N A R U C

National Association of Regulatory Utility Commissioners

January 10, 2014

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: Evolution of Wired Communications Networks Hearing Questions for the Record

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

Thank you for the opportunity to testify before the subcommittee on Communications and Technology on October 23rd and I appreciate this additional opportunity to elaborate on my testimony.

Additional Questions for the Record - The Honorable Anna Eshoo:

You indicated in your testimony that "regardless of the level of competition, some oversight is always necessary to provide things the market will not." Do you agree that interconnection between competing carriers is an area where oversight is needed? If so, what role should state public utility commissions play?

Answer:

Thank you for your question.

Yes, interconnection between competing carriers is an area where history indicates some level of oversight is necessary. Interconnection of telecommunications carriers' networks for the exchange of voice traffic is essential to ensure your constituents continue to enjoy the benefits of robust competition and receive voice services that are universally connected, reliable, and secure.

As carriers enter the market, oversight of vital carrier-to-carrier interconnection is more important than ever. The backstop authority to arbitrate disputes where the market fails outlined at 47 U.S.C. §§ 251-2 of the federal Telecommunications Act of 1996 is crucial. Proper interconnection can

level the competitive playing field and benefit consumers. The converse is also true. Without access to such backstop authority, competition can be stymied in crucial market segments.

Recognizing the importance of a technology-neutral approach to interconnection policy, in July 2008 NARUC adopted a resolution calling for the preservation of State authority as well as carriers' interconnection rights and traffic exchange obligations under Sections 251 and 252. Regardless of the technology used to provide a voice service, State commissions should continue to act under those sections to ensure consumers enjoy the full and unconstrained benefits of local competition.[1]

Section 251 requires all telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers. On the issue of interconnection, the Act is technologically neutral. It does not distinguish between circuit switched facilities and other network facilities <u>or protocols</u> that may be used to provide fee-based point-to-point real time voice services. As cited in my testimony, FCC Commissioners Rosenworcel and Pai have both made similar statements.

The clear duties outlined in those sections and the arbitration provisions provided by Congress should have resolved all interconnection issues on a rolling basis. But that's not what has happened. States (and the FCC) continue to receive complaints from carriers that incumbents and large facilities-based providers are denying them IP interconnection outright. Experience shows commercial agreements between parties of unequal bargaining power often are hard to reach.

In December of last year, the Michigan Public Service Commission (MPSC) ruled in favor of Sprint in an IP interconnection dispute with AT&T Michigan. In that case, AT&T argued that it was unable to provide Sprint with IP interconnection because the applicable (IP) equipment is owned by a separate, but affiliated, out-of-state company and specifically alleged that Section 251(c)(2) does not extend to IP-to-IP interconnection.[2] This case is indicative of the type of ongoing interconnection problems in the market that confront States regularly. These disputes are a direct result of the FCC's failure to classify VoIP services as either an "information service" or a "telecommunications service" under the Act.

Section 252 provides State commissions with the primary responsibility to mediate, arbitrate and approve interconnection agreements between incumbent local exchange carriers and other telecommunications carriers. State commissions have always been at the forefront of implementing and enforcing the open market requirements of the Act. Absent this State PUC arbitrated interconnection back stop, there would surely be less competition (and competitors) today. Should this important State role be eliminated or even curtailed, competition and consumers would suffer.

---

[1] NARUC Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks, Adopted July 23, 2008. Available at: http://www.naruc.org/Resolutions/TC%20Interconnection.pdf.

[2] In the matter of the petition of SPRINT SPECTRUM, L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish Interconnection Agreements with MICHIGAN BELL TELEPHONE COMPANY d/b/a AT&T MICHIGAN, Case No. 17349. Available at: http://efile.mpsc.state.mi.us/efile/docs/17349/0027.pdf.

Carriers should not be allowed to avoid obligations to interconnect just because they have migrated from one packet-based technology (TDM) to another (IP). Competition alone will not solve all problems. As the Michigan example above illustrates, oversight of interconnection remains necessary for consumers to receive the benefits of competition. Congress was clear in the 1996 Act that State commissions have a crucial backstop arbitration authority where competing carriers cannot negotiate an interconnection agreement. This role should continue.

If you have questions about NARUC's positions or would like to discuss it further, please contact NARUC Legislative Director Brian O'Hara at (202)898-2205, bohara@naruc.org, NARUC General Counsel Brad Ramsay at (202)898-2207, jramsay@naruc.org or John Burke at (802)828-2358.

Sincerely,

John Burke
Commissioner, Vermont Public Service Commission
Immediate Past Chair, NARUC Committee on Telecommunications

cc: Members of the Committee on Energy and Commerce