



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 09-2286

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**COMMENT SOUGHT ON NARUC PETITION FOR CLARIFICATION OR
DECLARATORY RULING REGARDING STATE
AUTHORITY TO OBTAIN BROADBAND-RELATED DATA**

PLEADING CYCLE ESTABLISHED

WC Docket No. 09-193

Comment Date: November 2, 2009

Reply Comment Date: November 9, 2009

On September 25, 2009, the National Association of Regulatory Utility Commissioners (NARUC) filed a petition for clarification or declaratory ruling regarding state authority to obtain broadband-related data.¹ Specifically, NARUC requests that the Commission clarify that no Commission order or regulation “limits State authority to collect any data from any broadband infrastructure or service provider.”²

We invite comment on NARUC’s petition. We note that it is unclear what basis, if any, there might be for a claim that the Commission has preempted state-mandated collection of data regarding broadband infrastructure and services. Indeed, one of the express purposes of the Broadband Data Improvement Act (BDIA)³ is “[t]o improve the quality of Federal and State data regarding the availability and quality of broadband services.”⁴ We ask that any party claiming that such state data collection is preempted to explain in detail the basis for its claim. This explanation should cite to each statutory provision and Commission decision that the party claims has preempted state broadband information

¹ National Association of Regulatory Utility Commissioners, Petition for Clarification or Declaratory Ruling that No FCC Order or Rule Limits State Authority to Collect Broadband Data (filed Sept. 25, 2009) (Petition).

² *Id.* at 1 (emphasis deleted).

³ Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (codified in part at 47 U.S.C. §§ 1301-04).

⁴ BDIA, Preamble, 122 Stat. at 4096; *see also* BDIA, § 103(a) (codified at 47 U.S.C. § 1302(a)) (requiring that the Commission collect demographic information regarding geographic areas that lack broadband service); BDIA, § 106(b) (codified at 47 U.S.C. § 1304(b)) (establishing a state broadband data and development grant program); American Recovery and Reinvestment Act of 2009, § 6001(l), Public Law No. 111-5, 123 Stat. 115, 516 (2009) (requiring the National Telecommunications and Information Administration (NTIA) to develop and maintain a comprehensive, interactive, and searchable nationwide inventory map depicting the extent to which broadband service capability is deployed and available throughout each state).

filing requirements. This explanation also should state whether the claimed preemption is express,⁵ or based on an alleged conflict between federal and state law.⁶

Interested parties may file comments on or before **November 2, 2009**, and reply comments on or before **November 9, 2009**. All pleadings should reference **WC Docket No. 09-193**.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW-A325, Washington, D.C. 20554. Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, D.C. 20554, or by e-mail to CPDcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: `get form <your email address>`. A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

⁵ See, e.g., *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992).

⁶ See, e.g., *Florida Lime and Avocado Growers*, 373 U.S. 132, 142-43 (1963).

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, D.C., 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at fcc@bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

For further information, contact William A. Kehoe, Competition Policy Division, Wireline Competition Bureau (202) 418-1580.

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