

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
<i>Accelerating Wireline Broadband Deployment by Removing Barriers To Infrastructure Investment</i>)	WC Docket No. 17-84
)	
)	

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

Pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission’s (FCC) rules, the National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these comments in response to the Federal Communications Commission’s (FCC) April 21, 2017 Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment on removing regulatory barriers to wireline broadband infrastructure in the above-captioned proceeding.¹

For over 125 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto

¹ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, FCC 17-37 (Released April 21, 2017), at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-37A1.docx; Published at 82 Federal Register 22453 (May 16, 2017).

Rico, and the Virgin Islands charged with, *inter alia*, overseeing certain operations of telecommunications utilities.

NARUC is recognized by Congress in several statutes² and consistently by the Courts,³ as well as a host of federal agencies,⁴ as the proper entity to represent the collective interests of State utility commissions.

At our recent February meetings in Washington, D.C., NARUC passed a resolution, attached as Appendix A, that

applauds the FCC and Chairman Ajit Pai for initiating the Broadband Deployment Advisory Committee and looks forward to an active role in that effort,

² 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).

³ 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).

⁴ 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 and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

but also specifically

opposes further efforts in petitions asking the FCC to preempt the traditional authority of the State and local authorities by replacing intrastate regulation of rights-of-way, Pole Attachments, and other telecommunications facilities or services of public utilities with comprehensive federal mandates imposed by the FCC.

Citing the regime of cooperative federalism inherent in the 1996 legislation,⁵ the resolution specifically instructs NARUC “to oppose any preemption that supplants State regulation of intrastate telecommunications with FCC mandates.”

An earlier February 2016 resolution, attached as Appendix B, specifically addresses the 47 U.S.C. § 214 process and urges the FCC to:

[a]dopt specific criteria for the FCC to use in evaluating applications to discontinue retail telecommunications services that preserve fundamental features of legacy services such as connection quality, 9-1-1 and NG-911 access, competitive interconnection, interoperability, affordability, and services for those with disabilities, among other things

and also

[d]evelop specific objective criteria with which to evaluate whether wholesale services should be preserved and continued after the incumbent local exchange carrier (ILEC) transitions to alternative technologies, allowing the States to balance existing policies regarding wholesale access and obligations with the benefits of investment in reliable, robust, and innovative networks.

⁵ The 1996 Act created a structure that requires the FCC to work hand-in-glove with State Commissions. *See, e.g., 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”). This principle was detailed in NARUC’s 2013 Federalism Paper, which envisions a joint federal-State partnership in, among other things, the deployment of broadband facilities and service to all Americans.

BACKGROUND

The FCC’s April 21, 2017 release has three sections. The Notice of Proposed Rulemaking (NPRM) focuses on pole attachment reforms,⁶ expediting the copper retirement and network change notification process,⁷ and streamlining the Section 214(a) discontinuance process.⁸

In the Notice of Inquiry (NOI), the FCC seeks input on whether it should or has the authority to broadly preempt State and local laws that “inhibit broadband deployment.”⁹ as well as its “functional test” standard for defining what constitutes a service. Finally, the Request for Comment (RC), seeks comment on the so called “functional test” standard and whether a service goes beyond a single offering or product.¹⁰

NARUC has not had an opportunity to take detailed positions on all of the issues raised by the April 21 release. But our existing resolutions make clear that the FCC should be careful to respect the clear limits on its authority imposed by the plain text of the federal telecommunications law.

⁶ NPRM at ¶¶ 3-52.

⁷ NPRM at ¶¶ 56-70.

⁸ NPRM at ¶¶ 71-79.

⁹ NOI at ¶¶ 100-114.

¹⁰ RC at ¶¶ 115-123.

DISCUSSION

The FCC should respect clear limits on its authority imposed by the plain text of Section 224.

Laudably, the NPRM acknowledges that Section 224(c) specifies that States can “reverse-preempt” the Commission’s pole attachment regulations,¹¹ and that “twenty states and the District of Columbia” have done so.¹² Less prominent in this discussion are the other limits on Commission authority specified in that section, including:

- (a) Section 224(a), which specifies that “any person that is cooperatively organized or any person owned . . . by any State” – is *not* a “utility” subject to the FCC’s regulations under subparts (b), (d) and (e), *i.e.*, cooperatives, States and municipalities are not subject to the FCC’s pole attachment authority; and
- (b) Section 224(f), which explicitly permits “a utility providing electric service” to “deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”

The electric industry is already highly regulated by both NARUC’s State Commission members and several federal agencies. Congress, through this Section

¹¹ NPRM at ¶ 4.

¹² *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 25 FCC Rcd 5541, 5542 (WCB 2010).

224(f) exemption, explicitly recognized that the FCC must consider the potential impact of its regulations on safety as well as the reliability and security of the electric grid and electric ratepayers.

Moreover, on its face, Section 224 was never intended as an FCC bludgeon to broadly preempt existing State capacity, safety, and reliability oversight. Congress narrowly focused this section on filling gaps on issues not directly regulated by some States.¹³ Indeed, the Senate Commerce, Science and Transportation Committee Report specified that Congress considered pole attachments:

to be essentially local in nature, and that the various state and local regulatory bodies which regulate other practices of telephone and electric utilities are better equipped to regulate CATV pole attachments. Regulation should be vested with those person or agencies most familiar with the local environment within which utilities and cable television systems operate. It is only because such state or local regulation currently does not widely exist that Federal supplemental regulation is justified. [I]n absence of regulation by these state and local regulatory authorities . . . [the FCC] should fill the regulatory vacuum to assure that rates, terms, and conditions, otherwise free of governmental scrutiny are assessed on a just and reasonable basis.¹⁴

The 1996 amendments, Pub. L. 104-104 § 703, did not change that focus.

On its face, the FCC's jurisdiction is limited to adjudication of disputes over whether a utility has applied its safety, reliability, and engineering standards in a

¹³ See Communications Act Amendments of 1978, S. REP. NO 95-580, 16-17 (1978), reprinted in 1978 U.S.C.C.A.N. 109, 124-5 (stating FCC's authority is "strictly circumscribed and extends only so far as is necessary to permit the Commission to involve itself in arrangements affecting the provision of utility pole communications space to CATV systems").

¹⁴ *Id.*

non-discriminatory manner. Practically, the FCC should reaffirm that many State laws that impact pole attachment safety and reliability issues, *e.g.*, state occupational safety and health, high voltage line, and storm hardening laws/regulations, are entitled to deference. This should include laws enacted by States that have not “reverse preempted” the FCC’s oversight.¹⁵ The fact is, States are better situated than the FCC to fully account for the overall regulatory impact on all industry stakeholders and balance interests to achieve an optimum outcome. The Commission simply lacks jurisdiction under Section 224 to preempt or second-guess applicable State requirements.

Finally, the FCC should defer any final action in this proceeding, until it acts on the May 23, 2017 Notice of Proposed Rulemaking *In the Matter of Restoring Internet Freedom*, which proposes reclassifying broadband internet access service as an “information service.” By its express terms, Section 224 only covers pole attachments requested by “cable television systems” and “telecommunications carriers” – not “information service providers.”¹⁶

¹⁵ *See, e.g.*, Access Order, 11 FCC Rcd. 15499 at ¶ 1154 (“[S]tate and local requirements affecting pole attachments are entitled to deference even if the state has not sought to preempt federal regulations under section 224(c). *See also In re Promotion of Competitive Networks*, 15 FCC Rcd. 22983 at ¶ 76 (“Section 224 applied only to utilities, and was not intended to override whatever authority or control an MTE owner might otherwise retain under the terms of its agreements and state law”).

¹⁶ *National Cable & Telecommunications Association, Inc. v. Gulf Power Co.*, 534 U.S. 327, 333, 122 S. Ct. 782, 786, 151 L. Ed. 2d 794 (2002) does not teach otherwise. That decision focused

The FCC should respect clear limits on its authority imposed by the plain text of Section 253.

Subject to specific reservations and conditions, 47 U.S.C. § 253(a) permits the FCC to preempt any State or local law that “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” In the NOI, the FCC seeks comment on whether under Section 253, it has authority to adopt rules preempting State and local authority over pole attachment related rights-of-way negotiations or permitting and approval processes. The NOI specifically seeks comment on whether it could use its Section 253 authority in States that regulate pole attachments under Section 224(c).¹⁷ The short answer to this specific query is – clearly not.

As a preliminary matter, where the statutory provisions relate to the same subject matter they should be construed in harmony with each other, as far as reasonably possible, so as to give force and effect to each.¹⁸ Section 253 must be read in harmony with Section 224.¹⁹ The logical conclusion: Section 253 does not

on “comingled” cable and “unclassified” internet access services. At the time of the litigation, the FCC explicitly determined it had not classified such high speed internet access services.

¹⁷ NOI at ¶108.

¹⁸ See e.g. *POM Wonderful LLC v. Coca-Cola Co.*, 679 F. 3d 1170 (9th Cir. 2012); *Wade v. Bd. of Sch. Comm’rs of Mobile County*, 336 F. Supp. 519 (S.D. Ala. 1971); *Durand v. N.L.R.B.*, 296 F. Sup. 1049 (W.D. Ark. 1969).

¹⁹ See e.g., *Wachovia Bank, N.A. v. United States*, 455 F.3d 1261 (11th Cir. 2006) (In interpreting statutes, the courts “do not read words or strings of them in isolation. We read them in context. We try to make them and their near and far kin make sense together, have them singing

give the Commission authority over pole attachments which are specifically exempt under Section 224 as outlined, *supra*.

Moreover, the FCC's direct authority pursuant to Section 253 is limited in both States that have reverse preempted, and those that have not.²⁰

The entire provision is written in terms of "telecommunications services" and "telecommunications providers." The most preemptive grant of authority, in § 253(a), is of entities providing "telecommunications services." It is far from clear if all entities seeking access to construct broadband facilities can currently be classified as a "telecommunications carrier" and/or can meet the definition of providing "telecommunications services."

on the same note, as harmoniously as possible."); *Alabama Power Co. v. U.S. E.P.A.*, 40 F.3d 450, 455 (D.C. Cir. 1994) ("Statutory text is to be interpreted to give consistent and harmonious effect to each of its provisions.").

²⁰ See, e.g., Section 253(b), captioned "State regulatory authority" which specifies 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.

See also, Section 253 (b), which similarly specifies that"

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."

Moreover, it is obvious from the text of § 253(d)²¹ (and § 253(c)) that Congress meant § 253 to be applied on a State-specific and law or regulation-specific basis.²² Section 253(d) speaks in terms of “a state” and “such statutory or regulation” which is to be preempted “only to the extent necessary to correct such violation.” Such text is hardly a prescription for general rules that apply to classes of different State regulations.

Similarly, Congress made clear that the reservation in § 253(c) is to be construed – if at all - by a court on a case-by-case basis. That section is designed specifically to preserve State and local regulatory authority over managing public rights-of-way and requiring fair compensation from “telecommunications providers.” More than one court has pointed out that *only* Sections 253(a) and (b) may be preempted by the Commission under Section 253(d).²³

²¹ Section 253 (d), captioned “Preemption” notes that “[i]f, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”

²² Compare, *Town of Amherst v. Omnipoint Communications Enters., Inc.*, 173 F.3d 9, 13 & n.3 (1st Cir. 1999) (discussing initial House version of provision that would have charged the FCC with developing a uniform national policy for the deployment of wireless communication towers that was rejected in favor of a bill that rejected such a blanket preemption of local land use authority).

²³ See, e.g., *Qwest Corp. v. City of Santa Fe, New Mexico*, 380 F.3d 1258, 1266 (10th Cir. 2004); *Bell South Telecomm. Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1187-89 (11th Cir. 2001); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 623 (6th Cir. 2000).

This is borne out by the plain text of § 253 and confirmed by its legislative history. During debate on § 253, Senator Gorton offered an amendment containing the current language of the section, explaining:

There is no preemption ... for subsection (c) which is entitled, “Local Government Authority,” and which is the subsection which preserves to local governments control over their public rights of way. It accepts the proposition ... that these local powers should be retained locally, that any challenge to them take place in the Federal district court in that locality and that the Federal Communications Commission not be able to preempt such actions.²⁴

Later, Senator Gorton also pointed out that his amendment:

retains not only the right of the local communities to deal with their rights of way, but their right to meet any challenge on home ground in their local district courts.²⁵

By giving the authority to enforce § 253(c) to the federal courts, not the Commission, Congress recognized not only the historic authority of state and local governments to manage their right-of-ways, but also that “fair and reasonable” compensation will vary by locality, and depend on a unique set of facts and circumstances.

Congress determined state and local governments are best situated to make such determinations, with the oversight of the federal district courts. The FCC should not override that determination.

²⁴ 141 Cong. Rec. S8213 (1995).

²⁵ 141 Cong. Rec. S8308 (1995).

Finally, §601(c)(1)²⁶ requires the FCC and Courts to do here, what the plain text of § 253 requires, *i.e.*, construe this provision (and § 224) narrowly.

The FCC lacks jurisdiction to preempt State authority to impose on a competitively neutral basis, 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 NOI asks if State laws governing “state legacy service quality and copper facilities maintenance regulations” can be preempted.²⁷ The answer is clearly not. Both fall squarely within the explicit reservation of State authority in Section 253(b) to “impose on a competitively neutral basis, 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.”

As a matter of policy, the FCC should not interfere with State rights-of-way regulation.

Assuming, *arguendo*, the FCC has the requisite authority, there is no reason to act.

Why?

²⁶ 47 U.S.C. § 152 Telecommunications Act of 1996, Pub. L. No. 104-104, §601(c), 110 Stat. 56 (codified in the note to 47 U.S.C. § 152). Section 601(c) specifies:

NO IMPLIED EFFECT- This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

²⁷ NOI at ¶ 113-14.

Thus far, the agency lacks a record to justify intervention. It appears that one of the FCC's driving interests is to facilitate the deployment of 5G facilities on poles and in rights-of-ways. Given the current status of 5G deployments/other attachments thus far, it is unlikely the industry can compile sufficient data to demonstrate a widespread problem exists.

What do we know?

The wireless tower industry has, under current laws, in the view of at least one analyst, "grown rapidly."²⁸ Obviously, a very large number of additional cell sites will be needed to deploy 5G networks.

But other than a few anecdotes, there simply is no statistical data that the current process either is not working or will not work.

There is, at least as of the filing of these comments, little evidence in the record demonstrating anything other than (i) a utility must pay for access to poles and rights-of-way owned by the public and (ii) that different configurations and placements in different communities have different prices.

²⁸ See, *Market Realist, An Overview of the Wireless Tower Industry*, by Steve Sage, January 11, 2016, online at <http://marketrealist.com/2016/01/overview-wireless-tower-industry/> ("In the past few years, the wireless tower construction industry has grown rapidly. This rapid growth is attributed to the demand for mobile data and high-speed data connections . . . There is a total of 205,000 cell phone towers in the United States. Most of them are owned by Crown Castle International (CCI), American Tower (AMT), and SBA Communications (SBAC).") (last accessed March 8, 2017).

Given the wide difference in property values and tax bases among communities, this is to be expected.

Absent a much stronger factual showing, any free market advocate or federal entity charged, in part, with protecting the public interest should tread carefully. The FCC concedes “as did Congress in enacting Sections 253 and 332 of the Communications Act . . . localities play an important role in preserving local interests such as aesthetics and safety.”²⁹ Rights-of-way are used for many things, and the ongoing provision of these crucial services requires detailed review of applications for both cell tower and wireless telecommunications facilities to ensure that they will not raise safety or reliability concerns with respect to current right-of-way uses.

Consider that the FCC cannot step in and tell a private landowner what compensation he or she must take to allow a tower company to use his or her land. The rationale limiting the FCC’s authority in such cases suggests the agency should hesitate before telling elected officials that the citizens that voted them into office

²⁹ See, NOI at ¶112. Compare, *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421 (DA 16-1427 rel. December 22, 2016) available online at: <https://ecfsapi.fcc.gov/file/12222748726513/DA-16-1427A1.pdf>; Order, (DA 17-51 rel. January 12, 2017) at <https://ecfsapi.fcc.gov/file/0112380614184/DA-17-51A1.pdf>, *mimeo* at 2. Courts too have recognized that distinctions based on traditional zoning principles, including aesthetic impact, *e.g.*, *T-Mobile Ne. LLC v. Fairfax Cnty. Bd. of Supervisors*, 672 F.3d 259 (4th Cir. 2012), and business – residential zoning differences, *e.g.*, *Omnipoint Commc’ns Enters. v. Zoning Hearing Bd. of Easttown Twp.*, 331 F.3d 386 (3d Cir. 2003), *cert. denied*, 540 U.S. 1108 (2004).

must subsidize specific uses of city property via an FCC mandate. Such decisions should continue to be made locally by elected officials with demonstrated unique expertise and knowledge relative to management of their rights-of-way as a guardian and trustee for their citizens. Not by an agency thousands of miles away with no local knowledge, expertise or accountability to local voting citizens.

Local officials clearly have a vested interest in economic development and are subject to direct feedback from the voters they serve. Local control effectively allows citizens, through their elected officials, to review and address community needs relative to use of the public's rights-of-way and protections afforded to companies using those rights-of-way. Such local oversight is essential to protect the public health, safety and welfare and ensures citizens have actual input with respect to issues that affect them directly.

CONCLUSION

Sections 224 and 253 place clear limits on the exercise of FCC authority. Moreover, the record thus far does not provide a factual basis for any preemptive action. NARUC requests the FCC recognize these facts and eschew any formal action. Instead, the FCC should focus on Chairman Pai's new broadband deployment task force to come up with non-binding best practices to facilitate specific State consideration of telecommunications carriers' proposals.

Respectfully submitted,

James Bradford Ramsay
GENERAL COUNSEL
Jennifer Murphy
ASSISTANT GENERAL COUNSEL
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, Suite 200
Washington, DC 20005
Telephone: 202.898.2207
E-mail: jramsay@naruc.org

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Appendix A - Resolution on Federalism and the Mobilitie Petition

WHEREAS, The Federal Communications Commission (FCC) issued a Declaratory Ruling on November 18, 2009, at WT Docket No. 8-163, DA 09-99, establishing definite timeframes for State and local action on wireless facilities siting requests which, while preserving the authority of States and localities to make the ultimate determination on local zoning and land-use policies, adopted federal timelines of 90 days for collocation applications and 150 days for siting applications; *and*

WHEREAS, The FCC Declaratory Ruling of November 18, 2009, at WT Docket No. 8-163, DA 09-99 was upheld by the Supreme Court in *City of Arlington v. Federal Communications Commission*, 133 S. Ct. 1862 (2013) through application of the *Chevron* doctrine, a legal principle that defers to a federal agency's interpretation of law, to federal agency interpretations of their federal statutory authority; *and*

WHEREAS, The FCC adopted *In re: Connect America Fund* a Report and Order and Notice of Further Rulemaking in Docket 10-90 on November 18, 2011, 26 FCC Rcd 17663, 17973-74 (¶¶ 883-884) (FCC 11-161) (2011) ("*USF/ICC Transformation Order*" or "*FNPRM*") proposing, among other things, to reform the federal universal service fund (USF) to revise existing high-cost support universal service mechanism and focus such support so as to deploy broadband network facilities capable of providing voice and broadband services to all Americans; *and*

WHEREAS, The *USF/ICC Transformation Order* preempted the States' traditional legal authority to establish rates for intrastate telecommunications access; *and*

WHEREAS, The FCC's preemption was upheld in its entirety by the federal courts in *In re FCC*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Aug. 27, 2014, *cert. denied*, 83 U.S.L.W. 3835, May 4, 2015 (Nos. 14-610, *et al.*); *and*

WHEREAS, Mobilitie, LLC filed a petition at WT Docket No. 16-421 addressing streamlining the deployment of small-cell infrastructure on November 15, 2016 (the Mobilitie Petition); *and*

WHEREAS, The FCC subsequently issued a Public Notice ("Public Notice") of the Mobilitie Petition on December 22, 2016 in Docket No. WT 16-421, DA 16-1427 stating that "[s]ections 253 and 332(c)(7) of the Communications Act and Section 6409(a) of the Spectrum Act are designed, among other purposes, to remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities"; *and*

WHEREAS, The FCC notice also asked for comments on how small cell deployment can be improved and expedited by the FCC issuing guidance on how federal law applies to local government review of wireless facility siting applications and local requirements for gaining access to rights of way, including requests for information on: 1) certain practices that prohibit or have the effect of prohibiting the provision of wireless service; 2) ways to improve the timeliness of right of way permit review; and 3) interpretation of the fair and reasonable compensation and non-discrimination requirements of 47 USC 253(c); *and*

WHEREAS, Prior decisions of the FCC in response to inquiries that examined State and local laws or policies, including those concerning facility siting or compensation, have resulted in truncating those State laws or policies, if not preempting them; *and*

WHEREAS, The general principles of federalism set out by the National Association of Regulatory Utility Commissioners (NARUC) in its 2013 Federalism Paper envision a joint federal-State partnership in, among other things, the deployment of broadband network facilities and service to all Americans; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2017 Winter Committee Meetings in Washington, D.C., reiterates its support for the federal-State partnership envisioned in its 2013 Federalism Paper; *and be it further*

RESOLVED, That, consistent with NARUC's 2013 Federalism Paper, NARUC urges the FCC to act consistently with the principles of federalism endorsed there as it applies to the federal-State partnership underway in the deployment of wireless and wireline facilities, including the deployment of small-cell infrastructure; *and be it further*

RESOLVED, That NARUC applauds the FCC and Chairman Ajit Pai for initiating the Broadband Deployment Advisory Committee (BDAC) and looks forward to an active role in that effort; *and be it further*

RESOLVED, That NARUC also encourages its members to engage State and local authorities managing rights-of-way, pole attachments, and other telecommunications facilities or services under examination in the Mobilite Petition to understand the important role that public utility access provided by those State and local authorities plays in the deployment of the broadband infrastructure of public utilities; *and be it further*

RESOLVED, That NARUC opposes further efforts in petitions asking the FCC to preempt the traditional authority of the State and local authorities by replacing intrastate regulation of rights-of-way, Pole Attachments, and other telecommunications facilities or services of public utilities with comprehensive federal mandates imposed by the FCC; *and be it further*

RESOLVED, That NARUC directs the NARUC General Counsel, and urges fellow State members, to participate in FCC proceedings to oppose any preemption that supplants State regulation of intrastate telecommunications with FCC mandates and to provide input regarding the Public Notice that encourages the FCC to issue guidance, including what constitutes reasonable and nondiscriminatory and thus, permissible fees under federal law, consistent with the governing authority contained in federal law at 47 U.S.C. Section 332 and 47 U.S.C. Section 253 and the principles that State and local governments are charged with managing the public rights of way and that State and local governments must protect the health, safety, and welfare of their citizens.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors on February 15, 2017

**Appendix B - Resolution in Support of IP Technology Transitions Which
Preserve the Fundamental Features of Legacy Services**

WHEREAS, Many telecommunications services provided over today's Public Switched Telephone Network (PSTN) are migrating from Time Division Multiplexing (TDM) to Internet Protocol (IP) technologies; *and*

WHEREAS, The reliability and affordability of the services provided by the IP - based and TDM networks continue to be the cornerstone of the telecommunications compact; *and*

WHEREAS, The Federal Communications Commission (FCC) asked States to comment on “specific criteria for the Commission to use in evaluating applications to discontinue retail services pursuant to section 214 of the Act,” in its Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (FNPRM) in proceedings, GN Docket No. 13 - 5, RM - 11358, WC Docket No. 05-25, RM-1059, released on August 7, 2015; *and*

WHEREAS, Six State Commissions (joint States) jointly filed reply comments in the above - referenced proceeding to support the establishment of clear standards for the performance and availability of the IP - based and TDM networks; *and*

WHEREAS, The joint States support nationwide performance criteria for the replacement networks as well as a review of local considerations such as demographics and geography that may necessitate referral to the States for local testing to ensure the viability of the replacement services and consistency with State service quality and public safety standards; *and*

WHEREAS, The joint States recommend that the FCC at least maintain current service quality standards, require carriers to demonstrate that any replacement service provides at least as much interoperability as the service being retired, and require that the alternative services allow at least the same accessibility, affordability, usability, and compatibility with assistive technologies as the service being discontinued; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2016 Winter Committee Meetings in Washington, D.C ., urges the FCC to adopt specific criteria for the FCC to use in evaluating applications to discontinue retail telecommunications services that preserve fundamental features of legacy services such as connection quality, 9-1-1 and NG-911 access, competitive interconnection, interoperability, affordability, and services for those with disabilities, among other things; *and be it further*

RESOLVED, That the FCC take note of and implement the recommendations of the joint States in any decision on the service discontinuance process; *and be it further*

RESOLVED, That the FCC should develop specific objective criteria with which to evaluate whether wholesale services should be preserved and continued after the incumbent local exchange carrier (ILEC) transitions to alternative technologies, allowing the States to balance existing policies regarding wholesale access and obligations with the benefits of investment in reliable, robust, and innovative networks.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors on February 17, 2016*