

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

California Public Utilities Commission,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 21-1016
)	
Federal Communications Commission)	
And the United States of America)	
)	
<i>Respondents.</i>)	

MOTION TO INTERVENE IN SUPPORT OF PETITIONER

Pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure, D.C. Circuit Rules 15(b) and 27, and 28 U.S.C. § 2348, the National Association of Regulatory Utility Commissioners (“NARUC”) moves to intervene in the above-captioned proceedings.

Petitioner the California Public Utilities Commission (“CPUC”) seeks review of the *Order on Remand* released by the Federal Communications Commission (“FCC” or “Commission”) in the proceeding captioned: *Restoring Internet Freedom; Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42, 17-108, 17-287, FCC 20-151 (rel. October 29, 2020), published at 86 Federal Register 994 (January 7, 2021).

NARUC is a quasi-governmental nonprofit organization founded in 1889. For the last 130 years, NARUC has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's member commissions include the State agencies engaged in the economic, rate, safety and the reliability regulation of public utilities that provide telecommunications services. NARUC's member commissions must assure that telecommunications services are established and maintained as required by the public convenience and necessity. They must also ensure that these services are provided at rates and conditions that are just, reasonable and non-discriminatory

The *Order on Remand* failed to adequately address crucial issues involving federal universal service programs potentially impacting complementary State programs administered by, and coordinated with those programs by NARUC member commissions. NARUC members also play a key oversight role for several of the FCC's universal service programs.

NARUC requests leave to intervene in support of Petitioner CPUC.

I.

NARUC actively participated at every stage of the underlying series of proceedings at the FCC as well as the intervening appeals that compelled the FCC to issue the remand order on review in this proceedings.

NARUC is recognized by Congress in several statutes¹ and consistently by the Courts² as well as a host of federal agencies,³ as the proper entity to represent the collective interests of State utility commissions.

NARUC cannot be adequately represented by any other party to this proceeding. NARUC's member commissions' ability to protect the public health and welfare (as well as state universal service programs permitted and arguably encouraged by federal law) is specifically constrained by the FCC's ruling.

¹ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of the Federal Communication Commission's 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).

² 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 Commissions 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).

³ Compare, 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 . . . these economic harms constitute its members' injury-in-fact.")

As a “party in interest in the proceeding before the agency whose interests will be affected” by this review proceeding, NARUC is entitled to intervene “as [a matter] of right.” 28 U.S.C. § 2348.

II.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, NARUC submits the following corporate disclosure statement: NARUC is a quasi-governmental corporation organized under the laws of the District of Columbia with its principle place of business in Washington, D.C. NARUC has no parent corporation. No publicly traded company owns any equity interest in NARUC.

For the foregoing reasons, NARUC respectfully requests intervention in these proceedings.

Respectfully submitted,

National Association of Regulatory Utility Commissioners

s/ James Bradford Ramsay

James Bradford Ramsay

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DATED: February 24, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2021, I electronically filed the foregoing *Motion to Intervene in Support of Petitioner* with the Clerk of Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. I certify further that I have directed that copies of the forgoing Motion for Leave to Intervene be served by electronic service via CM/ECF or by first-class mail, as indicated, to the following persons.

By Electronic Mail

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Respectfully submitted,

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