

**FCC Local and State Government Advisory Committee  
Advisory Recommendation Number 20:**

**Petition for Declaratory Ruling, Communications Act Provisions, and FCC  
Jurisdiction Regarding Preemption of State Court Rules Awarding Monetary  
Damages Against Commercial Mobile Radio Service Providers for Violation of  
Consumer Protection or Other State Laws, WT Docket No. 99-263**

On July 28, 1999, the Federal Communications Commission (FCC) invited public comment on whether the Telecommunications Act of 1996 (Telecommunications Act) preempts state and local jurisdictions from bringing actions against wireless mobile service providers for violating state consumer protection laws or actions for wrongful conduct brought by way of contract claims or tort actions.

The continued availability of state consumer protection statutes and the ongoing availability of the rights and remedies thereunder, are important to state and local government. Such laws and their associated regulations allow state and local government, as well as the consumer, to protect against unscrupulous providers who promise the world but deliver nothing. Because of its importance, the Federal Communications Commission Local and State Government Advisory Committee (LSGAC) offers the following comments:

I. The LSGAC lacks the resources that would allow it to do the factual research necessary to take a stand as to the facts of Wireless Consumer Alliance v. Los Angeles Cellular Telephone Company, which is the impetus for the Petition for Declaratory Ruling. The LSGAC notes, however, that in its Petition for Declaratory Ruling, the Wireless Consumer Alliance (WCA) asserted that a decision by the FCC on this matter would not involve delving into the facts of the Los Angeles case. According to the WCA, the issue is merely that of preemption: does the Telecommunications Act of 1996 preempt a state court from awarding damages for violations of state consumer protection laws.

II. A possible outcome of this proceeding is preemption of state action by way of a declaratory ruling. It is the position of the LSGAC that a declaratory ruling is not the proper method to preempt state action, should preemption be appropriate.

As a matter of principal, the LSGAC has grave concern with regard to preemption of state and local government authority. Historically, the LSGAC has expressed its concern for preemptive actions. For instance, in Advisory Recommendation Number 4 dealing with preemption of zoning moratoria on tower siting facilities, the LSGAC noted "It is not in the federal interest to seem to assume control over...essentially local matters. No uniform national solution can meet all the varied local circumstances."

III. Consumer protection has primarily been a state ---not a federal---matter.

Specifically, consumer protection has been handled by states through the development of various consumer protection statutes. There are broad policy implications in preempting an area of law that has been traditionally reserved for state and local authorities. Moreover, to the extent that such matters are purely intrastate, it is by no means clear that the FCC could properly preempt state regulation. See, e.g., Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

IV. Further, the Telecommunications Act does not limit state and local government from issuing rules, regulations, and policies designed to protect consumer interests. Although section 332(c)(3)(A) of the Telecommunications Act prohibits local or state government from regulating entry or rates of commercial and private mobile service providers, it does not prohibit state and local government from bringing consumer protection suits against wireless providers in state courts. Therefore, the prohibition in section 332(c)(3)(A) with regard to wireless providers is limited and not absolute.

V. The LSGAC believes that the issue presented in the Petition for Declaratory Ruling is important to state and local government. However, due to the scarcity of comments filed with regard to this matter, it is not clear to the LSGAC whether state and local governments are aware of, or educated about this matter.

#### RECOMMENDATIONS:

For the reasons discussed above, the LSGAC recommends that the Commission take the following actions:

- (1) As a matter of process, associations representing local and state government interests must be made fully aware of this matter and the potential consequences of a ruling to local and state government. Accordingly, outreach to these groups is appropriate and necessary.
- (2) Take no preemptive action in issuing a Declaratory Ruling as section 332(C)(3)(A) of the Telecommunications Act does not preempt a state court from awarding damages for violations of state consumer protection laws.

Adopted by the LSGAC on October \_\_\_\_, 1999.

---

Kenneth S. Fellman  
Chairman