

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

*In the Matter of* )  
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 )  
*Emergency Broadband Connectivity* ) WC Docket No. 20-445  
*Fund Assistance* )  
 )

**INITIAL COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY  
COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (NARUC), respectfully submits these comments on the January 4, 2021 Public Notice captioned “Wireline Competition Bureau seeks comment on Emergency Broadband Connectivity Fund Assistance.”<sup>1</sup>

For over 130 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with, *inter alia*, overseeing certain operations of telecommunications utilities.

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<sup>1</sup> FCC Notice, *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, (FCC Rel. Jan. 4, 2021) (*Notice*), available online at: <https://www.fcc.gov/document/fcc-seeks-comment-new-emergency-broadband-benefit-program>.

NARUC is recognized by Congress in several statutes<sup>2</sup> and consistently by the Courts<sup>3</sup> as well as a host of federal agencies,<sup>4</sup> as the proper entity to represent the collective interests of State utility commissions. In the Telecommunications Act,<sup>5</sup> Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.

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<sup>2</sup> See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

<sup>3</sup> See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

<sup>4</sup> Compare, NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

<sup>5</sup> *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub. L. No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”). See note 2, *supra*.

The Notice raises questions about implementation of the \$3.2 billion Emergency Broadband Benefit (EEB) Program created by the U.S. Congress in the Consolidated Appropriations Act of 2021 (Act)<sup>6</sup> to help low-income consumers access the Internet through broadband connections during the ongoing pandemic.

The Act sets forth several requirements:

[1] Provider's must elect to participate and either be designated as an eligible telecommunications carrier (ETC) or be approved by the FCC.

[2] Participating providers will make available to eligible households a monthly discount off the standard rate for an Internet service<sup>7</sup> offering and associated equipment (up to \$50/month).

[3] Participating providers may receive a single reimbursement up to \$100 for supplying an eligible household with a connected device (i.e., laptop, desktop computer, or tablet) if the household contributes \$10 -\$50 towards the device. Eligible households may receive only one supported device.

[4] Providers are required to submit certain certifications to the FCC to receive reimbursement from the Program and the FCC must adopt audit requirements to ensure provider compliance and to prevent waste, fraud, and abuse.<sup>8</sup>

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<sup>6</sup> Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020).

<sup>7</sup> Internet service in this context essentially means a retail broadband Internet access service.

<sup>8</sup> *Notice* at 1-2.

NARUC applauds Congress for enacting – and in particular, the FCC for its expedited action to stand-up this program. However, this temporary broadband measure lacks many important safeguards available to protect consumers and basically leaves it to the FCC to assure coordination with complementary state emergency support initiatives.

NARUC’s comments will focus in part on those opportunities.

In particular NARUC will briefly address: (1) the need to require participants to notify State Commissions regardless of the basis for getting access to the funds, and (2) the need to assure the FCC states affirmatively that there are no federal (or preemptive) barriers to State authority to assist consumers with complaints about carriers service, provision of customer premises equipment, or billing practices

### **Background**

In 1996, Congress recognized the crucial partnership between the FCC and States on universal service issues – creating a structure that requires the FCC to work hand-in-glove with State commissions on Lifeline and other universal service programs.<sup>9</sup>

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<sup>9</sup> Weiser, Philip, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U.L. Rev. 1692, 1694 (2001) (describing the 1996 Act as "the most ambitious cooperative federalism regulatory program to date"). Like the FCC, State commissions are *affirmatively charged* by Congress to “preserve and advance universal service,” and to encourage deployment “of advanced telecommunications” to all Americans. *See*, 47 U.S.C. §254(b)(5)(“should be specific . . . federal and state mechanisms to advance universal service”); §254(f) (authorizing State programs); §251(f) (allowing States to exempt rural carriers from

NARUC has long history of supporting Broadband Lifeline services like those in the new EBB program, as well as Lifeline services to qualified disaffected consumers more generally.<sup>10</sup> Many NARUC members have complimentary State Lifeline programs that pioneered database programs.

Crucially, in those States, consumers also have an additional viable option to seek relief if carriers are not providing promised services, or equipment, or there are related billing problems associate with the service.

Such problems have always arisen in the context of such programs.

*Because of the size and scale of this temporary program- the FCC should expect those problems to proliferate with the roll-out of this program.*

There is also the fact that many states are engaged in utilizing both State funds and other Congressional appropriations to facilitate consumer access to broadband.

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certain requirements); and §254(i) (requiring FCC and States to insure universal service at reasonable rates.)

<sup>10</sup> See, e.g., NARUC's July 2000 *Resolution Regarding Universal Service for Low Income Households*; July 2005 *Resolution Supporting the efforts of the Federal Communications Commission and the National Association of Regulatory Utility Commissioners to promote Lifeline Awareness*; July 2009 *Resolution Proclaiming National Telephone Discount Lifeline Awareness Week*; NARUC's February 2008 *Resolution to Support Equal Access to Communication Technologies by People with Disabilities in the 21st Century*; February 2009 *Resolution on Legislation to Establish a Broadband Lifeline Assistance Program*; November 2009 *Resolution on Lifeline and Link-Up Program Support for Broadband Internet Access Services and Devices*; July 2011 *Resolution Supporting a Low-Income Broadband Service Adoption Program*; February 2018 *Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households.*

The need for close FCC-State coordination re: oversight of such programs has never been greater.

NARUC members have acted as part of the bulwark *against abuse of consumers and the program itself.*

At the same time, NARUC has been one of the strongest, if not the strongest proselytizer/advocate for lifeline services.

We initiated “Lifeline Awareness Week” and press every year for a nationwide campaign to assure that people that qualify for such services know they are available.

For these and other reasons, NARUC respectfully suggests:

- 1. The FCC should require participating carriers to provide adequate information as well as notice to the relevant State Commissions.***

Providers of retail broadband Internet access services that are already designated by the State or the FCC can participate in the EBB Program, but they must provide appropriate notice to the FCC indicating their respective elections.<sup>11</sup>

NARUC agrees that at a minimum, the FCC should require all providers wishing to participate in the EBBP to submit a notice that includes all six areas of documentation noted in the Public Notice to the FCC and the Universal Service Administrative Company (USAC).

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<sup>11</sup> Notice at 2-3.

The FCC should also have USAC publicly disclose by state, each provider that has applied, their standard monthly retail broadband rate, and if they have been approved or denied participation in the program. The FCC needs to provide some clarification or safe harbors on what constitutes a “standard monthly” rate for broadband in bundled plans.

Part of the required informational filings publically released by USAC should also include

[i] web-links to each provider’s websites and

[ii] a contact number for qualifying consumers to seek the broadband assistance.

To guard against waste, fraud, and abuse, these participating providers should comply and adhere to, at a minimum, the same broadband standards established by the Lifeline program, as well as any other FCC and USAC requirements.

As noted, *supra*, there is little doubt given the scope of this program that problems characteristic of the existing lifeline programs will arise – and in much greater numbers. Many of NARUC’s members are active in getting qualified consumers to sign up for the program and generally assisting those consumers with problems with carrier service obligations both under federal and state law. This informational role is of more critical importance while the COVID-19 pandemic persists. There is no question State Commissions will receive inquiries and requests

for assistance regarding the availability of the broadband access services and equipment distribution benefits under the Program. For this reason, the State Commissions need to know which ETC and non-ETC broadband providers are participating in the Program and in what specific locations in the State. Given the States historical involvement in promoting the availability of all Lifeline services and in assisting consumers with acquiring service, the FCC order should require participating providers (both ETCs and non-ETCs) to not only provide this notice to the FCC and the USAC, but to each states' commission as well.

- 2. Any FCC order should state affirmatively that there are no federal (or preemptive) barriers to any States' authority to assist consumers with complaints about carriers provision of service, about carrier provision of customer premises equipment, or of carrier billing practices or disputes.***

The fact is, in many states, NARUC member Commissions are the front line in protecting consumers that have problems with service or billing from carriers, and protecting the program itself from fraud and abuse. Again, issues of quality of service, reliability, public safety, and dispute resolution will increase as the program unfolds.

The ETC designation is the current statutory vehicle allowing both better coordination of state and federal benefits (aka – not letting carriers choose what state benefits qualifying customers should receive), but also assuring states have authority to address valid consumer complaints about service and/or lack thereof.

Unfortunately, that is not a requirement for all providers under the program.



Any provider that does not comply to the FCC regulations or fails to provide the subsidized service, will undoubtedly use every legal avenue to forestall enforcement by the FCC or an interested State.

But the FCC should not leave open a door to allow a participant to limit consumer state options for relief (or, indeed, consumer access to complementary state benefits). The FCC's own precedent is that broadband is a mixed use service involving both intrastate and interstate communications – as it clearly is.

At a minimum, the FCC should specify in any order implementing the EBB program, that: State actions that assist consumers or address absent or defective service or billing disputes can hardly be said to be inconsistent with the Commission's own actions to implement the program.

If the carrier has not been previously required to get an ETC designation and is operating in a State that does ETC designations, the FCC should specify that in seeking access to the fund, they are submitting to the jurisdiction and oversight of those funds, and services and equipment subsidized by those funds to the states where the funds are being utilized where the State claims authority to exercise such oversight.

### **3. *Other Matters***

#### ***a. Covered Services***

As per the notice, the FCC should provide additional clarity with respect to the covered services and devices that will be furnished by participating ETC and non-ETC broadband providers to eligible consumers and households.<sup>12</sup> The broadband access services that will be furnished under the Program must meet certain adequacy, quality, and reliability parameters while remaining affordable under the reimbursement criteria of the Act. As noted, *supra*, with matters arising with regard to quality of service, reliability, public safety, and dispute resolution, the FCC should address the states' role with respect to equipment matters given that the statute does not preclude a state role only a mandated state ETC designation.

#### ***b. Broadband Access Service Rates***

The providers intending to participate in the Program must provide “standard rate” information for their broadband access service offerings.<sup>13</sup> To the extent that these providers usually bundle their broadband access service offerings with other services such as voice and video delivery services, the Commission may consider whether its existing urban rate survey may be of

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<sup>12</sup> *Notice* at 8-9.

<sup>13</sup> *Notice* at 3.

assistance in determining a “standard rate” for discrete levels of standalone broadband access service offerings.

***c. The FCC should continue to support the Federal State Partnership on Universal Service and Lifeline.***

The Act permits the FCC to approve the participation of non-ETC providers in the Program and specifies the FCC may not require an ETC designation for such entities.<sup>14</sup> NARUC generally supports the FCC’s proposals regarding the participation of non-ETC broadband providers in the Emergency Broadband Benefit Program *but only to the extent the approach reflects the specific provisions of the federal statute.*

Why? Bypassing the vetting/certification of carriers via the ETC designation process might make sense in the context of an emergency assistance program that is long overdue. However, it is a bad long term strategy for any ongoing subsidy program. Because of the pandemic-induced increased need for access, Congress understandably required the FCC to expedite the process. While that was and is obviously good in terms of quickly getting relief to those that desperately need it – also necessarily foreshortens both vetting and long term oversight of the applicant providers.

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<sup>14</sup> Notice at 4-5.

While NARUC favors rapid implementation of this program, Congress' temporary elimination of the ETC designation process should raise concerns long term for the FCC both a policy matter and a logistical matter. It certainly should not be a feature of any permanent program. Some carriers are already urging Congress to restructure the entire universal service program in a way that will dissolve the FCC-State partnership and reduce coordination and oversight of both universal service programs generally and lifeline programs in particular. Absent an ETC designation, in States with existing complementary lifeline programs, a provider will not necessarily be required to assure customers will also have access to State benefits. If the carrier files for a designation from the state, providing the complementary State subsidy is not a choice. Also, the designation process allows the FCC to leverage State expertise and resources to police carrier abuse of the federal program. States have always' played an important role in combating waste, fraud, and abuse of the Lifeline program through delegated ETC authority. And they play an even stronger role in assisting consumers. The agency should consider these factors in any reports it makes on this emergency program to Congress.

## **Conclusion**

For the foregoing reasons, NARUC requests that the Commission require interested state commissions receive the same notice indicating a provider's election to participate in the Program that is submitted to USAC, especially for non-ETCs that will be participating in their respective state. The FCC should make clear that nothing in federal law or FCC policy inhibits State actions or jurisdiction to assist consumers, oversee the program's implementation in their state, etc. The FCC should specify that by taking the subsidy funds, participants are simultaneously consenting to the jurisdiction of any state commission with respect to those fund expenditures and/or any complaints arising out of the services provided subsidized by those funds.

Respectfully submitted,

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