



N A R U C
National Association of Regulatory Utility Commissioners

November 9, 2018

Via E-Mail to privacyrfc2018@ntia.doc.gov

Attn: Privacy RFC
Docket No. 180821780-8780-01

The Honorable David J. Redl
Assistant Secretary for Communications and Administration
National Telecommunications and Information Administration (“NTIA”)
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

RE: Comments of the National Association of Regulatory Utility Commissioners on the National Telecommunications and Information Administration (NTIA) September 25, 2018 Request for Comments on Developing the Administration’s Approach to Consumer Privacy, Docket No. 180821780-8780-01.

Assistant Secretary Redl,

The National Association of Regulatory Utility Commissioners (NARUC), respectfully submits this brief comment on the NTIA *Request for Comments on Developing the Administration’s Approach to Consumer Privacy*.¹ NARUC commends the NTIA for its *RFC*, requesting public general comments on promoting consumer privacy and seeking specific feedback on “core privacy outcomes consumers can expect from organizations,” and “high-level goals for federal action.”²

However, the NTIA’s efforts, which suggests “harmonizing the regulatory landscape,”³ should not, in any way, limit States’ options for enforcement of federal protections, or stronger

¹ U.S. Department of Commerce, the National Telecommunications and Information Administration (NTIA), *Request for Comments on Developing the Administration’s Approach to Consumer Privacy* (rel. Sept. 26, 2018), Docket No. 180821780-8780-0, RIN 0660-XC043, 83 Federal Register 187, available at <https://www.ntia.doc.gov/files/ntia/publications/fr-rfc-consumer-privacy-09262018.pdf> (*RFC*).

² *Id.*

³ *Id.* Specifically, the *RFC* states “we are actively witnessing the production of a patchwork of competing and contradictory baseline laws.” *Id.*

protections promulgated through State law. It simply makes no sense to limit the number of State cops on the privacy beat or reduce (or limit) privacy protections currently available to U.S. consumers.

This NTIA initiative is likely to be cited as precedent for and will impact privacy protections in all sectors. The *RFC* maintains that “given its history of effectiveness, the FTC is the appropriate federal agency to enforce consumer privacy with certain exceptions made for sectoral laws outside of the FTC’s jurisdiction, such as HIPAA.”⁴

NARUC has taken no position on if there should be a single locus for general privacy protections at the federal level. Certainly the FTC *could be* designated as the principal agency to enforce federal consumer privacy standards under a proposed federal privacy framework. But whatever federal agency or agencies are designated, federal privacy initiatives must assure that State privacy cops and enforcement procedures remain intact.

At a minimum, States must be allowed to enforce federal privacy standards. There is no possible rationale that could justify eliminating State enforcement of federal standards – effectively significantly reducing the number of privacy cops on the beat - other than to provide incentives for non-compliance and less protections for U.S. consumers.

For the same reason, no federal action should constrain State options for enforcement of any federal standards. The only reason to specify a State’s enforcement options – the State agency, procedure/process, fine or penalty or State adjudicatory body effecting the fine or penalty - again is to limit enforcement, limit incentives for compliance with the standards, and require States to expend scarce resources to change existing procedures (which, in turn, requires some re-education of some State consumers on where, at the State level, to seek relief).

Finally, if protection of consumers is the ultimate goal, then NTIA’s recommendations should reflect the principles of cooperative federalism adopted by NARUC’s Federalism Task Force in 2013. Among other things, those principles specify that federal customer data privacy standards should always represent “*a floor not a ceiling—for the protection of consumer privacy.*”⁵ Any goals for federal action supported by the NTIA should in not supplant or inhibit States’ ability to enact robust consumer privacy laws. Nor, as referenced earlier, should they impede States’ consumer privacy enforcement efforts/procedures.

⁴ *Id.*

⁵ National Association of Regulatory Utility Commissioners, NARUC Federalism Task Force Report: Cooperative Federalism and Telecom In the 21st Century, November 2013, p. 10, available at <https://pubs.naruc.org/pub.cfm?id=0D53064E-9E9C-0929-9D01-FDBF631704F5> (emphasis added). This principle also states that “Individual States, consumer protection agencies, and service providers should work together to determine whether additional protections are necessary based on their own needs.” *Id.*

Instead, any NTIA recommendations should specifically acknowledge and incorporate State level enforcement. The only possible outcome: better and more comprehensive consumer privacy protection. States are a necessary and logical partner in policing privacy, for a variety of factors – including States’ relative proximity to affected consumers, States’ specific knowledge of businesses operating within their respective jurisdictions, States’ acknowledged expertise in adjudicating these types of issues, and of course the additional State human and enforcement resources that will continue to be available to protect consumer privacy.

If you have any questions about these comments, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org. Thank you for the opportunity to comment.

Respectfully submitted,

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NARUC General Counsel

cc: *Travis Hall, Telecommunications Policy Analyst*
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