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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, *Petitioner*, v. FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES OF AMERICA, *Respondents*.	Case No. 15-1497

PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, the National Association of Regulatory Utility Commissioners (NARUC) respectfully petitions this Court for review of the Federal Communications Commission's (FCC) "Report and Order"[1] released on June 22, 2015 in the proceeding captioned: *In*

[1] See, *In the Matter(s) of Numbering Policies for Modern Communications*, WC Docket 13-97, *IP-Enabled Services*, WC Docket 04-36, *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket 07-243, *Telephone Number Portability*, CC Docket 95-116, *Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, *Connect America Fund*, WC Docket 10-90, *Numbering Resource Optimization*, CC Docket 99-200, Report and Order, FCC 15-70, 30 F.C.C. Rcd. 6839, (rel. June 22, 2015) ("Order"), at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-70A1.docx.

the Matter(s) of Numbering Policies for Modern Communications, IP-Enabled Services, Telephone Number Requirements for IP-Enabled Services Providers, WC Docket No. 07-243, *Telephone Number Portability, Developing a Unified Intercarrier Compensation Regime, Connect America Fund, Numbering Resource Optimization*, WC Docket No. 13-97, WC Docket No. 04-36, CC Docket No. 95-116, CC Docket No. 01-92, WC Docket No. 10-90, and CC Docket No. 99-200; FCC 15-70 (rel. June 22, 2015) and published in the Federal Register on October 29, 2015.[2]

A copy of the Order is attached to this Petition.

The Order is a final order and may be appealed under 47 U.S.C. § 402(a).

The Commission is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure, and the United States of America is a proper respondent under 28 U.S.C. § 2344.

Venue is proper in this Court under 28 U.S.C. § 2343.

The Order was published on October 29, 2015 at 80 Federal Register 66454. This Petition has been filed within 60 days of issuance of the Order though more than 10 days after the agency noticed the decision.

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[2] *Numbering Policies for Modern Communications, IP-Enabled Services, Telephone Number Requirements for IP-Enabled, Services Providers, Telephone Number Portability et al.*, 80 Federal Register 66454 (October 29, 2015), available online at: https://federalregister.gov/a/2015-20900

In the Order, the FCC ignores the plain text as well as the structure of the Telecommunications Act of 1996 by extending both the rights and obligations of telecommunications common carriers to unclassified service providers. By continually ignoring the requirements of the statute – deferring for more than 10 years the classification of Voice over Internet Protocol Services (VoIP) – the FCC has fomented a host of potentially unnecessary proceedings and litigation over the scope of NARUC's member State commissions both with respect to numbering conservation and a range of other issues.

For example, if VoIP services are in fact "telecommunications services," this entire series of proceeding and petitions which has lasted over a decade, was an enormous waste of taxpayer dollars. This is because telecommunications service providers already have direct access to numbering resources under the rules that predate the order on review. And, as the FCC acknowledges, in the order on review, the underlying service is potentially subject to NARUC's member State Commissions' oversight.[3]

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[3] Order, at ¶4, mimeo at 3: "Section 52.15(g)(2)(i) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested.[] The Commission has interpreted this rule as requiring evidence of either a state certificate of public convenience and necessity (CPCN) or a Commission license. As a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the Numbering Administrators." {footnote omitted}

On the other hand, if the FCC is able to come up with any logical construction of the statute that could support classifying VoIP services as "information services," interested States could have long ago litigated the question of the impact of Congress' instructions in 47 U.S.C. §153(21) that even telecommunications carriers " . . .can only be treated as a common carrier under this chapter only to the extent they are providing telecommunications services;" treatment that clearly includes mandatory requirements to pay the costs of number portability in 47 U.S.C. §251(e)(2) or being subject to duties to port imposed only on common carriers in 47 U.S.C. §251(b)(2). As NARUC and others pointed out below, the statute forecloses the approach the Commission adopts below.

NARUC represents the interests of State utility commissions that oversee the regulation of, *inter alia*, telecommunications services. In the single most preemptive provision of the Telecommunications Act of 1996, 47 U.S.C. §253 (1996), Congress permitted the FCC to preempt any State law that had the effect of prohibiting the provision of "any interstate or intrastate telecommunications services. Significantly, in the same section Congress specifically preserved State jurisdiction to impose "...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." Id.

The FCC cannot use its statutory forbearance authority to eliminate this reservation of State authority so instead, across administrations and more than a decade of proceedings and court cases, it has steadfastly refused to classify VoIP services.

NARUC has been recognized both by Congress in several statutes[4] and consistently by Article III courts[5] as the proper entity to represent the collective interests of the State utility commissions. NARUC actively participated in the agency proceedings below, and lacking any classification of the underlying

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[4] See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. NARUC, et al. v. ICC, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

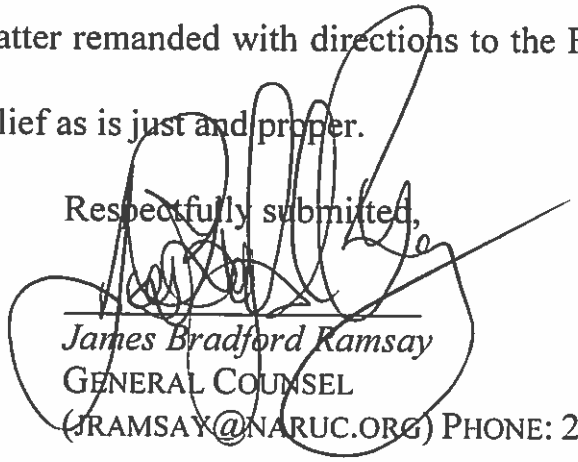
[5] See, e.g., United States v. Southern Motor Carrier Rate Conference, Inc., 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (The Supreme Court noted: "[t]he District Court permitted . . . (NARUC), an organization composed of State agencies, to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also NARUC v. DOE, 851 F.2d 1424 (D.C. Cir. 1988); Indianapolis Power and Light Co. v. ICC, 587 F.2d 1098 (7th Cir. 1982); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1976); NARUC v. Federal Energy Regulatory Commission, 475 F.3d 1277 (D.C. Cir. 2007); NARUC v. Federal Communications Commission, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

services, the changes adopted in the Order will cause members of NARUC direct and concrete injury.

NARUC seeks an order and judgment that portions of the FCC order are arbitrary and capricious, 5 U.S.C. § 706(2)(A), beyond the FCC's jurisdiction, authority or power, 5 U.S.C. § 706(2)(C), an abuse of discretion, and otherwise not in accordance with law, 5 U.S.C. § 706(2)(A).

NARUC requests that portions of the order be vacated, set aside, modified, and/or enjoined, and the matter remanded with directions to the FCC, and that the Court provide such other relief as is just and proper.

Respectfully submitted,



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Dated: December 23, 2015

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the National Association of Regulatory Utility Commissioners (NARUC) respectfully submits this disclosure statement. NARUC is a quasi-governmental nonprofit organization founded in 1889 and incorporated in the District of Columbia. NARUC is a "trade association" as that term is defined in Rule 26.1(b). NARUC has no parent company. No publicly held company has any ownership interest in NARUC. NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the regulated electric utilities within their respective borders.

Respectfully submitted,

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Dated: December 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2015, I caused a copy of the foregoing petition for review and disclosure statement, along with a copy of the subject order, to be served upon the parties listed below by first-class mail, postage prepaid.[6]

Respectfully submitted,

James Bradford Ramsay
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DATED: December 23, 2015

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[6] See, Circuit Rule 15: "In carrying out the service obligations of FRAP 15(c), in cases involving informal agency rulemaking such as, for example, those conducted pursuant to 5 U.S.C. § 553, a petitioner or appellant need serve copies only on the respondent agency, and on the United States if required by statute, see, e.g., 28 U.S.C. § 2344. See also, Sierra Club v Environmental Protection Agency, 118 F.3d 1324 (5th Cir. 1997) ("Implicit in this local rule is the D.C. Circuit's determination that participants in informal rulemaking proceedings are not "parties" for purposes of FRAP 15(c).")