

Resolution on Customer Proprietary Network Information (CPNI)

WHEREAS, On October 2, 2001, the FCC on remand from the 10th Circuit Court of Appeals released a notice seeking comment on what methods of customer consent would service the governmental interests at issue and afford informed consent in accordance with the first amendment; and

WHEREAS, NARUC contends that the FCC's original CPNI Order was narrowly tailored and that the existing administrative record convincingly demonstrates that, of the limited options available to the FCC, the opt-in method of obtaining customer approval was the most reasonable solution; and

WHEREAS, NARUC, in its amicus brief of the United States Supreme Court seeking review of the 10th Circuit's decision, also contends that the Court did not apply the correct standard of review when examining the FCC decision; and

WHEREAS, Even if the 10th Circuit's erroneous 1st amendment standard of review is applied to implement an opt-in approach to carriers' use of CPNI, the FCC need only demonstrate that (1) privacy is a substantial governmental interest underlying the adoption of 47 U.S.C § 222; and (2) there is ample evidence to demonstrate and an opt-out approach is insufficient to protect this interest; and

WHEREAS, NARUC's State commissions have found in a variety of contexts a substantial interest in the care and treatment of customer derived information; and

WHEREAS, The clear focus of § 222, which imposes the CPNI

requirements, is Congress' interest in privacy; and

WHEREAS, American jurisprudence recognizes a fundamental right to privacy in personal communications, and the Courts and Congress have recognized that paramount interest citizens have in protecting their privacy; and

WHEREAS, There is independent evidence verifying that an opt-in approach is an ineffective method to protect sensitive private information; now therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania, based on its members wide experience dealing with these types of privacy issues in a variety of contexts, finds that government has a clear and substantial interest in these issues; and be it further

RESOLVED, That NARUC encourages its member commissions to file comments detailing their experiences and record based finding with respect to regulated utilities' use of customer information.

Sponsored by the Committee on Consumer Affairs.

Recommended by the NARUC Board of Directors November 13, 2001. Adopted in Convention November 14, 2001.