

Notice of *Ex Parte* Contact

TO: Data Center  
All Parties in Case Nos.  
TC-2005-0067  
TC-2007-0085  
CC-2009-0435

FROM: Chairman Robert M. Clayton III *RC*  
Commissioner Kevin Gunn *KG*

DATE: July 17, 2009



On July 16, 2009, the following email and attached resolution were received from Craig Unruh, AT&T External Affairs. These cases are contested cases. The Commission is bound by its *ex parte* rule, and, we are therefore giving notice to the parties this communication has been received.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication from any person interested in a case (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, we submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Commissioners  
Executive Director  
Secretary/Chief Regulatory Law Judge  
General Counsel

## Neuner, Joyce

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**From:** UNRUH, CRAIG A (ATTSI) [cu2846@att.com]  
**Sent:** Thursday, July 16, 2009 12:30 PM  
**To:** Clayton, Robert; Gunn, Kevin  
**Subject:** NARUC resolutions

**Attachments:** 7-15 \_5.17 pm - redline of Jones version 5.docx; Broadband Mapping Data Resolution Redline final.doc



7-15 \_5.17 pm - Broadband Mapping  
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Chairman Clayton:

Commissioner Gunn:

AT&T has reviewed the proposed NARUC resolutions and we have concerns with a few of them. First off, we do not oppose the lifeline awareness and the auto dialer resolutions. We do have concerns with the special access, broadband data, and FM tuner resolutions.

With respect to the special access issue, we support data collection and believe a thorough collection of data will show the market to be competitive with falling prices. To date, the data collection efforts have failed to gather meaningful information from all providers. While we don't believe another resolution is necessary, in the event NARUC chooses to pass a resolution, we believe it should be focused on comprehensive data collection and should not draw any conclusions at this point about the state of the marketplace. To that end, we suggest a few changes to the proposed resolution as red-lined in the attached.

<<7-15 \_5.17 pm - redline of Jones version 5.docx>> Regarding broadband data collection, we do not oppose states obtaining information from the FCC on broadband availability as long as the proper mechanisms are in place to protect the data. The current process permits this and should not be altered at this time. The FCC, under its new leadership, is evaluating broadband policies, including data collection and mapping, and we recommend letting the FCC sort through these issues before adjusting the current process for state access to broadband data. Moreover, the NTIA is also involved in data collection and mapping efforts. As such, we do not believe a resolution is necessary. In the event NARUC chooses to pass a resolution, though, we offer the following suggested changes to the proposed resolution.

<<Broadband Mapping Data Resolution Redline final.doc>> Lastly, we do not believe NARUC should pass the resolution dealing with the Warning, Alert and Response Network (WARN) Act of 2006. The industry and the FCC have already agreed on an approach. The industry is already investing in the agreed upon approach. The advisory committee examining this issue voted 41-1 to recommend the current proposal. Notably, the National Association of Broadcasters was the lone dissenting vote. There are a host of reasons why the FM transmitter approach is not reasonable (won't comply with WARN Act requirements, no practical improvement in emergency alerting, technical constraints, battery life issues, spectrum issues, etc.). There is no reason to revisit this issue.

Thanks for your consideration and please let me know if you have any questions. And, have a good time at NARUC.

Craig Unruh  
AT&T External Affairs

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***Resolution Supporting Access to Broadband Mapping Data******Sponsored by Chairman Betty Ann Kane,  
D.C. Public Service Commission***

**WHEREAS**, In the Broadband Data Services Improvement Act (P.L. 110-385), the Congress concluded that “The Federal Government should also recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data and should encourage and support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation;” *and*

**WHEREAS**, The Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2009 Winter Meetings in Washington, D.C., adopted a resolution recognizing the critical role the States have in gathering the necessary broadband services data to determine unserved and underserved areas within their borders; *and*

**WHEREAS**, The Federal Communications Commission (FCC) has preempted State authority to regulate wireline and wireless broadband service providers, thereby, prohibiting States from requiring broadband data service providers to submit information on service locations, speeds and prices; *and*

**WHEREAS**, Several States have initiated State broadband service mapping projects to identify served, underserved and unserved areas, and t These efforts would benefit from additional coordination and cooperation with *have been undermined and progress has been delayed because States have been forced to rely on voluntary compliance by* wireline and wireless broadband service providers *responding to requests for broadband service data;* *and*

**WHEREAS**, *States require broadband services* Policymakers need information from wireline and wireless broadband service providers in order to:

- Accurately measure the progress in improving access to and adoption and use of broadband services in their States,
- Assess the impact that broadband service has on rural, low-income, unemployed, aged, and otherwise vulnerable consumers,
- Analyze the effects of broadband infrastructure deployment initiatives on schools, libraries, medical and healthcare providers, community colleges and other institutions of higher learning, community support organizations and public safety agencies, and
- Target State, regional and local-level policy initiatives and incentives to increase broadband service deployment and adoption rates; *and*

**WHEREAS**, The NARUC Board of Directors, convened at its February 2007 Winter Meetings in Washington, D.C., adopted a resolution that requested the FCC to delegate

authority, at the State's option, for broadband service data collection and analysis purposes; *and*

**WHEREAS**, The Broadband Data Services Improvement Act, at 47 USC §1304(h), directs the FCC “to provide eligible entities access, in electronic form, to aggregate data collected by the Commission” States with the broadband service data collected by the FCC based on the Form 477 submissions of broadband service providers,” provided that the “eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity;” *and*

WHEREAS, an “eligible entity” for these purposes may include “an agency or instrumentality of a State, or a municipality or other subdivision,” “a nonprofit organization,” or “an independent agency or commission in which an office of a State is a member on behalf of the State,” and “is the single entity in the State that has been designated by the State to receive a grant” under Section 106 of the Broadband Data Improvement Act; and

**WHEREAS**, On March 19, 2008, the FCC adopted a Report and Order, WC Docket No. 07-38, to require wireline and wireless broadband service providers to file modified semi-annual FCC Form 477 reports that will show the number of broadband connections in service in individual Census Tracts, the broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speed tiers, and, for mobile wireless broadband service providers, the number of subscribers whose data plans allow them to browse the Internet and access Internet content; *and*

**WHEREAS**, The FCC received the modified Form 477 reports for data for the period July 1, 2008 through December 31, 2008, from all wireline and wireless broadband service providers on or before March 16, 2009, *and*

**WHEREAS**, The FCC routinely denies States' requests for up-to-date copies of the Form 477 reports filed by wireline and wireless broadband service providers that provision service in their states and, currently, will only provide copies of the outdated Form 477 reports with data for the period July 1, 2007 through December 31, 2007; *now, therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Summer 2009 Meetings in Seattle, Washington, requests the FCC to immediately comply with the requirements of the Broadband Data Services Improvement Act by providing those States that are “eligible entities” for purposes of Section 106 of that Act, that agree to provide the levels of protection for data as required by that section, and that and so request, with access in electronic form “to aggregate data” collected by the Commission based on copies of the current Form 477 submissions by wireline and wireless broadband service providers from their States, provided that said States agree to (1) provide at a minimum the levels of

protection for data as required for purposes of said Section 106, (2) not permit the publication of data for any geographic location except where the data of three or more providers is aggregated, and (3) not permit such data to be provided, directly or indirectly, to any entity, whether public, private, or otherwise, which is itself or is affiliated with any entity which is constructing, operating, supervising, or otherwise involved in the construction or operation of a wireless or wireline broadband system .and by requiring broadband service providers to simultaneously file future Form 477 reports with both the FCC and the respective State utility commissions; *and be it further*

**RESOLVED,** That the FCC should delegate authority to the States to require wireline and wireless broadband service providers in their State to submit data, in addition to that reported in the Form 477 report, on service locations, speeds and prices.