



N A R U C
National Association of Regulatory Utility Commissioners

Via E-Mail to privacyframework@nist.gov

Attn: NIST Privacy RFI
Docket No. 181101997-8997-01

Katie MacFarland
National Institute of Standards and Technology
100 Bureau Drive, Stop 2000
Gaithersburg, MD 20899I

RE: Comments of the National Association of Regulatory Utility Commissioners on the National Institute of Standards and Technology (NIST) November 14, 2018 *Developing a Privacy Framework*, Request for Information, Docket No. 181101997-8997-01.

Ms. MacFarland,

The National Association of Regulatory Utility Commissioners (NARUC), respectfully submits this brief comment on the NIST *Developing a Privacy Framework request for information (RFI)*.¹ NARUC commends the NIST for its *RFI*, seeking public comments on the creation of a “voluntary” privacy framework to “improve organizations’ management of processes for incorporating privacy protections into products and services.”²

Given NIST’s prominence, this *RFI*, although focused on voluntary standards, is likely to be grist for federal and state policymakers addressing privacy issues. It is certain the NIST framework will be cited as precedent for and will impact the evolution of mandatory privacy protections in all sectors

Indeed, the *RFI* includes several “Organizational Considerations” (OC) that arguably implicate the impact of more stringent standards and multiple enforcement regimes. In particular, OC-11 asks how current regulatory or regulatory reporting requirements (e.g., local, state, national,

¹ U.S. Department of Commerce, the National Institute of Standards and Technology (NIST), *Developing a Privacy Framework*, Request for Information (rel. Nov. 14, 2018), Docket No. 181101997-8997-01, Document Number: 2018-24714, 83 Federal Register 56824, available online at: <https://www.federalregister.gov/documents/2018/11/14/2018-24714/developing-a-privacy-framework#footnote-1-p56824>.

² *Id.*

international) relate to the use of standards, models, methodologies, tools, guidelines and best practices and principles. And in OC-12, the RFI asks about “mandates to use specific standards ...and conflicts between requirements and desired practices.”

Companies charged with complying with existing “local, state, national, international” regulatory requirements will likely use their responses to OC-11 and 12 to support elimination of competing privacy mandates and enforcement capability.

NARUC respectfully requests that any final voluntary NIST framework specify it should not be used as a template to limit States’ options for enforcement of federal protections, or stronger protections promulgated through State law.³

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. There is no possible rationale to 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 protection to U.S. consumers. For the same reason, no federal action, including compliance with voluntary NIST guidelines, should constrain State procedural options for enforcement. The only reason to limit 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.

Thank you for the opportunity to comment.

Respectfully submitted,

James Bradford Ramsay
NARUC General Counsel

³ Federal customer data privacy standards should always represent “*a floor not a ceiling— for the protection of consumer privacy.*” National Association of Regulatory Utility Commissioners, NARUC Federalism Task Force Report: Cooperative Federalism and Telecom In the 21st Century, Nov. 2013, p. 10, online at <https://pubs.naruc.org/pub.cfm?id=0D53064E-9E9C-0929-9D01-FDBF631704F5> (emphasis added).