

2-15-2008

# "Resolve, Regarding Full, Fair and Nondiscriminatory Access to the Internet" 2008

Maine Office of the Public Advocate

Follow this and additional works at: [https://digitalmaine.com/meopa\\_docs](https://digitalmaine.com/meopa_docs)

---

## Recommended Citation

Maine Office of the Public Advocate, ""Resolve, Regarding Full, Fair and Nondiscriminatory Access to the Internet" 2008" (2008).  
*Public Advocate Office Documents*. 61.  
[https://digitalmaine.com/meopa\\_docs/61](https://digitalmaine.com/meopa_docs/61)

This Text is brought to you for free and open access by the State Documents at Digital Maine. It has been accepted for inclusion in Public Advocate Office Documents by an authorized administrator of Digital Maine. For more information, please contact [statedocs@maine.gov](mailto:statedocs@maine.gov).

February 15, 2008

Senator Philip Bartlett II, Senate Chair  
Representative Lawrence Bliss, House Chair  
Joint Standing Committee on Utilities and Energy  
123<sup>rd</sup> Maine Legislature  
100 State House Station  
Augusta, ME 04333-0100

**RE: Public Advocate Report on "Resolve, Regarding Full, Fair and Nondiscriminatory Access to the Internet"**

Dear Senator Bartlett and Representative Bliss:

In compliance with the provisions of Resolves of 2007, Chapter 106, I am pleased to submit the report required in that Resolve.

During the 2007 legislative session the Utilities and Energy Committee considered **LD 1675, "An Act to Protect Network Neutrality"**. After a lengthy public hearing and two work sessions, the committee issued a divided report with a majority of the committee favoring a proposal which replaced the original bill with a Resolve which directed the Office of Public Advocate to take several actions "to monitor and review state and federal activity on issues relating to full, fair and nondiscriminatory access to the Internet". This amended version of LD 1675, now entitled "**Resolve, Regarding Full, Fair and Nondiscriminatory Access to the Internet**", was ultimately passed by the Legislature and signed by the Governor.

The Office of Public Advocate intended to carry out the tasks in the revised version of LD 1675 through a consultant but, because of an unexpected budget problem, had to withdraw the Request for Proposals for a consultant before it was implemented in order to conserve funds to offset the budget problem. As a result of our withdrawal of the RFP, and the fact that the attorneys on the OPA staff who have some familiarity with the issues in LD 1675 were otherwise engaged in the FairPoint/Verizon merger and other ongoing cases, this report has been delayed beyond its due date of February 1, 2008. The committee chairs graciously granted us a one month extension on our reporting date.

The primary work in preparation of this report has been done by Patty Moody-D'Angelo, our Public Service Manager II and Research Assistant, much of it done on her

personal time in order to get this report prepared within the time provided. Her extensive efforts over the past months in preparing this report are deeply appreciated. Please note that the information we collected for this report was voluminous, and reproducing it all in paper form seems wasteful. Except for the reports prepared for the chairs of the committee, which include paper copies of the materials, copies of the report provide information to allow readers to access these materials in electronic form.

Thank you for the opportunity to provide the Committee with this information in response to Resolves, Chapter 106.

Sincerely,

Richard Davies  
Public Advocate

cc: Utilities and Energy Committee  
Lucia Nixon, OPLA  
Kelly Arata, OOG

Kristen Gottlieb, U&E  
Chris Simpson, PUC

## **Report of the Public Advocate pursuant to LD 1675**

### **Introduction**

During the 2007 legislative session the Utilities and Energy Committee considered **LD 1675, "An Act to Protect Network Neutrality"**. After a lengthy public hearing and two work sessions, the committee issued a divided report with a majority of the committee favoring a proposal which replaced the original bill with a Resolve which directed the Office of Public Advocate to take several actions "to monitor and review state and federal activity on issues relating to full, fair and nondiscriminatory access to the Internet". This amended version of LD 1675, now entitled "**Resolve, Regarding Full, Fair and Nondiscriminatory Access to the Internet**", was ultimately passed by the Legislature and signed by the Governor.

The Office of Public Advocate had intended to carry out the tasks in the revised version of LD 1675 through a consultant but, because of an unexpected budget problem, had to withdraw the Request for Proposals for a consultant before it was implemented in order to conserve funds to offset the budget problem. As a result of the withdrawal of the RFP, and the fact that the attorneys on the OPA staff who might have some familiarity with the issues in LD 1675 were otherwise engaged in the FairPoint/Verizon merger and other ongoing cases, this report has been delayed beyond its due date of February 1, 2008. The committee chairs have graciously granted us a one month extension on our reporting date.

The primary work in preparation of this report has been done by Patty Moody-D'Angelo, a Public Service Manager II and our Research Assistant, much of it done on her personal time in order to get this report prepared within the time provided. Her efforts in preparing this report are deeply appreciated. Please note that the information we collected for this report was voluminous, and reproducing it all in paper form seems wasteful. Except for the copies prepared for the chairs of the committee, which include paper copies the materials, copies of the report provide information to allow readers to access most of these materials in electronic form.

### **Our tasks:**

1. **Evaluate the actions of the Federal Communications Commission, the United State Congress and other appropriate agencies with respect to ensuring that citizens' rights to full, fair and nondiscriminatory access to the Internet are not impeded.**

FEDERAL COMMUNICATIONS COMMISSION

**FCC Order & Consent Decree** - In the Matter of Madison River Communications, LLC and affiliated companies (DA 05-543) - FCC approved a consent decree against Madison River Communications, LLC and Madison River Telephone Company, LLC. In this consent decree, the FCC fined Madison River \$15,000 for allegedly blocking VOIP traffic on the company's ISP network. ([Attachment 1\) FCC website search page](#))

### **Order Consent Decree**

- § McCullagh, Declan. "[Telco Agrees to Stop Blocking VoIP Calls.](#)" (March 3, 2005),
- § Liptak, Adam. "[Verizon Blocks Messages of Abortion Rights Groups.](#)" (September 27, 2007)
- § Svensson, Peter. "[Comcast Blocks Some Internet Traffic.](#)" (October 19, 2007)
- § Marra, William. "[Pearl Jam's Anti-Bush Lyrics Jammed by AT&T - Rock Band Upset After 15 Seconds of Lyrics Cut From Webcast; AT&T Apologizes.](#)" (August 10, 2007)

**FCC Policy Statement - Adopted August 5, 2005** - In The Matters of Appropriate Framework for Broadband Access to the Internet over Wireless Facilities (CC Docket No. 02-33); Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services (CC Docket No. 01-337); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements (CC Docket Nos. 95-20, 98-10); Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00-185); Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities (CS Docket No. 02-52) ([Attachment 2](#))

Policy Statement - Four Principles: Consumers are entitled to

5. access to lawful Internet content of their choice;
6. run applications and use services of their choice, subject to the needs of law enforcement
7. connect their choice of legal devices that do not harm the network; and
8. competition among network providers, application and service providers, and content providers.

**FCC Notice of Inquiry March 22, 2007** - In The Matter of Broadband Industry Practices (WC Docket 07-52) ([Attachment 3](#))

**FCC - Ex Parte Filing United States Department of Justice** - In The Matter of Broadband Industry Practices (WC Docket 07-52) - DOJ cautioned against imposing regulations that could hamper the development of the Internet and related services in response to the FCC Notice of Inquiry. Senators Olympia Snowe and Byron Dorgan are included as Ex Parte filers as well. ([Attachment 4](#))

**FCC - Comments of the National Association of State Utility Consumer Advocates** - In The Matter of Broadband Industry Practices (WC Docket 07-52) (WC Docket No. 07-52) ([Attachment 5](#)) :: [Comments](#)

**FCC - 28,146 Comments filed with the FCC to-date (12/17/2007)** - In The Matter of Broadband Industry Practices (WC Docket 07-52) (WC Docket No. 07-52 ([Attachment 6](#)) )  
[Comments](#)

**FCC Mergers** - Verizon-MCI merger was completed January 6, 2006. Verizon must maintain as many settlement-free "peering" arrangements (meaning - sender keeps all, neither party pays the other for the exchanged traffic, instead each derives revenue from its own customers) as it had on the merger closing date until January 2009. Verizon is to honor the FCC's net neutrality principles until January 2008. AT&T-BellSouth merger was completed December 29, 2006. AT&T must also honor the FCC's net neutrality policy statement until June 2009, which is to maintain a neutral network and neutral routing in its wireline broadband Internet access service through December 2008. ([Attachment 7](#))

## **FEDERAL TRADE COMMISSION**

**FTC Issues Staff Report on Broadband Connectivity Competition Policy (6/7/2007)**  
**(Reports Urges Caution on Network Regulation)** - The report identifies guiding principles that policymakers should consider in evaluating proposed regulations or relating to broadband Internet access and network neutrality. ([Attachment 8](#)) [Read the Full Report](#)

## **UNITED STATE CONGRESS**

**S. 215:** The Internet Freedom Preservation Act - A bill to amend the Communications Act of 1934 to ensure network neutrality. ([Attachment 9](#))

**H.R. 5252:** Communications Opportunity, Promotion, and Enhancement (COPE) Action of 2006 - A bill to promote the deployment of broadband networks and services. (Attachment 10)  
) Too voluminous to copy. [Read the Full Report](#).

**DRAFT S. :** Consumer Competition and Broadband Promotion Act - A Bill to provide for increased competition in telecommunications services, promote the expanded use of broadband services, and for other purposes. (Attachment 11)

**S. 2917:** Internet Freedom Preservation Act - A bill to amend the Communications Act of 1934 to ensure net neutrality. ([Attachment 12](#))

**H.R. 5417:** Internet Freedom and Nondiscrimination Act of 2006 - A bill to amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet. ([Attachment 13](#))

[Search Congress Record](#)

**H.R. 5273:** Network Neutrality Act Of 2006 - A bill to promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services. ([Attachment 14](#))

**S. 2686:** Communications, Consumer's Choice, and Broadband Deployment Act of 2006 - A bill to amend the Communications Act of 1934 and for other purposes. ([Attachment 15](#))

**S. 2360:** Internet Non-Discrimination Act of 2006 - A bill to ensure and promote a free and open Internet for all Americans. ([Attachment 16](#))

2. Monitor the Federal Communications Commission's inquiry into broadband industry practices, FCC-07-31, WC Docket No. -7-52.

See Attachments 4, 5 & 6 - Federal Communications Commission - Currently there are over 28,000 comments that have been filed in [WC Docket No. 07-52](#) (enter into the PROCEEDING Box = 07-52)

3. **Collect information on legislative and regulatory actions of other states on these issues.**

**Illinois adopted a House Resolution (HR0307)** essentially calling upon the Congress of the United States of America to refrain from legislation that would regulate the Internet and to maintain today's approach that allows the competitive marketplace to drive broadband and broadband-related applications development and deployment free from governmental regulation. ([Attachment 17](#))

**Maryland Legislature House Bill 1069 Introduced February 9, 2007 - An Act concerning Public Service Commission - Broadband Internet Service** - For the propose of requiring the Public Service Commission to adopt regulations requiring certain broadband providers to submit certain reports periodically to the Commission on the deployment of certain Internet service to the public; specifying the required contents of the reports; requiring the Commission to publish the reports on the Commission's website; stating the intent of the General Assembly; defining certain terms; and generally relating to broadband internet service in Maryland. Del. Herman Taylor, having introduced the legislation, asked that the bill not be considered at a committee meeting. The boost came from Attorney General Douglas F. Gansler who provided an extensive letter reaffirming that jurisdiction of Internet regulation is a federal matter. Karen Rowe, Assistant Attorney General further cautioned that HB 1069 "would raise significant federal preemption issues, and could be found to violate the Commerce Clause." ([Attachment 18](#)) [Ltr by Kathryn Rowe, AAG](#)

**Michigan Legislature House Bill 6456 (2006)** - A bill to provide for state video service authorization; to promote competition in providing video services; to ensure local control of rights-of-way; to provide for fees payable to local units of government; to provide for local programming; and to prescribe the powers and duties of certain state and local agencies and officials. Enacted and Approved by the Governor on December 21, 2006 (Act No. 480, Public Acts of 2006). ([Attachment 19](#))

**New York State Assembly Introduced A 1423/S.744** which was rolled into a larger comprehensive telecom reform bill (A.3980B) that was later introduced in the Senate (S.5124). This so-called "Omnibus bill" incorporated massive regulation of cable, broadband, wireless and telecommunications. Establishes statewide cable franchises for the purposes of competitive cable service, promoting the widespread development of high-capacity broadband internet access, and increasing the availability and quality of services in this key economic development area, and ensuring the safety, reliability, and affordability of telecommunications services. *The line-state franchising and net neutrality legislation was not enacted.* ([Attachment 20](#))

Pennsylvania on March 28, 2007 "The Internet Freedom Preservation Act S. 215" was introduced to the General Assembly of the Commonwealth of Pennsylvania (See Attachment 9) - Essentially the General Assembly found and declared that it is in the public interest:

0. to maintain and enhance the competitive free market that currently exists for the Internet and Internet services upon which Internet commerce relies;
1. to preserve and promote the open and interconnected nature of the net and consumer power and choice;
2. to foster innovation, investment and competition among network providers, as well as application, content and service providers; and
3. to preserve the security and reliability of the Internet and the services that enable consumers to access content, applications and services over the Internet.

**National Conference of State Legislatures (2006-2007 Policies for the Jurisdiction of the Communications, Technology and Interstate Commerce Committee)** - Network Neutrality (Action Resolution) calls upon Congress to avoid adopting new rules and limit such action to providing the FCC with clear authority to oversee, but not proactively intervene in, the broadband Internet marketplace by adopting principles that focus on assessing whether the market continues to ensure that consumers can:

4. receive meaningful information regarding their broadband service plans;
5. have access to their choice of legal Internet content within the bandwidth limits and quality of service of their service plan;
6. run applications of their choice, within the bandwidth limits and quality of service of their service plans, as long as they do not harm the provider's network; and
7. be permitted to attach any devices they choose to their broadband connection at the consumer's premise, so long as they operate within the bandwidth limits and quality of service of their service plans and do not harm the provider's network or enable theft of services. ([Attachment 21](#))

**National Governors Association (Key Committee Issues, Federal Relations) - Telecommunications - House Activity** - June 8<sup>th</sup>, 2006, House passed COPE Act (H.R. 5252) by a vote of 321-101. A portion of the COPE Act gives the FCC authority to enforce the four net neutrality principles it adopted that allow consumers to access all lawful Internet content and services. However, it does not prevent broadband providers from favoring their own online traffic or the traffic of business affiliates. An amendment to require phone and cable companies to give equal treatment to similar types of Internet traffic was defeated (by a vote of 152-269). Other amendments to the House-approved version include provisions that would:

- increase penalties (to \$750,000 from \$500,000) against video service providers that deny service to residents because of income;
- preserve the FCC's authority to require Voice-over-Internet-Protocol (VoIP) service providers to contribute to the Universal Service Fund when they interconnect, either directly or indirectly, with incumbent local exchange carrier networks, and to properly compensate network owners for the use of their network; and
- clarify language giving the FCC exclusive authority to adjudicate network neutrality "does not affect the applicability of the antitrust laws to cases involving network neutrality or the jurisdiction of the courts to hear such cases."

[\(Attachment 22\)](#)

4. **Review the State's telecommunications and technology policies, including the ConnectME Authority established pursuant to the Maine Revised Statutes, Title 35-A, section 9203, and evaluate the extent to which those policies are encouraging adequate investment in technology infrastructure to support a strong Internet system and continued expansion of broadband access in this State; and [\(Attachment 23\) Title 35-A](#) and [the Rule](#)**

We believe that the existing language (see text-below) at Title 35-A §9204(5) may be discouraging investment that would support a strong Internet system in Maine:

5. *The authority may not take the action if a service provider franchised or certificated to provide a communications service to the area submits a timely certification to the authority that the service provider will commence within 45 days and will complete within one year the installation of sufficient advanced communications technology infrastructure to provide broadband or wireless service in a manner that would render the authority's action unnecessary or redundant.*

In addition, we propose that a new sub-§6 should be added to §9204, that would read something like the following:

6. *Audit. A full accounting of the project(s) in both narrative and fiscal form must be supplied to ConnectME within sixty days following the completion of the project. Such accounting shall be supplied on the standard ConnectME grant report form and is subject to audit by the responsible state agency. Financial records must be kept on file a minimum of three years by the Grant Recipient official following the completion of the project.*
2. **Review the extent of the State's authority to protect the rights of users of the Internet in the State to full, fair and nondiscriminatory access to the Internet.**

We recommend that the Maine Legislature ensure that full disclosure is provided by Internet service providers to their customers and potential customers in such a way that consumers will understand the services they are obtaining and any how those services are delivered. When these Internet services are bundled as a telecommunications package the consumer still must benefit from full disclosure and non-misleading information. See Chapters 8 and 9 of the Federal Trade Commission Report, June 2007 (see **Attachment 8**) elaborates in great detail about consumers receiving truthful, full and meaningful disclosure.