N A R U C

National Association of Regulatory Utility Commissioners

March 8, 2004

The Honorable George W. Bush
President
United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

No one has a bigger stake in assuring that your constituents, the people in every U.S. State and territory, as well as each specific State's economy, benefit from the proper and rapid implementation of Congress' vision of local competition than your fellow public servants - the State public service commissioners. The States and the FCC have worked hard since passage of the 1996 Telecommunications Act to foster competition in local telephone markets and more than 15 million Americans are now served by competitive carriers. Unfortunately, the D.C. Circuit Court's March 2nd decision in *United States Telecommunications Association vs. FCC* threatens the foundation of local telecommunications competition and the key role Congress assigned to the States to ensure competition develops and is maintained. It is critical that you support immediate Supreme Court review of this faulty and destabilizing opinion.

When the Congress enacted the local market-opening provisions in the Telecommunications Act in 1996, it affirmed and extended the longstanding relationship of the federal and State governments as partners in implementing telecommunications policy. The Federal Communications Commission (FCC) is charged with adopting overall rules implementing the market-opening provisions of the Act. State commissioners have the vital task of arbitrating disputes between incumbents and new entrants that arise from the FCC's rules, including determining how the incumbent providers unbundle the required network elements and the rates for these elements. In addition, the Congress explicitly preserved large areas of State authority, including the ability of States to establish additional network access obligations, so long as they are consistent with local competition purposes and provisions of the Act.

In the Triennial Review Order adopted last year, the FCC faced a daunting task in rewriting its rules regarding access to unbundled network elements. Court decisions reviewing prior FCC actions explicitly required it to adopt rules that were "granular" or specific to particular carriers, services, and markets. The record presented to the Commission was suitable for national determinations. The FCC, however, recognized it lacked the institutional and procedural capacity to create the more detailed records needed to engage in specific market-by-market

inquiries. By definition, such an approach can only result in better matching pro-competitive policies to actual conditions in specific markets. The FCC also recognized that State commissions, with their long experience analyzing local markets, their established intensive fact-finding procedures, and their unique perspective, are perfectly equipped for such inquiries. Accordingly, the FCC decided to delegate to the States a critical role in determining whether incumbents needed to provide access to unbundled network elements.

The Commission's decision to delegate this specific role to the States is well-grounded in the law and consistent with the structure and intent of the 1996 legislation. For such a delegation to survive legal scrutiny, the Commission had to ensure that (1) there is explicit or implicit authority to make such a delegation, (2) there is a sound rationale based in the statute for making such a delegation, (3) the delegation is reasonably designed to ensure that the States will consistently act according to the statute's substantive standards, and (4) parties have recourse after a State acts or if a State fails to act. The FCC's delegation met all these criteria. Moreover, the FCC decision to permit States to effectively "establish access and interconnection obligations" is also consistent with States' Congressionally-assigned role even without an express delegation. Unfortunately, the D.C. Circuit's opinion reverses the FCC's decision.

We strongly support the FCC's approach which expressly allows States to create more detailed market specific records that can only result in a better basis for decisions about the application of the competition policy outlined in the FCC's guidelines. We believe it is critical for the growth of local telecommunications competition that this role be preserved. We urge you to support immediately seeking a stay and Supreme Court review of the appellate court's flawed decision.

Thank you in advance for considering our request. We are in Washington at the National Association of Regulatory Utility Commissioners (NARUC) Winter Committee Meetings at the Washington Renaissance Hotel. The meetings end this Wednesday, March 10, 2004. If you have any questions or want to talk about this further, please have your staff contact Brad Ramsay, NARUC's General Counsel, at 202.898.2207 or Brian Adkins, NARUC's Legislative Director for Telecommunications, at 202.898.2205. Either one will assure we return your call as soon as possible.

Respectfully Submitted,

Stan Wise
NARUC President
Commissioner, Georgia Public Service Commission

Robert Nelson
Chair, NARUC Telecommunications Committee
Commissioner, Michigan Public Service Commission