



N A R U C
National Association of Regulatory Utility Commissioners

August 21, 2017

The Honorable Ajit Pai
Chairman
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: *NARUC Request to expand membership of BDAC*, filed in the proceeding captioned:
In the Matter of Accelerating Broadband Deployment, GN Docket No. 17-83

Chairman Pai:

On March 16th, Senate Commerce Committee Chairman Thune sent to the National Association of Regulatory Utility Commissioners (NARUC), along with other stakeholders a request for potential actions to improve broadband deployment. In its informal response, NARUC noted:

Earlier this year Chairman Pai formed a new Broadband Advisory Committee (BDAC) similar to NARUC's [February 2016] proposal and the referenced legislation. This advisory committee is expected to explore ways to accelerate deployment of high-speed broadband nationwide and to close the digital divide. *NARUC commends Chairman Pai for taking this proactive step.*¹

This NARUC response was provided before the April 6, 2017, announcement of the composition of this new federal advisory Committee. Of the Thirty members of the BDAC, 21 represent various industries involved in providing broadband services or broadband infrastructure. Only two represent State level government, two represent city governments, and one represents a tribal government. Among the 58 representatives participating in the working groups, the percentages are a bit worse with one NARUC and six local government representatives.

It is self-evident, that any recommendations will necessarily reflect the composition of the committee. A simple review of the current roster suggests the committee is heavily weighted in favor of those seeking attachments to poles. The concept for this committee was a good one, but the usefulness of any recommendations is likely to be undermined by this imbalance.

¹ See NARUC's 2016 *Resolution Calling For Streamlined Access To Rights Of Way On Federal Lands To Accelerate Broadband Deployment* (February 16, 2016) (<http://pubs.naruc.org/pub/D54CD7B4-C65D-4FF8-4255-5237A193784A>), calling for "a process for collaboration among the agencies at the federal, State, United States Territories, local, and tribal governments, as well as in consultation with private industry, to work together to identify existing barriers and develop best practices for granting such access [to rights-of-way, pole attachments and easements on federal lands] at all levels to improve broadband deployment . . . across the nation."

NARUC is not the only one to notice this obvious imbalance.²

Power companies own a significant percentage of all poles, and like cities and municipalities, are familiar with the very real safety and reliability hazards, logistical challenges and actual costs associated with pole attachments and rights-of-way use. Yet, as the Edison Electric Institute (EEI) recently observed, the electric sector needs more than two “voices at the [BDAC] table.”³

² *Panettieri, Angelina, Technology and Communications, National League of Cities Ex Parte*, filed May 19, 2017, <https://ecfsapi.fcc.gov/file/10519947406489/FCC%20Ex%20parte%20Clyburn%20Luna%20GMA%20Meeting.pdf>. (“[T]he National League of Cities continued to urge the Commission to increase the number and diversity of local officials on the BDAC to a level comparable with the number and diversity of industry officials.”); Washington Internet Daily, *Local Governments want better Representation*, Warren Publishing (May 23, 2017); Communications Daily, *Local Officials Worry About BDAC Composition* (June 02, 2017) (“While the FCC has chosen some of local government’s best . . . there are not enough of them. The most articulate and persuasive of advocates cannot overcome a 20-1 ratio.”); Communications Daily, *Clyburn Wants More Voices in Broadband Infrastructure Talks*, Warren Communications (June 09, 2017) (Clyburn urged a broader “consortium” on BDAC.); Communications Daily, *NOTEBOOK*, Warren Communications (July 18, 2017) (“U.S. Conference of Mayors’ comments included joint resolutions calling on the FCC to . . . ” expand the [BDAC] to include more local government representatives.”); Silbey, Mari, *On Broadband, FCC Talks Carrots, Not Sticks*, LightReading.com (July 20, 2017), <http://www.lightreading.com/services/broadband-services/on-broadband-fcc-talks-carrots-not-sticks-/d/d-id/734777> (“Santosham also noted that there are only seven municipality representatives assigned to the BDAC process, and suggested that, “The voice of municipalities perhaps needs to be broader.” Others on the FCC committee also piped up with the same concern. . . Comcast Corp Vice President for Regulatory Policy David Don pointed out that if the group wants cities to employ the model codes that are developed, it will very much help to have their buy-in from the beginning. “I think this is a serious risk right now. We have a lot of groups who are concerned that they’re not at the table,” said Don. “I think if just at the end we present a model code to the municipalities and they feel they’ve had an insufficient amount of input, it’s going to go nowhere.”); Communications Daily, *Local Government Reps Complain about DBAC Makeup, Too-Tight Time Frames*, Warren Communications (July 21, 2017); Panettieri, Angelina, *FCC Holds Second Meeting of Broadband Deployment Advisory Committee*, State News Services/NLC Release (August 1, 2017); Griffis, Kelcee, *Energy Group Urges FCC To Add More Broadband Advisors*, Law 360 (August 10, 2017) <https://www.law360.com/articles/953107/energy-group-urges-fcc-to-add-more-broadband-advisers>; Dodge, Blake, *FCC packs broadband advisory group with big telecom firms, trade groups; Local government officials, largely frozen out, fear they’re about to get rolled*, *The Center for Public Integrity* (August 11, 2017) <https://www.publicintegrity.org/2017/08/11/21057/fcc-packs-broadband-advisory-group-big-telecom-firms-trade-groups> (“The assignment seemed to call out for participation from city officials like Carter, since municipal officials approve where and what equipment telecommunications companies can place on public rights of way, poles and buildings. But. . .Sixty-four city and state officials were nominated for the panel, [and] the agency initially chose only two.”); Dodge, Blake, *Almost All of FCC’s New Advisory Panel Works for Telecoms*, Daily Beast (August 11, 2017) <http://www.thedailybeast.com/almost-all-of-fccs-new-advisory-panel-works-for-telecoms>; Mills, Chris, *The FCC is actively working against consumers*, BGR Opinion (August 12, 2017) <http://bgr.com/2017/08/12/fcc-net-neutrality-rules-ajit-pai/> (“[T]he 30-person [BDAC] with 28 reps from telecoms companies, and just two from local cities. The committee was supposed to work out how cities and companies can work together best to deploy high-speed wireless internet; instead, it will likely be a list of telecoms industry wishes.”); Bode, Karl, *New FCC Broadband ‘Advisory Panel’ Stocked With Telecom Consultants, Allies & Cronies*, TechDirt (August 14, 2017) <https://www.techdirt.com/articles/20170811/09042437982/new-fcc-broadband-advisory-panel-stocked-with-telecom-consultants-allies-cronies.shtml> (“[W]hile it’s important to have companies on the panel that have expertise building large networks, so too is it important to have an equal weight given to consumer activists, objective external experts, and folks that operate outside of the box when it comes to improving American connectivity.”)

³ See, Griffis, Kelcee, *Energy Group Urges FCC To Add More Broadband Advisors*, Law 360 (August 10, 2017) (“Edison Electric Institute urged the FCC to expand [BDAC], saying that electric companies are leaning on broadband service as grid technology improves [which] means the sector needs voices at the table . . . [BDAC should] include electric company representatives and state-level utility leaders “so that pole attachment and broadband issues could be considered in a larger context.”);

Moreover, many NARUC members have oversight of electric utilities and have an interest in assuring that any FCC initiatives do not jeopardize reliability or require electric ratepayers to subsidize the rollout of competitive communications services. Some NARUC members have ‘reversed preempted’ the FCC on pole attachments and have other extensive experience relevant to BDAC’s recommendations. That’s one reason why EEI’s *ex parte* also recognizes the need for more State representatives, suggesting that unlike “attachers,” both electric companies and States are interested in insuring the BDAC’s work does not “negatively impact upon public safety and the provision of reliable electric service, or impair ongoing grid modernization.”⁴

At NARUC’s last meeting in July, the members passed the attached resolution detailing much of the information included in this letter.

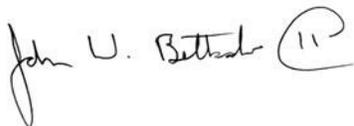
The resolution recognizes that the current composition of the BDAC is unlikely to lead to a balanced recommendation and specifically urges the FCC to do two things:

[1] “increase[e] the membership of State and local government representatives on the [BDAC] and its working groups to an amount that equitably balances with membership by BIAS industry representatives; and

[2] “rekindle its partnership with the States through the work of the 706 Joint Conference to develop federal-State cooperative solutions that promote broadband infrastructure deployment and public access to BIAS across the nation.”

NARUC respectfully requests you expand the membership of the BDAC to assure that crucial public safety, reliability, costs, and subsidy concerns are reflected in its final recommendations. The expansions should include enough additions to “equitably balance[] with membership by BIAS industry representatives.”

Respectfully Submitted,



John W. Betkoski
NARUC President



Paul Kjellander
Chair, NARUC Committee on Communications

POSTSCRIPT: As the July resolution notes, because, NARUC “was expecting a smaller and more balanced committee membership,” the association “only submitted the name of one NARUC commissioner to the FCC to serve on behalf of the NARUC membership.” To assist your office in expediting additions to the BDAC to create more balance, NARUC solicited the names of others State regulators willing to represent NARUC on the BDAC. NARUC’s President, **John Betkoski III** of Connecticut, would endorse the following Commissioners as additional NARUC representatives to the BDAC: District of Columbia Public Service Commission Chairman **Betty Ann Kane**, Colorado Public Utilities Commissioner **Wendy Moser**, and myself, **Paul Kjellander**, President of the Idaho PUC and the current Chair of the NARUC Telecommunications Committee.

⁴ See, *Notice of Ex Parte, Letter to Marlene Dortch, Secretary FCC, from H. Russell Frisby, Jr representing Edison Electric Institute*, Filed In WC Docket No. 1784; WC Docket 17-200 (August 9, 2017).

Resolution to Bring Balance to the Broadband Deployment Advisory Committee Membership

Whereas in a Resolution adopted at its 2016 Winter Committee Meetings in Washington, DC, the National Association of Regulatory Utility Commissioners (“NARUC”) stated that: “The timely deployment of broadband-capable facilities is in the public interest and is a stated policy goal of federal and State policymakers”;

Whereas in the aforementioned Resolution, NARUC advocated for “the creation of a process for collaboration among the agencies at the federal, State, United States Territories, local, and tribal governments, as well as in consultation with private industry, to work together to identify existing barriers and develop best practices for granting such access [to rights-of-way, pole attachments and easements on federal lands] at all levels to improve broadband deployment and access across the nation”;

Whereas on October 8, 1999, the Federal Communications Commission (“FCC”) adopted an Order (CC Docket No. 99-294) that convened a Federal-State Joint Conference on Advanced Telecommunications Services (“706 Joint Conference”), in accordance with Section 706 of the Telecommunications Act of 1996, comprised of the five FCC Commissioners and five State Commissioners recommended by NARUC, based on a belief that “a Joint Conference is an appropriate vehicle for federal, state, and local cooperation with regard to the rapid and widespread deployment of advanced services. A Joint Conference provides a flexible forum in which to conduct an open dialogue, collect and exchange information, and consider initiatives that will encourage deployment”;

Whereas on October 23, 2001, then-FCC Chairman Michael Powell prescribed that the 706 Joint Conference would be “a partnership that can be used to assess data collection experiences, develop federal-state cooperative solutions and address local issues such as rights-of-way challenges”;

Whereas since the designation in January 2017 of FCC Commissioner Ajit Pai as the new FCC Chairman, the FCC has not reconvened a meeting of the 706 Joint Conference or given any directive on issues or tasks to be addressed by the federal and State 706 Joint Conference members;

Whereas on January 31, 2017, FCC Chairman Pai announced the formation of a new federal advisory committee, the Broadband Deployment Advisory Committee (“BDAC”), which will provide advice and recommendations to the FCC on how to accelerate the deployment of high-speed broadband Internet access services (“BIAS”);

Whereas, NARUC, in comments, complimented FCC Chairman Pai on the charge of the BDAC but, expecting a smaller and more balanced committee membership, only submitted the name of one NARUC commissioner to the FCC to serve on behalf of the NARUC membership;

Whereas as stated in the BDAC’s Charter, the Objective and Scope of Activities: “ may include, but are not limited to, drafting for the Commission’s consideration a model code covering local franchising, zoning, permitting, and rights-of-ways regulations; recommending further reforms of the Commission’s pole attachment rules; identifying unreasonable regulatory barriers to broadband deployment; and recommending further reform within the scope of the Commission’s authority (to include, but not limited to, sections 253 and 332(c)(7) of the Communications Act and section 6409 of the Spectrum Act)”;

Whereas FCC Chairman Pai has appointed 30 members of the BDAC, including 21 members that represent various BIAS industries or industry associations, while only two BDAC members represent State entities (including NARUC’s representative, Massachusetts Department of Telecommunications and Cable Commissioner Karen Charles Peterson), two members represent city governments, one member represents a tribal government, and four members represent academic and nonprofit nongovernmental organizations;

Whereas FCC Chairman Pai has established five working groups, composed of 58 members including one NARUC representative and five local government representatives, that will assist the BDAC in carrying out its work: -Model Code for Municipalities—Douglas Dimitroff, New York State Wireless Association, Chair, and Sam Liccardo, Mayor, San Jose, California, Vice Chair; -Model Code for States— Kelly McGriff, Southern

Light, Chair, and Commissioner Karen Charles Peterson, Vice Chair; • Competitive Access to Broadband Infrastructure—Ken Simon, Crown Castle, Chair, and Brent Skorup, Mercatus Center at George Mason University, Vice Chair; • Removing State and Local Regulatory Barriers—Robert DeBroux, TDS Telecom, Chair, and Kim Keenan, Multicultural Media, Telecom and Internet Council, Vice Chair; and • Streamlining Federal Siting—Jonathan Adelstein, Wireless Infrastructure Association, Chair, and Valerie Fast Horse, Coeur d’Alene Tribe, Vice Chair.

Whereas although Commissioner Charles Peterson has made a significant commitment of her time and effort, in addition to that of the staff of the Massachusetts Department of Telecommunications and Cable, to the work of the BDAC, the Model Code for States Working Group and its subcommittees, it is self-evident that the recommendations of the BDAC’s working groups and the BDAC will be determined based on a majority vote of the BIAS industry representatives;

Whereas on May 16, 2017, representatives of the National League of Cities (“NLC”) met with FCC Chairman Pai to “urge the Commission to increase the number and diversity of local officials on the BDAC to a level comparable with the number and diversity of industry officials” (see Letter to FCC regarding ex parte meeting; Angelina Panettieri, Principal Associate, Technology and Communications National League of Cities; dated: May 18, 2017);

Whereas on June 27, 2017, apparently in response to the request of the NLC, FCC Chairman Pai appointed City Councilman Andy Huckaba from the City of Lenaxa, Kansas as a member of the BDAC;

Whereas it is evident that the BDAC’s recommendations will have a significant effect on the course the FCC selects to promote broadband infrastructure deployment and public access to BIAS across the nation;

Whereas States and local governments have a progressive history of, and will continue to have a major role in, promoting and implementing BIAS deployment and access policies, programs, and projects across the country;

Whereas the BDAC is a potentially beneficial asset to the FCC, however, it should be recognized by the FCC that the composition of any federal advisory committee will necessarily impact the validity of its recommendations; *and*

Whereas it is preferable that the BDAC provide more balanced and better recommendations that reflect the views of a greater number of State and local governments, which is best facilitated by an increased number of State and local government entities represented on the BDAC; *now, therefore be it*

Resolved, that the Board of Directors of the National Association of Regulatory Utility Commissioners (“NARUC”), convened at its 2017 Summer Policy Summit in San Diego, California, urges the FCC to rekindle its partnership with the States through the work of the 706 Joint Conference to develop federal-State cooperative solutions that promote broadband infrastructure deployment and public access to BIAS across the nation, including addressing State/local issues such as access to rights-of-way, pole attachments, easements, and eminent domain authority; and be it further

Resolved, that NARUC urges the FCC to work cooperatively together with the States and local governments to identify existing federal and State regulatory and legal barriers to improve broadband infrastructure deployment and public access to BIAS across the nation and to effectuate this objective by increasing the membership of State and local government representatives on the Broadband Deployment Advisory Committee and its working groups to an amount that equitably balances with membership by BIAS industry representatives.

Sponsored by the Committee on Telecommunications on July 18, 2017
Adopted by the NARUC Board of Directors on July 19, 2017