



N A R U C
National Association of Regulatory Utility Commissioners

April 6, 2018

The Honorable Ajit Pai
Chairman
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: *NARUC Request to expand membership of BDAC and Post Critiques as Part of Final BDAC Releases*, filed in the proceeding captioned: *In the Matter of Accelerating Broadband Deployment, GN Docket No. 17-83*

Chairman Pai:

In our April 5, 2017 letter to you as well as an earlier March 16, 2017 letter to Senate Commerce Committee Chairman Thune, NARUC was among the first to commend you specifically for creating a Broadband Deployment Advisory Committee (BDAC) to explore ways to accelerate deployment of high-speed broadband nationwide and to close the digital divide.¹ As conceived, the BDAC looked like a powerful commitment to the values inherent in cooperative federalism. It appeared poised to deliver useful best practices for States to consider.

Unfortunately, the implementation of the idea has failed to reach the targeted ambitions. There is a problem. As our April 2017 missive points out: any recommendations will necessarily reflect the composition of the committee.

The recognition of this problem – and its likely effect - is not limited to NARUC.²

¹ See April 5, 2017 Letter from NARUC President Betkoski and NARUC Communications Committee Chairman Kjellander to FCC Chairman Pai, in GN Docket No. 17-83, online at: <https://www.fcc.gov/ecfs/filing/108213067113138>. See also, NARUC's 2016 *Resolution Calling For Streamlined Access To Rights Of Way On Federal Lands To Accelerate Broadband Deployment* (February 16, 2016) (<http://pubs.naruc.org/pub/D54CD7B4-C65D-4FF8-4255-5237A193784A>), calling for "a process for collaboration among the agencies at the federal, State, United States Territories, local, and tribal governments, as well as in consultation with private industry, to work together to identify existing barriers and develop best practices for granting such access [to rights-of-way, pole attachments and easements on federal lands] at all levels to improve broadband deployment . . . across the nation."

² See NARUC's *July 2017 Resolution to Bring Balance to the [BDAC] Membership*, see also, *Panettieri, Angelina, Technology and Communications, National League of Cities Ex Parte*, filed May 19, 2017, <https://ecfsapi.fcc.gov/file/10519947406489/FCC%20Ex%20parte%20Clyburn%20Luna%20GMA%20Meeting.pdf>. ("[T]he National League of Cities continued to urge the Commission to increase the number and diversity of local officials on the BDAC to a level comparable with the number and diversity of industry officials."); Washington Internet Daily, *Local Governments want better Representation*, Warren Publishing (May 23, 2017); Communications Daily, *Local Officials Worry About BDAC Composition* (June 02, 2017) ("While the FCC has chosen some of local government's best . . . there are not enough of them. The most articulate and persuasive of advocates cannot overcome a 20-1 ratio."); Communications

Since its inception many have raised concerns that committee membership is heavily over-weighted in favor of those seeking attachments to poles.

Though the concept for this committee was a good one, as we predicted last April, it has become clear that the usefulness of its recommendations have been and likely will continue to be undermined by this imbalance.

That outcome was both predictable and unavoidable - in spite of all the good faith efforts of both the staff and members involved.

As constituted, the BDAC continues to miss an excellent opportunity to discover useful balanced policies that will actually help States encourage broadband growth.

The BDAC could provide a balanced set of ideas to assist the FCC adopt broadband friendly regulations and inform States on best practices for encouraging deployment.

However, the ideas being generated are overwhelmingly lopsided. They call on the FCC and State authorities to override all local opposition, ignore valid competing considerations, and give private companies the right to place network equipment wherever they choose at below market rates.

Daily, *Clyburn Wants More Voices in Broadband Infrastructure Talks*, Warren Communications (June 09, 2017) (Clyburn urged a broader "consortium" on BDAC.); Communications Daily, *NOTEBOOK*, Warren Communications (July 18, 2017) ("U.S. Conference of Mayors' comments included joint resolutions calling on the FCC to . . . " expand the [BDAC] to include more local government representatives."); Silbey, Mari, *On Broadband, FCC Talks Carrots, Not Sticks*, LightReading.com (July 20, 2017), <http://www.lightreading.com/services/broadband-services/on-broadband-fcc-talks-carrots-not-sticks-/d/d-id/734777> ("Santosham also noted that there are only seven municipality representatives assigned to the BDAC process, and suggested that, "The voice of municipalities perhaps needs to be broader." Others on the FCC committee also piped up with the same concern. . . Comcast Corp Vice President for Regulatory Policy David Don pointed out that if the group wants cities to employ the model codes that are developed, it will very much help to have their buy-in from the beginning. "I think this is a serious risk right now. We have a lot of groups who are concerned that they're not at the table," said Don. "I think if just at the end we present a model code to the municipalities and they feel they've had an insufficient amount of input, it's going to go nowhere."); Communications Daily, *Local Government Reps Complain about DBAC Makeup, Too-Tight Time Frames*, Warren Communications (July 21, 2017); Panettieri, Angelina, *FCC Holds Second Meeting of Broadband Deployment Advisory Committee*, State News Services/NLC Release (August 1, 2017); Griffis, Kelcee, *Energy Group Urges FCC To Add More Broadband Advisors*, Law 360 (August 10, 2017) <https://www.law360.com/articles/953107/energy-group-urges-fcc-to-add-more-broadband-advisers>; Dodge, Blake, *FCC packs broadband advisory group with big telecom firms, trade groups; Local government officials, largely frozen out, fear they're about to get rolled*, *The Center for Public Integrity* (August 11, 2017) <https://www.publicintegrity.org/2017/08/11/21057/fcc-packs-broadband-advisory-group-big-telecom-firms-trade-groups> ("The assignment seemed to call out for participation from city officials like Carter, since municipal officials approve where and what equipment telecommunications companies can place on public rights of way, poles and buildings. But. . . Sixty-four city and state officials were nominated for the panel, [and] the agency initially chose only two."); Dodge, Blake, *Almost All of FCC's New Advisory Panel Works for Telecoms*, Daily Beast (August 11, 2017) <http://www.thedailybeast.com/almost-all-of-fccs-new-advisory-panel-works-for-telecoms>; Mills, Chris, *The FCC is actively working against consumers*, BGR Opinion (August 12, 2017) <http://bgr.com/2017/08/12/fcc-net-neutrality-rules-ajit-pai/> ("[T]he 30-person [BDAC] with 28 reps from telecoms companies, and just two from local cities. The committee was supposed to work out how cities and companies can work together best to deploy high-speed wireless internet; instead, it will likely be a list of telecoms industry wishes.); Bode, Karl, *New FCC Broadband 'Advisory Panel' Stocked With Telecom Consultants, Allies & Cronies*, TechDirt (August 14, 2017) <https://www.techdirt.com/articles/20170811/09042437982/new-fcc-broadband-advisory-panel-stocked-with-telecom-consultants-allies-cronies.shtml> ("[W]hile it's important to have companies on the panel that have expertise building large networks, so too is it important to have an equal weight given to consumer activists, objective external experts, and folks that operate outside of the box when it comes to improving American connectivity.")

This apparent windfall for companies seeking to deploy can only antagonize state and local governments which in turn will further delay and impede broadband deployment. In concept, the BDAC should have functioned as a forum for a discussion about the issues surrounding deployment with balanced input from all parties that have a valid interest in assuring deployment. However, given the composition, in practice the “consensus” result has so far, been uniformly skewed in favor of private provider interests. For example, the BDAC has advanced proposals that would encourage the FCC to preempt state authority over access to state owned infrastructure, limit a state government’s right to control access to its own infrastructure through binding arbitration, and deny a state the ability to charge market rates for access to its own property. This despite valid objections about the cost, feasibility, and even legal authority that the FCC would have to implement them (which could lead to wasteful litigation and additional delays, all at the expense of the American taxpayer).

Indeed, frustration over these issues led to the resignations Mayor of San Jose Sam Liccardo in January after the last meeting, as well as the resignation of New York City CTO Miguel Gamiño Jr. last week.

In his resignation Mayor Liccardo stated:

It has become abundantly clear that despite the good intentions of several participants, the industry-heavy makeup of BDAC will simply relegate the body to being a vehicle for advancing the interests of the telecommunications industry over those of the public.

Mr. Gamiño echoed the Mayor’s remarks almost exactly last week noting:

It is clear that despite good faith efforts by both the staff and members involved, the membership structure and meeting format of the BDAC has skewed the drafting of the proposed recommendations towards industry priorities without regard for a true public-private partnership.

Even the current BDAC Chair, Aristotle’s Elizabeth Bowles recognized that their departure deprives the committee “of a key perspective, one that I think is necessary to balance other voices on the BDAC.”³ This unbalanced approach ignores another obvious truth. NARUC’s member commissions and States generally, of course support and want to encourage increased broadband deployment. Not only has Congress charged NARUC’s members with this task via 47 USC Section 1302, but, generally, increased deployment provides practical and economic benefits for our residents, businesses, and telecommunications markets. The BDAC’s composition ignores that fact that States (and localities) have every incentive to participate in the BDAC in a way that will promote deployment.

³ *BDAC Likely to Continue Beyond Initial Reports, Maybe With New Local Members*, Communications Daily at 4-5 (April 4, 2018).

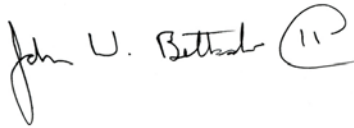
States have an important role to play in the deployment of broadband and their voices should be reflected in any final report of the committee.

BDAC Chair Bowles also noted yesterday⁴ that it might take “the committee until July to create the final report of the BDAC as a whole.”

It is very late in the process, but, as per NARUC’s 2017 resolution, the FCC should immediately, “increase[e] the membership of State and local government representatives on the [BDAC] and its working groups to an amount that equitably balances with membership by BIAS industry representatives.”

At a minimum, to make certain any final BDAC consolidated report reflects some measure of balance, any final publication – including the State model rules – should append a critique or critiques by the interests that are clearly underrepresented.

Respectfully Submitted,

Handwritten signature of John W. Betkoski in black ink, including a circled number 11.

John W. Betkoski
NARUC President

Handwritten signature of Paul Kjellander in black ink.

Paul Kjellander
Chair, NARUC Committee on Communications

POSTSCRIPT: As the July resolution notes, because, NARUC “was expecting a smaller and more balanced committee membership,” the association “only submitted the name of one NARUC commissioner to the FCC to serve on behalf of the NARUC membership.” As anyone on the State Model Working Group will attest, NARUC’s current representative has represented the association well - putting in countless hours supporting the process. We believe other NARUC appointees will provide similar contributions if appointed. NARUC will be happy to assist your office in expediting additions to the BDAC to create more balance by providing a list of possible candidates.

⁴ See note 3 *supra*.