

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20544**

<i>In the Matter(s) of</i>)	
)	
<i>Petition of USTelecom for Forbearance</i>)	WC Docket 18-141
<i>Pursuant to 47 U.S.C. § 160</i>)	
<i>To Accelerate Investment in Broadband</i>)	
<i>And Next Generation Networks.</i>)	
)	

**MOTION OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
FOR EXTENSION OF TIME**

Pursuant to Rule 1.46 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules of Practice and Procedure, 47 C.F.R. § 1.46 (2010), the National Association of Regulatory Utility Commissioners (NARUC), on behalf of its member commissions, respectfully files this motion requesting an expansion of the comments cycle announced in the FCC’s May 8, 2018 Public Notice DA 18-475 captioned *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*.

With atypical expedition,¹ the subject May 4th filed [USTelecom Petition for Forbearance](#),² was stamped accepted/received on May 7th, and the notice setting the comment cycle was a late release on the very next day - May 8th. Given the breadth of issues covered in the petition, the notice sets a fairly short comment cycle – placing the deadline for filing oppositions (or comments) on the USTelecom Petition at June 7, 2018, with any reply comments due on June 22, 2018.

Not surprisingly, the petition has already drawn three requests for the FCC to extend the comment cycle. On May 11, 2018, INCOMPAS filed a motion³ urging the FCC to extend the time for initial comments/oppositions to 60 days, through and including August 6, 2018, with reply comments due 30 days later, on September 5, 2018. The same day, the California Association of Competitive Telecommunications Companies (CALTEL) filed a separate *Motion for Extension*

¹ See, May 11, 2018 *INCOMPAS Motion for Extension*, WC Docket No. 18-141, at p. 6-7, suggesting the FCC has, in practice, timed the release of notices on forbearance petitions to give parties considerably more than the 34 days from filing allotted in this case, available online at: <https://ecfsapi.fcc.gov/file/1051110221795/INCOMPAS%20Motion%20for%20Extension%20of%20Time%205-11-18.pdf>.

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018, stamped “accepted/filed” May 7, 2018) (*USTelecom Petition*), available online at: <https://ecfsapi.fcc.gov/file/105080586602574/18-141.pdf>.

³ See, May 11, 2018 *INCOMPAS Motion for Extension*, in WC Docket No. 18-141; See also the May 11, 2018 *INCOMPAS Motion to Dismiss*, in WC Docket No. 18-141, online at: <https://ecfsapi.fcc.gov/file/10511259311842/INCOMPAS%20Motion%20to%20Dismiss%205-11-18.pdf>.

and Protective Order seeking similar relief.⁴ The following Monday, May 14, 2018, the Midwest Association of Competitive Communications (MACC) filed a letter, citing the potential impact on competitive carriers, filed a letter in support of the INCOMPAS request.⁵ NARUC expects *at least* two more extension requests to be filed.

The issues raised in the *USTelecom Petition* are complex and will, without question, impact, at some level, both competition and State regulatory authority and options. The INCOMPAS, CALTEL, and MACC requests seek the absolute minimum extension necessary to permit a full analysis and response to the issues raised by the *USTelecom Petition*.

For the reasons discussed *infra*, NARUC respectfully requests a minimum extension of 60 days for the comments, through and including August 6, 2018 with reply comments due 30 days later, on September 5, 2018.

In support of this request, NARUC states as follows:

⁴ See May 11, 2018, California Association of Competitive Telecommunications Companies *Motion for Extension of Time and Protective Order*, in WC Docket No. 18-141, at: <https://ecfsapi.fcc.gov/file/105122383125936/CALTEL%20Motion%20for%20Extension%20and%20Protective%20Order%20WC%2018-141%20%20%205-11-18.pdf>. Note, the Association filed a revised motion on May 15, 2018.

⁵ See May 14, 2018 *Letter to Marlene H. Dortch, FCC Secretary, from Paula Foley, Midwest Association of Competitive Communications*, in WC Docket No. 18-141, at: https://ecfsapi.fcc.gov/file/1051469858023/MACC%20Ltr%20in%20Support_051418.pdf.

I. NARUC AND ITS INTERESTS

NARUC, founded in 1889, is the national organization representing the Congress referenced from the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These commissions are charged with regulating the rates and conditions of service associated with the intrastate operations of telephone utilities. NARUC is recognized by Congress in several statutes⁶ and consistently by the Courts⁷ as well as a host of federal agencies,⁸ as the proper entity to represent the collective interests of State utility commissions. In the Federal

⁶ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this 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).

⁷ See, e.g., *U.S. 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) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commission’s of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *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. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

⁸ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

Telecommunications Act,⁹ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.¹⁰

NARUC's members have an obvious interest in this proceeding and will be directly affected by the FCC's disposition of this petition irrespective of the outcome. Indeed, the USTelecom Petition specifies, at pp. 24 -26, it is seeking forbearance from “Section 252(d)(3) to the extent that provision would authorize states to re-impose unbundling and resale obligations from which the Commission has otherwise forbore.” In footnote 69 it points to the need to also forbear from the “related 251 and 252 obligations” specifying States should have no arbitration oversight “with respect to Section 512(c)(3) and (4) obligations” that apply only to incumbent carriers. Adding “It is important, however, to ensure that other policy makers cannot use surviving Section 251 or 252 powers to unlawfully replicate the Section 251(c)(3) and (4) regimes.” The “other policy-makers” referenced here are NARUC's member commissions. Whatever one's views of the *USTelecom*

⁹ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

¹⁰ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; 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.)

Forbearance Petition, the requested relief in this proceeding specifically targets State commission authority.

This targeting has not gone unnoticed among NARUC members.

At least two of NARUC's members are currently planning to file both comments and separate extension requests in this docket. Indeed, in the lead up to a regular conference call last Friday on telecommunications issues, it became clear not only that more than one State was going to file on the petition, but that, given the issues raised, several others are seriously considering the possibility.

All were concerned that the current comment cycle would not permit them adequate time to consider the petition. Part of the discussion focused on concerns that some NARUC members will be unable to draft their comments and get them through the State approval process in time to meet the deadline. Given the scope of the relief requested, the numerous studies relied upon, compilation and analysis of the relevant data to respond to the petition will require significant time and resources to complete. All agreed that any entity responding would need more time to compile a useful response. As a result, on that Friday call, the undersigned was specifically instructed to seek an extension of the comment cycle in this proceeding.

II. NEED FOR RELIEF

Although the Commission's *Forbearance Procedures Order*¹¹ states that the Commission will "typically allow 30 days for comments and 15 days for replies," it also states that it would use "longer cycles for more complex petitions."

The USTelecom Petition is definitely "complex." The requested forbearance is broad, and the legal and factual issues raised are myriad and complicated. As the INCOMPAS, CALTEL, and MACC requests indicate, the time between the notice and the comment deadline simply does not give any interested party adequate time to prepare a proper response, much less allow NARUC members to generate an adequate response and get it through State required clearance procedures.

As INCOMPAS accurately, points out in its petition, at 3:

Interested parties do not have nearly enough time under the current comment cycle to address all of the questions raised by the Petition and its economic analysis, and to prepare necessary comments in order to assist the Commission in its decision-making. The complexity of these issues calls for careful scrutiny by the Commission and interested parties of the economic analysis, assumptions and data that underlie the Petition. To do that, parties need significantly more time than is allotted under the current comment cycle to marshal the data and economic expertise to evaluate the model presented in the Petition, to study the potential impacts to competition, and to assess the effect of the forbearance sought on "charges, practices, classification, or regulations"; consumer protection,

¹¹ *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, FCC 09-56, 24 FCC Rcd. 9543, ¶ 29 (2009) ("Forbearance Procedures Order").

and the public interest as required under Section 10 of the Communications Act. {Footnotes omitted}

States have fewer staff and less resources than the other entities that have already sought extensions in this cycle. On top of that, States have clearance procedures that lengthen the time required to make a response. For example, in California, the commission is specifically required by Cal. Pub. Util. Code § 716 (West) to file comments on forbearance petitions with respect to Sec. 251(c)(3) and Sec. 271 (c)(2)(B)(ii). The state's interest in a thorough analysis of these petitions is reflected § 716(b) which requires the commission to collect data on the affected California metropolitan statistical areas, that includes, but is not limited to "separate data on competitive options for residential, business, and wholesale services." The current time frame certainly does not appear sufficient for the collection of any data or any extensive analysis, much less a multilevel approval process.

The *USTelecom Petition* (i) obviously raises issues of concern to the NARUC's state commission membership and (ii) if adopted will unquestionably impact upon these members' ability to adhere to their respective mandates to serve the public interest. No other participant's comments can adequately represent the viewpoint of those NARUC's members that plan to file in this proceeding. This viewpoint is necessary to fully illuminate the issues raised by this proposal and assure a complete record upon which to base a decision.

Hence, granting the requested extension will serve the public interest by ensuring State commissions continued full participation and a better/more complete record for FCC Commissioners consideration.

In prior cases, the FCC has found that, while it does not routinely grant extensions of time, as stated in 47 C.F.R. § 1.46(a), “it has done so when necessary to ensure that the Commission receives full and informed responses and that affected parties have a meaningful opportunity to develop a complete record for the Commission’s consideration.”¹²

NARUC respectfully submits that here, too, an extension request is necessary to ensure that the Commission receives full and informed responses and that industry-wide affected parties have a meaningful opportunity to develop a complete record for the Commission’s consideration.

¹² *In the Matter of Facilitating the Deployment of Text-to-911 and other Next Generation 911 Applications, Framework for next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, *Order*, DA 11-2049, ¶4 (released Dec. 21, 2011 (citations omitted). (*citing* *In the Matter of Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, WC Docket 05-196, *Order*, 25 FCC Rcd 16879, 16880 ¶¶ 3-5 (PSHSB 2010) (granting 14-day extension to permit various Communications Security, Reliability, and Interoperability Council (CSRIC) working groups to develop and finalize recommendations relating to E911 and NG911); *Wireless Telecommunications Bureau Grants Extension of Time to File Reply Comments on Commercial Mobile Radio Services Market Competition, Public Notice*, WT Docket No. 09-66, DA 09-1419 (WTB rel. June 24, 2009) (granting 14-day extension for “development of a complete record on the issues.”)).

IV. CONCLUSION

Accordingly, because of the critical importance of the issues raised by the *USTelecom Petition*, and because of the clear need for additional time to adequately review and get clearances to address those issues, NARUC respectfully requests the FCC grant the requested extension.

Respectfully Submitted,

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May 16, 2018