



N A R U C
National Association of Regulatory Utility Commissioners

January 29, 2009

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

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

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
2322 Rayburn HOB
Washington, D.C. 20515

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

Re: The Federal Communications Commission Collaboration Act (H.R. 4167)

Dear Chairmen Waxman, Boucher and Ranking Members Barton, Stearns:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I am writing to express our support for the *Federal Communications Commission Collaboration Act* (H.R. 4167). Representative Stupak's bill corrects systemic problems with the so-called "Sunshine laws" that induce significant inefficiencies and delay in FCC administrative process.

NARUC represents the government experts from each of your States, U.S. Territories, and the District of Columbia on, among other things, telecommunications utilities. These public utility commissioners know and understand local markets and conditions. They are well positioned to gauge the impact of federal policy changes on communications services, siting, and deployment. They share your desire for your constituents to benefit from reliable and ubiquitous telecommunications.

In a December 12, 2008 Letter to the Obama-Biden Transition Team,¹ NARUC urged the Administration to press for substantial and broad modification of the so-called Sunshine rules that are the focus of H.R. 4167. Specifically, there, among a laundry list of other much needed FCC reforms, NARUC argued:

Efficiency – Sunshine Rules: Drop the Artifice and require face-to-face Commissioner Negotiations. *Bring back multiday FCC Commissioner open negotiation agenda sessions - or lift the sunshine rules for face-to-face FCC commissioner negotiations.* The current "Sunshine rules" do not prevent decisions from being made out of the sunshine of public scrutiny. The Commissioners decide and usually have their dissents and concurrences prepared before the public meetings - which is more often a stylized Kabuki theatre rather than an actual decision-making session. The Sunshine rules simply put more authority in the hands of expert staff and drags out the negotiation process. This is horrifically inefficient.

As long as any formal vote occurs in an open meeting, H.R. 4167 allows negotiations among principals (the FCC Commissioners) – not just their delegates. This is a significant and much needed improvement to the

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>.

current process and we support it. However, there is one minor change to the bill needed to further improve the efficiency of decision making at the FCC.

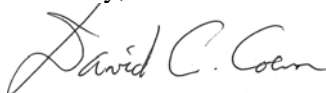
To take advantage of the expertise and insight of State Commissioners on certain key issues, Congress requires joint FCC-State deliberative bodies. These so-called “joint” boards, charged by Congress with the responsibilities of a federal administrative law judge and tasked with making critical record-based recommendations on universal service,² advanced services,³ and separations⁴ issues, *also have FCC Commissioners as participants*. Necessarily, the incredible inefficiencies in deliberations imposed by the current law on full commission deliberations also plague the work of these Congressionally-mandated bodies. A typical joint board has four State public service Commissioners, nominated by NARUC and confirmed by the FCC, and three FCC Commissioners.

Currently, FCC Commissioners must rotate their participation during face-to-face meetings and conference calls of such Joint Boards, causing continuous inefficient repetition of prior conversations and positions. NARUC urges the inclusion of language in H.R. 4167 to extend the exemption to cover FCC Commissioners and staff working with State commissioners and staff appointed to a federal state joint board or conference created pursuant to section 410 of title 47, United States Code.

NARUC is committed to working with the FCC to ensure all Americans have access to high-quality communications services at competitive prices. The bill streamlines the FCC’s decisional procedures. Its requirement for party diversity for a quorum to meet is a critical and clever additional protection of process. Adding NARUC’s proposed clarification will extend the efficiency benefits to deliberations among State and Federal regulators assigned to produce critical recommendations on key issues via a joint board or conference. Congress should quickly pass H.R. 4167 with our requested clarification.

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 or NARUC General Counsel Brad Ramsay at (202)898-2207, jramsay@naruc.org.

Sincerely,



David C. Coen
President, NARUC

cc: Members of the Committee on Energy and Commerce

² 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.

³ 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 Telecommuni-cations 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*.

⁴ 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>.

***Resolution on Federal Restrictions Affecting
FCC Commissioner Participation on Joint Boards and Conferences***

WHEREAS, Title 5b, Section 552, of the United States Code generally prohibits more than two (2) members of the Federal Communications Commission (FCC) from meeting privately to discuss agency business; *and*

WHEREAS, By Statute, only three (3) of the five (5) FCC Commissioners may serve on either the Universal Service or Separations Joint Board, and typically, the FCC Chair only appoints three to four FCC Commissioners to serve on Joint Conferences; *and*

WHEREAS, The Section 552 prohibition has the unintended effect of creating inefficiencies when FCC Commissioners work as part of Federal-State Joint Boards and Conferences (Joint Boards); *and*

WHEREAS, The FCC Commissioners frequently have to rotate their participation during meetings and conference calls, causing unnecessary repetition of prior conversations and positions; *and*

WHEREAS, Both State Commissions and the FCC benefit from participating in Joint Boards; *and*

WHEREAS, Joint Boards only serve as advisory boards for the FCC; *and*

WHEREAS, The FCC has discretion whether to adopt recommendations of the Joint Boards; *and*

WHEREAS, The exceptions enumerated within subsection 552(c) do not include participation in Federal-State activities; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its March 2004 Winter Meeting in Washington, D.C., supports legislation amending Section 552 of the United States Code to include a limited exemption to the 2 FCC Commissioner restriction to allow all FCC Commissioners appointed to any specific Joint Board or Joint Conference convened pursuant to Section 410 or 254 of the Act to participate simultaneously with their State counterparts in discussions related to that specific Board or Conference, *and be it further*

RESOLVED, That the NARUC General Counsel is authorized to take any appropriate actions to support legislation to allow this exemption.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors March 10, 2004*