

**Resolution Regarding Preemption of  
State Regulation of Wireless Common Carrier Services**

**WHEREAS**, On March 14, 1991, the FCC approved the application of Fleet Call (Docket No. LMK-90036) to deploy "enhanced specialized mobile radio ("ESMR") systems in six of the nation's 10 largest metropolitan areas, and

**WHEREAS**, Fleet Call's ESMR services will compete with common carrier cellular services that are subject to State regulation, and

**WHEREAS**, The FCC maintained Fleet Call's status as a private land mobile service, which the States are preempted from regulating under Section 332 of the Communications Act; and

**WHEREAS**, On April 15, 1991, the National Association of Regulatory Utility Commissioners (NARUC) filed a petition for reconsideration of the Fleet Call order, contending that the FCC failed to conduct a meaningful evaluation of Fleet Call's proposed service under the "functional test" for distinguishing private carriers from common carriers as required under Section 332 of the Communications Act; and

**WHEREAS**, On October 31, 1991, the FCC denied the NARUC's petition for reconsideration; and

**WHEREAS**, On September 4, 1991, Telocator filed a Petition for Rule Making requesting that cellular carriers be permitted to provide auxiliary non-common carrier services and that those services be classified as private land mobile services; and

**WHEREAS**, On October 28, 1991, Mobile Radio New England filed a request for rule waiver similar to Fleet Call to develop an "Advanced SMR Network" to "satisfy the growing demand on the part of its customers for advanced services as well as for small, lightweight and compact portable radios,"; and

**WHEREAS**, Both the Telocator and Mobile Radio New England filings appear to be based upon the Fleet Call "private carriage" standard; and

**WHEREAS**, In CC Gen Docket 90-314, the FCC also has raised the possibility of classifying some or all personal communications services ("PCS") under the "private carriage" standard; and

**WHEREAS**, At the November, 1990 meetings, the NARUC Executive Committee adopted a resolution that called for PCS providers to be regulated as common carriers and opposed State preemption; and

**WHEREAS**, Precedents established in the Fleet Call, Telocator, and Mobile Radio New England proceedings might be used to preempt State regulation of PCS; and

**WHEREAS**, NARUC supports the competition to cellular services that PCS and systems such as Fleet Call may provide, but opposes using the "private carriage" standard to effect preemption of State regulation; now, therefore, be it

**RESOLVED**, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Meeting in Washington, D.C., continues to oppose the FCC's current interpretation of the "private carriage" standard as applied in the Fleet Call proceeding, because of the FCC's failure to apply the "functional test" for distinguishing private carriers from common carriers as required under Section 332 of the Communications Act; and be it further

**RESOLVED**, That the NARUC Executive Committee opposes any FCC action that seeks to use the "private carriage" standard as applied in the Fleet Call proceeding to preempt State regulation of PCS/PCN or other wireless common carrier services; and be it further

**RESOLVED**, That the NARUC Executive Committee encourages the FCC, by reclassifying spectrum or some other reasonable means, to allow systems such as Fleet Call to provide competition to cellular services without preempting State regulation; and be it further

**RESOLVED**, That the NARUC General Counsel communicate this position in the appropriate FCC proceedings.

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Sponsored by the Committee on Communications  
Adopted March 4, 1992  
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