Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter(s) of	)	
Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership	)	WC Docket No. 07-38
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

COMMENTS OF THE
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC")[1] respectfully submits the following comments in response to the July 17, 2009 Notice of Proposed Rulemaking ("Notice" or "NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above captioned proceedings.[2]

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[1] Founded in 1889, NARUC's members include agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and conditions of service of utility intrastate operations. NARUC members ensure that utility services are provided at rates and conditions that are just, and reasonable. Both Congress and federal courts have consistently recognized NARUC as a proper entity to represent the collective interests of State commissions. See, e.g., 47 U.S.C. § 410(c) (1971) (*Congress designates NARUC to nominate members to Federal-State Joint Boards to consider issues of concern to State regulators and the FCC on universal service, separations, and other issues*); See also 47 U.S.C. § 254 (1996) (*describing functions of the Universal Service Joint Board*). See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (*where the Court explains "Carriers, to get the cards, applied to [NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations the ICC issued to create the "bingo card" system*). See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985).

[2] *Comment Sought on Providing Eligible Entities Access to Aggregate Form 477 Data As Required by the Broadband Data Improvement Act*, Public Notice, DA 09-1550, July 17, 2009, 74 Fed. Reg. 36446 (July 23, 2009) ("*Public Notice*"). Available online at: http://edocket.access.gpo.gov/2009/E9-17579.htm.

The Notice seeks comment on how to interpret and implement Sections 106 (h) (1) and 106 (h) (2) of the Broadband Data Improvement Act ("BDIA" or "Act").[3]

Less than two weeks ago, at its summer meetings in Seattle, Washington, NARUC passed a resolution addressing these specific issues. A copy of that resolution is appended as appendix A. Among other things,[4] the resolution asks the FCC, "in accord with the requirements of the BDIA to immediately:

- Provide States that so request with the raw data from the relevant current Form 477 submissions by wireline and wireless broadband service providers;

- Require broadband service providers to simultaneously file future Form 477 reports with both the FCC and the requesting States; and

- Condition the aforementioned on a State's commitment to treat such Form 477 reports as privileged or confidential, as a record not subject to public disclosure except as otherwise agreed by the broadband service provider.

In support of these positions, NARUC states as follows:

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[3] Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§ 1301-1304) ("BDIA" or "Act"). The full text is available online at the Government Accounting Office's website at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ385.110.

[4] The resolution also asks the FCC to "immediately grant a petition for declaratory ruling affirming that: (1) it is an important aim of federal policy to expand the scope of available broadband services data; and (2) the FCC has not asserted any general preemption of any State actions requiring broadband service providers to submit specific information, at an appropriate level of granularity as determined by the State, on broadband service locations, speeds, prices, technology and infrastructure within the State, provided such State agrees to provide a minimum level of data confidentiality and protection." ***NARUC intends to file the referenced petition later this week or early next week.***

BACKGROUND

The 2008-passed Broadband Data Improvement Act has two critical foci: first, to "improv[e] Federal data on the deployment and adoption of broadband service" and, second, to "recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data." *Id.*

Senator Daniel Inouye (HI-D), who introduced this legislation in the Senate, noted:

> The federal government has a responsibility to ensure the continued rollout of broadband access . . . [b]ut . . . we cannot manage what we cannot measure. This bill will give us the baseline statistics we need . . . to . . . achieve the successful deployment of broadband access and services to all Americans.[5]

Clearly, the data Congress wants collected under this legislation is *any* information needed to make decisions about how and where to deploy broadband infrastructure and services. Bad or incomplete data necessarily leads to bad or poorly contrived planning and polices.

The Broadband Data Improvement Act

The Act has three sections: "Findings"; "Improving Federal Data on Broadband" and, of obvious interest to NARUC's state commission members, a final section titled "Encouraging State Initiatives to Improve Broadband".[6] This last section, 47 U.S.C. § 1304, which discusses the need to encourage State initiatives, *requires* the FCC provide "eligible entities" access, in electronic form, to "aggregate" data collected by the Commission based on the Form 477 submissions of broadband service providers.[7] Section 1304 also provides that an eligible entity

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[5] See http://www.consumeraffairs.com/news04/2008/10/congress_broadband.html (Last visited July 29, 2009).

[6] See 47 USC §§ 1301, 1303 and 1304. Section 1302 is the codification of Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104.

shall treat any trade secret, commercial or financial information or privileged or confidential matter as a record not subject to public disclosure, except as agreed to by the broadband service provider and the eligible entity.[8] An eligible entity under the BDIA is: (A) an entity that is either (i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; or (ii) a nonprofit organization; or (iii) an independent agency or commission in which an office of a State is a member on behalf of a State; and (B) is the single entity in the State that has been designated by the State to receive a grant under the BDIA.[9] Thus, some eligible entities will be instrumentalities of a State; while others likely will be non-profit organizations that are not instrumentalities of the State and not subject to the same requirements as instrumentalities.

The Notice

The notice seeks comment on

(1) how the FCC should interpret the term "aggregate" in § 106(h) (1) – specifically whether the confidentiality provisions of section 106(h) (2) indicate that the Commission should provide access to data that is more disaggregated than the Form 477 filing-based data that it makes available to the public, as well as what factors should be used to determine the appropriate level of aggregation, and

2) if the FCC should take any measures to ensure eligible entities' compliance with the confidentiality provisions of § 106(h) (2).

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[7] 47 U.S.C. 1304 (h) (1). The BDIA does not require that the FCC provide eligible entities access to Form 477 data of non-broadband service providers.

[8] 47 U.S.C. §1304 (h) (2).

[9] 47 U.S.C. §1304 (i) (2).

DISCUSSION

A. Aggregation

The Commission asks for comment on how the term "aggregate" should be interpreted and for what criteria they should use to interpret this term.

The answer is obvious. The touchstone to interpret any law is Congressional intent.[10] That is the overriding criteria for any FCC interpretation. Fortunately, year after year, in at least three separate pieces of legislation, Congress has been crystal clear both that it wants to promote the deployment and adoption of advanced services – ***and that it wants States to play a key role in those efforts***. Sections 706 and 254 of the Telecommunications Act of 1996,[11] as well as the express terms of the BDIA and the American Recovery and Reinvestment Act of 2009, (P.L. 111-5, 123 Stat. 115 (2009)) clarify Congress's expressed goals that *States will* both: (i) promote the deployment of advanced infrastructures and information services themselves, and (ii) collect information to assist efforts to map the current and ongoing state of the deployment of broadband services.

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[10] "If the intent of Congress is clear, that is the end of the matter; for the Court, *as well as the agency*, must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984). {emphasis added}

[11] 47 U.S.C. §706 and §254 (1996). In Section 706, Congress specifies ***that States*** (and the FCC) "***SHALL*** encourage the deployment…of advanced telecommunications capability" a term Congress defined "without regard to any transmission media or technology, as high speed, switched, broadband telecommunications capability. (emphasis added) Pub. L. No.104-104,110 Stat. 56, § 706 (codified in the notes to 47 U.S.C. §157) This section must be read in *pari materia* with the Act's emphasis for access to such services for schools, libraries, and rural health care facilities, as well as the 47 U.S.C. § 254(c)'s requirement to periodically update what services can be supported by federal programs (and - necessarily the allowed State analogues). In 47 U.S.C. § 254 (b), the linkage between Congress's desire for States to promote advanced services and a periodically evolving universal service is explicit. It *mandates* that the FCC explicitly base its policies to advance universal service (which includes both "advanced" and "information" services) on the existence of STATE mechanisms. Specifically that section states " [T]he FCC SHALL base policies for the preservation and advancement of universal service on the following principles . . . (2) . . . Access to advanced services . . . (3). . .Consumers in all regions. . .including those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas. . .(5). . .There should be specific, predictable and sufficient Federal AND STATE mechanisms to preserve and advance universal service." (emphasis added) Id. In 47 U.S.C. § 254 (f), Congress mandates that every provider of INTRASTATE telecommunications contribute to a States program.

What should the FCC provide to States that are willing to keep elements of the data confidential?

It seems obvious that whatever data the FCC finds necessary and useful to collect, their fellow regulators at the State level, looking to accomplish the exact same goals, will also.

"Aggregate" may be taken to mean a "combining" of individual pieces to form a single whole, without reference to those individual pieces. It could also mean supplying all the information provided. Clearly, as even the FCC concedes, there is no need for the confidentiality provisions of Section 1304 (h) (2) if the term "aggregate" meant only providing the information released by the Commission to the public.

Nor does it seem logical to give any information otherwise available to the public or the investment community - via carrier annual reports, sec filings, or tax filings such protection.

Therefore a greater level of disaggregation is clearly contemplated by the BDIA.

Whatever is provide ***must be*** sufficiently disaggregated to allow for Congress' purpose to be achieved, i.e., to be useful in planning and encouraging the deployment of broadband services. The data must be sufficiently granular to allow the eligible entities to identify where and how broadband resources can best be deployed. As the Commission has itself found that more granularity is needed to make the data somewhat useful, so it should also recognize the need to provide that granular data to the eligible entities.

Any limiting interpretation of this term should land on the side of advancing Congressional goals – and rather obviously – on providing more data to eligible entities rather than less. Optimally, "aggregated" data will include all (aka – the aggregate) of the data collected - all the data given in each of the Form 477s filed, individually by carrier, by census tract, by technology category (DSL, Cable Modem, Terrestrial Mobile Wireless, etc.) and by upload/download information transfer rate.

Each bit of information is critical to allow eligible entities to develop and implement the specified "statewide initiatives to identify and track the availability and adoption of broadband services within each state."[12]

There is a third factor that should weigh heavily in the FCC's determinations – the need for speed. The comment cycle for this rulemaking is expedited and understandably so. There is a very short window for access to broadband infrastructure and funding. There is a very short window for the FCC to come up with a national broadband deployment plan. There is a very short window for states to submit their proposals for mapping data programs.

Obviously, the form 477 data is a critical prerequisite to useful State input and plans in all three categories.

Those parties whose interest and expertise are uniquely aligned with the challenges facing the federal government – the States – are operating under the same time pressures.
like the federal government – trying to re-build the "broadband" plane at the same time that they are creating a map of the pieces that have already been constructed. State entities have, like the FCC, competent and expert staff. Delay in the release of complete data (or release of data only belatedly recognized as insufficient) ***will undermine State efforts***. The obvious solution – require carriers to simultaneously file the Form 477's with those States that, as discussed below, agree to provide the needed level of confidentiality. There is some precedent for this approach.

B. Confidentiality

Hand in hand with this level of disaggregation goes a need for protection of confidential information. The BDIA requires that an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential as a record not subject to public disclosure, except as mutually agreed to by the broadband service provider and the eligible entity.[13]

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[12] See 47 U.S.C. § 1304 (b) (1).

Where the eligible entity is an instrumentality of the State, this requirement is likely to be self-effectuating. Most States have Freedom of Information Acts ("FOIAs") that require disclosure of most publicly held information, but that protect trade secrets and commercial, privileged and financial information from disclosure.[14] Such an eligible entity can certify to the FCC that its FOIA provides sufficient protection. If necessary, the Commission can review a State's FOIA to determine whether it is sufficiently protective of confidential information and, by agreement, impose federal requirements where not.[15] In the very small number of States that do not have protections against disclosure of confidential information, the FCC and the eligible entity can work to help the entity to obtain the information, redacted or reformatted so as not to affect confidentiality.[16] If determinations are made that the information cannot be sufficiently protected, that is, if the State-instrumentality eligible entity cannot treat a confidential matter as not subject to disclosure, then the BDIA prevents the FCC from providing the data. This provides a major incentive to reach agreement on data protection.

Where eligible entities are not instrumentalities of the State, there is likely no statutorily-imposed obligation to disclose information. Those eligible entities can enter agreements with the FCC covering the protection of the information modeled on the State or federal requirements.

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[13] *See* 47 U.S.C. § 1304 (h) (2).

[14] *See, e.g*., DC ST § 2-531 *et seq.* For example the eligible entity in the District of Columbia is the Office of the Chief Technology Officer, which is a state instrumentality subject to the District's Freedom of Information Act, which provides protection for confidential information.

[15] We note that a process similar to this is considered part of the Data Sharing Arrangements entered into between the Commission and several State Public Utility Commissions. See *Local Telephone Competition and Broadband Reporting*, 19 FCC Rcd. 22340 at ¶ 26 (2004) ("*Second Data Collection Order*") ("Such data sharing only occurs where state entities formally declare to us that they are willing and able to treat submitted information subject to restrictions on data release that are at least as stringent as federal requirements.").

[16] *See Local Telephone Competition and Broadband Repo*rting, 15 FCC Rcd. 7717 at ¶ 95 (2000) ("*First Data Collection Order*") ("In these situations, we will work with these state commissions to enable them to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the provider's sensitive information.")

C. Data Sharing Arrangements

The BDIA *requires* the provision of information only to eligible entities. As noted earlier, State Commissions are repositories of perhaps the most expertise on the deployment of all critical infrastructures in a State. Even where they are not designated as the entity to seek the BDIA funding, they are likely to:

- Either oversee or run State universal service programs (and some broadband initiatives);
- Provide input to NTIA (through the consultation specified by Congress in the ARRA) on requests for infrastructure funding in their State;
- Provide input to the FCC on its broadband deployment/universal service reform initiatives,
- Provide input to the State entity charged with State broadband initiatives; and/or
- Provide input to the eligible entity designated by the State to receive the BDIA grant.

Obviously, the Form 477 data can be very useful for all these tasks.

Fortunately, just is the BDIA is not the only expression of Congress's desire for a strong state role in advancing broadband services, it is also not the only source of authority for the release of Form 477 data to requesting State utility commissions. The FCC has for quite a while been sharing data with a few State commissions based on so-called Data Sharing Arrangements. The FCC should facilitate more FCC-State Data Sharing Arrangements and specify they include the State data provided to eligible entities.

In a 1985 rulemaking, the FCC delegated to the Chief of the then "Common Carrier Bureau" authority to "approve the release to State public utility commissions such information as the Bureau may obtain during the course of its audit activities which falls within the common interest and jurisdiction of the Commission and the states."[17]

This rule was awkwardly codified in Section 0.291 of the Commission's Rules as an exception to a negative. The rule stated that the Chief "shall not have authority" regarding Sections 219 and 220 of the Communications Act - - - except as necessary to do certain things, including approve the release of information to state commissions. In 1990, the Commission undertook clarify this section, finding the blanket prohibition was too broad:

> By limiting the sweeping nature of the prohibitory language, we eliminate the need to identify specific exceptions to the prohibitions.[18]

Although the "approve the release of data to state commissions" language is no longer found in the rule, the Chief of the Common Carrier Bureau (now the Wireline Competition Bureau) today has authority to release information to the State public utility commissions, subject to confidentiality protections.

The Commission has historically found great value in such data sharing. In 2000, when the Commission set forth its data gathering requirements, including Form 477, it specified:

> *Sharing data with State Commissions*. Finally, because we wish to maximize the value of this information collection for states, we conclude that the Chief of the Common Carrier Bureau may release the information collected under this program to the state commissions, subject to certain conditions.

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[17] *Memorandum Opinion and Order*, FCC 85-197 (rel. April 24, 1985), recon. den. *Amendment of Part 0 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau*, 104 FCC 2d. 733 (1986). The basis for the rule allowing release of information to state commissions is found in Sections 220 and 410 (b) of the Communications Act.

[18] *Amendment of Parts 0,1,and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau*, 5 FCC Rcd. 4601 (1990).

> A state commission may view *all data* submitted on a *carrier specific* basis, by entities filing data for that commission's state, provided that the state has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure of any confidential information. However, where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail. […]We anticipate that these actions will give state commissions a valuable and unique view into the state of local competition and broadband deployment in their states. In addition, we hope that this will further our goal of reducing the overall reporting burdens placed on entities in these markets by minimizing the need for additional information collection programs at the state level.[19]

In 2004 the Commission again affirmed its support of a program of providing Form 477 data to State public utility commissions in the *Second Data Collection Order*.[20] At that time, the Commission reported that at least ten States received Form 477 data under the data sharing arrangement using a formal "Data Sharing Agreement" negotiated through the Wireline Competition Bureau. This program greatly assists States in their efforts to promote broadband deployment. Sharing data with State public utility commissions, in addition to eligible entities, will smooth the path to greater broadband usage in all areas of a State.

CONCLUSION

The FCC should focus on Congressional goals and the usefulness access to granular data to allowing the States to advance those goals when defining the data to be released to eligible entities. Confidentiality provisions are important and can be arranged to assure broadband service providers that trade secrets, financial and other confidential information will be protected. Finally, to allow those with the most expertise in the States to participate in both Federal and State broadband initiatives, the FCC should make the data given to eligible entities

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[19] *First Data Collection Order* at ¶ 95 (emphasis added).

[20] *Local Competition and Broadband Reporting,* 19 FCC Rcd. 22340 (2004).

in each State available to that State's public utility commission under the long-standing and much-valued Data Sharing Arrangements.

Respectfully Submitted,

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Appendix A - *Resolution Supporting Access to Broadband Mapping Data*

WHEREAS, States need broadband services information on service locations, speeds, prices, technology and infrastructure from wireline and wireless broadband service providers in order to:

- Accurately measure the progress in improving access to and adoption and use of broadband services in their States,
- Assess the impact that broadband service has on rural, low-income, unemployed, aged, disabled and otherwise vulnerable consumers,
- Analyze the effects of broadband infrastructure deployment initiatives on schools, libraries, medical and healthcare providers, community colleges and other institutions of higher learning, community support organizations and public safety agencies, and
- Target State, regional and local-level policy initiatives and incentives to increase broadband service deployment and adoption rates; *and*

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its February 2009 Winter Meetings in Washington, D.C., adopted a resolution recognizing the critical role the States have in gathering the necessary broadband services data to determine unserved and underserved areas within their borders; *and*

WHEREAS, The Federal Communications Commission (FCC) found both digital subscriber line (DSL) and cable modem services – that provide access to the Internet – are "information services" and that "courts have recognized the Commission's authority under Title I to preempt non-federal regulations that negate the Commission's goals;" *and*

WHEREAS, Absent federal preemption, States have legal authority to collect broadband services data; *and*

WHEREAS, It is clear from sections 706 and 254 of the Telecommunications Act of 1996 (47 U.S.C. §706 and §254), as well as the express terms of the Broadband Data Improvement Act (P.L. 110-385, 122 Stat. 4096 (2008)) (the BDIA), encouraging "complementary State efforts to improve the quality and usefulness of State data" and the American Recovery and Reinvestment Act of 2009, (P.L. 111-5, 123 Stat. 115 (2009)) that Congress's expressed goals are that States will both: (i) promote the deployment of advanced infrastructures and information services themselves, and (ii) collect information to assist State and Federal efforts to map the current and ongoing state of the deployment of broadband services; *and*

WHEREAS, NARUC disagrees with those who argue that because the FCC has preempted *some* State authority to regulate wireline and wireless broadband service providers, the FCC has also preempted the States' authority to require broadband service providers to submit information on service locations, speeds, prices, technology and infrastructure within the State; *and*

WHEREAS, Several States initiated broadband services mapping projects to identify served, underserved and unserved areas which have been frustrated by reliance on *voluntary* responses to requests for granular broadband services data; *and*

WHEREAS, The NARUC Board of Directors, convened at its July 2007 Summer Meetings in New York, New York, adopted a resolution that requested the FCC to delegate authority, at the States' option, for broadband services data collection and analysis purposes; *and*

WHEREAS, The BDIA, at 47 U.S.C. §1304(h), directs the FCC to provide States with the aggregate broadband services data collected by the FCC based on the Form 477 submissions of broadband service providers; *and*

WHEREAS, On March 19, 2008, the FCC adopted a Report and Order, WC Docket No. 07-38, to require wireline and wireless broadband service providers to file modified semi-annual FCC Form 477 reports that will show the number of broadband connections in service in individual Census Tracts, the broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds, and, for mobile wireless broadband service providers, the number of subscribers whose data plans allow them to browse the Internet and access Internet content; *and*

WHEREAS, The FCC received the modified Form 477 reports for data for the period July 1, 2008, through December 31, 2008, from all wireline and wireless broadband service providers on or before March 16, 2009, *and*

WHEREAS, The FCC denies States' requests for up-to-date copies of the dis-aggregated Form 477 reports filed by individual wireline and wireless broadband service providers that provision service in their States and, currently, will only provide copies of the outdated Form 477 reports with aggregated data for the period July 1, 2007 through December 31, 2007; *and*

WHEREAS, On July 1, 2009, the National Telecommunications and Information Administration (NTIA) released a Notice of Funding Availability (NoFA) for the State Broadband Data and Development Grant Program that makes grants available to the States "to fund their collection of broadband-related data . . . to develop statewide broadband maps, which will be linked to a Department of Commerce webpage." And, "In addition, the (State grant) awardees will submit all of their collected data to NTIA for use by NTIA and the FCC in developing and maintaining the national broadband map, which will be displayed on an NTIA webpage before February 17, 2011." And, the NoFA concluded that "State participation is critical to the national broadband mapping effort;" *and*

WHEREAS, Even though the NoFA provides that "In order to promote the efficient creation of the State and national broadband maps, NTIA and RUS [the Rural Utilities Service] will require that broadband internet service providers that apply for infrastructure grants under BTOP [the NTIA's Broadband Technology Opportunities Program] and RUS' Broadband Initiatives Program (BIP) agree to provide the data that awardees under this Program [the State Broadband Data and Development Program] are required to collect" there will likely be many broadband service providers that do not apply for BTOP or BIP funding and will, thus, not be required to submit necessary broadband mapping data to the States; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its Summer 2009 Meetings in Seattle, Washington, requests the

FCC, in accord with the requirements of the BDIA to immediately: (1) provide States that so request with disaggregated data from the relevant current Form 477 submissions by wireline and wireless broadband service providers; (2) require broadband service providers to simultaneously file future Form 477 reports with both the FCC and the requesting States; and (3) condition the aforementioned on a State‘s commitment to treat such Form 477 reports as privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider; *and be it further*

RESOLVED, To promote regulatory certainty, the FCC should immediately grant a petition for declaratory ruling affirming that: (1) it is an important aim of federal policy to expand the scope of available broadband services data; and (2) the FCC has not asserted any general preemption of any State actions requiring broadband service providers to submit specific information, at an appropriate level of granularity as determined by the State, on broadband service locations, speeds, prices, technology and infrastructure within the State, provided such State agrees to provide a minimum level of data confidentiality and protection as required by the BDIA, at 47 U.S.C. §1304.

Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors, July 22, 2009