



N A R U C
National Association of Regulatory Utility Commissioners

February 3, 2012

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn HOB
Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2322A Rayburn HOB
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications,
Technology & the Internet
2125 Rayburn HOB
Washington, D.C. 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications,
Technology & the Internet
2322A Rayburn HOB
Washington, D.C. 20515

RE: *The FCC Process Reform Act of 2011 (H.R. 3309)*

Dear Chairmen Upton, Walden and Ranking Members Waxman, Eshoo:

On behalf of the National Association of Regulatory Utility Commissioners, I am writing to express support for key sections of the *Federal Communications Commission (FCC) Process Reform Act of 2011* (H.R. 3309). While NARUC has not taken a position on all aspects of the bill, we have long championed many of the common sense reforms proposed in this legislation. We also have a few policy suggestions.

NARUC represents the government agencies in all 50 States, U.S. Territories, and the District of Columbia responsible for oversight of critical utility infrastructures – including telecommunications utilities. NARUC’s member commissions, along with other State agencies, have the same interests in assuring adequate telecommunications service to all of their constituents as each member of Congress. NARUC member commissioners face the same regulatory challenges as our federal colleagues and many State commissions use procedures similar to those proposed in H.R. 3309.

NARUC continues to specifically endorse several provisions in H.R. 3309, including those that require the actual language of a proposed rule to be published for comment, specify a minimum 60-day comment cycle, and mandate that all commissioners have “adequate time” to review any draft decision before voting on it.¹ These provisions will necessarily improve both the record upon which the agency must base its decisions and also the resulting decisions.

¹ See Dec. 12, 2008 Letter from NARUC President Butler to Prof. S. Crawford, Obama Transition Team at: <http://www.naruc.org/Testimony/08%200916%20NARUC%20House%20ltr%20Prepaid%20Calling%20Card%20fin.pdf>.

We are particularly pleased to see inclusion of the so-called “sunshine” reform provisions which allows more than two FCC Commissioners to meet outside of an open meeting and covers deliberations of the federal-State joint boards and conferences. NARUC has endorsed that significant and much needed improvement to the current process for years.²

H.R. 3309 specifically allows negotiations among principals (the FCC Commissioners) – not just their delegates. The change also allows the FCC to take full advantage of the expertise and insight of State Commissioners on key issues where Congress has mandated joint FCC-State deliberations. So-called “joint boards,” composed of both federal and State Commissioners, are charged by Congress with the responsibilities of federal administrative law judges and tasked with making critical record-based recommendations on universal service,³ advanced services,⁴ and separations⁵ issues. Necessarily, the incredible inefficiencies imposed by the current law on full commission deliberations also plague the work of these Congressionally-mandated bodies. H.R. 3309’s sunshine revisions eliminates this problem.

NARUC also suggests specific provisions⁶ to (i) increase the technical and engineering expertise at the FCC and (ii) reform the forbearance process be included in any final bill.⁷

We have been informed the Committee will consider an amendment to H.R. 3309 at markup to require the FCC to create a searchable online database of consumer complaints to help consumers choose among competing providers and services. While NARUC has not taken a

² *Resolution on Federal Restrictions Affecting FCC Commissioner Participation on Joint Boards and Conferences* at: http://www.naruc.org/Resolutions/participation_jointboards04.pdf.

³ The FCC Federal State Joint Board on Universal Service was established in March 1996 as per the Congressional mandate found in 47 U.S.C. § 254 (1996) (The text of the law is available from the Government Printing Office website at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+47USC254. The FCC webpage on this Board is at: http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html.

⁴ The FCC Federal State Joint Conference on Advanced Services was established in 1999 as part of the FCC’s effort to promote deployment of high speed services, pursuant to 47 U.S.C. § 157 (Note incorporates § 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, as amended by Pub. L. 107-110, Title X, § 1076(GG), Jan.8, 2002, 115 Stat. 2093), available at page 32 of the 2007 House edition of Title 47 of the United States Code, online at: <http://uscode.house.gov/pdf/2007/2007usc47.pdf>. The FCC webpage on Joint Conference on Advanced Services activity is at: <http://www.fcc.gov/jointconference/headlines.html>. Congress authorized its creation in 47 U.S.C. § 410(b) (1994), found online at page 220 of Title 47 referenced *supra*.

⁵ The FCC Federal State Joint Board on Separations has been in operation for over 25 years. Congress authorized its creation in the 1970s in 47 U.S.C. § 410(c) (1994), found at page 220 of the copy of Title 47 found at the web address in note 3, *supra*. The FCC webpage on the Separations Joint Boards is at: <http://www.fcc.gov/wcb/tapd/sep/welcome.html>.

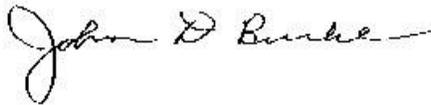
⁶ Letter to House Subcommittee on Communications, Technology and the Internet concerning H.R. 3309, sent November 15, 2011. Text available online at: <http://www.naruc.org/Testimony/11%201115%20NARUC%20House%20FCC%20reform%20bill%20draft.pdf>.

⁷ *Resolution on Reform of FCC Management and Process* (February 2009) available online on NARUC’s website at: <http://www.naruc.org/Resolutions/TC%20Resolution%20on%20Reform%20of%20FCC%20Management%20and%20Process.pdf>, such a change was proposed in *The FCC Commissioners Technical Resources Enhancement Act* (HR 2102); and *Resolution on Forbearance* (February, 2008), at: <http://www.naruc.org/Resolutions/Forbearance%20Procedures.pdf>; Legislation back in 2008 was proposed to reform this process back in 2008 with *the Protecting Consumers Through Proper Forbearance Procedures Act* (HR 3914). Both the NARUC resolution and HR 3914 call for elimination of the “deemed granted” provision in the forbearance rules.

specific position on this we have generally supported consumer access to data that would help them make informed decisions.⁸

NARUC is committed to working with Members of Congress and other stakeholders to ensure the benefits of competition are available to all Americans. Improved decision making at the FCC will only benefit the marketplace and consumers. NARUC urges Congress adopt the portions of the *Federal Communications Commission (FCC) Process Reform Act of 2011* (H.R. 3309) supported by NARUC and to continue working with us and other stakeholders to further improve FCC processes. Thank you and please contact NARUC Legislative Director Brian O'Hara at (202)898-2205, bohara@naruc.org or NARUC General Counsel Brad Ramsay at (202)898-2207, jramsay@naruc.org if you would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink that reads "John D. Burke". The signature is written in a cursive style with a horizontal line at the end.

John Burke
Chair, Committee on Telecommunications

CC: Members of the Committee on Energy and Commerce

⁸ *Resolution on Current Policies Regarding Telecommunications*, adopted March 2004 and available at: <http://www.naruc.org/Resolutions/04%201117%20CURRENT%20NARUC%20POLICY%201.pdf>; and see *Resolution on Truth-in-Billing Model Rules*, adopted July, 2000, available at: http://www.naruc.org/Resolutions/attachment_truth_in_billing_model.pdf.