

State regulators step up effort to retain UNE authority

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Eighty state regulatory commissioners, representing 34 states, sent a letter to the FCC Wed. asking the agency not to restrict their ability to retain the unbundled network element platform (UNE-P) as an entry strategy in their states. The letter, announced by NARUC Pres. David Svanda at a conference sponsored by the Phoenix Center, also urged the FCC not to preempt the state commissions' ability to add UNEs in their states beyond those that might be included on the national list. The letter comes as the FCC weighs changes in its UNE rules and state regulators have become increasingly concerned that they might not have the flexibility to make changes in whatever the FCC does.

The letter also urged the FCC to reflect several other principles when it makes its UNE decision: (1) "Any FCC list should, at a minimum, include all existing [UNEs]." (2) UNEs shouldn't be "delisted" without a state "check-off." (3) The FCC should "caucus" with the states before "promulgating the 'necessary and impair' standard used to evaluate if a UNE should be available." (4) The FCC should confirm the state authority to add UNEs.

At an all-day Phoenix conference, panelists debated how "intermodal" competition could be expanded and whether it was as important as some said it was. Regulators, including FCC Chmn. Michael Powell, have cited intermodal competition - competition among different technical platforms -- as a factor when weighing whether various markets were competitive. However, in broadband, there are only 2 strong intermodal competitors -- the ILECs' DSL and cable modem -- and most regulators would like to see a 3rd one, said Scott Marcus, Internet adviser at the FCC. It's not clear what technology could become that "3rd wire," he said, because "the jury's still out" on other broadband modes such as satellite, WiFi and terrestrial wireless. "We'd like a 3rd wire rather than new regulations," Marcus said. An indication of true intermodal competition is seen in the way consumers now use e-mail instead of cellphones and cellphones instead of long distance services, ex-NTIA Dir. Gregory Rohde said. However, "broadband is still a duopoly" and emerging broadband technologies are promising but not yet proved for widespread use, he said.