Resolution Calling on the FCC to Reexamine Wireless Carriers' Early Termination Fees

WHEREAS, Many wireless customers sign service contracts with wireless carriers that include early termination fees (ETFs) and obligate customers for one or more years; *and*

WHEREAS, Some contracts are extended by carriers due to customer initiated changes; *and*

WHEREAS, In addition to these ETFs, many independent vendors of wireless equipment and services may impose additional ETFs that vary in amount, depending on the vendor1; *and*

WHEREAS, From 2002-2004 the U.S. Public Research Interest Group estimated that ETFs cost consumers $4.6 billion in penalties for canceling their contracts or lost opportunities to obtain lower-cost services, thus limiting consumers' choices among carriers and services;[2] *and*

WHEREAS, Wireless carriers continue to assert that (1) ETFs are necessary in order to reduce, or subsidize, customers' costs of wireless products (*i.e.*, handsets) and services (rate plans) and to ensure that carriers fully recover customer-acquisition costs;[3] and (2) ETFs may help lower transaction costs by isolating the cost of prematurely cancelled services to the cost-causer; *and*

WHEREAS, Wireless carriers provide prepaid services, including pay-as-you-go, month-to-month, hybrid plans and in few cases pro-rated plans which customers may purchase in advance; *and*

WHEREAS, Conditions in the wireless market that may have justified the economic and policy assumptions underlying the *Cellular Bundling Order* have changed since 1992; *and*

WHEREAS, The wireless industry has flourished since 1992, growing its subscriber base from just under 9 million, according to the wireless industry's website, to over 239 million by July 3, 2007, and consistently showing solid revenue and profit increases compared to the traditional wireline sector during this time frame;[4] *and*

WHEREAS, Wireless carriers have sought and obtained designation as Eligible Telecommunications Carriers ("ETCs") under 47 U.S.C. §214(e), allowing them to support their costs to serve customers in high-cost areas with monies disbursed from the federal Universal Service Fund ("USF"); *and*

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[1] *See In re Cellular Telephone & Internet Association's Petition for Declaratory Ruling Regarding Early Termination Fees in Wireless Service Contracts*, WT Docket No. 05-194, Utility Consumers Action Network Comments, pp. 15-19 (Aug. 5, 2005).

[2] *See* Edmund Mierzwinski, "Locked in a Cell: How Cell Phone Early Termination Fees Hurt Consumers," U.S. PIRG Education Fund, pp. 20-21 (Aug. 2005) available at: http://www.uspirg.org/uploads/6K/L1/6KL1e4XLE1QzgyFz7hpKKQ/lockedinacell05.pdf.

[3] *See* "Early Termination Fees – CTIA Position," http://ctia.org/industry_topics.cfm/TID/41/CTID/12 (accessed Feb. 5, 2007).

[4] *See* http://files.ctia.org/pdf/CTIAMidYear2006Survey.pdf.

WHEREAS, According to the most recent data compiled by the Universal Service Administration Company, the total amount of federal USF subsidies received by wireless carriers has more than doubled in the last two years, from $471 million to approximately $1.10 billion in 2006, and constitutes over 99 percent of all federal USF subsidies received by competitive ETCs; *and*

WHEREAS, On July 12, 2007, the National Association of State Utility Consumer Advocates (NASUCA), passed a resolution calling on the Federal Communications Commission to reexamine the 1992 Cellular Bundling Order to determine if use of ETFs benefits *both* consumers and wireless carriers; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its July 2007 Summer Meetings in New York, New York, calls upon the Federal Communications Commission to reexamine the economic and policy assumptions underlying its 1992 *Cellular Bundling Order,* in order to determine whether wireless carriers' – or their independent vendors' – use of ETFs remains a needed and "efficient promotional device" that benefits *both* consumers and wireless carriers; *and be it further*

RESOLVED, That the FCC should fully investigate the equipment and customer acquisition or retention costs cited by the wireless industry as justification for ETFs, in order to determine whether such costs are being reasonably and appropriately recovered from consumers; *and be it further*

RESOLVED, That this Resolution shall not, in any way, be construed as endorsing the proposition asserted by wireless carriers that the FCC has exclusive jurisdiction over wireless carriers' ETFs under 47 U.S.C. §332(c)(3)(A).

Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors July 18, 2007