

Resolution on Special Access

WHEREAS, Special access is a key input to all telecommunications providers which includes the local loop (channel terminations) and dedicated transport to their end users, including business customers, interexchange carriers (IXCs), competitive local exchange carriers (CLECs), and commercial mobile radio service providers service offerings; *and*

WHEREAS, The substantial majority of special access services are provided by the regional Bell Operating Companies (BOCs, or ILECs), which after recent mergers and consolidations, consist of two large, vertically and horizontally integrated companies with national reach, and one company with a regional ILEC footprint in Western States; *and*

WHEREAS, The Federal Communications Commission (FCC) in 1999 established certain predictive triggers as what were then considered irreversible evidence of sufficient competition in special access markets, which were primarily based on the number of collocations by competitive carriers in the incumbents' wire centers (Price Flexibility Order); *and*

WHEREAS, Using those triggers, the FCC has provided pricing flexibility relief from its price cap rules for the majority of metropolitan statistical areas (MSAs); in fact, as of November 2006, only three of the 100 largest MSAs in the United States have not been granted pricing flexibility; *and*

WHEREAS, The Government Accountability Office issued a report in November 2006 ("FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services," GAO-07-80), and concludes that "in the 16 major metropolitan areas we examined, facilities-based competition for dedicated access services exists in a relatively small subset of buildings," and that the FCC needs to improve its data collection and analysis in order to determine the true extent of competition in special access markets; *and*

WHEREAS, The GAO acknowledges in its report that there are numerous gaps in data and there is no single public or private data source that is universally recognized as comprehensive, and that "the data may be understating or overstating competition to varying degrees"; *and*

WHEREAS, The FCC issued a Notice of Proposed Rulemaking on January 31, 2005 (WC-05-25) to re-examine the appropriate regulatory framework for price capped local exchange carriers' interstate special access services; *and*

WHEREAS, NARUC has had a long-standing interest in ensuring that sufficient competition exists in local exchange markets so that market-based rates can apply to wholesale services such as special access, and where competition is judged not to be sufficient, regulatory policies should be adopted that prevent dominant carriers with excessive market power from operating in a manner that harms competition; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2007 Winter Meetings in Washington, D.C., directs its Committee on Telecommunications, under the aegis of the Federal Regulatory Subcommittee, to examine the competitive issues involving special access in selected markets, and that such subcommittee report back its analysis, findings, and any recommendations to the full Committee by the Summer Meeting to be held in New York City in July 2007; *and be it further*

RESOLVED, That NARUC directs its General Counsel to communicate this resolution to Congress, and to all relevant Federal and State agencies and policymakers.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors, February 21, 2007