

## ***Resolution Supporting Access to Broadband Mapping Data***

**WHEREAS**, States need broadband services information on service locations, speeds, prices, technology and infrastructure 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, disabled 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 Board of Directors of the National Association of Regulatory Utility Commissioners, 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) found both digital subscriber line (DSL) and cable modem services – that provide access to the Internet – are “information services” and that “courts have recognized the Commission’s authority under Title I to preempt non-federal regulations that negate the Commission’s goals;” *and*

**WHEREAS**, Absent federal preemption, States have legal authority to collect broadband services data; *and*

**WHEREAS**, It is clear from sections 706 and 254 of the Telecommunications Act of 1996 (47 U.S.C. §706 and §254), as well as the express terms of the Broadband Data Improvement Act (P.L. 110-385, 122 Stat. 4096 (2008)) (the BDIA), encouraging “complementary State efforts to improve the quality and usefulness of State data” and the American Recovery and Reinvestment Act of 2009, (P.L. 111-5, 123 Stat. 115 (2009)) that Congress’s expressed goals are that States will both: (i) promote the deployment of advanced infrastructures and information services themselves, and (ii) collect information to assist State and Federal efforts to map the current and ongoing state of the deployment of broadband services; *and*

**WHEREAS**, NARUC disagrees with those who argue that because the FCC has preempted *some* State authority to regulate wireline and wireless broadband service providers, the FCC has also preempted the States’ authority to require broadband service providers to submit information on service locations, speeds, prices, technology and infrastructure within the State; *and*

**WHEREAS**, Several States initiated broadband services mapping projects to identify served, underserved and unserved areas which have been frustrated by reliance on *voluntary* responses to requests for granular broadband services data; *and*

**WHEREAS**, The NARUC Board of Directors, convened at its July 2007 Summer Meetings in New York, New York, adopted a resolution that requested the FCC to delegate authority, at the States' option, for broadband services data collection and analysis purposes; *and*

**WHEREAS**, The BDIA, at 47 U.S.C. §1304(h), directs the FCC to provide States with the aggregate broadband services data collected by the FCC based on the Form 477 submissions of broadband service providers; *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 speeds, 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 denies States' requests for up-to-date copies of the dis-aggregated Form 477 reports filed by individual 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 aggregated data for the period July 1, 2007 through December 31, 2007; *and*

**WHEREAS**, On July 1, 2009, the National Telecommunications and Information Administration (NTIA) released a Notice of Funding Availability (NoFA) for the State Broadband Data and Development Grant Program that makes grants available to the States "to fund their collection of broadband-related data . . . to develop statewide broadband maps, which will be linked to a Department of Commerce webpage." And, "In addition, the (State grant) awardees will submit all of their collected data to NTIA for use by NTIA and the FCC in developing and maintaining the national broadband map, which will be displayed on an NTIA webpage before February 17, 2011." And, the NoFA concluded that "State participation is critical to the national broadband mapping effort;" *and*

**WHEREAS**, Even though the NoFA provides that "In order to promote the efficient creation of the State and national broadband maps, NTIA and RUS [the Rural Utilities Service] will require that broadband internet service providers that apply for infrastructure grants under BTOP [the NTIA's Broadband Technology Opportunities Program] and RUS' Broadband Initiatives Program (BIP) agree to provide the data that awardees under this Program [the State Broadband Data and Development Program] are required to collect" there will likely be many broadband service providers that do not apply for BTOP or BIP funding and will, thus, not be required to submit necessary broadband mapping data to the States; *now, therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its Summer 2009 Meetings in Seattle, Washington, requests the

FCC, in accord with the requirements of the BDIA to immediately: (1) provide States that so request with disaggregated data from the relevant current Form 477 submissions by wireline and wireless broadband service providers; (2) require broadband service providers to simultaneously file future Form 477 reports with both the FCC and the requesting States; and (3) condition the aforementioned on a State's commitment to treat such Form 477 reports as privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider; *and be it further*

**RESOLVED,** To promote regulatory certainty, the FCC should immediately grant a petition for declaratory ruling affirming that: (1) it is an important aim of federal policy to expand the scope of available broadband services data; and (2) the FCC has not asserted any general preemption of any State actions requiring broadband service providers to submit specific information, at an appropriate level of granularity as determined by the State, on broadband service locations, speeds, prices, technology and infrastructure within the State, provided such State agrees to provide a minimum level of data confidentiality and protection as required by the BDIA, at 47 U.S.C. §1304.

---

*Sponsored by the Committee on Telecommunications*

*Adopted by the NARUC Board of Directors, July 22, 2009*