



N A R U C  
National Association of Regulatory Utility Commissioners

October 30, 2009

**NOTICE OF ORAL EX PARTE CONTACT**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: NARUC notice of oral ex parte contacts concerning the proceedings captioned:**

***In the Matter(s) of Consumer Information and Disclosure, CG Docket No. 09-158, Truth-in-Billing Format, CC Docket No. 98-170, IP-Enabled Services WC Docket No. 04-36***

Dear Secretary Dortch:

On Wednesday, October 28, 2009,<sup>1</sup> *Vermont Commissioner John Burke, Chair of NARUC's Ad Hoc Committee on National Wireless Consumer Protection Standards*, and NARUC's General Counsel, Brad Ramsay met at 5:00 pm, with the following members of the FCC's Wireless Telecommunications Bureau (WTB):

***Ms. Ruth Milkman, Wireless Telecommunications Bureau Chief***  
***Ms. Jane Jackson, Associate Bureau Chief, Office of the WTB Chief***  
***Mr. Aaron Goldberger, Senior Legal Advisor, Office of the WTB Chief***  
***Ms. Nese Guendelsberger, Chief, Spectrum & Competition Policy Division, WTB***  
***Mr. Kevin Holmes, Attorney, Broadband Division, WTB***  
***Mr. David Hu, Attorney, Broadband Division, WTB***  
***Mr. Jeffrey Tigner, Attorney, Broadband Division, WTB***  
***Mr. Mark Stone, Attorney, Broadband Division, WTB***  
***Mr. Yul Kwon, Attorney, Broadband Division, WTB***

During the meeting, Commissioner Burke described the Ad Hoc Committee's efforts to influence federal legislation to establish uniform wireless consumer protections rules and pointed out some areas where the committee's work (and NARUC's Congressional advocacy) might be relevant to the FCC's deliberations in the above captioned proceeding.

Specifically, Commissioner Burke and Mr. Ramsay provided copies of a July 2008 resolution along with a NARUC survey of areas where various NARUC members, Consumer Advocates, and

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<sup>1</sup> NARUC respectfully requests any waivers needed to file this notice one-day out of time.

Industry representatives discussed their views on what areas of wireless company operations might be considered appropriate for some sort of national standard. Both are attached to this letter.<sup>2</sup>

**SCOPE:** *Commissioner Burke noted that the survey responses will become stale over time, but that the expansive list of potential issue areas generated by the committee as a basis for the survey might be useful in circumscribing the scope of any current inquiries.*

**PARTNERSHIP - NOT PREEMPTION: KEEPING STATE “COPS” ON THE BEAT -** *Commissioner Burke and Mr. Ramsay also pointed out that, although the current law is clear with respect to existing State authority over non-rate regulation,<sup>3</sup> to avoid unnecessary litigation, any order imposing new FCC federal rules or standards of conduct on the wireless industry should specify that concurrent State enforcement using existing State agencies, mechanisms, procedures, fines and remedies (even if the fines and remedies are more punitive) are not preempted.*

**REGULAR UPDATES TO FEDERAL STANDARDS ADVISABLE:** *Commissioner Burke generally suggested the creation of an advisory group that includes industry and consumer advocates to regularly propose adjustments, additions or deletions of the FCC rules, as suggested in the resolution, might be useful. The resolution, which again – was focused on then pending legislation - specifically recommends the formation of a joint task 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.” He noted that interactions with NARUC and various State commissions spurred the industry to create its own code of conduct.*

If you have any questions about this letter, please do not hesitate to contact the undersigned at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org).

**Respectfully Submitted,**

/s/

**James Bradford Ramsay  
NARUC General Counsel**

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<sup>2</sup> A copy of NARUC’s recent response to a July 2009 Letter from the National Conference of State Legislators to Congress was included as part of the packet of materials distributed at the meeting. It was not really discussed with or relevant to the FCC. However, since it was included in the materials provided, out of an abundance of caution, we are also filing a copy with this ex parte notice.

<sup>3</sup> In the 1993 Budget Reconciliation Act, 47 U.S.C. § 332(c)(3)(A) (1993), while Congress narrowly preempted State oversight of entry or rates of wireless carriers, it specifically reserved State authority to regulate “*other terms and conditions of commercial mobile services.*” *Id.* This means currently State commissions can step in to address carriers’ abusive contractual terms and conditions when circumstances warrant – informally handling complaints or setting service benchmarks or perhaps referring a complaint to the State Attorney General.

## ***Appendix A - 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.

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