staff Subcommittee on Telecommunications at our upcoming meetings in New York City.

Thank you for the opportunity to comment.

Respectfully submitted,

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**NARUC Federalism Task Force Report:
Cooperative Federalism and Telecom
In the 21st Century**



September 2013

National Association of Regulatory Utility Commissioners

1101 Vermont Ave., N.W., Suite 200,

Washington, D.C. 20005

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Hon. Ronald Brisé, Florida Public Service Commission

Hon. James Cawley, Pennsylvania Public Utility Commission

Hon. Paul Kjellander, Idaho Public Utilities Commission

Hon. Chris Nelson, South Dakota Public Utilities Commission

Hon. Ryan Palmer, West Virginia Public Service Commission

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Table of Contents

| | | |
|-------------|--|-----------|
| I. | Introduction..... | 1 |
| II. | Federalism and 21st century communications..... | 3 |
| A. | Goals | 3 |
| B. | Federalism 2005 – focus on communications functions not technology silos | 4 |
| C. | Federalism 2013 – improving the relationship between the States and the FCC | 6 |
| III. | Cooperative federalism – a roadmap for 2013 and beyond | 7 |
| IV. | Principles of Cooperative Federalism..... | 9 |
| V. | Conclusions..... | 14 |

Cooperative Federalism and Telecom in the 21st Century

I. Introduction

The National Association of Regulatory Utility Commissioners (NARUC) published its initial report on Federalism and Telecom in July 2005 in response to Congressional interest in revising the Telecommunications Act to better meet the needs of regulators, service providers, and consumers¹ in a changing regulatory and technology landscape. The 2005 report examined telecommunications regulation from a functional perspective, recommending ways in which the States² and the Federal Communications Commission (FCC) should share jurisdiction over the key aspects of communications³ services—consumer protection, public safety, universal service, and competition and wholesale markets—independent of the technology used to deliver those services.

Much has changed in the eight years since the 2005 NARUC report was published. The telecommunications marketplace has grown to include not only traditional wireline and wireless providers, but also companies offering service using new and different technologies, including texting, computer based calling, and internet protocol (IP) enabled services (e.g., Voice Over IP or VoIP, Skype, Google Voice, etc.). The FCC has expanded its jurisdiction over areas reserved to the States, including intercarrier compensation and the distribution of federal universal service funds, the designation of wireless eligible telecommunications carriers (ETCs), wireless tower siting, and many aspects of emergency service.⁴

¹ The term "consumer" as used throughout this document includes all communications users, including residential, small business, wholesale, and enterprise customers.

² The term "state" throughout this document refers to the 50 states, the District of Columbia, and the U.S. Territories, including Puerto Rico and the U.S. Virgin Islands. In addition, we use this term as shorthand to refer to governors, state legislatures, regulators, and other state agencies.

³ We use the term "communications" here to refer to both traditional voice communications and communications over broadband facilities (VoIP or similar IP-enabled services), and new services such as texting, instant messaging, and similar means of sharing information among multiple parties.

⁴ See generally *In re Connect America Fund et al.*, (FCC, Rel. Nov. 18, 2011), WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *appeals pending*. Intercarrier compensation (ICC) generally refers to payments between carriers for the exchange of various types of traffic.

These changes have given rise to new challenges for all players in the communications marketplace, including ensuring that communications services remain affordable, ubiquitous, reasonably comparable, and reliable for all consumers, regardless of location, and that the new technologies being introduced do not disadvantage some consumers (or geographic regions) in favor of others. To that end, in November 2012, NARUC President Philip Jones chartered a Task Force on Federalism to review NARUC's 2005 policies and paper and to determine any changes to those policies required by the changing communications landscape. President Jones charged the Chair of NARUC's Telecommunications Committee, John Burke, with selecting the members of the Task Force. Commissioner Burke populated the task force, named the Honorable Orjiakor Isiogu of Michigan as chair, and included commissioners from across the country, representing States with various levels of telecommunications regulation, on the team. This paper provides the output of the Task Force and recommends a set of principles that should guide the interaction among the States, the FCC, and industry to continue to

Make available to all the people of the United States, without discrimination . . . a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . .⁵

As provided in the Task Force charter, this paper includes:

1. A framework to guide the States in their interaction with the FCC, other federal agencies, and the Courts in addressing regulatory jurisdiction;
2. An updated policy for evaluating changes to federal telecommunications law; and
3. A set of principles that will guide interaction among the States, the FCC, service providers, and others in working collaboratively to ensure that telecommunications regulation remains consistent with the goals of the Act and meets the needs of consumers.⁶

The Task Force sought input on the development of its positions on forward looking communications policy from NARUC members, the FCC, consumer groups, academics, and industry. It held "listening sessions" with a wide range of commenters and received written comments from multiple parties. In addition, the Task Force posted an initial draft set of Principles on the NARUC and National Regulatory Research Institute (NRRI) websites and requested comments and suggestions from all stakeholders. This input provided the background for the members' discussions and consideration. This paper provides the joint output of those sessions and is the end result of the members' deliberations. The Task Force recommends this paper to NARUC's membership as a guide for their interaction with State and federal legislators

⁵ 47 U.S.C § 151 (1996).

⁶ Federalism Task Force Charter, *available at* http://www.naruc.org/Publications/12_1114_CharterTF_FederalismTelecom.pdf.

and agencies, industry, and others in reviewing and implementing communications policy and legislation going forward.

II. Federalism and 21st century communications

A. Goals

As reflected in this paper, the goals of the NARUC members for responding to the changing communications landscape are consistent with the 1996 Telecommunications Act (TA 96 or "the Act") and largely align with the goals of the FCC and industry as noted in their comments on the draft Principles. As the nation moves forward with the transition from traditional, regulated TDM⁷ wireline networks to IP-enabled services, wireless, and other new forms of communications, the States and NARUC members support a continued focus by all parties on:

- Protecting consumers;
- Ensuring that networks remain ubiquitous and interconnected regardless of communications technology or end user location;
- Ensuring public safety by maintaining universally available, robust, and reliable networks regardless of communications protocol or end user device;
- Ensuring that voice and broadband service are ubiquitously available to all citizens at rates that are affordable and reasonably comparable and with reasonably comparable functionality, regardless of technology.

These goals are discussed in more detail in Section IV of this paper, the Principles of Cooperative Federalism. The Principles support the goals of the NARUC members and their States for ensuring that communications services remain reliable and obtainable by all. They focus on collaboration and competition as keys to meeting customer and industry needs in those areas where competition is strong enough to discipline the market and to provide consumers with effective choice. Where competition is not sufficient to ensure that all consumers can obtain the services they need at reasonable and comparable prices and with equivalent functionality and quality, the Principles recommend that some level of regulatory intervention remains available as a backstop to remedy problems caused by a lack of competitive choice or other issues associated with the broader public interest (e.g., public safety and privacy). The Principles also support the need for the States to remain involved in matters of health and safety, such as ensuring the ubiquity, reliability, and universal availability of communications services, regardless of the technology used to provide them.

⁷ TDM or Time Division Multiplexing is a technique for transmitting a number of separate signals simultaneously over one communications medium. TDM technology establishes a single path for the transmission of communications between the calling and the called party.

The idea of the States and the FCC working jointly to identify and resolve consumer and provider issues and ensure competition is a central part of TA96. The Act envisions collaboration between the FCC and the States in determining consumer needs, promoting on-going competition among providers and technologies, providing universal service, ensuring public safety and privacy, and protecting consumers from illegal and unfair practices. The Act shares regulatory jurisdiction over communications between the States and the federal government. It divides responsibilities along the traditional lines of inter and intrastate communications but looks to the States to provide insight into the needs of their residents, to ensure that comparable service is available to all consumers regardless of location, and to encourage competition and the universal availability of service by ensuring that providers interconnect their networks, regardless of the technology those networks use. The Act also recognizes that the States have specific expertise in many areas, particularly those requiring investigation and adjudication.

The Act creates a specific mandate for the States and the FCC to work together through the establishment of two Federal and State Joint Boards to evaluate issues and recommend solutions to problems. In Section 254 of the Act, Congress established the Federal-State Joint Board on Universal Service to implement the universal service mandates of the Act as well as policies related to the designation of Eligible Telecommunications Carriers under Section 214(e). Section 214 designates roles for State public utility commissions to play in implementing the Act. The States are tasked with identifying carriers that would be eligible to receive support from the federal Universal Service Fund (USF), determining which carriers would provide service to un-served areas, and adjudicating petitions from carriers wishing to withdraw from providing services supported by the federal USF.

The Act establishes the Federal-State Joint Board on Jurisdictional Separations under Section 410(c). The FCC must refer to the Joint Board any proceeding related to the separations of property or expenses between the interstate and intrastate jurisdiction. After a referral, the Joint Board of four State commissioners, three FCC Commissioners and, in the case of the Universal Service Joint Board, one consumer advocate, deliberates and makes recommendations to the Commission.

In addition to these Joint Boards, the Act authorized the FCC to convene joint boards on other issues or to conduct joint hearings with States. This method for cooperatively addressing issues has been used only once—to establish the Joint Conference on Advanced Services under Section 706 of the Act.

B. Federalism 2005 – focus on communications functions not technology silos

NARUC's 2005 study and recommendations point out that TA96 is technology agnostic and thus can serve as the basis for communications oversight going forward, regardless of changes to the underlying configuration of the network(s) or the protocols used to transmit information. In making its recommendation, the 2005 task force evaluated the core competencies of the States and the FCC and recommended roles for shared jurisdiction. In defining these roles, the 2005 task force recognized that traditional economic regulation would diminish or even disappear as competition became more widespread, but recommended a

continuing role for the States to ensure that consumers receive the services they need. To that end, the 2005 paper proposed that any rewrite of TA 96 focus on dividing the responsibility for "overseeing" communications functionally, assigning the primary responsibility to the States in areas where they have specific knowledge and expertise (for example individual consumer protection issues), and giving the FCC the lead on issues that address the needs of the nation as a whole (e.g., rules for wireless services, spectrum allocation, and the federal USF). The paper also recommended that the FCC continue to use the tools provided by the Act, particularly the Joint Boards, to provide an on-the-ground focus regarding the needs of the States and their citizens.

NARUC's 2005 paper stressed that communications policy must be "technology neutral" and recommended that any rewrite of the Act continue to be linked not to a specific technology but "to the salient features of a particular service, such as whether it is competitive and how consumers and small businesses depend on it."⁸ Based on these points, the 2005 paper and the subsequent Resolution on NARUC Telecommunications Legislative Reform⁹ suggested that any revision of the Act should:

- Promote innovative platforms, applications and services in a technology-neutral manner;
- Consider the relative interests and abilities of the State and federal governments when assigning regulatory functions;
- Preserve the States' particular abilities to ensure their core public interests;
- Preserve access for consumers to the content of their choice without interference by the service provider;
- Ensure timely resolution of policy issues important to consumers and the market;
- Protect the interests of low income, high cost areas, and consumers with special needs;
- Provide responsive and effective consumer protection; and
- Focus regulation only on those markets where there is an identified market failure.¹⁰

⁸ NARUC Legislative Task Force Report on Federalism and Telecommunications, July 2005, page 4.

⁹ Resolution on NARUC Telecommunications Legislative Reform, July 2005, *available at* <http://www.naruc.org/Resolutions/Summer%202005%20Telecom%20Policy%20Reform.pdf>

¹⁰ NARUC Legislative Task Force Report on Federalism and Telecommunications, July 2005, page 1.

C. Federalism 2013 – improving the relationship between the States and the FCC

The 2013 Task Force concurs with the objectives espoused by NARUC in 2005. To meet these objectives, it recommends increasing the collaboration between the FCC and the States to examine and provide solutions to communications issues, an approach that has worked well in the past but appears to have been used on a more limited basis in current policy decisions.

The States (governors, legislators, regulators, and other State agencies) are uniquely positioned to work with the FCC, industry, consumer groups, and other stakeholders to ensure that consumers are able to obtain affordable, reliable, and ubiquitous communications services, including access to broadband, regardless of their location. The States have also ensured that all consumers will have access to communications services through provisions such as carrier of last resort (COLR) obligations where required under applicable State law.

To encourage this collaboration, Sections 410 and 254 of the Act created a partnership between the States and the FCC—the Joint Boards—for collectively seeking, developing, and implementing communications policy recommendations. By referring items to the Joint Boards established by these sections of the Act, the FCC is able to gain direct insight into the potential effects of proposed communications rules and policies on individual States and their citizens.

In the past, the Joint Boards have provided effective input into numerous FCC rulemakings and policies, including revisions to the Lifeline program, certification of eligible telecommunications carriers (ETCs), cost allocations, and wholesale service requirements. The Commission's recent actions in dealing with key issues like the reform of the federal USF program, however, appear to have reduced the effectiveness of the Joint Boards and caused the States to seek improvement to the FCC's rulemaking procedures.

Under the Administrative Procedure Act (APA) (5 U.S.C. § 551 *et seq.*), an agency's regulatory activities can include formal adjudications¹¹ and rulemakings,¹² as well as more informal processes. The FCC almost exclusively uses informal "notice and comment" rulemakings to revise existing regulations and to promulgate new rules, giving it more flexibility in reaching its decisions. Although the States and NARUC participate in these proceedings, questions have recently been raised regarding the ability for all interested parties to participate fully in these decisions. While the States, NARUC, and other parties file written comments on

¹¹ For example, the FCC adjudicates interconnection arbitrations under 47 U.S.C. § 252(e)(5) if a state does not carry out its own obligations under Section 252(e) of the Act, 47 U.S.C. § 252(e).

¹² Formal rulemakings for federal administrative agencies that promulgate regulations under the APA must comply with stricter procedures for the development of the relevant record. When such regulations "are required by [federal] statute to be made on the record after opportunity for an agency hearing," a federal administrative agency may need to hold one or more evidentiary hearings during the promulgation of such regulations. *See* 5 U.S.C. §§ 553(c), 556 & 557.

proposed rules, it appears that the FCC often focuses its efforts more on the information provided in the ex parte submissions that occur at the end of the comment cycle and/or on written submissions that are made after the end of the formal comment and reply comment period than on earlier submissions. Although ex parte meetings and written submissions are disclosed to other commenters through the FCC's Electronic Comment Filing System (ECFS), NARUC members have expressed serious concerns about whether this practice presents all interested parties with an adequate and timely opportunity to respond (particularly for those parties without a presence in Washington, DC).¹³

By returning to its earlier policy of actively seeking input from the States via the Joint Boards, the FCC can ensure that its rules positively impact the States and their citizens. To do this, the Task Force recommends that the FCC refer matters to the Joint Boards more regularly; follow the APA rules in its formal and informal rulemakings; and seek diverse regulatory input from a variety of sources.

III. Cooperative federalism – a roadmap for 2013 and beyond

The States, the FCC, and industry all have roles to play in ensuring ubiquitous access to reliable, affordable communications, including access to broadband. Despite changing State statutes, the transition to IP-enabled networks, and emerging communications offerings, cooperative federalism remains the most appropriate model for communications oversight in the 21st century. The States and the FCC are important partners in ensuring that the United States continues to lead the world in the availability and usability of communications. By working cooperatively with each other and industry, the States and the FCC can better understand communications issues, propose rules, and resolve issues. By working together, each party can maximize the other's potential for creating both the most effective and reliable communications system and the one that best serves the needs of all its citizens.

As Professor Philip Weiser points out, this partnership creates a cooperative federalism that represents the balance between complete federal preemption and “uncoordinated federal and state action in distinct regulatory spheres (dual federalism).”¹⁴

Cooperative federalism programs set forth some uniform federal standards — as embodied in the statute, federal agency regulations, or both — but leave state agencies with discretion to implement the federal law, supplement it with more

¹³ See generally NARUC Resolution TC-3 and accompanying White Paper, 2013 Winter Meetings, adopted February 6, 2013.

¹⁴ Philip J. Weiser, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U. L. Rev. 1692, 1697 (2001).

stringent standards, and, in some cases, receive an exemption from federal requirements. This power allows states to experiment with different approaches and tailor federal law to local conditions.¹⁵

The FCC is experienced in and well-positioned to respond to overarching policy areas such as allocating wireless spectrum, enacting radio frequency/interference regulations, developing overall standards for network reliability and availability, developing a floor for consumer privacy and security, and determining the nation's long term goals for broadband availability and adoption. At the same time, the States remain important laboratories for evaluating new processes to ensure that they can be adapted to best meet the needs of their individual citizens, investigating and resolving consumer issues, identifying areas where service is not available or is inadequate, and working with carriers to resolve wholesale issues (including arbitrating interconnection agreements). By working cooperatively in areas that implicate both federal and State needs (e.g., managing the universal service process and the collection and allocation of funds), the FCC and the States together will ensure that communications services remain ubiquitously available and affordable to all consumers, regardless of changing technology. To further ensure this cooperation, the FCC should determine the regulatory status of VoIP and other IP-enabled services. Until there is a decision on this issue, questions about the responsibility for ensuring that communications services remain safe, reliable, and ubiquitously available (including interconnection) will remain unanswered.

The States provide the "feet on the street" to understand consumer complaints and concerns. Thus, the States should continue to maintain the primary and immediate responsibility for end-user consumer protection, for ensuring the availability and affordability of universal service, and for ensuring service reliability, safety, and service quality where allowed under applicable State laws. As Justice Brandeis pointed out:

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.¹⁶

State public utility commissions and other State agencies have successfully fulfilled this role for the telecommunications and other critical public utility industries that include network infrastructure since the first railroad oversight boards were created well over 100 years ago. More recently, the States have been the first to identify and seek to resolve issues with call completion, slamming, and cramming. They have supported competition by arbitrating interconnection agreements and adjudicating carrier-to-carrier complaints. They have managed number portability and number conservation measures at the State level to ensure that numbers are used properly and to avoid unnecessary area code exhaust. They have overseen the reliability of communications networks to ensure that all citizens have access to emergency services.

¹⁵ Weiser, at 1696 (citations omitted).

¹⁶ *New State Ice Co. v. Liebmann*. 285 U.S. 262, 311 (1932).

Diversity of regulatory input and evidence-based decision making are the cornerstones for ensuring that regulation meets the needs of both consumers and industry. The States are experienced in investigating and resolving issues based on evidence and in collecting and examining multiple viewpoints through face-to-face *adjudicatory* proceedings, often preceded by advance discovery of information under oath, and followed by cross-examination of witnesses, presided over by an impartial hearing officer. For this reason, the States are well-positioned to balance the needs of consumers and service providers in developing and responding to communications policy issues.

By collaborating with the States, the FCC can ensure that new policies and regulations meet the needs of consumers across the nation, regardless of the type of service to which they subscribe or their location, be it urban or rural. Cooperative federalism should be the goal for the continued implementation of the Act and for any new legislation going forward.

IV. Principles of Cooperative Federalism

The Task Force recommends that all entities engaged in providing, regulating, or managing communications services or on proposing legislation for future communications oversight use the following principles to guide their work. By focusing on these Principles, the FCC, the States, and industry will ensure that communications service remains affordable, ubiquitous, and reliable for all consumers, regardless of technology. These Principles provide a guide for implementing the current Act as the network transitions from its current technologies to IP and a basis for evaluating proposed or pending legislation at both the State and the federal level. The Principles are provided in no specific order; each is equally important to ensure a robust and reliable communications ecosystem available to all consumers.

By focusing on the spirit of cooperative federalism embodied in these principles, the States and the FCC can ensure that decisions regarding communications services are based on factual inquiry, that diverse opinions are heard and included in the decision making process, and that all entities work together to reach the best conclusion.

1. Consumer protection

Ensure that consumers are protected from unfair or illegal practices (including cyber threats) and that individual consumer privacy is maintained, regardless of technology.

- States, the FCC, and industry should work collaboratively to ensure that consumers are protected from unfair practices regardless of the technology used to provide those services. This includes protecting against slamming, cramming, unfair billing practices, and cyber attack, as well as ensuring that consumers' personal information remains private and secure.

- States and service providers should work together to track, review, and assist consumers in resolving complaints. By jointly reviewing and tracking complaints, all parties can identify and rectify problem areas.
- The FCC's customer data privacy standards should represent a floor—not a ceiling—for the protection of consumer privacy. Individual States, consumer protection agencies, and service providers should work together to determine whether additional protections are necessary based on their own needs.

2. Network reliability and public safety

Reliable, ubiquitously available communications are critical to protecting the public safety, responding to disasters, and ensuring the public good. Communications policy must ensure that communications networks are reliable and available, regardless of technology.

- States, the FCC, and service providers should work together to ensure that all consumers can access emergency services (i.e., 911, E911, and NG911) regardless of the technology used to carry calls.
- The FCC's outage reporting data provides a baseline for determining network reliability. This data should be shared with the States where allowed under applicable State laws so that the FCC and the States may work together to ensure that networks remain reliable.
- States and the FCC should work together to resolve call completion problems so that all consumers may make and receive calls to all locations across the country.
- States, the FCC, and industry should collaborate with broadband providers, electric utilities, and equipment manufacturers to address the issue of continuing voice service during major power outages.

3. Competition

Competition is critical to discipline the market and to ensure that consumers have multiple options for selecting the service that best meets their needs. The States are well positioned to work with all stakeholders to ensure that there is robust competition and customer choice across their specific jurisdictions.

- Customers should have the choice of multiple providers, products, and services.

- States should work with industry and the FCC to determine where competition is adequate to ensure customer choice.
- The FCC, other federal agencies, and the States should work together, where statutorily permitted, to collect the granular data necessary to determine the areas where effective competition exists and to monitor changes to the competitive landscape.
- Where competition is not sufficient to ensure adequate and affordable service, when appropriate, the States and the FCC should consider further steps.

4. Interconnection

Communications networks must remain interconnected on a non-discriminatory basis regardless of technology. All consumers must be able to call each other regardless of carrier or technology, calls must complete, and no area of the country should become an isolated communications island, simply because some providers choose not to interconnect to others in those locations. The requirement to interconnect should not be limited to a subset of providers, but should apply to all suppliers, regardless of the technology they use.

- Interconnection is necessary to ensure ubiquitous service and enhance competition among providers.
- The States are well positioned to continue to oversee the interconnection process as provided in Sections 251 and 252 of the Telecommunications Act of 1996.
- Sections 251 and 252 of the Act are technology neutral. The rules for interconnection do not and should not depend on the technology used by the interconnecting providers.
- The States, the FCC, and industry should work together to examine the way the interconnection of next generation communications networks should be accomplished in order to ensure that all providers can complete calls to all other providers, regardless of the technology they use.

5. Universal Service

Universal service remains a key policy goal of the nation as a whole. The States and the FCC should work together to ensure that service is affordable, ubiquitous, and reliable for all consumers.

- The States retain an important role in working with the FCC to ensure that service providers continue to meet social policy goals, including the universal availability of communications services, providing reasonably comparable and affordable service between urban and rural areas, and providing access to services such as Lifeline, Telecommunications Relay Service, and carrier of last resort (COLR) obligations as permitted by State law, regardless of technology.
- The States and the FCC should continue to focus on the role set forth in Section 254 of the Telecommunications Act of working together to define and implement the requirements for universal service, regardless of technology.
- The FCC can best fulfill its responsibilities under Section 254 by working with the Federal-State Joint Board on Universal Service to determine the requirements for universal service, including funding and contribution mechanisms.
- The States are well positioned to work with the FCC to determine the effects of changes to the universal service funding methodology. Potential reforms of the federal USF contribution and support mechanisms should not negatively affect State USF funds or create the potential for causing gaps in the ubiquitous availability of service.

6. Regulatory diversity

Regulation should be functional rather than based on the specific technology used to initiate a communication and carry information. Regulation should be technology neutral and developed after reviewing and evaluating constitutional and statutory State and federal roles and exploring multiple points of view.

- The States remain important laboratories for exploring solutions to complex problems.
- Federal and State regulators should seek multiple points of view on issues, including utilizing the Joint Boards to ensure that State and end user needs are heard and understood.

7. Evidence-based decision making

Open and transparent evidence-based decision making should be the primary tool in reforming regulatory policies. The best policies are developed by gathering information, evaluating all points of view, and exploring multiple options.

- The States are ideally suited to conduct evidence-based proceedings.
- The FCC and the States should work together to collect the data necessary to make informed decisions.
- In order to ensure that all interested parties are given an adequate and meaningful opportunity to be heard, the FCC's informal rulemaking processes should be conducted openly and fairly and should rely primarily on timely written comments and not on ex parte communications.

8. Broadband access, affordability, and adoption

The universal availability of broadband service is important to ensure job growth and the availability of quality medical care and education across the nation. The States have a key role in ensuring broadband deployment and adoption for their constituents, as well as in protecting the consumers of those services.

- The States are well-positioned to work with the FCC, industry, and others to determine where broadband is needed and to assess the availability of competitive choices.
- The States should work with the FCC and industry to define consumer protections for broadband service, including exploring privacy issues, ensuring accurate billing, and working with industry to review and resolve customer complaints.
- The States are well-suited to work with the FCC and industry to track and evaluate the reliability of broadband service, including, where allowed under applicable State laws, reviewing outage reporting data and ensuring that service is restored on a timely basis..
- The States are well-positioned to work with the FCC, industry, and others to develop equitable and sustainable funding mechanisms for broadband service.

V. Conclusions

Cooperative federalism remains an important cornerstone for ensuring that 21st century communications continues to meet the needs of all citizens, regardless of their location and the type of service that they choose. Changes to the underlying structure of the network or the technology used to carry information do not change the need for reliable, robust, affordable, and ubiquitous communications services that are universally available and reasonably comparable regardless of location. Although competition provides a key means for disciplining the market, where competition is not sufficient to offer consumers adequate, safe, high quality service choices, regulation may be needed as a backstop.

The States remain vital partners with the FCC and industry to ensure that customer needs are met in our changing technological environment. They are well positioned to understand the availability of communications services in their own jurisdictions, to respond quickly to consumer concerns, and to provide input on competitive issues and service problems, particularly as they affect service availability, affordability, reliability, quality, public safety, and privacy. The FCC should use the Joint Boards and other State-federal regulatory coordination mechanisms such as the Joint Conference to seek State input on user needs, consumer problems, broadband deployment and availability, and other issues.

One-size solutions rarely fit. The States are in a unique position to provide on-the-ground expertise and experience to resolve customer complaints and consumer issues. They should continue to serve as fact finders and, where appropriate under State statutes, adjudicators of issues affecting communications. Cooperative federalism and collaboration among all involved in determining telecommunications policy will ensure that those policies best meet the needs of those they are designed to serve. Any rewrite of the Telecommunications Act of 1996 should reflect the need for cooperative federalism and the principles provided in this paper.