



N A R U C
National Association of Regulatory Utility Commissioners

August 11, 2008

The Honorable Kevin Martin, FCC Chairman
The Honorable Michael Copps, FCC Commissioner
The Honorable Jonathan Adelstein, FCC Commissioner
The Honorable Robert McDowell, FCC Commissioner
The Honorable Deborah Taylor Tate, FCC Commissioner

Federal Communications Commission
445 12th Street, SW - Portals II Building
Washington, D.C. 20544

RE: NARUC's Resolution on Telecommunications Policy Proposing to Congress a New Option for State input into national rules for the wireless industry.

A Proposed NARUC Working Group to originate a base set of national wireless Standards.

In the Matter of CTIA's Petition for Declaratory Ruling, Docket Number 05-194

Dear Commissioners:

We both missed all of you at the recent Summer NARUC meetings in Portland, Oregon. As each of you know, NARUC has, for years, advocated cooperative approaches to address problems where FCC and State public interest concerns overlap. Cooperative models that allow State enforcement up to any national standards using existing State procedures and penalties can yield the optimal outcome that best serves both consumers and the public interest.

The most recent example of NARUC advocacy involved wireless company early termination fees (ETFs). As our testimony in the Commission's June 2008 En Banc points out:

[1] "Experience and common sense suggest a partnership with State authorities is key to any new federal rules designed to protect ...wireless consumers ... *there is no possible rationale for the FCC to limit consumer access to State remedies or penalties for federally defined inappropriate or abusive conduct.*"

[2] “NARUC generally agrees with Chairman Martin: ETFs are not rates.¹ If the FCC made such a finding, industry attorneys will argue that the FCC is the only possible venue for customers with complaints to seek resolution. From a policy perspective, basing any FCC ETF rule on a legal finding that ETFs are Section 332 “rates” makes no sense. There is no logical reason to take State cops off the beat ... [or limit who] ... can enforce any federal standard.”²

NARUC’s New Legislative Proposal

The idea of cooperative enforcement regimes with respect to wireless services was the focus of one resolution adopted at the Oregon session by the NARUC Board of Directors. There have been several recent Congressional efforts to modify the current oversight regime for the wireless industry embodied in existing legislation.

In response, the July NARUC resolution proposes a *new model* to Congress to ensure State input into national rules applicable to the wireless industry. The model consists of a task force composed of three FCC commissioners, five State commissioners, an industry representative, a representative of the State Attorneys General, and a consumer advocate.

Key Components of the Wireless Policy Resolution Proposal

[1] The task force will “engage in a collaborative process (including public comments and reply comments to ensure the transparency of the process) to mutually agree upon set of uniform national wireless consumer protection standards;”

[2] The task force would hold public meetings, except for deliberative sessions, and would continue to meet at least every six months after the initial standards are adopted to review any proposals for changes as deemed necessary; such meetings could be held sooner at the option of the chair of the joint task force or by request of the majority of the joint task force;

[3] The task force would complete deliberations for uniform national wireless consumer standards within six months which would be submitted to the FCC for approval;

[4] If no action is taken by the FCC within 120 days of submission, the uniform national consumer protection standards would be deemed approved; and

[5] State commissions “shall retain co-extensive authority to: (1) resolve consumer complaints in their States; (2) enforce the uniform national wireless consumer protection standards; (3) conduct fact-based investigations relating to subject matters covered by such national consumer protection standards, similar to the way slamming and cramming matters are now handled; (4) utilize existing

¹ See Kirby, Paul, "Martin indicates FCC won't rule ETFs are part of wireless rate structure" TR Daily, 12/13/07 ("Chairman . . . Martin told a Senate panel today that he doesn't think the FCC will rule that . . . ETFs imposed by wireless carriers are part of the rate structure, and thus exempt from oversight by states. He . . . doesn't think ETFs should be considered rates.")

² Indeed, that testimony also pointed out two undeniable facts: “(1) The federal government will *always* lack the manpower to help *all* consumers in *every* State, and (2) In many cases, whatever assistance they may provide will be complicated by distance and time zones. As the FCC has acknowledged in some contexts, this means that even where federal minimum standards may be appropriate, State/local governments must be allowed to enforce the federal standards using existing procedures and remedies – including perhaps more punitive measures for violations.”

laws and administrative procedures authorized by the State to enforce any provisions included in a uniform national standard, either pursuant to State law or delegated authority under federal law; and (5) impose a penalty to enforce compliance with such standards or a violation of State law pursuant to a civil action or an administrative procedure authorized by the State, including higher fines or more punitive civil or criminal remedies, including injunctive relief and ... will retain the ability to exercise explicit authority, including but not limited to, enforce laws of general applicability, collection and payment of State taxes, interconnection requirements, State universal service programs, public safety/E911 requirements, ETC designations.”

Partnership, not Preemption

NARUC has in proceeding after proceeding noted that States frequently are both the first to recognize industry abuses and the first to provide needed relief. This proposal allows States to instigate changes to national rules based on emerging abuses. It builds on the competencies of federal and State agencies, assures State input to regularly revise an oversight regime, does not limit the use of existing State procedures/remedies, and leverages the limited federal and State resources available.

Clearly, key *elements of this proposal require some changes to existing law*. NARUC will of course be presenting this new procedure to Congress - which is currently considering legislation setting such standards.

Recommended National Standards

However, we would like to do more than just give legislators detailed suggestions on this new mechanism for State input. We would like to also *provide some recommendation on an initial set of national standards*. We sincerely appreciate the strong support given by each of you to cooperative federal-State approaches to tackling both intercarrier compensation and universal service. We are considering the best method to advance a separate working group to generate the needed recommendations. We plan to request that NARUC’s President form an inter-NARUC Telecommunications and Consumer Affairs Committee task force to solicit input from industry, State attorneys general, and consumer groups.

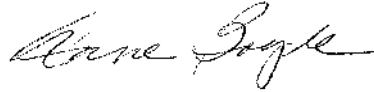
The undersigned expect to contact each of you in the coming weeks to both *reaffirm NARUC’s position on early termination fees* and answer any questions you may have about this initiative. We hope, as with previous NARUC initiatives, each of you can lend support to this effort. As always, we welcome each FCC Commissioners ideas on either the process or specific standards the task force may wish to consider and invite you and/or staff to participate in any appropriate manner.

If you have any immediate questions about this letter, the NARUC resolution, or the task force, please do not hesitate to contact either one of us – or NARUC’s General Counsel Brad Ramsay at 202.898.2207 or jramsay@naruc.org.

Sincerely,



*Ray Baum
Chair
Committee on Telecommunications*



*Anne Boyle
Chair
Consumer Affairs Committee*

Enclosure

Resolution Concerning the Communications Policy Statement

WHEREAS, Convergence of technologies and the deployment of national networks offering packages of landline and wireless voice, video, and broadband services have blurred traditional jurisdictional boundaries between federal and State regulation of telecommunications services; *and*

WHEREAS, According to the Pew Internet & American Life Project Survey, dated December 2007, 87% of Americans have wireless phones, while the Centers for Disease Control and Prevention National Center for Health Statistics' "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2007" report states that nearly one out of every six American homes (15.8%) had only wireless telephones during the second half of 2007, and more than one out of eight American homes (13.1%) received all or almost all calls on wireless telephones despite having a landline telephone in the house; *and*

WHEREAS, In February 2005, NARUC passed a resolution stating that any revisions to the Telecommunications Act should, among other things: (1) consider the relative interests and abilities of the State and federal governments when assigning regulatory functions; (2) preserve the States' particular abilities to ensure their core public interests in consumer protection; (3) ensure timely resolution of policy issues important to consumers and the market; (4) focus regulation only on those markets where States identify market failure; *and*

WHEREAS, In the past, NARUC has supported a national framework for wireless consumer standards as a minimum, with the States free to impose further regulations; and NARUC has opposed national preemption regarding the terms and conditions of wireless telecommunications services, to safeguard a State commission's oversight of wireless carriers that hold Eligible Telecommunications Carrier (ETC) status, and a State commission's desire to resolve wireless consumer complaints using its expertise in consumer protection, public safety, fact-based arbitration and adjudication, and physical proximity to the consumer; *and*

WHEREAS, Pursuant to Section 214(e) of the Communications Act, wireless carriers, according to a June 2008 GAO report, have successfully petitioned 40 State commissions to receive federal subsidies from the high-cost fund to serve rural areas, which are estimated to be \$1.2 billion in total, and have accepted State jurisdiction over certain terms and conditions for such ETC certification and annual or periodic review as a condition of receiving those subsidies; *and*

WHEREAS, Today, according to a new survey conducted by the State utility commissions of California and the District of Columbia of 50 States, the District of Columbia, Guam, and Puerto Rico, 35 State utility commissions have no regulatory authority, and of the 18 jurisdictions who do have such authority, only nine are actively engaged at present in such regulation over the terms and conditions of wireless voice communications; *and*

WHEREAS, State utility commissions have proven to be valuable partners to the Federal Communications Commission (FCC) as the "laboratories of democracy" for ensuring consumer rights in a timely manner; *and*

WHEREAS, States have successfully enforced the FCC's national policies on a consistent and fair manner, such as in the area of slamming and cramming, and have encouraged new services (e.g. Statewide video franchise authority) and have met public policy challenges, such as universal broadband availability; *and*

WHEREAS, Uniform national standards coupled with a State and federal enforcement partnership would give consumers throughout the nation a clear and consistent set of consumer rights that they may not have today, particularly the consumers in those States that do not regulate terms and conditions of wireless service; however, should such a State receive the authority or determine to exercise its authority in the future, it would be able to take advantage of the uniform standards and State enforcement scheme as described herein; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2008 Summer Meetings in Portland, Oregon, supports efforts to encourage mutually agreed upon, uniform national wireless consumer protection standards coupled with an effective partnership of State and federal enforcement; *and be it further*

RESOLVED, That NARUC recommends the formation of a Joint Task Force or Working Group (hereinafter "joint task force") that includes three FCC Commissioners, five State commissioners, an industry representative, a representative of the State Attorneys General, and a consumer advocate to engage in a collaborative process (including public comments and reply comments to ensure the transparency of the process) to mutually agree upon set of uniform national wireless consumer protection standards, *and be it further*

RESOLVED, That the joint task force would hold public meetings, except for deliberative sessions, and would continue to meet at least every six months after the initial standards are adopted to review any proposals for changes as deemed necessary; such meetings could be held sooner at the option of the chair of the joint task force or by request of the majority of the joint task force; *and be it further*

RESOLVED, That should changes to the standards be adopted by the joint task force after the initial standards are approved, the changes shall be approved using the same collaborative process outlined in this resolution; *and be it further*

RESOLVED, That the mutually agreed upon uniform national wireless consumer standards would be completed within six months of the formation of the joint task force and then submitted to the FCC for approval; but Congress shall determine that if no action was taken by the FCC by the end of the 120 day period from the date of submission, the uniform national consumer protection standards would be deemed to be approved and adopted by the FCC. In addition, should any such standards and recommendations or revisions affect Sections 214(e) or 332(c), such revisions shall be submitted to the relevant committees of jurisdiction of the House of Representatives and Senate for their review and consideration, recognizing that ultimate authority for these issues resides with the Congress; *and be it further*

RESOLVED, That under this new partnership, the State commissions shall retain co-extensive authority to: (1) resolve consumer complaints in their States; (2) enforce the uniform national

wireless consumer protection standards; and (3) conduct fact-based investigations relating to subject matters covered by such national consumer protection standards, similar to the way slamming and cramming matters are now handled; (4) utilize existing laws and administrative procedures authorized by the State to enforce any provisions included in a uniform national standard, either pursuant to State law or delegated authority under federal law; and (5) impose a penalty to enforce compliance with such standards or a violation of State law pursuant to a civil action or an administrative procedure authorized by the State, including higher fines or more punitive civil or criminal remedies, including injunctive relief; *and be it further*

RESOLVED, That in conjunction with the State and federal cooperative model, States will retain the ability to exercise explicit authority, including but not limited to, enforce laws of general applicability, collection and payment of State taxes, interconnection requirements, State universal service programs, public safety/E911 requirements, ETC designations; *and be it further*

RESOLVED, That NARUC authorizes and directs the staff and General Counsel to promote, with the Federal Communications Commission, Congress, and other policymakers at the federal level, policies consistent with this statement.

*Sponsored by the Committees on Telecommunications and Consumer Affairs
Adopted by the Board of Directors, July 23, 2008*