

Resolution on Pretexting and States Protecting Consumer Privacy

WHEREAS, “Pretexting” occurs when a person falsely represents that he or she is an authorized consumer and thereby convinces an agent of a telephone company or VoIP service provider to release confidential phone records; *and*

WHEREAS, Federal law requires phone companies to give consumers a choice about whether their records (“Customer Proprietary Network Information” or “CPNI”) will be shared with third parties, but some State commissions have found that federal rules have occasionally failed to provide clear notices to consumers and federal remedies have not always been adequate to prevent consumer harm, particularly in the face of novel search techniques; *and*

WHEREAS, Internet service providers also have opportunities to collect information about their customers that is personally sensitive and that may reasonably be protected by law; *and*

WHEREAS, A new federal law enacted in 2007 provides penalties of up to ten years’ imprisonment for anyone found guilty of pretexting and also for anyone who improperly purchases or sells telephone records or who gains unauthorized access to a customer’s Internet account data; *and*

WHEREAS, Federal efforts to protect customer privacy have not always been completely successful, particularly when new forms of queries are invented, when new commercial interests increase the value of private data, when new forms of data are collected or data are held by new kinds of service providers, and when privacy violations are arguably within the jurisdiction of more than one federal agency; *and*

WHEREAS, States have a variety of State laws and policies that protect consumer privacy in communications matters, including anti-wiretapping laws and anti-pretexting regulations; *and*

WHEREAS, State commissions have generally provided very effective enforcement on a full range of telecom consumer issues, including slamming, cramming, billing disputes, extended service outages, inappropriate service disconnections, modem hijacking and other issues, and State commissions handle hundreds of thousands of complaints every year and, in most cases, consumer issues are resolved informally in a matter of weeks; *and*

WHEREAS, States may have the ability to react more promptly to new and innovative industry practices that sidestep existing privacy protections; *and*

WHEREAS, NARUC adopted a resolution in February 2006 that committed NARUC to work with Congress, the FCC and the industry on a comprehensive approach to the privacy of telephone records; *and*

WHEREAS, In March 2006, and with the support of the Cellular Telecommunications Industry Association, the Senate Commerce Committee introduced a bill that would have broadly preempted State commission from enforcing State restrictions on the release of Customer Proprietary Network Information and also would have restricted States to a single forum for enforcement in which the State’s “chief legal officer” would file a civil suit in federal district court; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its February 2007 Winter Meetings in Washington, D.C., continues to support federal laws and regulations that fully protect consumer privacy; *and be it further*

RESOLVED, That the States have a broad, legitimate and historically recognized interest in protecting the privacy interests of their citizens, and State commissions continue to play an important role in ensuring that public safety and consumer protection goals are met; *and be it further*

RESOLVED, That States should retain the right to take enforcement action against privacy violations in any constitutional manner that does not directly conflict with federal requirements, and this should include the ability to take enforcement action through administrative agencies, attorneys general, and/or through civil and criminal actions brought in State courts; *and be it further*

RESOLVED, That NARUC directs its General Counsel to communicate this resolution to all relevant policymakers, including Federal and State agencies and Congress.

Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors February 21, 2007