



N A R U C
National Association of Regulatory Utility Commissioners

May 21, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: NOTICE OF EX PARTE COMMUNICATION filed *In the Matter(s) of (i) Bridging the Digital Divide for Low-Income Consumers WC Docket No. 17-287, Lifeline and Link-Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197*

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 1.1206(b), I am filing this notice of my separate meetings on May 18, 2018, with *Jamie Susskind, Chief of Staff, Office of Commissioner Brendan Carr, and Jay Schwartz, Wireline Advisor to the Chairman Office of Chairman Ajit Pai*. In both meetings, I briefly reiterated NARUC's views on two key issues in the pending Lifeline proceeding.¹

In short, NARUC agrees with the Lifeline NPRM's recognition of the "important and lawful role of the states" assigned by Congress with respect to federal universal service programs.² We support the FCC's determination that the agency cannot create a designation process under 47 U.S.C. § 214 that bypasses *ab initio* State commissions.

Second, NARUC strongly disagrees with the proposal to eliminate non-facilities-based resellers from the federal Lifeline program. Non-facilities-based carriers, currently serving 75 percent of eligible users, should continue to receive Lifeline funds, in part, because, even with a transition period, the potential to disrupt and even eliminate service to literally millions of eligible users is obvious. Indeed, in my review of the initial comments filed, I found only one set of comments directly supporting this limitation on resellers. The Lifeline NPRM suggests, in ¶ 63, that limiting Lifeline subsidies to facilities-based carriers might spur additional investment in infrastructure. However, there is also no credible evidence that eliminating non-facilities-based service will spur additional investment in voice-and broadband-capable networks. After all, it seems unlikely that any network owner would be selling unused airtime in large blocks to Lifeline resellers if that sale was not profitable and thus did not also contribute to the maintenance and improvement of the "resold" facilities. Indeed, this point is confirmed by expert testimony appended to CTIA's initial comments. According to the affidavit of Dr. John May attached to their comments, at 2:

¹ See *Comments of the National Association of Regulatory Utility Commissioners* (Feb. 21, 2018): <https://ecfsapi.fcc.gov/file/1022185377406/18%2000221%20NARUC%20Initial%20Lifeline%20NPRM%20cmts.pdf>.

² NPRM at ¶ 54.

Facilities-based and non-facilities-based carriers (Mobile Virtual Network Operators or MVNOs) operate symbiotically to each provide economic value and enhance consumer welfare in the provisioning of modern communications services. The result of this relationship is enhanced capacity utilization and hence more investment than would happen in the absence of MVNOs.³

Also, simple economics suggest it is unlikely that the FCC's revised policy can be calibrated to provide adequate encouragement to current non-facilities-based service providers to either build their own wired facilities or overbuild other facilities-based providers – particularly in underserved/low population areas.

I am providing copies of this ex parte to both Ms. Susskind and Mr. Schwarz. If I am informed by either that I missed an advocacy point presented during the meeting, I will immediately revise and refile this notice. If you have any questions, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

cc: *Jay Schwarz, Legal Advisor, Wireline, Office of Chairman Pai*
Jamie Susskind, Chief of Staff, Office of Commissioner Carr

³ See *Comments of CTIA* (February 21, 2018) at 3 (“[Non-facilities-based resellers] presence in the market increases incentives for network investment, citing the Exhibit A “Declaration of Dr. John May at 2.) at: <https://ecfsapi.fcc.gov/file/1022132549976/180221%20CTIA%20Lifeline%20Comments.pdf>.