

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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*In the Matter of* )

*Safeguarding and Securing* )  
*The Open Internet* )

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WC Docket No. 23-320

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**COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

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The National Association of Regulatory Utility Commissioners (“NARUC”) respectfully submits these comments to respond to the Federal Communications Commission’s (“FCC” or “Commission”) October 19, 2023, Notice of Proposed Rulemaking (“NPRM”) proposing to re-establish rules to preserve the openness of the Internet.<sup>1</sup>

Since 2002, through a series of resolutions,<sup>2</sup> NARUC has consistently supported the FCC’s efforts to preserve net neutrality on broadband access services. At the same time, NARUC has also pointed out Congress’s clear intent that State commissions retain authority in key areas.

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<sup>1</sup> See, *In the Matter of Safeguarding and Promoting the Open Internet*, WC Docket No. 23-230, (FCC, Adopted October 19, 2023; Rel. October 20, 2023), Notice of Proposed Rulemaking, FCC 23-83, online at: <https://docs.fcc.gov/public/attachments/FCC-23-83A1.pdf> (Adobe) or <https://docs.fcc.gov/public/attachments/FCC-23-83A1.docx> (Word); Published at 88 Federal Register 76048 (11/03/2023), at <https://www.federalregister.gov/documents/2023/11/03/2023-23630/safeguarding-and-securing-the-open-internet>.

<sup>2</sup> See, e.g., NARUC’s July 2014 *Resolution to Ensure Jurisdictional Bases for Open Internet Rules*, at: <https://pubs.naruc.org/pub/53A0DBEE-2354-D714-5170-60D7FD0C4152?> (“Encourag[ing] the Commission to rely strongly upon the authority conveyed by Section 706 . . .to support the adoption of open Internet rules that promote enhanced competition for broadband Internet access service and address potential market abuses, supplemented by authority provided by Titles I, II and III . . .subject to reasonable forbearance where conditions warrant.” Cf., July 2010 *Resolution Opposing Federal Preemption of States’ Jurisdiction over Broadband Internet Connectivity Service* at: <http://pubs.naruc.org/pub/53A0CFA5-2354-D714-51F8-A10975F79113>. (Since 2005, NARUC has consistently endorsed a “functional focus” model

NARUC represents the interests of State commissions that oversee, among other things, telecommunications utilities in the United States and U.S. Territories. The Association has been recognized both by Congress in several statutes<sup>3</sup> and consistently by Article III courts<sup>4</sup> as the proper entity to represent the collective interests of the State utility commissions.

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of jurisdiction that allocates State and federal regulatory responsibilities based on their core competencies. The resolution specifies that if the FCC chooses to adopt the “Third Way” to support Net Neutrality (an indeterminate legal theory ultimately rejected by the FCC), the agency should also: [1] Use the NARUC “functional focus-core competency” paradigm to analyze the federal State jurisdictional issues raised and [2] Assure nothing prejudices “States’ authority reserved under Section 253 . . . “to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard” consumers’ rights; and [3] Otherwise avoid an unlawful and inefficient application of forbearance authority under 47 U.S.C. §160 to [reservations of] State authority. *Cf.*, NARUC’s February 2010 *Resolution on Open Access to the Internet*, at: <http://pubs.naruc.org/pub/53A0CA34-2354-D714-51AF-79C55BE5994E> (Resolution supports (A) “the right of all Internet users, including broadband wireline, wireless, cable modem, and application-based users, to have access to and the use of the Internet . . . unrestricted as to viewpoint and . . . provided without unreasonable discrimination as to lawful . . . content; (B) adoption of [the 2009] NPRM principles (1) through (4) and (6);” and (C) adoption of principle (5) as long as it (i) is applied in a “technologically neutral fashion, (ii) recognizes that “there are differences in markets, bandwidth, spectrum resources, and other factors. . .,” (iii) specifies “what constitutes unreasonable restrictions or unreasonable discrimination,” (iv) gives “providers incentive for innovation and a fair return on their investment,” and (v) does not jeopardize “the goals of ensuring that all consumers have access to and use of affordable and reliable broadband services.” *See, also*, NARUC’s 2005 *Resolution on Responding to FCC NPRM on Broadband Customer Service*, at: <http://pubs.naruc.org/pub/53A12889-2354-D714-511A-A177996ACDB3> and 2002 *Resolution Regarding Citizen Access to Internet Content*, at: <http://pubs.naruc.org/pub/539EB994-2354-D714-51DA-4F4B002C90F7>

<sup>3</sup> *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 FCC 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.).

<sup>4</sup> *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), where, although standing was not specifically addressed, NARUC was the lead petitioner in a successful appeal involving DOE and the nuclear waste program; *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); *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

Clearly, Congress anticipated that States would continue to play a crucial role with respect to broadband deployment. Section 1302, 47 U.S. C §1302 (Section 706 of the 1996 Act), specifies that State Commissions “shall encourage the deployment” of “advanced services” using, among other things, “methods that remove barriers to infrastructure investment.” Similarly, Section 254, 47 U.S.C. § 254 (a), (b), and (f) makes clear that Congress anticipated that States, especially those with universal service and/or grant programs, would continue to play a crucial role in deployment of infrastructure and services. Moreover, 47 U.S.C. § 253 includes a specific and fairly broad Congressional reservations of State authority with respect to “telecommunications services.” Both high speed data services and dial up access to the internet were considered “telecommunications services” when the 1996 legislation became law.

Based on its resolutions, NARUC is already on record specifically:

- *Supporting the uniform adoption of the regulatory principles outlined in the original FCC 2009 notice, incorporated in the **NPRM** including the transparency rules;*<sup>5</sup>
- *Encouraging the FCC in the **NPRM** to “rely strongly upon the authority conveyed by Section 706 . . . to support the adoption of open Internet rules . . . supplemented by authority provided by Titles I, II and III of the Communications Act, subject to reasonable forbearance where conditions warrant;”*

NARUC has also pointed out that Congress specified specific State roles with respect to universal service, “advanced services,” and “telecommunications services.”

- *Urging the FCC to use a “functional focus-core competency” paradigm to analyze the federal-State jurisdictional issues raised by this NPRM; and*

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<sup>5</sup> *NPRM* at ¶ 116; ¶¶ 152 – 153 (Preventing Blocking of Lawful Content, Applications, Services, and Non-harmful Devices); ¶¶ 154 – 157 (Preventing Throttling of Lawful Content, Applications, Services, and Non-harmful Devices); ¶¶ 158 – 163 (No Paid Prioritization); ¶¶ 164 – 168 (General Conduct Rule); ¶¶ 169 – 186 (Transparency Rule);

- *Specifying that if the FCC utilizes Title II in tandem with “reasonable forbearance where conditions warrant,” that the agency must avoid an unlawful and inefficient application of forbearance authority to provisions that reserve State authority.*

In support of these positions, NARUC states as follows:

### ***Discussion***

***The clear text of the statute compels the FCC to return to both (i) classifying telecommunications facilities used to access the internet as common carriers and (ii) the most logical interpretation of Section 706.***

As noted earlier, NARUC is a long-time supporter of the adoption of the net neutrality regulatory principles incorporated in this *NPRM*.<sup>6</sup>

The *NPRM*, at ¶ 195, seeks comment on its proposal “to return to the Commission’s prior view and interpret sections 706(a) and (b) of the 1996 Act as grants of regulatory authority.” At ¶¶ 202-203, the *NPRM* seeks comment on specific sections of Title II as a basis for the rules. Earlier, in ¶¶ 83-24, the *NPRM* also seeks comment on the possible applicability of the so-called *major questions doctrine* to its proposal.

The standards Courts might apply on any review of final FCC action in this docket will support FCC action as long as the agency returns to both (i) classifying telecommunications providers providing internet access as common carriers and (ii) the most logical FCC interpretation of Section 706. This approach is consistent with both the text of the 1996 Act<sup>7</sup> and the FCC’s historical treatment of both high-speed services and internet access.

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<sup>6</sup> See note five, *supra*, and *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 (2010) (*2010 Open Internet Order*).

<sup>7</sup> *Telecommunications Act of 1996*, Pub.L. No. 104-104, 110 Stat. (February 8, 1996). (“Act” or “1996 Act”)

This approach is one of the reasons why a NARUC resolution specifically endorsed reliance on Section 706, 47 U.S.C. § 1302(a) and the return to the classification of high-speed data access services as a Title II service.

Currently, the United States Supreme Court has taken certiorari on two cases<sup>8</sup> that suggest the Court may overrule or limit the deferential standard of review announced in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (*Chevron*).<sup>9</sup> Oral argument is scheduled for January 17, 2024. Also, as per the ¶¶ 83-24 discussion, arguments have been presented in this proceeding that the *Major Question Doctrine* will apply to block the FCC’s return to the original classification of Digital Subscriber Line and similar services providing access to the Internet.

The potential standard of review questions raised by the Supreme Court’s review of the *Chevron Doctrine* and the application of so-called *Major Question Doctrine* are intertwined. Indeed, the *Major Questions Doctrine* was developed by the Supreme Court as a response to administrative excesses permitted by *Chevron* - another judge-made rule adopted in 1984. But, as discussed, *infra*, whether or not the Court adjusts or reverses the *Chevron* standard and whether or

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<sup>8</sup> See *Loper Bright Enterprises, et al. v. Raimondo, et al.*, (Case No. 21-5166), at: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-451.html> (“Whether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.”; which is scheduled to be argued in tandem with *Relentless, Inc, et al. v. Department of Commerce, et al.* (Case No. 22-12190, at: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-1219.html> - (which notes the question for review is the same as in *Loper*.)

<sup>9</sup> *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). (“When a court reviews an agency’s construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court . . . must give effect to the unambiguously expressed intent of Congress. . . .if the statute is silent or ambiguous . . . the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”)

not a court chooses to apply the *Major Questions Doctrine* – the FCC’s targeted classification is the best way to assure the final rules survive judicial review.

Though first referenced as “the major questions doctrine” by the Supreme Court in a June 2022 *West Virginia v EPA* opinion,<sup>10</sup> the Court has used that rationale to reject Agency overreach in *Chevron* cases tracing all the way back to at least 1994.<sup>11</sup> In *West Virginia*, Chief Justice Roberts provided a précis of the doctrine - outlining cases applying it back to the 2000 *FDA v Brown & Williamson* decision.<sup>12</sup>

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<sup>10</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_, 142 S. Ct. 2587, 2609 (2022). The Supreme Court struck down the EPA’s 2015 Clean Power Plan, holding that the agency lacked the authority to adopt the plan based on the *Major Questions Doctrine*, announcing: (“As for the major questions doctrine “label[ ],” *post*, at —, it took hold because it refers to an identifiable body of law that has developed over a series of significant cases all addressing a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted. Scholars and jurists have recognized the common threads between those decisions. So have we. See *Utility Air*, 573 U.S. at 324, 134 S.Ct. 2427 (citing *Brown & Williamson* and *MCI*); *King v. Burwell*, 576 U.S. 473, 486, 135 S.Ct. 2480, 192 L.Ed.2d 483 (2015) (citing *Utility Air*, *Brown & Williamson*, and *Gonzales*.)

<sup>11</sup> *MCI Telecommunications. Corp. v. AT&T.*, 512 U.S. 218 (1994)), *See also*, Bowers, Kate, *IN FOCUS: The Major Questions Doctrine* (Congressional Research Service November 2, 2022) available online at: <https://crsreports.congress.gov/product/pdf/IF/IF12077>

<sup>12</sup> *West Virginia v. EPA*, 142 S. Ct. 2587, 2607–09 (2022) (“Where the statute . . . confers authority upon an administrative agency, that inquiry must be “shaped, at least in some measure, by the nature of the question presented”—whether Congress in fact meant to confer the power the agency has asserted. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000). In the ordinary case, that context has no great effect on the appropriate analysis. Nonetheless, our precedent teaches that there are “extraordinary cases” that call for a different approach—cases in which the “history and the breadth of the authority that [the agency] has asserted,” and the “economic and political significance” of that assertion, provide a “reason to hesitate before concluding that Congress” meant to confer such authority. *Id.*, at 159–160, 120 S.Ct. 1291. . . In *Brown & Williamson*, for instance, the Food and Drug Administration claimed that its authority over “drugs” and “devices” included the power to regulate, and even ban, tobacco products. . . . We rejected that “expansive construction of the statute,” concluding that “Congress could not have intended to delegate” such a sweeping and consequential authority “in so cryptic a fashion.” . . . In *Alabama Assn. of Realtors v. Department of Health and Human Servs.* . . . we concluded that the Centers for Disease Control and Prevention could not, under its authority to adopt measures “necessary to prevent the . . . spread of ” disease, institute a nationwide eviction moratorium in response to the COVID–19 pandemic. We found the statute’s language a “wafer-thin reed” on which to rest such a measure, given “the sheer scope of the CDC’s claimed authority,” its “unprecedented” nature, and the fact that Congress had failed to extend the moratorium after previously having done so. . . . Our decision in *Utility Air* addressed another question regarding EPA’s authority—namely, whether EPA could construe the term “air pollutant,” in a specific provision of the Clean Air Act,

Generally speaking, in those cases, the court rejected agency claims of regulatory authority when (1) the underlying claim of authority concerns an issue of “vast ‘economic and political significance,’” and (2) Congress has not clearly empowered the agency with authority over the issue - that is, basically the relevant statutory text was ambiguous.<sup>13</sup> The cases highlight the idea that Congress rarely provides an extraordinary grant of regulatory authority through language that is modest, vague, subtle, or *ambiguous*. The doctrine is succinctly described by the Supreme Court as Congress “does not, one might say, hide elephants in mouseholes.”<sup>14</sup>

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to cover greenhouse gases. . . . Despite its textual plausibility, we noted that the Agency's interpretation would have given it permitting authority over millions of small sources, such as hotels and office buildings, that had never before been subject to such requirements. [and] declined to uphold EPA's claim of “unheralded” regulatory power over “a significant portion of the American economy.” . . . In *Gonzales v. Oregon* . . . we confronted the Attorney General's assertion that he could rescind the license of any physician who prescribed a controlled substance for assisted suicide, even in a State where such action was legal. The Attorney General argued that this came within his statutory power to revoke licenses where he found them “inconsistent with the public interest,” 21 U. S. C. § 823(f). We considered the “idea that Congress gave [him] such broad and unusual authority through an implicit delegation . . . not sustainable.” . . . Similar considerations informed our recent decision invalidating the Occupational Safety and Health Administration's mandate that “84 million Americans . . . either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense.” . . . We found it “telling that OSHA, in its half century of existence,” had never relied on its authority to regulate occupational hazards to impose such a remarkable measure. . . . All of these regulatory assertions had a colorable textual basis. And yet, in each case, given the various circumstances, “common sense as to the manner in which Congress [would have been] likely to delegate” such power to the agency at issue, *Brown & Williamson*, 529 U.S. at 133, 120 S.Ct. 1291, made it very unlikely that Congress had actually done so. Extraordinary grants of regulatory authority are rarely accomplished through “modest words,” “vague terms,” or “subtle device[s].” . . . Nor does Congress typically use oblique or elliptical language to empower an agency to make a “radical or fundamental change” to a statutory scheme. *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 229, 114 S.Ct. 2223, 129 L.Ed.2d 182 (1994). Agencies have only those powers given to them by Congress, and “enabling legislation” is generally not an “open book to which the agency [may] add pages and change the plot line.” E. Gellhorn & P. Verkuil, *Controlling Chevron Based Delegations*, 20 *Cardozo L. Rev.* 989, 1011 (1999) . . . Thus, in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us “reluctant to read into ambiguous statutory text” the delegation claimed to be lurking there. . . . To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to “clear congressional authorization” for the power it claims. *Ibid.*” (all internal citations omitted)

<sup>13</sup> *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

<sup>14</sup> *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468, 121 S. Ct. 903, 909–10 (2001) (citing *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231, (1994) and *FDA v. Brown & Williamson Tobacco Corp.*)

But opponents of the NPRM’s proposed actions face two difficult problems.

The first is that Courts, including the Supreme Court have never applied the *Major Questions Doctrine* before in this context – despite significant changes in regulatory treatment allegedly based on ambiguous statutory text.

The Supreme Court did not apply the doctrine the first time the FCC dramatically changed the scheme of regulatory oversight in the proceedings that terminated with the 2005 *National Cable and Telecommunications Association v. Brand X Internet Services (Brand X)*<sup>15</sup> decision. The District of Columbia Circuit (“D.C. Circuit”) also did not apply – and indeed, specifically rejected the application of the doctrine in its review of the 2010 *Open Internet Order*, finding, among other things, that “FCC regulation of broadband providers is no elephant, and section 706(a) is no mousehole.” *Verizon v. F.C.C.*, 740 F.3d 623, 639 (D.C. Cir. 2014). Similarly, a different panel of D.C. Circuit judges, a few years later, did not apply the doctrine to the FCC’s decision in the 2015 Open Internet order,<sup>16</sup> which reinstated the classification of these services to their pre-*BrandX* status in. Nor did another panel of the D.C. Circuit apply the doctrine apply when the FCC again reversed course in 2018.<sup>17</sup>

The second problem is - the very first FCC dramatic reclassification of a class of services previously considered a “telecommunications service” terminated in earlier cited *Brand X* decision. It is significant both that the *Major Question Doctrine* was not applied and *Chevron* deference allowed the agency action.

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<sup>15</sup> *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967, 976–77, 125 S.Ct. 2688 (2005).

<sup>16</sup> *United States Telecom Association v. F.C.C.*, 825 F.3d 674, 690 (D.C. Cir. 2016)

<sup>17</sup> *Mozilla v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).



Certainly, there was a case to be made that the *Major Question Doctrine* should have applied – which Justice Scalia pointed out in the opening paragraph of his dissent – citing to one of the first cases where the rationale appeared, that the FCC:

has once again attempted to concoct “a whole new regime of regulation (or of free-market competition)” under the guise of statutory construction. *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 234, 114 S.Ct. 2223, 129 L.Ed.2d 182 (1994). Actually, in these cases, it might be more accurate to say the Commission has attempted to establish a whole new regime of *non-regulation*, which will make for more or less free-market competition, depending upon whose experts are believed. The important fact, however, is that the Commission has chosen to achieve this through an implausible reading of the statute and has thus exceeded the authority given it by Congress.

*BrandX*, 545 U.S. 967, 1005, 125 S.Ct. 2688, 2713

Instead, the *BrandX* majority chose to give the FCC considerable *Chevron* deference, noting:

Some of the respondents dispute this conclusion, on the ground that the Commission's interpretation is inconsistent with its past practice. We reject this argument. Agency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework. Unexplained inconsistency is, at most, a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedure Act. (citations omitted) For if the agency adequately explains the reasons for a reversal of policy, “change is not invalidating, since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency.

*BrandX*, 545 U.S. 967, 981, 125 S.Ct. 2688, 2699 (2005)

The point?

If the *Major Question Doctrine* is applicable to high speed access to the internet, it— certainly should have been applied in the first instance in 2005 when the FCC took the first step to move away from the existing “telecommunications service” classifications for both DSL service and, of course, the competing service provided by cable companies via cable modem raised in

*Brand X*. If the doctrine were applied today, and logic prevails, the Court’s would require the FCC to revert to the status quo ante – which in this case is precisely what the FCC is proposing to do.

Such services, including dial-up internet access, were treated before the proceedings that lead to *Brand X*, as common carrier offerings. As the D.C. Circuit correctly pointed out in 2014, when Congress passed the 1996 Act

“it did so against the backdrop of the Commission's long history of subjecting to common carrier regulation the entities that controlled the last-mile facilities over which end users accessed the Internet.”

*Verizon v. F.C.C.*, 740 F.3d 623, 638 (D.C. Cir. 2014) (“*Verizon*”)

The treatment of these services as common carrier offerings predated the 1996 Act and continued for several years thereafter.

In addition, should the Supreme Court cut back on *Chevron* deference in the pending cases set for argument in January, that too supports the original classification of the subject services under Title II.

As the earlier cited *Brand X* quotes illustrate, the Supreme Court majority based its decision squarely on a very broad application of the *Chevron* doctrine. The dissent, authored by *Chevron* devotee Justice Scalia, suggested that the reading of the statute was “implausible” so that *Chevron* did not apply. Indeed, even Justice Breyer, concurring with the majority’s application of *Chevron*, noted that the Commission's decision to exempt cable broadband providers from Title II regulation was “perhaps just barely” within the scope of the agency's “statutorily delegated authority.”<sup>18</sup>

The NPRM’s tentative conclusion to return to a common sense reading of the statute should be adopted.

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<sup>18</sup> *Brand X* 545 U.S. 967, 1003, 125 S. Ct. 2688, 2712 (2005)

The return to the status quo ante is obviously permissible if the Chevron Doctrine survives review unscathed. All the existing case law indicates that is the case.

However if *Chevron* is rejected, then both the majority and the dissents in Brand X suggest that the *NPRM's* classification is required.

The FCC should, as outlined in the *NPRM*, apply the functional definition of “telecommunications service” in the statute. Use of the internet via high-speed connections (or even dial up) involves – on its face – the transmission between or among points specified by the user, of information of the user’s choosing. 47 U.S.C. § 153(50) This “telecommunications service” is offered “for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(54). This approach also clears up ambiguities over who qualifies to receive federal USF funds and what services are provided under 47 U.S.C. § 254 and § 214. As suggested in ¶¶ 70 -73, the best reading of the definitional provisions supports classification as a telecommunications service.

One final point, the previous analysis of *Chevron* and the *Major Questions Doctrine* also applies to the *NPRM's* construction of 47 USC § 1302(a) (1996), which specifies that the FCC and the States

“***shall*** encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

Congress didn’t say the FCC – and the States – may encourage deployment. It said “shall.” And the provision specifies an illustrative list of examples of the types of actions that can be taken.

The plain meaning of this text is obvious.

In one of the more concise and understated explanations of what Congress meant with this text, in a 2010 order, the Commission suggested it is reasonable to think Congress, in directing the Commission to undertake certain acts, “necessarily invested the Commission with the statutory authority to carry out those acts.” *Open Internet Order*, 25 F.C.C.R. at 17969 ¶ 120 (2010). NARUC agrees with the FCC’s 2010 analysis of the text and legislative history that supported its conclusion that § 706(a) constitutes an affirmative grant of regulatory authority. *Id.* at 17969–70 ¶¶ 119–121.

***The FCC should continue the partnership envisioned by Congress and set standards as a floor on State action.***

In ¶ 24, the FCC concludes that reclassification will put the agency’s ability “to preempt any inconsistent state law on substantially stronger legal footing” and seeks comment on that analysis. Later in ¶¶ 94-97, the FCC asks for which legal theories best support preemption of State laws.<sup>19</sup>

In 1996, Congress recognized the crucial partnership between the FCC and States on universal service issues – creating a structure that requires the FCC to work hand-in-glove with

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<sup>19</sup> In ¶ 95, the FCC notes it “expects that Commission decisions finding BIAS to be interstate for regulatory purposes to largely resolve possible arguments premised on the limitation on FCC authority over state communications services under section 2(b) of the Act that otherwise could arise here” That expectation might face some legal problems. The FCC has found that internet traffic is mixed, that is includes both interstate and intrastate traffic. It contends the traffic is inseverable. But mixed use and inseverability does not resolve the question of should the State be preempted, or even does the State rule or initiative conflict with federal law. The State has jurisdiction over the provider, because there are intrastate communications (47 U.S.C. §152(b)) traffic unless the FCC has an independent statutory basis for requiring preemption. Recall that Congress, in 47 USC 1302(a), requires states to promote the deployment of advanced services – and the FCC’s preemptive authority under Section 253 allows the FCC to target state requirements that directly affect *both interstate and intrastate services*. Both provisions indicate Congress believed States could establish requirements that affect interstate services that the FCC might have to address using Section 253. *Compare Qwest Corp. v. Scott*, 380 F.3d 367 (8th Cir. 2004) (States not preempted from service quality oversight of a mixed-use (with inseverable traffic) special access telecommunications lines assigned to the interstate jurisdiction. Case suggests intent is the touchstone.)

State commissions on the promotion of advanced services and other universal service programs.<sup>20</sup>

The FCC's best path forward is to take advantage of that partnership.

*Whatever legal authority the FCC chooses to rely upon to establish the final rules, it makes no sense to undermine enforcement of those rules. If the FCC makes a finding that they are required by the public interest, then they should be enforced.*

At a minimum, particularly given the FCC's staff and resource limitations, it makes sense to allow states, albeit those whose legislatures give or have given them the authority, to enforce the federal standards.

It is difficult to compose an argument that a particular rule or requirement is an FCC goal and required by the public interest, but that enforcement of the rule is not.

If the FCC paradigm makes sense, there is no reason to take measures to circumscribe its enforcement. In other words, there is no reason to take state "cops" off the beat.

And there are other policy reasons for taking a cooperative approach.

To its credit, the FCC sought comment in ¶ 95 of the NPRM on issues that permit consideration of a coordinated approach to oversight, asking, among other things:

[S]hould we identify in this proceeding issues where the Commission will decline to preempt state requirements and thereby share regulatory responsibility with the states, such as state privacy and consumer protection laws? For what issues, if any, is the Commission required to share regulatory responsibility with the states?

NARUC's answer to the first question is quite obviously "Yes."

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<sup>20</sup> Weiser, Philip, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U.L. Rev. 1692, 1694 (2001) (describing the 1996 Act as "the most ambitious cooperative federalism regulatory program to date"). Like the FCC, State commissions are affirmatively charged by Congress to "preserve and advance universal service," and to encourage deployment "of advanced telecommunications" to all Americans. See, 47 U.S.C. §254(b)(5) ("should be specific . . . federal and state mechanisms to advance universal service"); §254(f) (authorizing State programs); §251(f) (allowing States to exempt rural carriers from certain requirements); and §254(i) (requiring FCC and States to insure universal service at reasonable rates.)

As for areas where the FCC should share regulatory responsibility with the states, one NARUC member, the Nebraska PSC, makes several key points in their comments in this proceeding that directly support that approach:<sup>21</sup>

(1) the FCC should not inhibit ongoing and substantial State investments in broadband by restricting its oversight of carrier expenditures of those funds or of the service quality of services provided using those funds; [] To avoid wasteful litigation, at a minimum, “the FCC should make clear that its proposed actions will not preempt state authority over service quality and other accountability measures put in place as a condition of receiving state universal service support or broadband grant funding.”<sup>22</sup>

(2) State and local oversight of 911 service providers will continue to be critical to ensure a robust, resilient, and reliable NG911 system. Therefore, local government entities must retain jurisdiction to investigate and seek redress for NG911 telecommunications failures that may not be deemed significant enough to warrant federal action, but still have a serious impact.<sup>23</sup>

Indeed, in several cases in the past, NARUC member investigations of 911 outages have been a catalyst for FCC action.<sup>24</sup>

For at least the last 15 years, NARUC has consistently suggested an analytical approach to overlapping federal and state oversight issues. The July 2010 NARUC resolution referenced *supra* urges the FCC to utilize that same framework to proposals involving Title II and forbearance. NARUC suggests that the FCC should examine/compare its own and State “core competencies”

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<sup>21</sup> Comments of the Nebraska Public Service Commission, filed in WC Docket 23-320 (December 12, 2023), available online at: <https://www.fcc.gov/ecfs/document/121230498488/1> (citation omitted).

<sup>22</sup> Id. at p. 3.

<sup>23</sup> Id. at p. 5

<sup>24</sup> See, e.g., December 2, 2014 Washington Utilities and Transportation Commission Press Release: CenturyLink facing (\$2.9 Million in) Penalties for Statewide 911 Outage, available online at: <http://www.utc.wa.gov/aboutUs/Lists/News/DispForm.aspx?ID=291>; January 17, 2013 Commonwealth of Virginia, State Corporation Commission, Staff Report of Final Findings and Recommendations, at: [http://media10.washingtonpost.com/wapo\\_generic/media/document\\_cloud/document/pdf/PUC-2012-00042\\_1-17-13.pdf](http://media10.washingtonpost.com/wapo_generic/media/document_cloud/document/pdf/PUC-2012-00042_1-17-13.pdf).

and *maintain* the existing dual cooperative federal-State structure for any needed oversight that the Telecommunications Act clearly contemplates.

Any practical federal framework revision should, as that 2010 resolution suggests, leverage the relative resources of all jurisdictions without inhibiting *Congressionally-sanctioned* State efforts to either (i) promote the deployment of advanced infrastructures (47 U.S.C. § 1302(a) (§706)) and universal service (47 U.S.C. § 254) through State-based programs or (ii) protect consumers, competition, and the public health and safety ((47 U.S.C. § 253(b) & § 332(c)) in the respective federal and State jurisdictions. It makes no sense for the FCC to undermine state oversight and restrict consumer (and perhaps even some competitors’) avenues for relief.

Where the FCC finds existing State core competencies and the need for any (State or federal) oversight, the only rational way to proceed is to share jurisdiction – or more precisely avoid pre-empting existing State authority. There have been FCC-State models<sup>25</sup> that have

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<sup>25</sup> State and Federal cooperation on “slamming issues”, 47 U.S.C. § 258 (1996), provides a perfect case study illustrating the practical benefits of leveraged/more effective enforcement and reduced consumer confusion inherent in this framework. The FCC by Order (FCC 00-135) recognized that States should have the ability, if they choose, to mediate slamming complaints received from consumers within that State. It also acknowledged individual States have unique processes, procedures, and rules regarding slamming complaints. Pursuant to the revised rules, States were able to “opt-in” to become the primary forums for resolving consumer’s slamming complaints. Although Congress limited the FCC’s flexibility somewhat, the agency did not take a “cookie cutter” approach to its rules. Rather, the FCC provided needed flexibility to the States to address unique fraudulent activities by establishing the regulatory floor and allowing the States to establish more stringent rules or the regulatory ceiling—particularly in the area of enhanced penalties. Initially, thirty-seven States opted-in to the FCC’s approach. There is no question that oversight of slamming issues was enhanced through collaborative Federalism. *See, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999), motion to dissolve stay granted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA 00-2163 (rel. Sept. 25, 2000); Erratum, DA 00-

generated successful outcomes. The FCC first sets minimum standards and then leaves States with the flexibility to address novel/variations of a particular abuse. Typically, with consumer protection measures, it makes sense to allow States to impose more protective measures, as well as enhanced fines or penalties.

NARUC's July 2010 resolution specifically references the core competency of States with respect to consumer protection. States commissions excel at delivering responsive consumer protection, assessing market power, and providing fact-based arbitration/adjudication. States are also the long heralded "laboratories of democracy"<sup>26</sup> for encouraging availability of new services and meeting policy challenges at the grassroots level. State involvement leverages enforcement efforts and often provides faster resolution for consumers. States are almost always better positioned to respond. Practically, State authorities are often the first stop for consumers seeking assistance with a telecommunications-related problem and, unlike the FCC which must respond to consumers from fifty States, each State government is only responsible for complaints arising within its borders. Moreover, any agency effort to impose blanket preemption of State telecommunications specific rules, assuming the Courts agree there is a statutory basis for such actions, *can only restrict consumer redress in the future*. While federal standards provide a useful baseline for regulations in areas involving established abuses, broad preemption would leave

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292 (rel. Oct. 4, 2000); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Order, 16 FCC Rcd 4999 (2001); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003).

<sup>26</sup> Justice Brandies, dissenting: "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." *New State Ice, Co. v. Liebmann*, 285 U.S. 262, 311 (1932).



consumers with untenable choices when new abuses arise. Even in established areas, federal rules should recognize that novel issues and related abuses will arise and build in flexibility to allow States to act.

An effective, pragmatic approach to federalism, such as the framework suggested above, will recognize and take advantage of these obvious State strengths. The 2010 resolution specifies that, given these State competencies “[a]ny new regulatory [broadband] framework should allow the States to perform a strong consumer-focused role, and in particular ensure that States are able to:

- Provide a local venue for investigation, alternative dispute resolution and prompt and efficient resolution of both intercarrier disputes and consumer-to-company disputes;
- Investigate adequately and take enforcement actions against violations of State laws regarding deceptive, misleading or fraudulent business practices;
- Maintain basic consumer protections such as the terms and conditions of service, contract disclosures, quality of service standards and reliable E911 services;
- Initiate consumer education efforts, in cooperation with the FCC, to properly inform consumers of their rights; and
- Ensure that the special needs of customers are met through programs such as distribution of specialized equipment, Lifeline and Link-up and Relay services.”

Against that statutory backdrop, the FCC and the State commissions have jointly promoted competition in telecommunications and broadband services. Through Joint Boards, Task Forces, and advisory bodies we have, *inter alia*, moved to streamline and assure elements of accountability for various aspects of the federal universal service programs and jointly worked towards improving the deployment of emergency communications. NARUC believes all these mechanisms should continue to have a role across the communications ecosystem.

One final note with respect to legal theories that allow the FCC to restrict state activity. One theory that can be easily ruled out is field preemption. In field preemption, courts infer an intention to preempt state law if the federal regulatory scheme is so pervasive as to "occupy the field" in that area of the law, i.e. to warrant an inference that Congress did not intend the states to supplement it. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). It is pretty obvious that field preemption is inapplicable in this circumstance as the FCC's citations in ¶ 95 themselves make clear. In most of the cited provisions referenced as a basis for preemption, Congress also included provisions explicitly preserving state authority.<sup>27</sup> For example, the FCC cites to the provision that provides it arguably its strongest basis for preempting state regulations: Authority under 47 USC § Section 253 to preempt state laws that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate [telecommunications service](#)." But that section also specifies in part (b) that:

"Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, 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."

This is a specific instruction from Congress. It allows States to impose on a competitively neutral basis the requirements necessary to preserve universal service, protect public safety, and ensure service quality.

Given the earlier referenced mandatory charge in 47 USC § 1302(a) for States to promote the deployment of advanced services, and the instruction in 47 USC § 254 for state programs, it is

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<sup>27</sup> Other provisions cited in ¶ 95 as a basis for preemption – provisions which undermine a finding of field preemption: "section 706," which mandates States join the FCC in promoting the deployment of advanced services, "section 332(c)," which specify States retain jurisdiction over other terms and conditions of certain wireless carrier services, "section 254" which specifies States should implement their own state universal programs while limiting the State funding mechanism).

not at all clear of the scope of the FCC’s preemptive power – which necessarily must be linked to another statutory duty or goal imposed by Congress.

***The Statute does not permit the FCC to apply forbearance to provisions of the Act that preserve State authority.***

NARUC’s July 2014 resolution specifies that the FCC could engage in reasonable forbearance under Section 10 “where reasonable conditions warrant.”

NARUC has not taken positions on what provisions of the Act might be an appropriate target for forbearance.

However, we have taken an unequivocal position on provisions that *cannot* be the subject of a forbearance proceeding – Congressional reservations of State authority – or more broadly – any provision that does not impose obligations on carriers.

It is not apparent from the NPRM that the FCC is contemplating forbearance with respect to such provisions. But still, this is not an academic exercise. In earlier dockets raising the possible application of Title II to broadband internet access services, both the FCC and numerous commenters raised the question of whether the forbearance authority permits the FCC to forbear from provisions of the statute *that do not directly impose obligations on carriers – with specific references to several provisions preserving State authority.*”

The short answer to that question is “no.”

At the heart of inquires about forbearance, and in particular questions of residual State authority,<sup>28</sup> is the question: Did Congress actually intend for the FCC to be able to selectively

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<sup>28</sup> In the 1996 Act, Congress’s intent to preserve State authority is repeatedly emphasized. See 47 U.S.C. § 261 (Preserving existing State regulations and allowing States to prescribe new rules.); 253(b) (preserving “the ability of a State to impose . . . requirements necessary to preserve and advance universal service . . . and safeguard the rights of consumers”); 254(i) (directing States to ensure that “universal service is available at rates that are just, reasonable, and affordable”); 153(41) (recognizing State “regulatory jurisdiction with respect to intrastate operations”); 601(c), codified in notes to § 152; and 706(c), codified

reallocate *continuing* federal-State jurisdictional responsibilities based on the authority granted in Section 10 (47 U.S.C. § 160(a))?

Congress clearly did not.

The plain language of the Act – as well as the legislative history – is not susceptible to such an interpretation. Section 10 specifies that the FCC can only forbear from statutory provisions (or FCC regulations) that the FCC “appl[ies] to a telecommunications carrier or a class of telecommunications carriers.”

The FCC does not in any sense “apply,” for example, Section 214(e)(2)’s reservation of State authority to designate ETCs to carriers. Congress did. The FCC does not “apply” the Section 706 and 254 duties for both the FCC and States to assure universal service and promote advanced services to carriers. Congress did.

Similarly, the FCC does not “apply” Section 253 in any sense – including its specific reservations of State authority – to carriers. It applies Section 253 to State and local laws. If the FCC could forbear from such provisions, it could also presumably forbear from the requirements in Section 10 that require it to make certain public interest findings before it chooses to forbear or to reject a forbearance petitions – a ludicrous suggestion.

This interpretation is buttressed by the Act’s citations to two “requirements” the statute specifies the FCC cannot forbear from applying “to telecommunications carriers” until they are “fully implemented” (47 U.S.C. § 160(d)). Both are quite clearly requirements that are imposed upon carriers. One - § 251(c) is a “subpart” of a provision – that only lists requirements on carriers.

This interpretation is also backed up by the limitation language in § 160(e). Under subpart (e), if the FCC forbears from “a provision of this chapter,” then a State cannot apply to a carrier or

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in notes to § 157, (establishing cooperative paradigm where both State and federal authorities are to encourage the deployment of advanced telecommunications capability).

enforce the same Telecommunications Act provision against a carrier either. The references are logically linked to the new duties imposed on carriers by the Act. States do not “continue to apply or enforce” substantive delegations or reservations of either FCC or State authority in the statute. If this language referencing enforcement of specific provisions of the Act were not clear enough, the legislative history of subsection (e) removes all doubt. See, Telecommunications Act of 1996, *House Conference Report No. 104-458*, 1996 U.S. Code Cong. and Adm. News 10 (January 31, 1996), at page 185, which notes, *inter alia*, “This new subsection is not intended to limit or preempt State enforcement of State statutes or regulations.”<sup>29</sup>

*Other issues:*

In NPRM ¶ 44, the FCC seeks comment on whether reclassification can serve to enhance the Commission’s authority to support consumer privacy by combating illegal robocalls and robotexts specifically noting that “many illegal robocalls are transmitted via VoIP networks.” The focus is apparently on internet specific and Over-the-Top VoIP communications. Still reclassification of BIAS services makes it impossible for the FCC to continue to imply that carrier-based VoIP services provided to the public at large for a fee are anything but Title II “telecommunications services.” The FCC has a petition pending before it now to finally specify

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<sup>29</sup> However, even if one assumes arguendo, a Court might find forbearance of § 253 and related substantive reservations of State authority are permissible, the FCC has no record that justifies “forbearance” sui sponte of “applying those sections.” Section 253 allows the FCC to preempt certain State laws, but specifies in part (b) that:

“Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, 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.”

The only logical reason the FCC could consider forbearance of a statutory provision that gives that agency explicit and apparently fairly broad authority to preempt State laws on a case-by-case basis, has to be to eliminate these Congressionally-mandated reservations of State authority. However, there is currently no record of State infringements that could justify the public interest and other required findings under Section 160(a) that are prerequisites for forbearance.

the classification of VoIP services. If final action in this proceeding leads to an FCC order confirming the regulatory status of VoIP providers, obviously the FCC would not have to rely on ancillary jurisdiction when dealing with VoIP providers. In other words, the authority for FCC action would be on firmer ground.

## **Conclusion**

NARUC requests that any final rules in this proceeding reflect the foregoing comments.

Respectfully submitted,

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**DATED: December 14, 2023**

## ***Appendix A - Resolution to Ensure Jurisdictional Bases for Open Internet Rules***

**WHEREAS**, In a Resolution adopted at its 2010 Winter Meeting in Washington, D.C., the National Association of Regulatory Utility Commissioners (NARUC) stated that broadband access to the Internet profoundly affects the lives of Americans and that limiting, or otherwise degrading broadband access for users of the Internet, such as by blocking Voice-over-Internet-Protocol (VoIP) applications, denying access to political content, or implementing technical measures that degrade the performance of peer-to-peer software distributing lawful content has become widely agreed upon as an unfair practice and may reduce the Internet's value to consumers; *and*

**WHEREAS**, In a Resolution adopted at its 2002 Annual Convention in Chicago, Illinois, NARUC concluded that the restriction of user access to the Internet and its effect on an informed public is an issue of real significance to Americans; *and*

**WHEREAS**, In the 2002 Resolution, NARUC endorsed the right of all Internet users, including broadband, Wireline, and cable modem users to (1) have access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications); and (2) receive meaningful information regarding the technical limitations of their broadband service; *and*

**WHEREAS**, On May 15, 2014, the Federal Communications Commission (Commission) released a "Notice of Proposed Rulemaking" (NPRM) ( In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, Rel. May 15, 2014, FCC 14-61, ¶¶ 1, 3, at 3), in which the Commission commented that these benefits of the Internet "flow, in large part, from the open, end-to-end architecture of the Internet, which is characterized by low barriers to entry for developers of new content, applications, services, and devices and a consumer-demand-driven marketplace for their products," but also stating that "there are no legally enforceable rules by which the Commission can stop broadband providers from limiting Internet openness;" *and*

**WHEREAS**, In the NPRM, the Commission proposed rules that it states are intended to preserve an open Internet; *and*

**WHEREAS**, The Commission also proposed to enhance transparency rules that require providers of broadband Internet access service to publicly disclose accurate information regarding network management practices, performance, and commercial terms of the service, which would include information related to blocking, throttling, and pay-for-priority arrangements; *and*

**WHEREAS**, In the NPRM, the Commission solicited comments upon the nature and extent of the Commission's authority to adopt open Internet rules, including the scope of the jurisdiction under Title II of the Communications Act and Section 706 of the Telecommunications Act of 1996 , 47 U.S.C. § 1301 et seq. ; *and*

**WHEREAS**, The Commission previously found that Title II provides the Commission express authority to implement, for telecommunications services, rules furthering universal service, privacy, access for persons with disabilities, and basic consumer protection (Framework for

Broadband Internet Service, GN Docket No. 10 - 127, Notice of Inquiry at ¶52); *now, therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2014 Summer Committee Meetings in Dallas, Texas , continues to support adoption of rules that protect an open Internet, consistent with NARUC’s 2002 and 2010 Resolutions, particularly since business and residential consumers, public safety, and government are relying more heavily on access to the Internet today and such access to an open Internet supports more competitive choices for those consumers; *and be it further*

**RESOLVED**, That NARUC supports the expansion of the transparency rules proposed by the Federal Communications Commission as full disclosure of accurate information to the public and providers of Internet access service is necessary to enable all consumers to make informed choices and to enable all market participants to understand service limitations; and be it further

**RESOLVED**, That NARUC encourages the Commission to rely strongly upon the authority conveyed by Section 706 of the Telecommunications Act of 1996 to support the adoption of open Internet rules that promote enhanced competition for broadband Internet access service and address potential market abuses, supplemented by authority provided by Titles I, II and III of the Communications Act, subject to reasonable forbearance where conditions warrant.

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*Passed by the Committee on Telecommunications.  
Adopted by the NARUC Board of Directors, July 16 , 2014*