

Second Resolution on the REA's Proposed Rules

WHEREAS, On December 20, 1993, the Rural Electrification Administration (REA), in response to the Rural Electrification Loan Restructuring Act of 1993 (RELRA), proposed, via Federal Register notice, to permanently implement an interim rule which would, inter alia, require that a State-derived telecommunications modernization plan be established before any telephone company in the State could be eligible for REA loans; and

WHEREAS, In response to the REA's request for comments, on February 18, 1994, 81 entities filed, including twenty-two individual State public utility commissions (PUCs), the New England Conference of PUCs and the Consumer Advocates Offices of six States; and

WHEREAS, Virtually all of these parties opposed at least some aspect of the REA's detailed approach as an unwarranted departure from Congressional intent; and

WHEREAS, Less than three weeks later, on March 2, 1994, NARUC passed its first "Resolution on REA's Proposed Rules" highlighting NARUC's concerns with the REA's proposed rules; and

WHEREAS, These concerns on the original proposed REA rules include, inter alia, that

- o Modernization plans must apply to all telecommunications providers in a State, even if they are not REA borrowers; and
- o Exceeding the requirements of the RELRA, effectively mandating through the modernization plan ubiquitous deployment of new technologies and services; and
- o Requirements to ubiquitously deploy services and technologies is estimated to exceed \$400 billion and cause engineering difficulties; and
- o The costs would primarily fall on the local customer under the existing FCC separation rules; and
- o Appears to usurp FCC and State jurisdictional authority through policies mandating (a) elimination of zone and mileage charges, (b) installation of new facilities and technologies, while leaving responsibility for the associated cost recovery to the States and the FCC, and (c) "flexible" tariffs for distance learning and medical imaging applications;

WHEREAS, In response to the resolution, NARUC has actively sought changes to the REA proposal via oral presentations to the Honorable Bob J. Nash, Undersecretary, Small Community and Rural

Development on April 29, 1994; the Honorable Wally B. Beyer; REA Administrator on May 12, 1994; Robert Peters, Assistant Administrator - Telephone Program; Matthew P. Link, Director - Rural Telephone Bank Management Staff; Ms. Barbara Eddy, Telephone Program Staff, and others, and via March 16, 1994 ex parte written submissions to these same individuals, as well as to the Honorable Mike Espy, Secretary of Agriculture, the Honorable Frederick G. Slabach, assistant secretary for Congressional Relations; the Honorable James S. Gilliland, General Counsel, the Honorable Bonnie L Luken, Deputy General Counsel; and Michael W. Kelly, Assistant General Counsel. In addition, on March 16, 1994, NARUC petitioned the REA to revise its rules; and

WHEREAS, It appears, in partial response to these efforts that the REA will soon be issuing a substantially revised proposal; now, therefore, be it

RESOLVED, That the NARUC Executive Committee, convened at its 1994 Summer Meetings in San Diego, California, reiterates its support for the REA's objective to "promote improvements in the nation's public switched network" provided it properly balances the deployment of new investment with the revenues required to recover deployment costs in rural areas; and be it further

RESOLVED, That NARUC emphasizes both its legitimate concerns and our desire to work cooperatively with the REA and Congress in developing rules that will help achieve, not detract from, our shared goals; and be it further

RESOLVED, That the REA proposed rules be modified to limit their application to REA borrowers under the provisions of the RELRA, and the remaining telecommunications requirements be left up to the appropriate State and Federal commissions; and be it further

RESOLVED, That the REA's proposed rules be modified to allow for more jurisdictional flexibility in the adoption of the modernization plans with regard to technology, demand, cost (including premature retirement of plant), and the effect on universal service; and be it further

RESOLVED, That the REA's proposed rule be modified to define goals rather than mandates, and address specific services, products, or functionalities rather than to address required technologies; and be it further

RESOLVED, That the REA reissue its proposed rules as interim rules and solicit further comment before they are enacted as final rules; and be it further

RESOLVED, That the NARUC General Counsel be directed to file in the expected comment cycle in accord with both this and our previous March 1994 resolution, and, to the extent necessary, seek conforming legislative changes in Congress by conveying NARUC concerns to individual members of Congress.

Sponsored by the Committee on Communications

Adopted July 27, 1994

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