

Resolution on Fair and Non-Discriminatory Access to Content

WHEREAS, After an extended debate, the FCC recently adopted a “Net Neutrality” order intended to: (1) ensure network transparency; (2) ban attempts to block lawful content or to prevent the network connection of non-harmful devices; (3) bar “unreasonable discrimination” of lawful Internet traffic; and (4) allow for reasonable network management practices; *and*

WHEREAS, An additional undercurrent was a proclaimed commitment to a “level playing field” to ensure markets decide winners and losers, rather than some central or regulatory authority; *and*

WHEREAS, In the recent decision approving the proposed vertical integration of carrier and content, the FCC dealt directly but in a selective manner with the “content neutrality” issue by (i) ensuring “reasonable access” to programming for multichannel distribution; (ii) establishing an “improved commercial arbitration process” for resolving disputes about (among other considerations) pricing, terms and conditions; and (iii) dictating that content be made available at “fair market value” and on “non-discriminatory prices and terms,” *and*

WHEREAS, Video content is the leading, if not the “killer,” application in the bundling of services by competitors seeking to enter discrete mid-size, small, and rural markets, and without reasonable and economic access to that content, small carriers will lack the ability to enter those markets and/or compete effectively against larger local exchange carriers (LECs) and multiple system operators (MSOs); *and*

WHEREAS, For rural providers seeking to reach unserved areas, the ability to offer the so-called “triple-play” is crucial to implementation of successful business plans and a pre-requisite to access to the significant capital investment required not only to bring video and broadband and IP-enabled services to those currently residing in unserved areas; *and*

WHEREAS, In recent years the transfer of networks from large to mid-sized carriers has been followed, in some areas, by significant increases which has been attributed, in whole or in part, to wholesale price increases sought from those small to mid-sized carriers; *and*

WHEREAS, The Commission’s decision, while helping to provide non-discriminatory access to content in some settings, has not dealt more broadly with the availability and potentially discriminatory pricing of content which disadvantages small and mid-sized LECs and comparable small and medium-sized cable providers; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Winter Committee Meetings in Washington D.C., urges the FCC to refer the matter to the Section 706 Joint Conference for examination and recommendations.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors February 16, 2011*