



# National Wireless Consumer Protection Standards – The Road Behind



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# Presentation Overview

- Mini History of Wireless Regulation
- NARUC Resolutions Concerning the Communications Policy Statement
- Formation of Ad Hoc Committee





## In the old days . . .

- Radio Act of 1927: Wireless spectrum nationalized and control given to Federal Radio Commission (FRC)
- Communications Act of 1934: Merged FRC into new Federal Communications Commission (FCC)
  - FCC given plenary authority over issuance of licenses for all forms of radio communications
  - Until 1993 Budget Act, States retained as part of their general powers to regulate common carriers, the power to regulate charges, classifications, practices, services, and facilities of purely intrastate wireless services.





# Omnibus Budget Reconciliation Act of 1993

- Pre-1993, two classes of mobile radio services:
  - Private mobile services – fairly unregulated
  - Public mobile services – regulated
- Two new categories set up by 1993 Budget Act:
  - Commercial Mobile Radio Services (CMRS) and
  - Private Mobile Radio Service (PMRS)



- Congress enacted a revised Section 332 for two reasons:
  - (1) Findings that disparities in the current regulatory scheme could impede the continuing growth and development of CMRS and deny consumers the protections they need if new wireless services were classified as private.
  - (2) Legislative history says: “The intent of [Section 332©(3)(A)], as modified, is to establish a Federal regulatory framework to govern the offering of all commercial mobile services.”





# 1993 Budget Act

- Congress directed that CMRS providers be treated as common carriers and subject to “light touch” regulation under Title II.
- Congress preempted state regulation of entry or rates of CMRS providers but allowed States to regulate “other terms and conditions of commercial mobile services” in Section 332(c)(3)(A):

“[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services . . . “





## 1993 Budget Act (con.)

- States could petition FCC to regulate CMRS and FCC could grant the petition if the State could demonstrate:
  - (1) market conditions with respect to wireless services failed to protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, or
  - (2) market conditions exist such that CMRS services is a replacement for landline telephone exchange service for a substantial portion of the telephone land line exchange service in the State.
- State petitions denied by FCC to date:  
Connecticut, Ohio, California, Louisiana, Arizona, New York, and Hawaii.





## NARUC 2005 Resolution

- NARUC passed a resolution in Feb. '05 (Federalism and Telecom White Paper) stating that any revisions to the Telecom Act of 1996 should:
  - (1) Consider the relative interests and abilities of the States 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; and
  - (4) Focus regulation only on those markets where states identify market failure.





## NARUC Traditional Positions

- NARUC supported national framework for wireless consumer standards as a minimum (the “floor”), with States free to impose further regulations.
- NARUC opposes national preemption regarding terms and conditions of wireless telecommunications services, to safeguard a State commission’s oversight of wireless carriers that hold Eligible Telecommunications Carrier (ETC) status.
- NARUC protects State’s desire to resolve complaints using its local expertise in consumer protection, public safety, fact-based arbitration and adjudication.





## **TC-2 Resolution Concerning Communications Policy Statement at NARUC DC Winter 2008**

- Earlier version: Resolution encourages “mutually agreed upon national wireless consumer standards to be established and interpreted by FCC” which would constitute both the “floor and the ceiling”.
  - States retain co-extensive authority to resolve complaints re terms and conditions of wireless service, enforce the standards, and conduct fact based investigations.
  - Recommends formation of a Joint Board or other body including state commissioners and consumer rep to draft rules and update periodically.
  - Does not impact areas where states have explicit authority under law.





## Initial Resolution

- Resolution passed 13-7 in Telecom Committee
- Sent back by Executive Board of NARUC to Telecom Com and consultation with Consumer Affairs Committee for further consideration at Summer NARUC meeting in July.
- Issues raised by opponents re first resolution:
  - Uniform national rules should be floor and not a ceiling
  - Questions re joint board process being too cumbersome
  - Request to clarify process of setting rules





## Final Resolution – NARUC Portland July '08

- Initial resolution amended to address concerns in amended resolution T-4:
  - Removed language that uniform national wireless consumer standards are a ceiling.
  - Removed references to Joint Board and instead recommends formation of a task force or working group with specific groups delineated to participate.
  - Process includes public comment and reply comments to ensure transparency
  - Periodic updates to rules through a similar collaborative process.
- New resolution presented to Telecom Committee and Consumer Affairs Committee. Passed in both Committees, and approved by Exec. Board.





## Final Resolution - Summary

- Encourage “mutually agreed upon, uniform national wireless consumer protection standards” + effective partnership of State and Federal enforcement
- Recommends formation of a Joint Task Force or Working Group including 3 FCC Commishes, 5 State Commishes, Industry Rep, Rep of State Attorney General, and consumer advocate to engage in collaborative process (including public comment and reply comments) to mutually agree on uniform set of national standards
- Jt. Task Force will hold public meetings, except for deliberative sessions





## Final Resolution Summary

- After initial standards set, will meet every 6 mos. to review change proposals which are subject to same collaborative process.
- Recommended completion of standards within 6 months of formation of the Task Force and submitted to FCC.
- Recommended that if no action taken by FCC after 120 days from date of submission, Congress could deem the standards approved and adopted by the FCC.
- Recommended if standards or recommendations impact Sections 214 (e) or 332(c), the revisions be submitted to relevant committees of Congress.





## Final Resolution Summary

- States retain coextensive authority to resolve consumer complaints, conduct fact-based investigations, use existing laws and administrative procedures authorized by the state to enforce any provisions included in a uniform national standard, and impose a penalty to enforce compliance.
- States retain ability to exercise explicit authority to enforce laws of general applicability, collection and payment of State taxes, interconnection requirements, State universal service programs, safety/E911 requirements, ETC designations.





## 2008 State Agency Survey

- July 2008 Survey of State Commissions done by staffs of DC and CA commissions:
- 35 State utility commissions have no regulatory authority
- 18 jurisdictions have regulatory authority, of which only 9 actively regulate terms and conditions of wireless service.





## Ad Hoc State Committee Formed

- In August 2008, NARUC President Smith names Ad Hoc State Wireless Task Force with Commissioner John Burke (VT) as chair.
- Email notice reads: With Congressional action on wireless legislation pending in 2008, NARUC hopes to present Congress with content for an initial set of possible uniform national rules.
- Input sought from various industry groups re possible standards
- Survey planned to all states.
- This Ad Hoc State Group is not the Task Force referred to in the Final Resolution.

