

Resolution on Information Services

WHEREAS, Communications consumers are served by an increasing number of technologies in today's markets and these technologies will continue to evolve and develop in the future; *and*

WHEREAS, The existing legal and regulatory constructs evolved in markets where almost all consumers were served by the public switched network and that new constructs will need to evolve and develop; *and*

WHEREAS, These FCC decisions and proceedings have or may assert jurisdiction under Title I over new technologies but without acknowledging that those technologies utilize and include telecommunications services; *and*

WHEREAS, When it passed the Telecommunications Act of 1996, Congress established a definition of "information services" and validated the FCC's previous rulings that enhanced services should be regulated on a different basis than telecommunications services; but Congress did not state that services that combine elements of information services and elements of telecommunications services should be regulated under Title I; *and*

WHEREAS, In 1998 the FCC reported to Congress that carrier regulation should be applied solely to companies that provide underlying transport, and not to the "information services" that are "built on top" of those facilities, and it tentatively concluded that certain phone-to-phone VOIP calls "bear the characteristics" of telecommunications services; *and*

WHEREAS, The Telecommunications Act of 1996 preserves the jurisdiction of the States to regulate intrastate telecommunications services; *and*

WHEREAS, Telecommunications Services associated with information services may be unregulated or more lightly regulated under the FCC's statutory forbearance powers [47 U.S.C. § 160]; *and*

WHEREAS, In February, 2003, NARUC adopted a resolution regarding VOIP services advising the FCC that a decision declaring all phone-to-phone calls to be information services by virtue of Internet technology might be inconsistent with the 1996 Act and could have negative effects on various telecommunications policies, including universal service, *now therefore be it*

RESOLVED, That the National Association of Regulator Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, that, in accordance with the principle of technological neutrality, regulatory jurisdiction should be based, whenever possible, on the characteristics of a service, not on the technology used to provide that service, whether the service is commingled with any other service or the speed or capacity of that service; *and be it further*

RESOLVED, That NARUC urges the FCC to carefully consider the following:

- Uncertainty and reduced capital investment while the scope of the FCC's authority under Title I is tested in the courts;
- Loss of consumer protections applicable to telecommunications services under Title II;
- Disruption of traditional balance between federal and State jurisdictional cost separations and the possibility of unintended consequences and increased uncertainty;
- Increases risk to public safety;
- Customer loss of control over content;
- Loss of state and local authority over emergency dialing services; and
- Reduced support base for federal and State universal service as well as State and local fees and taxes, *and be it further*

RESOLVED, That State and federal regulators should work together to adapt their regulatory oversight to the technological changes in communications markets so that all consumers receive the benefits of these new technologies; *and be it further*

RESOLVED, that NARUC General Counsel is authorized to make filings consistent with this resolution, including filing *amicus curiae* briefs in court proceedings.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors, November 18, 2003

Adopted by NARUC Convention, November 19, 2003