

Commissioner's Report on NARUC Telecommunications Committee Meetings in Washington D.C.

**Commissioner Rachelle B. Chong
February 16, 2006**

I wanted to report on the most pressing telecom issues from my trip to Washington DC for NARUC this week:

Unauthorized Sale of Consumer's Telephone Records

A NARUC resolution was passed on the highly publicized topic of theft and unauthorized sale of consumer's telephone records.

We are all concerned about recent news reports that data brokers selling customer telephone records on the Internet. Apparently these so-called "pretexters" call the telecom carriers and impersonate the customer to have the call records released, and then sell them to third parties for a profit on the Internet.

Obviously who you call, when you call and how often you call is very personal and sensitive information. Furthermore, this practice is very dangerous for those victimized by stalkers or domestic abuse. This is an area of tremendous concern for all Californians who care about the privacy of their telephone call records.

There is tremendous activity and high level attention on this issue in Washington D.C. It's a one-two punch at the federal level: the Federal Communications Commission (FCC) has jurisdiction over the carriers and the Federal Trade Commission (FTC) is going after the data brokers.

Last August, EPIC filed a petition for rulemaking, requesting the FCC open a rulemaking to consider stricter security standards to stop carriers from releasing private customer data to pretexters.

In November of 2005, the FCC subpoenaed numerous data brokers, trying to find out what data the brokers may be obtaining from telecom providers, in apparent violation of Section 222 of the Communications Act of 1934, governing use of customer data.

In January, the FCC's Enforcement Bureau has issued citations against two data brokers, who did not respond to the subpoenas. Also in January, the FCC's Enforcement Bureau requested evidence of compliance with an FCC rule instructing all telecom carriers to certify annually that it has operating procedures to ensure compliance with CPNI rules. The FCC Enforcement Bureau issued Notices of Apparent Liability against two carriers who did not produce the

officer's certification. It is now in conversations with all major carriers to discuss procedures to protect customer data and their current compliance.

On February 1st, the FTC Chairwoman Deborah Majoras testified to the House Energy and Commerce Committee that the FTC has the authority to bring law enforcement action against a pretexter of telephone records if it has reason to believe that the pretexter has engaged in unfair or deceptive practices under section 5 of the FTC Act.

On February 1, 2006, FCC Chairman Kevin Martin has asked Congress to:

1. Make illegal commercial availability of a consumer's phone records.
2. Overturn the 10th Circuit Federal Court of Appeals ruling prohibiting the FCC from requiring affirmative customer consent for use of a customer's records beyond uses relating to the customer's current service.
3. Strengthen FCC enforcement tools by eliminating the citation requirement of Section 503(a) which gives targets heads up that they are being investigated allowing them to flee;
4. raising maximum forfeiture penalties; and
5. extending the current one year statute of limitations.

Both the House and the Senate have held hearings on this matter in February, and many Congress members have said that legislation will be passed this year to criminalize pretexting. Expect legislation that will go through.

California has historically had stronger constitutional rights to privacy than provided under Federal Law due to a 1974 amendment to the California constitution that made the right of privacy an unalienable state constitutional right.

This privacy interest is extended to customer information through Public Utilities Code Section 2891, which prohibits telephone corporations from making available to anyone private financial information, calling patterns, types of phone services used, or demographic information about a residential customer without obtaining the customer's written consent.

I would like to ask our Telecom Division, Enforcement Division and Consumer Service and Information Division to look into this issue as to carriers operating within our state and let me know what they find. I am aware there is some activity in Sacramento about potential state legislation, which should be tracked.

E-911:

There is debate in Washington DC about whether all telecom carriers – including Voice Over Internet Protocol (VOIP) providers -- should provide effective E-911 capabilities. The issue is whether such E 911 obligations should be technology

neutral and apply equally to all telephone providers, including wireline, wireless, cable telephony and VOIP providers. If so, should VOIP providers be asked to make contributions to the infrastructure of the Public Safety Answering Point system?

Universal Service:

Many bills are being introduced in Congress about much needed universal service reform. This issue looks like one where legislation is likely.

A key issue is whether all communications providers – including VOIP – should be required to pay into the federal and state universal service funds. Second, there is a decisive movement to make all universal service subsidies transparent and evident. After intercarrier compensation reform, there may be a shortfall in universal service funding. This shortfall may be a big number – maybe as high as \$2 billion dollars. I will be closely following this issue relating to our upcoming Universal Service rulemakings.

Telecommunications Bill Rewrite:

Every year, Washington buzzes about whether a new rewrite of the telecom laws are in the offing. Because it is the tenth anniversary of the Telecom Act of 1996, there seems to be serious efforts to draft some comprehensive bills by numerous Congressional leaders on the relevant committees.

From experience, I will suggest that crafting a telecom bill rewrite is something that takes a number of years, so I would not bank on it.

NARUC's Legislative Task Force has suggested that any broad reform be technology neutral, and to avoid building frameworks around any particular technology since no policymaker can guess what is next going to happen.

The NARUC Legislative task force also suggested something called "Functional Federalism" which is the idea that if Congress is going to rewrite the Telecom Act, it does not have to be bound by traditional distinctions of "interstate" and "intrastate" jurisdiction as in the past.

Instead, NARUC Task Force suggested a new framework to look at the core competencies of agencies at each level of government, Federal, State and local – and assign regulatory functions on the basis of who is best suited to perform each function more effectively.

Areas that NARUC's Task Force suggested that States excel at included:

- 1 Responsive consumer protection
- 2 Efficiently resolving intercarrier disputes
- 3 Ensuring public safety

- 4 Assessing the level of competition in local markets, and
- 5 Tailoring national universal service and other goals to the fact specific circumstances of each state.

Bringing it Home to California

I bring these national trends and issues up because it dovetails very nicely into many priority activities we have going on here at the CPUC:

1. The consumer bill of rights, for example. What a good way for California to show that we are best suited to educate our consumers to adjust to this new world of competition, adjudicate complaints on serious issues like slamming and cramming, and protect them against fraud.
2. Our relook at levels of competition in the telecom markets in our URF proceeding and whether more pricing flexibility is appropriate at this time.
3. Our plans to kick off our universal service reform proceedings in spring.
4. I would also suggest that after the FCC acts on its Intercarrier Compensation docket, California will want to look at our intrastate intercarrier compensation charges to see what needs to be done at this time.

Thank you for your patience as to this report.