

Committee Resolutions

AS PASSED

By the

Board of Directors

of the

**NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS
Wednesday, July 21, 2010**

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Resolution in Support of a Study on Identifying Best Practices for Energy Assistance Programs

WHEREAS, Electric and gas utilities throughout the country have implemented energy assistance (EA) programs targeted at low-income households; *and*

WHEREAS, State public utility commissions have long attached importance to utilities providing affordable service to all their customers, including low-income households; *and*

WHEREAS, The need for EA programs is expected to grow in the coming years as Federal, State and Local governments in addition to non-governmental organizations will undergo severe financial challenges in continuing their past support for energy assistance to low-income; *and*

WHEREAS, The public interest dictates that EA programs should achieve the most favorable benefit-cost ratio; that is, the highest benefits to recipients given the dollars funded by utility customers; *and*

WHEREAS, Benefit-cost measurements require comprehensive data and analyses of the data, which include: (1) program participation rate, (2) the dollar benefits per program recipient, (3) the reduction in the energy burden of program recipients, and (4) the reductions in total utility arrearages, collection costs, debt write-offs, and disconnections attributable to EA programs; *and*

WHEREAS, In creating new EA programs or improving or expanding existing ones, State public utility commissions and utilities will benefit from information on the economic impact of households at risk and the various goals of States; *and*

WHEREAS, State public utility commissions and utilities will benefit from having information on the development, structure and implementation of EA programs; *and*

WHEREAS, State public utility commissions and utilities will benefit from information that identifies the features of EA programs that seem most crucial for their effectiveness or reflect best practices; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, urges a study to identify best practices for energy assistance programs; *and be it further*

RESOLVED, That the study furnish comprehensive information on utility and governmental EA programs and the various rationales and objectives that led to their formation; *and be it further*

RESOLVED, That the study build on relevant work previously done by industry groups such as the Edison Electric Institute and the American Gas Association, in addition to other organizations such as the Applied Public Policy Research Institute for Study and Evaluation (APPRISE) and Fisher, Sheehan, and Colton;¹ *and be it further*

¹ See, for example, APPRISE and Fisher, Sheehan, and Colton, *Ratepayer-Funded Low-Income Energy Programs: Performance and Possibilities, Final Report*, July 2007.

RESOLVED, That the study serve the low-income community by providing a publicly available report that includes comprehensive data and other information on past and existing EA programs; *and be it further*

RESOLVED, That the study, among other things, contain information on EA programs across the country that includes: (1) EA program design, (2) EA program purpose and objective, (3) the underlying legal and regulatory support for the EA programs, and (4) the methodologies applied to the measurement of EA program benefits and costs; *and be it further*

RESOLVED, That the study include the major lessons learned from existing and past EA programs and identify best practices that State public utility commissions and utilities can apply in the future.

*Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors July 26, 2010*

Resolution Urging the Federal Communications Commission to Use Its Authority to Protect Consumers from Mobile Device Bill Shock

WHEREAS, The Federal Communications Commission(FCC) recently released the results of its independently conducted national study of 3,005 American consumers regarding bill shock and Early Termination Fees (ETFs);² *and*

WHEREAS, The survey results showed that 80% of American adults have a personal cell phone, and 17% of those, or approximately 30 million Americans, have at one time experienced bill shock, or their cell phone bill increased suddenly from one month to the next, even though they had not changed their calling or texting plans; *and*

WHEREAS, Eighty-four percent (84%) said their cell phone company did not contact them when they were about to exceed their allowed minutes, text messages, or data downloads, and 88% said their cell phone company did not contact them after their bill suddenly increased; *and*

WHEREAS, Wireless phone screens provide basic information such as time, date, battery power, number of emails and voice mails; *and*

WHEREAS, Wireless phones depict icons that can be programmed to provide detailed information, *and*

WHEREAS, Consumers could have prompt and easily accessible usage information and avoid over-usage if all wireless phone screens displayed minutes used and remaining and/or a “Usage” icon that provides all account information including usage allowed, used and available, billing date, costs for overages for all services; *and*

WHEREAS, The FCC has reportedly received hundreds of complaints about unexpectedly outrageous cell phone bills ranging from hundreds to thousands of dollars;³ *and*

WHEREAS, Some wireless carriers provide alerts and other means to curtail overages, primarily to customers with smart phones; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has consistently supported and encouraged full disclosure to consumers; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, urges all wireless carriers with the technical ability to provide usage alerts, icons and/or screen notices on mobile devices, or other alerts to voice, text, and data consumers in the United States with clearly understood and prompt information to monitor usage, to empower consumers, to

² *Americans’ Perspectives on Early Termination Fees and Bill Shock, Summary of Findings* (rel. May 26, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298414A1.doc.

³ “Your tax dollars at work. “\$18,000 cell phone bill? ‘Bill shock’ in feds crosshairs” OC WATCHDOG (rel May 13, 2010) available at: <http://taxdollars.ocregister.com./2010/05/13>.

avoid bill shock, and to ensure that consumers are fully informed prior to incurring charges for services in excess of those in a customer's calling plans; *and be it further*

RESOLVED, That NARUC urges the FCC to work with State commissions, consumer representatives, and industry to implement measures to achieve these objectives; *and be it further*

RESOLVED, That NARUC directs its General Counsel and policy staff to promote policies consistent with this statement at the federal level.

*Sponsored by the Committees on Consumer Affairs and Telecommunications
Adopted by the NARUC Board of Directors July 21, 2010*

Resolution Supporting State Authority to Adopt and Promote Feed-in-Tariff Mechanisms for Renewable and Other Generation Technologies

WHEREAS, The United States Congress is actively considering legislation that would impose limitations on the emissions of GHG from electric power generation facilities that burn fossil fuels; *and*

WHEREAS, Previous NARUC resolutions support the development of federal programs that would address the emissions of GHG from electric power generation facilities that burn fossil fuels and urge that such programs should take into account the foundational role that must be played by State clean energy policies in delivering cost-effective GHG emission reductions and to incorporate mechanisms that enable States to further pursue these policies; *and*

WHEREAS, State commissions have long had regulatory responsibility for assuring generation resource adequacy for retail electric customers; *and*

WHEREAS, State commissions are the regulatory agencies that have the closest contact with the providers of retail electric service and that best understand the needs of retail customers; *and*

WHEREAS, Feed-in tariffs are regulatory mechanisms that encourage the development of new renewable energy resources by providing a long-term financial incentive to developers of such resources; *and*

WHEREAS, Feed-in tariffs are a potential option for States that wish to encourage the development of renewable resources and resource diversity; *and*

WHEREAS, Some States have expressed interest in developing feed-in tariffs that provide compensation at a level to cover the reasonable costs of developing generation resources, which may be greater than avoided costs or competitive prices; *and*

WHEREAS, The Federal Energy Regulatory Commission has concluded that requiring public utilities to purchase power at prices established by State commissions, or to offer to make such purchases, constitutes impermissible wholesale rate-setting by State commissions pursuant to the Federal Power Act, and that under the Public Utility Regulatory Policies Act, the role of the States is limited to determining “avoided cost” rates for qualifying facilities; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, supports the ability of individual States to determine whether or not the public utilities, under their jurisdiction, should be required to offer to purchase power at prices established by State commissions (including prices set pursuant to State feed-in tariffs) in a manner consistent with federal law; *and be it further*

RESOLVED, That NARUC directs its staff to advocate for the positions expressed in this resolution through proposed legislation or proceedings before the Federal Energy Regulatory Commission and, in such advocacy, to take into account the 2010 analysis of these issues

developed by the National Regulatory Research Institute and the National Renewable Energy Laboratories.

*Sponsored by the Committees on Electricity and Energy Resources
and the Environment*

Adopted by the NARUC Board of Directors July 21, 2010

Resolution Supporting the National Action Plan on Demand Response

WHEREAS, For years, the National Association of Regulatory Utility Commissioners (NARUC) has supported and promoted demand-side management as a means of making the most efficient use of electricity;⁴ *and*

WHEREAS, Both the Federal Energy Regulatory Commission (FERC) and numerous States have taken concrete steps in order to implement cost-effective demand response programs for the benefit of customers;⁵ *and*

WHEREAS, FERC is required to develop the National Action Plan on Demand Response (National Action Plan) as outlined in Section 529 of the Energy Independence and Security Act of 2007 (EISA); *and*

WHEREAS, The provisions of Section 529 direct that the National Action Plan include (1) identifying requirements for technical assistance to States to allow them to maximize the amount of demand response resources that can be developed and deployed, (2) designing and identifying requirements for implementation of a national communications program that includes broad-based customer education and support, and (3) developing or identifying analytical tools, information, model regulatory provisions, model contracts, and other support materials for use by customers, States, utilities, and demand response providers; *and*

WHEREAS, The National Action Plan proposes the development of a national communications program, with a multi-faceted structure that would include a Communications Umbrella, local implementation, and direct outreach to States, policymakers and partners whose support will be needed to develop demand response in every region but particularly in areas where there are no existing demand response programs or current plans to implement such programs; *and*

WHEREAS, The Communications Umbrella will provide a consistent, yet flexible, research-based message framework that could be adapted for use by local demand response implementers, including State and local government officials; *and*

WHEREAS, The National Action Plan will include two general categories of action with regard to tools and materials, (1) a web-based clearinghouse to provide the most current information and analyses on demand response, and (2) tools and methods for assessing the impacts, costs, benefits and operation of demand response programs; *and*

WHEREAS, The National Action Plan recommends the formation of a Coalition to coordinate implementation of the National Action Plan as a way of harnessing the collective energy of a variety of individual organizations and yielding outcomes that have greater reach and depth than those organizations could achieve acting individually; *and*

⁴ <http://www.naruc.org/Testimony/08%200521%20NARUC-DemandResponseSmith.pdf>

⁵ <http://www.naruc.org/News/default.cfm?pr=49>

WHEREAS, State governments, including NARUC’s member commissions, individual utilities and other demand response providers continue to take important actions in support of demand response. These actions include issuance of legislation and State energy plans, regulatory commission decisions, and the deployment of demand response programs and enabling technologies;⁶ *and*

WHEREAS, Demand response cannot achieve its full potential without the support of State regulators and State regulators agree that more effective demand response requires the action of State commissions; *and*

WHEREAS, Facilitating cost-effective demand response initiatives is one of many areas where the interests of FERC and State regulators overlap⁷ and the coordination of federal and State initiatives offers the best way to assure the full benefits of Demand Response are delivered to consumers; *and*

WHEREAS, State commissioners continue to work on demand response issues jointly with FERC through the FERC-NARUC Smart Response Collaborative; *and*

WHEREAS, That although the National Action Plan calls for the “deployment of the maximum amount of price-responsive demand response, such as “retail dynamic rate designs enabled through advanced metering,” that in times of limited government and private resources and extensive needs and priorities within the electric industry, it may not be possible for the broad goals and recommended measures of the NAPDR to be fully implemented; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, supports the National Action Plan as a tool to achieve the nation’s demand response potential, to build on past successes and make additional use of cost-effective demand response resources in the future; *and be it further*

RESOLVED, That the NARUC Board of Directors endorses the principal objectives and recommendations of the National Action Plan, and urges its member commissions to support individually, and where appropriate regionally, the elements and potential applicability of the recommendations outlined in the National Action Plan, in an effort to identify potential improvements in the development and deployment of demand response nationwide.⁸

*Sponsored by the Committee on Energy Resources and the Environment
Adopted by the NARUC Board of Directors July 21, 2010*

⁶ <http://www.ferc.gov/legal/staff-reports/sep-09-demand-response.pdf>

⁷ <http://www.naruc.org/Testimony/08%200421%20NARUCCompetition.pdf>

⁸ Modeled after ‘Resolved’ clause in *Resolution Supporting the National Action Plan on Energy Efficiency*, http://www.naruc.org/Resolutions/EC-2_NationalActionPlan0706.pdf.

***Resolution Regarding Enhanced Federal Support for Clean Energy Technology Research,
Development, Demonstration, and Deployment Activities***

WHEREAS, Affordable, secure, and clean energy options will be critical to addressing major economic, national security and environmental challenges including the high cost of needed energy infrastructure improvements, global competition for resources, oil dependence, and climate change; *and*

WHEREAS, U.S. leadership in innovation, science, and technology has been an essential building block of our nation's competitiveness in a global economy and could play a vital role in helping to address these challenges; *and*

WHEREAS, U.S. public and private investment in energy research and development accounts for less than one half of one percent of America's energy expenditures, a much smaller percentage commitment to research and development than occurs in other major sectors of the economy; *and*

WHEREAS, Federal Government energy research and development spending adjusted for inflation declined by 80% from 1979 to 2007; *and*

WHEREAS, Although the American Recovery and Reinvestment Act of 2009 provided a temporary increase in funding for energy research and development, it is unclear whether essential funding will be sustained over the period necessary to bring new clean energy technologies into the market; *and*

WHEREAS, The bipartisan National Commission on Energy Policy, the International Energy Agency, an independent analysis by the Brookings Institution, a group of 34 U.S. Nobel Laureates, and prominent business leaders including those making up the American Energy Innovation Council, among others, have recommended a doubling or larger increase in government support for Clean Energy research, development, demonstration, and deployment; *and*

WHEREAS, The United States Department of Energy has developed a portfolio of mechanisms, supplementing existing laboratories and programs, to accelerate innovation and improve the efficiency of efforts to develop and commercialize new energy technologies, including the Advanced Research Project Agency – Energy (ARPA-E) which funds high-risk, high-payoff projects and is patterned after the successful Defense Advanced Research Projects Agency (DARPA), Energy Innovation Hubs which provide longer term support to integrate basic and applied research and achieve breakthrough advances in key technologies, and Energy Frontier Research Centers focusing on fundamental research related to key energy problems; *and*

WHEREAS, Promising new technologies face significant risks when attempting to cross the gap between development and commercialization, often referred to as a “valley of death” for new technology; *and*

WHEREAS, Aligning support for large-scale demonstrations and early deployments of new Clean Energy technologies with energy research and development programs and with measurable objectives could accelerate the commercialization of the most promising new technologies; *and*

WHEREAS, Clean Energy technology includes technologies related to the production, use, transmission, storage, control or conservation of energy that will reduce demand for new energy supplies, diversify the U.S. energy supplies, and contribute to the stabilization of greenhouse gas concentrations; *and*

WHEREAS, NARUC's resolutions have promoted development of clean energy technologies, including a July 2009 resolution's attached white paper which notes that "policy makers can facilitate significant 'emissions' reductions through expansion of a wide range of State-level clean energy programs and support for demonstration projects in new technologies;" *and*

WHEREAS, NARUC has demonstrated a consistent and strong commitment to promoting energy efficiency – through passing resolutions encouraging States and the nation to consider implementing energy efficiency programs and through its key role in the development of the National Action Plan for Energy Efficiency, a collaborative effort involving State and Federal regulators, utilities, and energy consumers to identify and reduce barriers limiting greater investment in energy efficiency; *and*

WHEREAS, NARUC resolutions have supported deployment of clean and renewable energy technologies, including a July 2009 resolution urging the Department of Energy to adopt rules for its loan guarantee program that would encourage the commercialization and use of energy technologies that reduce, avoid, or sequester air pollutants and greenhouse gases, a February 2009 resolution requesting an extension of the federal investment tax credit for solar energy systems, a November 2006 resolution asking for an increase in funding for a farm renewable energy and energy efficiency program and actions to encourage the development of transmission capacity for new wind energy projects, and a July 2004 resolution seeking an investment tax credit for small wind turbines installed by homeowners or small businesses; *and*

WHEREAS, NARUC urged Congress and the Administration, in a July 2009 resolution, to provide adequate funding and incentives for research into carbon capture and storage technologies and underground storage capacities; *and*

WHEREAS, Congress is considering proposals which could double Federal support for clean energy research, development, demonstration, and deployment activities and create a Clean Energy Deployment Administration; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, supports a sustained substantial increase in federal government support for research, development, demonstration, and deployment of Clean Energy technologies designed to expand the range of technology options that will be available to meet this nation's economic, national security, and environmental challenges; *and be it further*

RESOLVED, That NARUC urges Congress and the Administration to consider approaches and institutional reforms that would further support large-scale demonstrations and early deployments of promising new Clean Energy technologies and align such support with energy research and development programs and with measurable objectives based on a comprehensive national energy strategy.

*Sponsored by the Committee on Energy Resources and the Environment
Adopted by the NARUC Board of Directors July 21, 2010*

***Resolution Supporting the Super-efficient Equipment and Appliance Deployment Initiative
(SEAD)***

WHEREAS, Appliance and equipment efficiency is among the most cost effective means of achieving energy efficiency, leading to reduced energy bills for residential and business consumers, pollution reduction, job growth, improved reliability and reduced demand pressure on energy prices; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has a long history of supporting appliance and equipment energy efficiency standards, including resolutions adopted in 1996, 1997, 1999, 2000, 2004, and 2009, because of the benefits energy efficiency standards provide to energy consumers, energy utility companies, and society as a whole; *and*

WHEREAS, On February 24, 1999, NARUC adopted a *Resolution in Support of Appliance Efficiency Standards Internationally* that urged the U.S. Department of Energy (DOE) to develop a program for sharing its successful experience promulgating appliance efficiency standards in the U.S. with its counterparts in other nations in order to help facilitate the use of energy efficiency standards globally; *and*

WHEREAS, On August 2, 2006, NARUC adopted a resolution supporting the National Action Plan on Energy Efficiency, which included the following five recommendations: “(1) Recognize energy efficiency as a high priority energy resource; (2) Make strong, long-term commitments to cost-effective energy efficiency as a resource; (3) Broadly communicate the benefits of and opportunities for energy efficiency; (4) Promote sufficient, timely, and stable program funding to deliver energy efficiency where cost-effective; and (5) Modify policies to align utility incentives with delivery of cost-effective energy efficiency and modify ratemaking practices to promote energy efficiency investments;” *and*

WHEREAS, On December 14, 2009, U.S. Secretary of Energy Steven Chu, accompanied by Indian Environment Minister Jairam Ramesh and Italian Environment Minister Stefania Prestigiacomo, announced in Copenhagen the launch of the Super-efficient Equipment and Appliance Deployment initiative (SEAD), which is a global market transformation for super-efficient equipment and appliances, operating through information sharing and coordinated programmatic and technical action by governments committed to increasing efficiency; *and*

WHEREAS, SEAD will coordinate efforts both to “push” inefficient devices off the market (e.g., through minimum standards) and to “pull” highly efficient devices into the market (e.g., through governmental and utility incentives); *and*

WHEREAS, Preliminary analysis by the Collaborative Labeling and Appliance Standards Program (CLASP) indicates that international collaboration to accelerate increasing appliance efficiency standards, as would be facilitated by SEAD, could globally avoid between 4,000 and 11,000 TWh consumption in 2030, thereby eliminating the need for between 1,300 and 3,700 mid-size coal power plants; *and*

WHEREAS, Preliminary analysis by the Lawrence Berkeley National Laboratory indicates that SEAD-coordinated incentive programs targeting televisions, lighting, air conditioning, and standby power could globally avoid about 300 TWh of annual electricity consumption within 10 years and about 860 TWh in 20 years, and thereby eliminate the need for about 100 mid-size (500 MW) coal power plants by 2020 and about 290 such power plants in 2030; *and*

WHEREAS, Coordinated utility-based appliance efficiency incentive programs in the United States and Canada have reduced the costs of program implementation by minimizing duplication in technical work and program design, and have through market transformation proved highly effective at increasing the energy savings associated with appliance efficiency programs; *and*

WHEREAS, Market transformation initiatives coordinated internationally through SEAD can leverage greater economies of scale than can utility, State, or national market transformation initiatives conducted in isolation; *and*

WHEREAS, Participation by utility and third-party program administrators in SEAD-coordinated market transformation initiatives can therefore benefit rate-payers through cost savings resulting from accelerated reductions in the price of highly efficient products and gains in the efficiency of the most efficient products; through improved reliability resulting from reduced demand pressure; and through the widespread economic and environmental benefits of climate change mitigation; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, expresses its support for the Super-efficient Equipment and Appliance Deployment Initiative (SEAD) and U.S. engagement therein; *and be it further*

RESOLVED, That NARUC encourages efforts by utilities and third-party program administrators to engage with SEAD and to participate in SEAD-coordinated equipment and appliance efficiency programs.

*Sponsored by the Committee on Energy Resources and the Environment
Adopted by the NARUC Board of Directors July 21, 2010*

Resolution on Smart Grid

WHEREAS, Smart grid deployment can help bring our electrical grid into the 21st century by enabling the more efficient, reliable and affordable consumption of electricity and allow third party providers of energy services access to consumer information which may spur innovation and economic development; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution in July 2009 sponsored by the Committees on Electricity, Energy Resources and the Environment, and Critical Infrastructure calling for, among other things, policies and standards that “should promote a flexible, non-proprietary, open infrastructure,” and “encourage interoperability of the electric grid and information services to foster a vast array of resources and information services;” *and*

WHEREAS, The Federal Communications Commission (FCC) in its March 2010 National Broadband Plan, stated that “[A] national Smart Grid policy should encourage tens of thousands of entrepreneurs to innovate – using new technologies and business models – to create a wide variety of in-building energy management and information services” and that “[M]aking energy data available to customers and their authorized third parties, while employing open and non-proprietary standards, is the best way to unleash this vast potential for innovation;” *and*

WHEREAS, The FCC recommended that “[S]tates should require electric utilities to provide consumers access to, and control of, their own digital energy information, including real-time information from smart meters and historical consumption, price and bill data over the Internet; *and*

WHEREAS, While the deployment of smart grid technologies may empower the consumer and provide more options, it also poses significant privacy issues that need to be considered and resolved by regulators; *and*

WHEREAS, Control of the smart grid network and the proper roles and responsibilities of electric utilities, telecommunication companies, and others are still being determined; *and*

WHEREAS, Because traditionally, privacy regulation usage data has been a State responsibility, consumers already turn to their State commissions for service and billing disputes; *and*

WHEREAS, The United States Department of Energy has recognized the need to balance the benefits of data collection with the protection of personal privacy; *and*

WHEREAS, Smart grid deployments will utilize various wired and wireless communications technologies over utility-owned and commercial communications networks to transmit data, that will include sensitive customer information and energy consumption data; *and*

WHEREAS, It is crucial that State-approved smart grid technology deployment plans continue to be subject to a record-based review by States to ensure proposals – and in particular – the

utility's proposal for recovery of its capital outlays, are both cost-effective and actually result in benefits to ratepayers; *and*

WHEREAS, The adoption of the smart grid will allow for the collection of specific information about individual customer electric use, including individual end-use applications, and electric bill payment data; *and*

WHEREAS, Most States and electric utilities have policies to protect customer energy usage data (CEUD) with the premise that such information be kept confidential absent customer authorization for its release; *and*

WHEREAS, Information on the operation, reliability, and safety of the electric systems must remain secure; *and*

WHEREAS, Third parties entering the market may seek access to customers and utility data, *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, recognizes the need to provide consumers with protections that ensure the privacy of customer information while allowing for the benefits the deployment of the smart grid promises; *and be it further*

RESOLVED, That NARUC encourages the National Regulatory Research Institute to expeditiously complete its study addressing consumer and operational data guidelines for States to consider when implementing smart grid technologies; *and be it further*

RESOLVED, That the State regulatory commissions, which have the responsibility for ensuring reasonable rates for local utility service, take steps to provide that utilities, subject to State commission oversight, make cost-effective decisions while at the same time safeguarding their customers' privacy and that authorized third parties have responsibilities to protect this information and the privacy of customers; *and be it further*

RESOLVED, That any Congressional or federal agency action should respect and incorporate State rules and ongoing State authority to protect ratepayers' privacy and ability to control access to their energy usage information; *and be it further*

RESOLVED, That NARUC make every effort to give the highest priority to ensure that consumers are protected as the smart grid evolves.

*Sponsored by the Committees on Telecommunications and Energy Resources
and the Environment*

Adopted by the NARUC Board of Directors July 21, 2010

Resolution Opposing Federal Preemption of States' Jurisdiction over Broadband Internet Connectivity Service

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its July 2005 Summer Committee Meetings in Austin, Texas, adopted a Resolution that endorsed a report on *Federalism and Telecom*, by the NARUC Legislative Task Force, which expressed support for “a ‘functional-focus’ model of jurisdiction” that allocates “State and federal responsibility over telecommunications based on analysis of the characteristics of each governmental function exercised, and of the comparative abilities of different levels of government to exercise the function successfully;” *and*

WHEREAS, The aforementioned Resolution further stated that: “Any new regulatory framework should allow the States to perform a strong consumer-focused role, and in particular ensure that States are able to:

- Provide a local venue for investigation, alternative dispute resolution and prompt and efficient resolution of both intercarrier disputes and consumer-to-company disputes;
- Investigate adequately and take enforcement actions against violations of State laws regarding deceptive, misleading or fraudulent business practices, including slamming and cramming;
- Maintain basic consumer protections such as the terms and conditions of service, contract disclosures, quality of service standards and reliable E911 services;
- Initiate consumer education efforts, in cooperation with the Federal Communications Commission (FCC), to properly inform consumers of their rights; and
- Ensure that the special needs of customers are met through programs such as distribution of specialized equipment, Lifeline and Link-up and Relay services;” *and*

WHEREAS, In the Telecommunications Act of 1996, Congress recognized the critical role State commissions must play to facilitate the availability and adoption of affordable advanced telecommunications services by: (1) in Section 706 specifying that States (and the FCC) “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,” a term defined “without regard to any transmission media or technology, as high speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology;” and (2) in Section 254, and others, specifying that States have the authority to take reasonable steps to preserve and advance universal service, a term defined as “taking into account advances in telecommunications and information technologies and services;” *and*

WHEREAS, On April 6, 2010, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Comcast v. FCC* (600 F.3d 642) (*Comcast* decision) that cast doubt on the ability of the FCC, and possibly the States, to ensure fair competition among broadband Internet

connectivity service providers and to protect the public's safety and welfare when they use broadband Internet services; *and*

WHEREAS, On June 17, 2010, the FCC released a *Notice of Inquiry* (FCC 10-114) seeking comments on the legal and practical consequences of all options for a legal framework for broadband Internet service in light of the *Comcast* decision, including among other options classifying wireline, terrestrial wireless and satellite broadband Internet connectivity services as a "telecommunications service" pursuant to a "third way" of regulatory oversight "under which the Commission would: (i) reaffirm that Internet information services should remain generally unregulated; (ii) identify the Internet connectivity service that is offered as part of wired broadband Internet service (and only this connectivity service) as a telecommunications service; and (iii) forbear under section 10 of the Communications Act from applying all provisions of Title II other than the small number that are needed to implement the fundamental universal service, competition and small business opportunity, and consumer protection policies that have received broad support;" *and*

WHEREAS, In Paragraph 109 of the *Notice of Inquiry*, the FCC explicitly requests commenters to address the implications for State and local regulation that would arise from the three proposals for a legal framework for broadband Internet connectivity service and broadband Internet service; *and*

WHEREAS, In Paragraph 110 of the *Notice of Inquiry*, the FCC indicates that "if a State were to impose requirements on broadband Internet connectivity service or broadband Internet service that are contrary to a Commission decision not to apply similar requirements, we would have authority under the Communications Act and the Supremacy Clause of the United States Constitution (Article III, section 2) to preempt those State requirements;" *and*

WHEREAS, The *Notice of Inquiry* seeks comment on all options, including one that would apply Sections 201, 202, 208, 222, 254, and 255 and forbearing from applying all other Title II sections to broadband Internet connectivity service or broadband Internet service and notes that "section 10(e) (of the Communications Act) provides that '[a] State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying;" *and*

WHEREAS, When not acting pursuant to a specific preemption provisions of the Communications Act, such as those in Sections 253 or 276, the proper test for FCC preemption established by longstanding jurisprudence requires both inseverability and inconsistency with the statutory goals; *and*

WHEREAS, On March 16, 2010, the FCC released *Connecting America: The National Broadband Plan* (National Broadband Plan) that sets forth four ways in which the federal, State and local governments can influence the advancement of the broadband ecosystem:

1. Design policies to ensure robust competition and, as a result maximize consumer welfare, innovation and investment;

2. Ensure efficient allocation and management of assets government controls or influences, such as spectrum, poles, and rights-of-way, to encourage network upgrades and competitive entry;
3. Reform current universal service mechanisms to support deployment of broadband and voice in high-cost areas; and ensure that low-income Americans can afford broadband; and in addition, support efforts to boost adoption and utilization;
4. Reform laws, policies, standards and incentives to maximize the benefits of broadband in sectors government influences significantly, such as public education, health care and government operations; *and*

WHEREAS, The U. S. Department of Commerce, National Telecommunications and Information Administration announced on May 28, 2010 that State governments and other existing awardees in its State Broadband Data and Development Grant Program may seek funding for various initiatives to help their communities compete in the digital economy and for up to three additional years of broadband data collection and mapping work; *now, therefore be it*

WHEREAS, The FCC has expeditiously responded to the U.S. Court of Appeals' *Comcast* decision by releasing a *Notice of Inquiry* (FCC 10-114) to identify the legal approach that will best support its efforts to ensure universal access to affordable, high-quality broadband services; promote broadband innovation, investment and competition; and protect and empower consumers; *and be it further*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, supports a "functional-focus" model of jurisdiction that allocates State and federal regulatory responsibility over communications services, similar to that adopted by the *Resolution* which adopted the *Federalism and Telecom* white paper, as attached, at its 2005 Summer Committee Meetings in Austin, Texas, and if the FCC chooses to implement a "third way" of regulatory oversight for broadband Internet connectivity service and broadband Internet service it should apply this model to broadband Internet connectivity service, based on analysis of the characteristics of each governmental function exercised, and of the comparative abilities of different levels of government to exercise the function successfully; *and be it further*

RESOLVED, That if the FCC chooses to implement a "third way" of regulatory oversight for broadband Internet connectivity service it should be very clear that the rationale does not prejudice in any way States' authority reserved under Section 253 of the Communications Act of 1934, as amended, "to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers;" *and be it further*

RESOLVED, That the FCC not forbear from applying Title II provisions of the Communications Act of 1934, as amended, which reserve authority to the States as such forbearance would be contrary to the bi-jurisdictional oversight of broadband Internet connectivity service.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors July 21, 2010

Resolution Urging the FCC to Adopt Changes to Early Termination Fee Practices

WHEREAS, The Federal Communications Commission (FCC) recently released the results of its independently conducted national study of 3,005 American consumers regarding bill shock and ETFs; *and*

WHEREAS, The survey found that 54% of queried cell phone users said they were subject to ETFs, 18% did not know if they were subject to ETFs, and of those, 47% did not know what the amount of the fee would be; *and*

WHEREAS, Of the cell phone users surveyed who are familiar with their bill (83% of cell-using respondents), 34% said the information about fees they would pay to switch service is not clear; *and*

WHEREAS, A majority, 61%, of cell phone users surveyed, said ETFs were influential in deciding to keep their current carrier, even if they had seriously considered switching carriers; *and*

WHEREAS, Some consumers that pay full retail price for phones are charged the same as or more for month to month service than those with ETFs; *and*

WHEREAS, Once consumers pay for the unpaid balance of a purchased phone there is no reduction in the monthly charge; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has consistently supported and encouraged consumer protection, including passing a resolution urging the FCC to reexamine the wireless carriers' use of ETFs in July of 2007;⁹ *and*

WHEREAS, The July 2007 NARUC resolution stated that from 2002-2004 the United States Public Interest Research Group (USPIRG) estimated that early termination fees cost consumers \$4.6 billion for canceling their contracts or lost opportunities to obtain lower cost services, limiting consumer choice among carriers and service; *and*

WHEREAS, In recent months two of the largest wireless carriers have announced significant increases to ETFs charged to their customers; *and*

WHEREAS, Senator Amy Klobuchar, a member of the Senate Commerce Subcommittee on Communications, Technology, & the Internet, recently called for action regarding ETFs stating, "Once again wireless providers have shown that they would rather use arbitrary fees than network and service quality to keep customers;"¹⁰ *now, therefore be it*

⁹ See *Resolution Calling on the FCC to Reexamine Wireless Carriers' Early Termination Fees*, sponsored by the Consumer Affairs Committee, National Association of Regulatory Commissioners, adopted July 18, 2007.

¹⁰ Klobuchar: AT&T Early Termination Fee Hike Excessive (rel. May 21, 2010), available at http://klobuchar.senate.gov/newsreleases_detail.cfm?id=325228&.

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Summer Committee Meetings in Sacramento, California, appreciates the FCC's action to address consumers concerns regarding ETFs and other billing matters; *and be it further*

RESOLVED, That any FCC investigation should determine if the cost of phones should continue to be included with monthly charges once the cost of the phone has been recouped, and if charging the same as or increased costs to month-to-month customers is justified; *and be it further*

RESOLVED, That NARUC directs its General Counsel and policy staff to promote policies consistent with this statement at the federal level.

Sponsored by the Committees on Telecommunications and Consumer Affairs

Adopted by the NARUC Board of Directors July 21, 2010