

Rec'd 11/5/00

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,)
)
)
 Petitioner,)
)
)
 v.)
)
)
 FEDERAL COMMUNICATIONS COMMISSION)
 and UNITED STATES OF AMERICA,)
)
)
 Respondents.)

NO. 00-1428

MOTION TO INTERVENE

Pursuant to Section 402 of the Communications Act of 1934 (U.S.C. § 402), 28 U.S.C. § 2348, and Rule 15(d) of the Federal Rules of Appellate Procedure, the National Association for Regulatory Utility Commissioners (“NARUC”) respectfully moves for leave to intervene in the above-captioned matter.

Petitioners seek review of the Declaratory Ruling issued by the Federal Communications Commission (“FCC”) *In the Matter of Federal State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, FCC 00-248 (rel August 10, 2000).

That Declaratory Ruling is squarely based upon, and inconsistent with, Section 253 of the Telecommunications Act of 1996, 47 U.S.C.A. § 253 (1996). That section requires, *inter alia*,

the FCC to preempt State regulations that may have the effect of prohibiting the ability of any provider to provide telecommunications services. The FCC's scope of authority to preempt is limited, however, to *only* "to the extent necessary to correct such violation or inconsistency." Moreover, the FCC is only entitled to preempt after providing a notice and an opportunity for comment on the specific state regulation at issue. In the order on appeal, the FCC issued an order (1) acknowledging the request had been mooted by a state court decision (pending State Supreme Court review) and (2) essentially stating it would preempt if the State Supreme Court reversed on appeal.

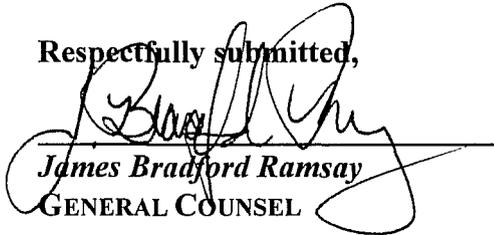
NARUC is a quasi-governmental nonprofit organization founded in 1889. Its membership includes those governmental bodies of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, engaged in the regulation of carriers and utilities. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, NARUC is composed of the State officials charged with the duty of regulating the telecommunications common carriers within their respective borders. As such, they have the obligation to assure that such telecommunications services and facilities as may be required by the public convenience and necessity are established, and that service is furnished at rates that are just and reasonable.

NARUC's responsibilities are nationwide and involve a broad spectrum of regulatory problems and responsibilities unique to it as an organization. In statutory language of the Congress, NARUC is "the national organization of the State commissions" responsible for economic and safety regulation of

the intrastate operation of carriers and utilities. *See*, 47 U.S.C.A. § 410(c)(1971). Moreover, Federal courts have recognized that the NARUC is a proper party to represent the collective interest of the State regulatory commissions. *See*, for example, *United States of America v. Southern Motor Carrier Rate Conference, et al.*, 467 F.Supp. 471 (N.D. Ga. 1979), *aff.* 672 F.2d 469 (5th Cir. Unit "B" 1982); *aff. en banc*, 702 F.2d 532 (5th Cir. Unit "B" 1983, *rev'd*, 471 U.S. 48 (1985)). *See also Indianapolis Power and Light Co. v. Interstate Commerce Commission*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

This recent expansive use of Section 253 to essentially issue a generic advisory opinion preemptive of State action has obvious and important implications for NARUC's members. Our member's interests would be affected by a decision of this Court to enjoin, set aside or amend the Declaratory Ruling. Accordingly NARUC respectfully requests that this Court grant it leave to intervene in the above-captioned matter.

Respectfully submitted,



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DATED: November 1, 2000

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v.)	NO. 00-1428
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FEDERAL COMMUNICATIONS)	
COMMISSION and UNITED STATES)	
OF AMERICA,)	
)	
<i>Respondents.</i>)	

CERTIFICATE OF SERVICE

I, James Bradford Ramsay, certify that a copy of the foregoing has been furnished by

U.S. Mail this 1st day of November 2000, to the persons listed below:

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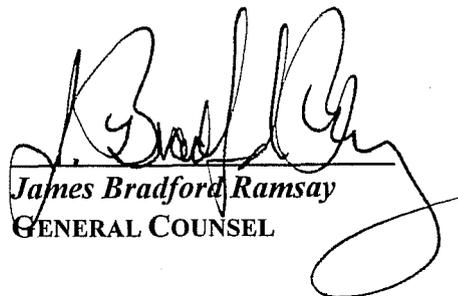
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