

**Media Access Project Supports Draft of NARUC Resolution on  
Broadband Internet**

November 8, 2002



The National Association of Regulatory Utility Commissioners will consider at its annual Convention in Chicago a resolution supporting open and free civic discourse via the Internet. The resolution recognizes that concerns raised by Media Access Project ("MAP") and others are valid and central to democracy in this country. MAP and other advocates, including the American Civil Liberties Union, have argued that the FCC's failure to protect speech on the Internet as it has in the past will endanger the rights of American citizens to send and receive information freely.

MAP participated in many conference calls with NARUC staff and representatives of the National Cable Television Association, Verizon, Microsoft, and others to develop this language finalized on November 6, 2002. Cheryl A. Leanza, Deputy Director of Media Access Project, who participated in the negotiations, stated, "the language is a careful compromise, and MAP supports NARUC adoption of the draft as written." "I hope that the industry representatives who helped negotiate the draft stand by their support of the document," she added.

MAP continues to believe that the best means to ensure open and free speech on the Internet is to maintain the strict nondiscrimination protections that the American people now receive over dial-up Internet access, and the ability of all ISPs access to broadband Internet facilities. Under such a this regime, each company may package and promote the content it believes consumers prefer, but no content will be disadvantaged because of the financial or political interests of the facilities owner. As the NARUC resolution explains, some Americans are able to obtain high speed Internet access only via cable television facilities and others only via telephone company facilities. Because Americans have little choice in the facilities they use, nondiscriminatory principles are essential to preserve the free speech and civic discourse that currently receives protection.

MAP's support of this resolution is part of its on-going efforts to preserve free and open speech on the Internet. Most recently, MAP represented clients challenging an FCC decision to strip nondiscrimination protection from high speed Internet access over cable television facilities. See MAP's brief in *Brand X v. FCC*, <http://www.mediaaccess.org/filings/CFA9thcirbriefFINAL1010.pdf> and MAP's open access web page at <http://www.mediaaccess.org/programs/broadband/index.html>.

The ACLU has issued a report on broadband open access, which is accessible at <http://archive.aclu.org/issues/cyber/broadband.html>.

A copy of the resolution is attached.

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## **Resolution Regarding Citizen Access to Internet Content**

Draft of 11/6/02

**WHEREAS**, In a “cable modem” Declaratory Ruling and Notice of Proposed Rulemaking released on March 15, 2002, the FCC declared that cable modem service is an information service, and it sought comment on whether the threat of blocking subscriber access to Internet content or services is sufficient to justify regulatory intervention, and

**WHEREAS**, The Commission proposes to regulate broadband access to the Internet using its Title I “ancillary jurisdiction” authority, and

**WHEREAS**, Customers using a telecommunications common carrier today have the ability to send and receive lawful information of their own design and choosing, and

**WHEREAS**, Title II of the Communications Act’s prohibition against unreasonable discrimination has historically protected the rights of American citizens to transmit and receive information without change in its form or content, and

**WHEREAS**, Many citizens today use broadband services and facilities as their chief source of information and news, even to the point of replacing newspapers, and are far more likely to do so in the near future, and

**WHEREAS**, Some citizens can get broadband service only through wireline telephone facilities, and others can get broadband service only through cable modems, and

**WHEREAS**, Providers of broadband services or facilities have the technical capability to create a "walled garden" or "fenced prairie," that is designed to attract customers to preferred content but that also could keep consumers from reaching content other than those of the providers’ choosing, and

**WHEREAS**, Some providers of broadband services or facilities may have an incentive to restrict Internet access to favored news sources, and if they chose to do so , it could significantly harm free and open information exchange in the marketplace of ideas, and

**WHEREAS**, Although the issue of “open access” has been debated largely as a question of fairness among different kinds of broadband providers, the restriction of user access and its effect on informed citizenship is the issue of primary significance to citizens, now therefore be it

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2002 Annual Meeting in Chicago, Illinois, that all Internet users, including broadband wireline and cable modem users should:

- (1) Have a right to access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications); and
- (2) Receive meaningful information regarding the technical limitations of their broadband service, and be it further

**RESOLVED,** Where a broadband facilities provider furnishes facilities on a nondiscriminatory basis to ISPs, including an affiliated ISP, nothing here prohibits the affiliated ISP from promoting or preferring particular content, and be it further

**RESOLVED,** That the NARUC General Counsel should include these guiding principles in NARUC comments filed in all relevant FCC broadband proceedings.