

Resolution on Cable Effective Competition Standards

WHEREAS, The Federal Communications Commission (FCC) in its Further Notice of Proposed Rulemaking, MM Docket No. 90-4, proposes three alternative standards for determining whether a cable system is subject to effective competition; and

WHEREAS, These alternative effective competition standards consist of two structural tests and one behavioral test. These are:

- 1) that effective competition exists if there are six unduplicated over the air broadcast signals and a cable penetration rate of less than 50 percent;
- 2) that effective competition exists if 50 percent of the cable community is capable of receiving the signal of a competing multichannel video provider and 10 percent subscribe to the alternative provider;
- 3) that effective competition exists if the cable operator will provide a basic service tier at a competitive price level as well as a minimum level of service and will adhere to certain quality of service standards; and

WHEREAS, The uniform 50 percent criterion may give cable systems having near 50 percent market share the incentive to charge excessively high rates, in order to discourage cable penetration and thereby remain unregulated; and

WHEREAS, Under the conditions of the second structural test it would be possible for an alternative cable system to achieve a 10 percent subscription rate by serving selective high density dwellings, e.g., high rise apartments and condominiums, and thereby leaving single family homeowners without access to an alternative cable system; and

WHEREAS, A cable system may meet one of the FCC proposed effective competition standards, but because of additional or unforeseen local cable market conditions, truly effective competition may not exist; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Meeting in Washington, D.C., hereby urges the FCC to establish a waiver process that allows the franchising authority to show that particular local circumstances make sole use of the FCC standards inadequate, and in such instances the franchising authority may propose an alternative standard for effective competition; and be it further

RESOLVED, That the NARUC Executive Committee directs the NARUC General Counsel to file comments expressing these concerns with the FCC.