



N A R U C  
National Association of Regulatory Utility Commissioners

October 28, 2009

The Honorable Brian Patrick Kennedy, Chair,  
Committee on Communications, Financial Services & Intrastate Commerce  
P.O. Box 1001  
Ashway, Rhode Island 02804-0018

Dear Chairman Kennedy:

I am writing to alert you about some possible misconceptions about the National Association of Regulatory Utility Commissioners' (NARUC's) positions on wireless issues. A July 8, 2009 letter to House Subcommittee on Communications, Technology and the Internet Chairman Boucher and Ranking Member Stearns, signed by the previous chair of your committee - the Honorable Phil Montgomery - expressed concern about a recent NARUC survey on wireless consumer protections. It suggests that NARUC and NCSL are approaching the same issue from fundamentally different directions. NARUC members were baffled and somewhat surprised by the letter. NARUC has worked closely with your organization in the past and we hope to continue to do so.

*We believe whatever differences there are in our respective positions on this issue are minor at best.* NARUC unequivocally shares NCSL's goal of ensuring that all Americans have access to the best possible wireless services at competitive prices. Indeed, NARUC also has passed a resolution specifically endorsing, as does NCSL, national wireless consumer protection rules, with continued State enforcement.<sup>1</sup>

The July NCSL letter is clear that Congress should not disturb State laws – enacted by your members – that give wireless consumer protection enforcement duties to States Attorneys General. *NARUC does not disagree.* NARUC's position has always been that State legislatures should retain flexibility to specify the State agencies, mechanisms, and penalties that protect consumers – even when enforcing national standards.

*Where the State legislature has specified the Attorney General can act to protect wireless consumers, we agree that authority should remain. There is no reason for Congress to take any State consumer "cops" off the beat or limit any existing constituent opportunities for redress. That is why NARUC also contends that any national wireless consumer protection law should respect current State legislator decisions (State laws) that allow other State agencies to provide your constituents with relief.*

This has obvious benefits. It limits consumer confusion. It avoids significant wastes of State taxes and staff resources. If Congress specifies which State entity can enforce national wireless consumer protection norms, some States may need to pass additional legislation to change the existing locus and mechanisms for enforcement and penalties. But even where additional State legislation is unnecessary, State agencies that do not qualify will have to shift current operations and reallocate staff. In such cases, the designated agency will have to "pick up the slack" and may possibly need to staff up to handle the additional complaints formally resolved through formal or informal procedures at a sister State agency. Moreover, consumers will need to be re-educated on the changed (and necessarily more limited) avenues for redress. The July NCSL letter states that thirty States and the District of Columbia have laws removing

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<sup>1</sup> NARUC does go further than NCSL by specifying a mechanism for State input to change the national standards and specifying States should be able to, among other things, use existing mechanisms and procedures. See footnote 2, *infra*.

public service commissions from wireless consumer protection enforcement. Assuming those numbers are accurate, that means at least 20 of NCSL's member legislatures have not imposed such limits. There is no reason those 20 legislatures should have to enact new legislation or otherwise adapt existing State procedures to a new national regime. There is, indeed, no discernable rationale for Congress to tell State legislatures which State agency (or agencies) can handle enforcement duties. Once Congress has defined certain conduct as illegal or unconscionable, federal statutory provisions that effectively limit State enforcement by, e.g., limiting enforcement to a specific agency or constraining existing State procedures and penalties to deter those that ignore the Congressional proscriptions are both illogical and unnecessary.

The text of the July letter suggests your Committee did not receive a complete briefing on NARUC's long time advocacy or the contents and origination of the cited survey. It also suggests the Committee has not received a briefing on State commissions and the general scope of their authority and experience. For example, the letter suggests the survey was focused upon announcing NARUC's policy views on State authority. It was not. The survey was focused on presenting Congress with ideas for national uniform consumer protection standards – although it is true that NARUC's long held and frequently articulated advocacy views, most recently modified almost two years ago, is referenced in the preface.<sup>2</sup> As noted earlier, that NARUC position *endorses maximum flexibility for NCSL's members*.

The July NCSL letter also states the results of NARUC's survey do “not reflect the views of State legislatures as articulated through NCSL's official policy approval process.” Nor do the survey responses reflect the official views of NARUC. It is – on its face – a survey. Indeed, the front page carries a specific disclaimer to that effect.<sup>3</sup>

The July NCSL letter mentions that the survey was “primarily targeted at public utility commissioners, not elected state policymakers.” This is somewhat misleading on two levels. First, public utility commissioners in about 12 States are, in fact, elected State policy makers. Second, while the survey naturally received many responses from NARUC's members, it was not primarily targeted at State commissions. *Indeed, NARUC specifically sought and actively encouraged input directly from the wireless industry, State Attorneys General, national and State consumer advocates, as well as, of course, NARUC member public service commissions.*<sup>4</sup> Despite our extensive outreach efforts, most survey responses did

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<sup>2</sup> For years NARUC argued that any national standards must include State enforcement and be a “floor,” not a “ceiling.” However, a July 2008 resolution shifts NARUC's position to an *affirmative* endorsement of national standards for wireless consumer protection. The resolution continues to support State enforcement using existing State agencies and procedures – as well as a strong State role to update those national standards regularly. According to the resolution, States “should retain co-extensive authority to: (1) resolve consumer complaints . . . (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 . . . 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.” The Resolution also specifies that States should “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, [and] ETC designations.”

<sup>3</sup> The disclaimer on the cover of the NARUC survey states: “The survey accurately represents the views of those that responded – which includes representatives from a majority of NARUC's members. As with most surveys, NARUC as an association is unlikely to take a specific position on various respondents' recommendations.”

<sup>4</sup> The survey was sent to: CTIA; Rural Cellular Association; Personal Communications Industry Association; Wireless Communications Association International; Rural Telecommunications Group; AARP; Consumers Union; Consumer Federation of America; National Association of Attorneys General; the National Association of State Utility

originate from State commissions – though we also received responses from industry and consumer advocates. All responses are included in the survey.

The letter also suggests that State commissions have “vast experience” as economic regulators but “little as protectors of consumers.” This particular characterization is simply not accurate. The vast majority of State commissions have extensive experience handling and assisting consumers with complaints over a wide range of water, telecommunications and power services. Indeed a cursory and incomplete March 2005 NARUC survey revealed that in 2004 alone, 20 of NARUC’s 51-plus commissions handled over 230,000 telecommunications-related complaints. Those complaints were resolved using administrative procedures which require each consumer’s concerns to be addressed individually, often in just weeks, compared to State Attorneys General enforcement, which is class-action oriented and may take months or years to reach resolution. Moreover, even where NARUC member commissions lack specific authority over wireless, they often work informally to resolve complaints.

It is clear Congress is interested in the wireless industry and possible venues for consumer protections measures. The NARUC survey focused on helping Congress establish an initial set of national standards for such legislation. NARUC believes our respective associations can be strong partners in ensuring our mutual constituents are protected. We hope this letter has been useful in outlining what the June 2009 NARUC survey does and what it does not do – *as well as highlighting the common ground in our respective advocacy stances.*

We are always very interested in hearing from, and working with, NCSL on these and related issues. We hope we continue to have opportunities to discuss them with you. If your Committee plans panels or presentations on these or related issues, particularly during your annual policy conclaves in Washington, D.C., and you would like to hear from us, or you would like additional information on NARUC’s positions, please do not hesitate to contact me directly. Alternatively you can have your staff contact Brad Ramsay, NARUC’s General Counsel at 202-898-2207, [jramsay@naruc.org](mailto:jramsay@naruc.org) or Brian O’Hara, NARUC’s Legislative Director – Telecom at 202-898-2205 or [bohara@naruc.org](mailto:bohara@naruc.org).

Thank you for your time and interest.

Sincerely,



Frederick Butler  
NARUC President

cc NCSL Committee on Communications, Financial Services & Interstate Commerce  
The Honorable Rick Boucher  
The Honorable Cliff Stearns