

Resolution on State Jurisdiction Over Wireless Industry

WHEREAS, States provide a key forum for resolution of consumer complaints of all types; *and*

WHEREAS, NARUC endorsed the principle of technological neutrality in telecommunications policy and identified consumer protection as one of States' core competencies in the cooperative federalism paradigm outlined in the "Federalism and Telecom" White Paper, adopted in July 2005; *and*

WHEREAS, The White Paper enunciates specific principles as ongoing important functions at the State level, including:

- (a) one-stop shopping for consumer complaints;
- (b) the ability to respond flexibly to consumer abuses; *and*

WHEREAS, The Paper makes clear that to assure needed State flexibility, federal rules should be "[a] Floor, not a ceiling" as "...blanket preemption on consumer affairs will restrict consumer redress in the future," and "...consumers should NOT have to wait for federal rulemaking every time a new issue arises"; *and*

WHEREAS, The paper also points out that, armed with this flexibility, States are frequently the "...first to provide consumer relief when novel issues emerge like cramming or modem hijacking," and contend that "[w]hen novel issues arise in the State (and they will), the law of unintended consequences should NOT be construed against the consumer"; *and*

WHEREAS, Even where Federal minimum standards for consumer protection may be appropriate, State/Local governments should be allowed to enforce federal standards and adopt supplemental standards where needed; *and*

WHEREAS, Such a cooperative approach between federal and State jurisdictions has worked well recently for such issues as developing and enforcing regulations on certain issues like slamming and cramming; *and*

WHEREAS, For the wireless industry, the regulatory model since the passage of the Omnibus Budget Act of 1993 amending Section 332 has been a dual jurisdictional approach that reserves to States the ability to regulate "terms and conditions" of service; *and*

WHEREAS, For the past 13 years, the wireless industry has flourished under this jurisdictional regime growing its subscriber base from under 10 million to over 207 million today, and showing solid revenue and profit increases compared to the traditional wireline sector; *and*

WHEREAS, States have carried out their responsibilities under the authority reserved over "terms and conditions" to handle and resolve consumer complaints on various issues affecting contract and service provisions, and in some States, to educate consumers about standard contract terms and about their rights and responsibilities under such contracts; *and*

WHEREAS, State Attorneys General and State commissions annually handle thousands of consumer complaints regarding the wireless industry on behalf of citizens in their respective States, according to a 2003 NRRI study; *and*

WHEREAS, The Better Business Bureau reports that complaints for the wireless industry ranked number one for three of the last 4 years over hundreds of other categories with a total of 31,671 complaints in 2005 - a 12 percent increase over complaints received in 2004; *and*

WHEREAS, CTIA, the national wireless association, has recently engaged in an aggressive campaign in the media and before the U.S. Congress to eliminate the Section 332(c) authority that allows States to protect their consumers; *and*

WHEREAS, The current draft of the comprehensive communications bill in the Senate Commerce Committee mark-up (Sen. Stevens' version of H.R. 5252, Section 1005) strips States of any authority to oversee wireless industry "terms and conditions"; *and*

WHEREAS, The wireless preemption provisions of the Stevens legislation violate the principles of State core competencies and technological neutrality; *and*

WHEREAS, Wireless carriers have also aggressively petitioned State commissions to be designated as Competitive Eligible Telecommunications Carriers (CETCs) under Section 214(e) of the Telecommunications Act, which allows these carriers to receive subsidies from the federal Universal Service Fund (USF) for servicing high-cost areas; *and*

WHEREAS, According to the most recent data from Universal Service Administration Corporation, the total amount of USF funds received by wireless carriers (CETCs) is about \$802 million and the Congressional Budget Office projects that the number of wireless subscriptions supported by universal service will double or triple by 2011 and that the increase in USF spending associated with the new entrants would amount to between \$600 million and \$1.2 billion above the 2005 level; *and*

WHEREAS, A March 17, 2005 FCC Report and Order (FCC 05-46) provides a set of recommended guidelines tightening eligibility requirements for ETC designations, including a detailed public interest determination, and more detailed analysis based on information on service, network, and consumer-related issues on how these public funds from USAC are actually being expended in the annual certification and reporting requirements due on October 1st; *and*

WHEREAS, A number of State commissions have responded to this order by either adopting the FCC recommendations in whole or part, either on an interim or permanent basis, or initiating rulemakings to establish more rigor and accountability in the designations and certifications by adopting their own rules; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2006 Summer Meetings in San Francisco, California,

expresses its strong opposition to the wireless preemption provisions of the Stevens legislation (and related efforts in other proposed legislation) because they would:

- Insulate the wireless industry totally from one of the core competencies of States;
- Negate the ability of State commissions to appropriately exercise ongoing oversight of wireless carriers who are receiving, in some cases, millions of dollars in universal service support;
- Violate the principles of technological neutrality and of applying even-handed oversight between wireline and wireless carriers;
- Violate fundamentally the fiduciary responsibility a government agency such as a State commission must exercise in its oversight of universal support funding; and
- Intrude into the administration of State taxes that require or prohibit line items on customer bills; *and be it further*

RESOLVED, When State Commissions are asked to designate wireless providers as Eligible Telecommunications Carriers (ETCs) under Section 214(e) or to certify such a provider as in compliance with State regulations as is required annually, NARUC urges such State Commissions to consider carefully whether the public interest, convenience, and necessity are served should States be preempted from regulating “terms and conditions” of wireless service; *and be it further*

RESOLVED, That NARUC, under the purview of its Committee on Consumer Affairs, will thoroughly study the impact of potential wireless preemption on all consumers, and will provide its assessment of potential harm to consumers resulting from a State’s prohibition in exercising its authority in addressing “terms and conditions” as well as novel consumer issues that will likely arise in the future; *and be it further*

RESOLVED, That NARUC, under the purview of its Committee on Telecommunications, will thoroughly study the impact of potential wireless preemption on all consumers, and will set forth further options for mitigating the harm to the public interest inherent in having any category of CETC exempted from a State’s telecommunications consumer protection laws; *and be it further*

RESOLVED, That NARUC continues to believe that a collaborative approach, under the existing federal statute, is an effective and appropriate way in which to resolve potential inconsistencies of State laws and regulations with national practices or standards, and reiterates its willingness to continue a collaborative dialogue with the wireless industry and the Federal Communications Commission; *and be it further*

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

*Sponsored by the Committees on Telecommunications and Consumer Affairs
Adopted by the NARUC Board of Directors August 2, 2006*