



N A R U C
National Association of Regulatory Utility Commissioners

August 25, 2023

TO: United States Senate Universal Service Fund (“USF”) Working Group

The Honorable Ben Ray Luján
Co-Chair
Senator, New Mexico

The Honorable John Thune
Co-Chair
Senator, South Dakota

The Honorable Amy Klobuchar
Senator, Minnesota

Shelley Moore Capito
Senator, West Virginia

The Honorable Gary Peters
Senator, Michigan

The Honorable Jerry Moran
Senator, Kansas

U.S. Senate
Washington, DC 20010

U.S. Senate
Washington, DC 20010

FR: The National Association of Regulatory Utility Commissioners (NARUC)
[Contact: Brad Ramsay at jramsay@naruc.org or 202.257.0568]

RE: NARUC Comments on USF Working Group’s July 27, 2023 Request.

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these comments in response to the July 27, 2023 request of the Senate Universal Service Working Groups for comment on the future of the FCC’s Universal Service Programs.¹ The *Request* specifically seeks comment on 10 questions.² NARUC’s comments endorse and amplify long standing association principles and also highlight positions articulated by its member commissions in a related FCC proceeding on the future of the USF program in 2022.³

¹ “Luján, Thune Announce Public Comment Period for Universal Service Fund Working Group” Press Release (July 27, 2023) online at: <https://www.lujan.senate.gov/newsroom/press-releases/lujan-thune-announce-public-comment-period-for-universal-service-fund-working-group/> (last accessed August 20, 2023) .

² “Universal Service Fund (USF) Working Group Request for Comment” (July 27, 2023) (“*Request*”), online at <https://www.lujan.senate.gov/usf/> (last accessed August 20, 2023) .

³ See, the February 17, 2022 comments filed in FCC Docket WC 21-476 by the California Public Utilities Commission at: <https://www.fcc.gov/ecfs/filing/10217151028198>, the Massachusetts Department of Telecommunications and Cable (MA) at: <https://www.fcc.gov/ecfs/filing/10217083610029>, the Minnesota Department of Commerce (MN) at: <https://www.fcc.gov/ecfs/filing/102171644822957>, the NY State Public Service Commission (NY) at: <https://www.fcc.gov/ecfs/filing/10217129634965>, and the Vermont Department of Public Service (VT), at: <https://www.fcc.gov/ecfs/filing/102171713111737>.

Specifically, (1) any evolution of the USF mechanism must build on the existing coordinated State and Federal approach outlined in the current law to, among other things, assure the integrity of those States that have their own state high cost and broadband subsidy or support programs that predate the Infrastructure Investment and Jobs Act; (2) reform of the contribution mechanism supporting the FCC USF programs is long overdue and the October 15, 2019 proposal⁴ from the State members of the Federal State Joint Board on Universal Service (and the associated process) is a useful place to start; and (3) Congress should expand, not eliminate the State Eligible Telecommunications Carrier (ETC) designation procedure to prevent fraud and abuse in the program.

NARUC'S INTEREST

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,⁵ energy, and water utilities. NARUC has long been recognized by Congress in several statutes⁶ and consistently by the Courts,⁷ as well as a host of federal

⁴ See, *In the Matter of Federal State Joint Board on Universal Service*, WC Docket No. 96-45, et al., Recommended Decision of the State Members (rel. Oct. 15, 2019), available online at: <https://ecfsapi.fcc.gov/file/1015153264262/2019%20State%20Members%20Recommendation.pdf>.

⁵ NARUC's member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competitive local exchange carriers (LECs). These commissions are obligated to ensure that local phone service is provided universally at just and reasonable rates. They have a further interest to encourage LECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

⁶ 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) (explaining that “[c]arriers, 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”).

⁷ 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) (noting that “[t]he 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).

agencies,⁸ as the proper entity to represent the collective interests of State utility commissions. In the Telecommunications Act,⁹ 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.¹⁰

NARUC and its members have a long history of providing support to and coordinating with both Congress and the FCC on Lifeline,¹¹ High Cost,¹² and other USF programs.

⁸ 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.”)

⁹ *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”).

¹⁰ *See* 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards, which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; *Cf.* 47 U.S.C. § 254 (1996). *Cf. NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “[c]arriers, 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.).

¹¹ *See, e.g., NARUC’s July 2023 Resolution Supporting Permanent Funding for the Affordable Connectivity Program; July 2023 Resolution Proclaiming Digital Connectivity and Lifeline Awareness Week; July 2022 Resolution for Federal and State Entities to Promote Consumer Awareness of the Affordable Connectivity Program and Share Database Access to Automatically Verify the Eligibility of Consumers for the Program; July 2021 Resolution on Ensuring that Low-Income Households Can Efficiently Enroll in the Emergency Broadband Benefit Program and Seeking Additional Funding; February 2021 Resolution on the Federal Communications Commission’s Review of Rural Digital Opportunity Program; 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; 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; July 2013 Resolution to Improve Lifeline Annual Recertification Process; July 2015 Resolution on ETC Designations for Lifeline Broadband Service; February 2016 Resolution on Reform of Lifeline Program; November 2016 Resolution on Requested Waivers to Implement the FCC’s Lifeline Reform Order February 2018 Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households; July 2018 Resolution to Implement Expeditiously a Properly Functioning and Consumer-Friendly Federal Lifeline National Eligibility Verifier; February 2019 Resolution to ensure the National Verifier is Properly Launched so that Low-Income Consumers can Access the Federal Lifeline Program ; July 2019 Resolution on the Lifeline National Verifier Launch and Minimum Service Standards.*

¹² *See, e.g., NARUC’s February 2023 Resolution Encouraging the Federal Communications Commission To Act To Ensure That Federal Support Provided to Successful Bidders in the Rural Digital Opportunity Fund Auction 904 Is Retained For Support In Any Jurisdiction Where A Successful Bidder Is Disqualified by the Federal Communications Commission; July 20, 2011 Resolution Strongly Supporting the Proposals Submitted on Universal Service Reform by the State Members of the Federal State Joint Board on Universal Service; July 2011 Resolution Supporting a Low-Income Broadband Service Adoption Program; November 2012 Resolution Seeking Joint Board*

Coordination made sense in 1934 and 1996 and it makes sense now. The 1996 Telecommunications Act recognized and explicitly encouraged existing state complementary universal service programs.

High-cost programs target areas that by definition are so remote¹³ and expensive to serve that they cannot support even one carrier without federal assistance.

Especially in those areas, your constituents need both FCC and State cops on the beat to ensure that promised services are being provided and to protect both program integrity and consumers.

No one knows the market – or the impact of federal programs – including the unintended consequences on your constituents – better than NARUC’s member commissions. They are a demonstrated front-line defense against fraud and abuse of the FCC’s programs and the constituents each program seeks to serve.

NARUC was a constant presence on Capitol Hill assisting Congress in the years leading up to the enactment of the Telecommunications Act of 1996. Both before and after the 1996 Act, the FCC and its staff have a long history of collaboration with States on USF issues through the Federal State Joint Board on Universal Service and through interactions with key staff in the Wireline Competition Bureau, the Consumer and Governmental Affairs Bureau, and the Universal Service Administrative Company.

Referrals; July 2013 Resolution Urging the Federal Communications Commission to Act Transparently in Deploying Formal CAF-II Rules and to Direct Funding to Ensure Comparable Voice and Broadband Services to Customers in the Nation’s Highest-Cost Areas; February 2014 Resolution Supporting Reform of the Federal Universal Service Fund Contribution System; November 2015 Resolution to Expedite Availability of Remote Areas Funding and Connect America Funding to Unserved and Underserved Areas Where Carriers Have Not Accepted Funding; November 2016 Resolution on Ensuring Timely State Access to CAF ETC Reporting Data; February 2017 Resolution on Federalism and the Connect America Fund Phase II; July 2017 Resolution Calling for Sufficient Funding of the High-Cost Universal Service Program for Rate Return (RoR) Carriers; July 2018 Resolution on Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States; November 2018 Resolution Urging the FCC to Extend and Reform Process for Creating the MF-11 Eligibility Map; February 2020 Resolution on the 5G Fund; July 2020 Resolution to Ensure that Recipients of Universal Service Fund Support Continue to Be Held to a High Standard and to Prevent Waste, Fraud, and Abuse; February 2021 Resolution on the Federal Communications Commission’s Review of Rural Digital Opportunity; July 2021 Resolution Supporting Recommendations from the Broadband Expansion Task Force; November 2021 Resolution Supporting Energy Company Communications Infrastructure for Broadband Expansion; February 2022 Resolution on Ensuring that Federal and State Entities Collaborate, Share Data, and Track Progress on Closing the Digital Divide Utilizing Various Federal Programs including the Infrastructure Investment and Jobs Act and the American Rescue Plan Act of 2021.

¹³ 47 U.S.C. § 254(b)(3).

The success of the FCC’s USF programs requires that that continued collaboration.

The Questions

The Request asks several questions. This response focuses on questions 4, 6, and 7. Questions 4 and 6 involve the same solution, so we will answer those two questions together.

Question (4) What reforms are necessary to address inefficiencies and waste, fraud, and abuse in each of the four programs and duplication with other government programs?

Question (6) Should Congress eliminate the requirement that a provider must be an “Eligible Telecommunications Carrier” (“ETC”) to receive USF subsidies?

IF CONGRESS WANTS TO MINIMIZE FRAUD AND ABUSE OF THESE PROGRAMS, IT SHOULD RETAIN THE ETC DESIGNATION PROCEDURE.

State and Federal coordination and cooperation is vital to the continued success of both the FCC’s and various State programs. Many NARUC members have *complimentary* State lifeline, high cost, and broadband funding programs.¹⁴ Many of those State initiatives pioneered policy initiatives, *e.g.*, database programs, similar to the FCC’s Lifeline Eligibility Verifier, that were successful in limiting fraud and abuse and ultimately migrated into the federal program.

Indeed, 27 years ago, 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, High Cost, and other universal service programs.¹⁵

As part of that cooperative effort, the majority of NARUC’s member commissions conduct proceedings to designate carriers as “eligible telecommunications carriers” (ETCs) under 47 U.S. C. § 214. That ETC designation is a prerequisite for participation in federal universal service programs, including the federal Lifeline program, which provides subsidized access to telecommunications services to low income Americans. When Congress created the Emergency Broadband Benefit Program – the precursor to the

¹⁴ Lichtenberg, Sherry, Ph.D. “State Universal Service Funds 2018: Updating the Numbers” (NRRI April 2019), online at: <https://pubs.naruc.org/pub/FA86A8F7-0CE5-DF43-391B-095BD03757BF>.

¹⁵ *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 certain requirements); and §254(i) (requiring FCC and States to insure universal service at reasonable rates.)

Affordable Connectivity Program (“ACP”) program, it unfortunately permitted carriers that did not have an ETC designation at the time to use a pandemic-induced emergency expedited FCC procedure to provide the broadband subsidies to consumers.

At the same time, Congress was careful not to upset the carefully balanced existing statutory scheme that only allows designated ETC’s to access funds collected by the FCC to fund Universal Service Fund. Instead, Congress specified this new emergency program must have separate congressional appropriations.

Many states have complementary Lifeline programs that provide additional funds to those low-income consumers. Other States have separate high-cost and broadband funding programs.

The ETC designation process frequently is the basis for a state’s oversight of the designated carrier’s Lifeline operations.

With the many potentially overlapping low-income and broadband subsidy programs,¹⁶ coordination is and remains vital.

Congress should eliminate the partial bypass of the ETC process currently permissible for the ACP program and, in any case specify that State commissions retain authority to audit service subsidized by federal USF programs and handle consumer service complaints.

On February 17, 2022, the Massachusetts Department of Telecommunications and Cable (MDTC) filed a comment,¹⁷ at p. 2, in the earlier referenced FCC proceeding on the future of the Universal Service program. Those comments “encourage[] the Commission to facilitate coordination between [the] Affordable Connectivity Program (ACP) participating carriers and state agencies.” They point out the glaring disparity in oversight between carriers that are subject to being designated as Eligible Telecommunications Carriers (ETCs) under 47 U.S.C. § 214, and those that do not. For MA, that disparity not only blocks the state’s ability to first “carefully evaluat[e] the provider’s suitability for government

¹⁶ See, e.g. February 17, 2022 Comments of the California Public Utilities Commission (CA Comments) in filed in FCC Docket WC 21-476 at p. 2, noting: “In California, ten Small Incumbent Local Exchange Carriers (Small LECs) provide telephone service in certain rural and high-cost areas. These companies receive funding from both the federal High-Cost Programs and the California High-Cost Fund – A (CHCF-A)6, some of which is intended to enable them to build out broadband-capable networks and offer broadband services to consumers.” (emphasis added)

¹⁷ *Id.*

funding”, but it also undermines that Commission’s ability to resolve consumer complaints. For other commissions, the impact is potentially much broader.

This is not a trivial issue.

All Federal and State universal service programs provide government support.

Companies that get government funds, whatever the mechanism, require some oversight.

Over the years, the FCC’s various USF programs have suffered several high-profile instances of fraud.¹⁸ Much of the fraud experienced after the FCC permitted wireless resellers to offer Lifeline was “largely driven by telecommunications employees . . . signing up individuals multiple times or even enrolling people who did not exist, in order to gain the commissions from setting up these new lines.”¹⁹ Recent reports suggest that the new Affordable Connectivity Program (ACP) support program is generating similar company malfeasance.²⁰

¹⁸ See, e.g., Hathout, Ahmand, *FCC Watchdog Finds Evidence of Fraud in Emergency Broadband Benefit*, (Broadband Breakfast November 24, 2021), at: <https://broadbandbreakfast.com/2021/11/fcc-watchdog-finds-evidence-of-fraud-in-emergency-broadband-benefit/> (Last accessed 8/16/2023); *FCC’s Lifeline Program: A Case Study of Government Waste and Mismanagement*, Hearing before the Committee on Homeland Security and Government Affairs, United States Senate September 14, 2017, online at: <https://www.govinfo.gov/content/pkg/CHRG-115shrg29656/pdf/CHRG-115shrg29656.pdf> (Last accessed 8/16/2023). *Advisory Regarding Provider Enrollments of Multiple ACP households Based on the Same Child/Dependent*, Memorandum, US FCC Office of Inspector General, September 8, 2022. https://www.fcc.gov/sites/default/files/oig_advisory_duplicate-bqps_09082022.pdf (Last accessed 8/16/2023).

¹⁹ Burns, Grayce “*The new federal broadband subsidy program is already plagued by fraud*” (Reason Foundation December 15, 2021) available at: <https://reason.org/commentary/the-new-federal-broadband-subsidy-program-is-already-plagued-by-fraud/> (Last accessed 8/16/2023). Ferraro, Nicole “*FCC Inspector General says ‘dozens’ of ISP claimed fraudulent ACP funds*” <https://www.lightreading.com/broadband/fcc-inspector-general-says-dozens-of-isps-claimed-fraudulent-acp-funds/d/d-id/780325>

²⁰ Summerhays, Anne “*PSC Commissioner Presley writes new FCC Chairwoman Rosenworcel over AT&T*” (Y’all Politics December 7, 2021) (Commissioner Presley asked Rosenworcel to follow up on a written request from all three Mississippi [PSC] Commissioners in 2020 for a full compliance audit and investigation regarding AT&T’s claims of providing service to over 133,000 locations in Mississippi as part of their obligation under the Connect America Fund II. “AT&T has a pattern and history of submitting false data. As a part of our annual certification for [ETCs], evidence was uncovered by our agency that led to great concern surrounding validity of AT&T Mississippi’s claims and the honesty of data submitted by the company to [USAC] and the information provided to consumers when they purchase a phone or sign up for broadband service.”) online at: <https://yallpolitics.com/2021/12/07/psc-commissioner-presley-writes-new-fcc-chairwoman-rosenworcel-over-att/> (Last visited 8/16/2023) See also, Corder, Frank “*PSC Commissioner Presley sends letter to FCC over Surge Phone*” (Y’all Politics January 25, 2022) (“Commissioner Brandon Presley (D) has asked the [FCC] Inspector General to issue a cease and desist against Surge Phone. The group has set up tents across Mississippi giving away free tablets and internet service with no consumer information given at the point of sale, disclosure of rates, or terms and conditions. Surge Phone proposes to be offering the Affordable Connection Program Benefit. Presley took issue with the group Monday in Amory, sharing the tweet

Elimination of the ETC designation procedure can only increase opportunities for fraud and abuse.

The ETC designation procedure has permitted many States to be a crucial partner with the FCC, with demonstrated success blocking carrier diversions of federal USF program funds to non-existent customers as well as ensuring that Lifeline consumers get the specified services. States have also protected the FCC's High-Cost program.

Removing the State role can only multiply opportunities for fraud and abuse and leave constituents with limited, if any, remedies where promised services are not provided. Eliminating the state role blocks them from using existing resources to address program and service integrity.

If you think reducing resources that target abuse and increase enforcement sounds illogical, you are correct. It makes no sense to take any additional "state cops" off the beat. Removing the ETC designation process will do just that.

As the Minnesota Department of Commerce Comments filed in the same 2022 FCC proceeding note at pp. 2-3:

States help protect against waste, fraud, and abuse, and raise consumer awareness of the Lifeline program. As part of the ETC designation and recertification process, state regulators work with service providers to meet federal mandates. In the course of that work, state regulators can discover issues where the service providers' public awareness activities do not meet requirements of the Telecommunications Act.[] The ACP and low-income programs mandated by the IJA have similar requirements.[] In the absence of requiring ACP providers to be ETCs, where state regulators are involved with ensuring program compliance requirements are satisfied, there should be some clarity on how compliance with outreach and advertising requirements will be satisfied.

Some carriers who want zero oversight of how they spend support dollars (whether funded by taxpayers or from other sources) have been pushing some version of streamlining or eliminating the ETC designation process for years.²¹ They were only partially successful in the recent enactment of the ACP.

below and noting that they were "providing ZERO written information to consumers." He said he stood in line and listened to their pitch. (Tweet: Prime example of why it was a MISTAKE to remove state oversight of @FCC EBB program. Vendor set up in Amory saying they are giving away free tablets, literally writing info on a spiral notebook and providing ZERO written information to consumers. I stood in line and listened.1/2 pic.twitter.com/4MNevgluh2 — Brandon Presley (@BrandonPresley) January 24, 2022)) online at <https://yallpolitics.com/2022/01/25/psc-commissioner-presley-sends-letter-to-fcc-over-surge-phone/> (Last visited 8/16/2023)

²¹ See the discussion, *infra*, starting at page 15 of the "arguments" these carriers offer for reducing oversight of the expenditure of government funds.

No policy maker – state or federal - should hand out billions and eschew any carrier accountability.

However, by targeting the ETC designation process, some carriers can limit oversight of their expenditures of funds and block any State oversight of - at least the provision of ACP²² – oversight which heretofore, has allowed States to help ensure that the FCC carrier or customer support payments benefit the intended recipients and not carrier bottom lines.

It is obvious why some carriers want to basically eliminate, or at least, severely constrain oversight of how federal support is actually used. It is also obvious why they would want to limit examination of the quality of the services they are required to provide.

It is more difficult to understand how any policy makers with familiarity with the history of federal universal service programs could limit oversight of this expenditure of taxpayer or other support dollars or, worse still, limit avenues for constituents to complain about substandard (or non-existent) services provided.

Historically, FCC and Congressional policy makers have welcomed State participation in oversight.

Indeed, the FCC has recently acknowledged - with explicit examples – the crucial role states have played in limiting fraud and abuse and in helping consumers that are not getting the service Congress intended. In a November 14, 2019 Order,²³ the agency described states as:

*vigorously exercis[ing] their oversight authority to combat waste, fraud, and abuse . . . In some cases, states have been the first to identify waste, fraud, and abuse by ETCs—the Hawaii Public Utilities Commission first identified the issues with Blue Jay’s **overclaims** of Tribal subscribers, and the Oklahoma Corporation Commission “first identified **fraudulent funding requests** from Icon Telecom.” More recently, an apparent (Sprint) violation of the Commission’s non-usage rule was initially uncovered by an investigation by the Oregon Public Utility Commission. (Footnote 82 “See **FCC Learns That Sprint Received Tens of Millions in Lifeline Subsidies—But Provided No Service**,” FCC Press Release (Sept. 24, 2019), online at <https://www.fcc.gov/document/sprintreceived-lifeline->*

²² *Id.*

²³ *In the Matter(s) of 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, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration 34 F.C.C. Rcd. 10886, 10898-10899 (2019) at ¶ 28.*

*subsidies-885000-inactive-subscribers.”) . . . States have also filtered out ineligible carriers **by refusing designations to those with substandard services** and weeded out bad actors by revoking designations for unlawful practices . . . States have also performed audits, addressed consumer complaints, and **maintained valuable state matching programs**.*

Seven years ago, in response to a similar proposal at the FCC to federalize the ETC designation process for broadband lifeline service by eliminating the state role in designations, then-Commissioner Ajit Pai accurately pointed out that:

. . . state commissions thus far have the best track record. . . It was the Florida Public Service Commission that cracked down on carriers receiving Lifeline subsidies for consumers who never used the service. . . And it was the Oklahoma Corporation Commission that “first identified fraudulent funding requests from Icon Telecom.”

In the record of that same proceeding, the California commission noted that:

*CPUC staff evaluates the cost of proposed Lifeline service plans to comparable retail offerings and rejects Lifeline plans that cost a Lifeline customer more than comparable retail plans. {emphasis added}*²⁴

Just last year, on March 21, 2022, the South Dakota Public Service Commission rejected LTD Broadband’s application for an ETC designation necessary to receive \$46,588,454 in FCC Rural Digital Opportunity Fund (RDOF) funding to support broadband rollout in the State.²⁵ The State found based on record evidence that LTD lacked the technical and financial ability to deliver on its promise to serve over 7000 locations in South Dakota. It is worth pointing out that the SD Commission acted five full months before the FCC found LTD’s auction long form deficient. This is a first-hand example of the States’ interest and ability to dig deeply into the capacity of a new company to evaluate if they can, in fact, provide the specified high-speed broadband service in high-cost parts of the country. This state commission’s actions protected the FCC RDOF program’s integrity, blocking waste and saving funds for reallocation to companies that can meet the targeted services levels.

²⁴ See, e.g., February 22, 2016 *Letter from California Public Utilities Commission members Catherine J.K. Sandoval, Carla J. Peterman, and Michel P. Florio to FCC Secretary*, in WC Docket No. 11-42, (*California Ex Parte*) available online at: <https://ecfsapi.fcc.gov/file/60001515662.pdf> (February 2016 *California Ex Parte*)

²⁵ *In the matter of the Application of LTD Broadband LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support*, Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks; Notice of Entry of Order, TC 21-001 (March 21, 2022) available online at: <https://puc.sd.gov/commission/dockets/telecom/2021/TC21-001/TC21-001FinalOrderDenyPublic.pdf> (last accessed August 23, 2023).

The undeniable impact of eliminating the ETC designation procedure will be that consumers have less protection and the program will be far more likely to incur losses that limit the resources available to support qualifying consumers.

Removing the State ETC Designation Role can only undermine existing state matching programs, resulting in higher prices for low-income constituents.

The first telephone Lifeline programs in the United States started at state commissions, which have a long history of supporting such vital social programs.²⁶ State commissions have promoted enrollment of Lifeline in a variety of innovative ways – including by creating and supporting the annual *Lifeline Awareness Week*. Indeed, last month, in recognition of the nascent success of the ACP program, NARUC rechristened Lifeline awareness week as *National Digital Connectivity and Lifeline Awareness Week*.²⁷

Last month, NARUC also endorsed by resolution additional Congressional Funding for the ACP program²⁸ and has long pressed for extending Lifeline to include broadband.²⁹

²⁶ Compare, *MTS and WATS Market Structure; Amendment of the Rules and Establishment of a Joint Board*, Order Requesting Comments, 50 FR 14727-01 (April 15, 1985) and *Re Moore Universal Tel. Serv. Act*, 14 CPUC 2d 616 (Apr. 18, 1984) (“The [1983] Act is intended to provide affordable local telephone service for the needy, the invalid, the elderly, and rural customers. The Act mandates that this Commission establish a subsidized telephone service funded by a limited tax on suppliers of intrastate telecommunications service.”). See also, *NARUC’s July 2000 Resolution regarding Universal Service for Low Income Households*.

²⁷ See, e.g., *NARUC’s July 2023 Resolution Proclaiming Digital Connectivity and Lifeline Awareness Week*.

²⁸ See, *NARUC’s July 2023 Resolution Supporting Permanent Funding for the Affordable Connectivity Program*

²⁹ See, e.g., *NARUC’s February 2008 Resolution to Support Equal Access to Communication Technologies by People with Disabilities*, *February 2009 Resolution on Lifeline and Link-Up Program Support for Broadband Internet Access Services and Devices*, *November 2009 Resolution on Legislation to Establish a (Permanent) Broadband Lifeline Assistance Program*, *July 2011 Resolution Supporting Low-Income Broadband Adoption Program*, and *July 2009 Resolution Proclaiming National Telephone Discount Lifeline Awareness Week*.

In 1996, Congress made clear in 47 U.S.C. §§ 214(e),³⁰ 253³¹ 254,³² 1301-3,³³ and other provisions of the Telecommunications Act, that it expected the states to continue to play a crucial role by partnering with the FCC with respect to universal service and the promotion of advanced services like broadband.

State Lifeline/low-income programs are a crucial part of that equation.

Not all states offer additional support or subsidies, but several state Lifeline programs provide support or subsidies ranging from \$2.50 to well over \$10.00 per month to qualifying federal Lifeline recipients.³⁴

³⁰ 47 U.S.C. §214(e) (“State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier.”)

³¹ 47 U.S.C. §253 (“(a) In general - No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (b) State regulatory authority - Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary 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.”) {emphasis added}

³² 47 U.S.C. §254 (“(b) Universal service principles - The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles . . . There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service...(e) Universal service support . . . only an eligible telecommunications carrier designated under section 214(e) of this title [by a State commission in the first instance] shall be eligible to receive specific Federal universal service support. . .(f) State authority A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.”){emphasis added}

³³ 47 U.S.C. §1301. (“Congress finds . . . The Federal Government should also recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data.”); §1302(a) (The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. §1304. (captioned "Encouraging State initiatives to improve broadband") {emphasis added}

³⁴ Responses to an April 2021 informal survey about monthly State Lifeline subsidies, indicated, **California** provides a **\$14.85** subsidy for cell or landline service, plus a one-time **\$39** service connection or conversion discount, Missouri’s program is limited to landline but provides **\$18.75** to a Lifeline Subscriber with voice-only service or voice service bundled with non-qualifying broadband service and **\$14.75** to those with voice service bundled with qualifying broadband service; **Minnesota** provides **\$10**, the **District of Columbia** provides **\$9.48** per month to customers under age 65 and **\$11.48** to customers 65 and older, **Wisconsin** provides up to **\$9.25** depending on the provider’s rate base, **Kansas**, **\$7.77**, **Oregon**, **\$7.00**, **Missouri**, **\$6.50**. Several other States offer **\$3.50/month**, including **Kentucky**, **Nebraska**, **New Mexico**, **Nevada**, **Texas**, and **Utah**. **Idaho**’s support level is **\$2.50**, whereas New York’s support varies. **Michigan** is unusual in that it requires just jurisdictional carriers to instead offer rate reductions ranging from **\$8.25 to \$12.35**.

For obvious reasons, in the states that do offer these additional funds to low-income households, state legislators, like Congress, are not likely to welcome any approach that limits states' ability to oversee, condition, and audit the use of State-provided Lifeline subsidies or support. Accessing state funds will continue to require at least some sort of state registration or qualification. If Congress chooses instead to eliminate the ETC designation process, and thereby the state role in that process, it will, at a minimum, undermine these state programs and cause unnecessary diversions of both FCC and state resources better directed towards serving deserving Lifeline consumers.

In the worst case, in the long term, it could sound the death knell for State matching programs. As one state Lifeline expert said in 2016:

My biggest fear is that the largest carriers will only go for federal designation and decline the additional State funding because they don't want to have to deal with us in the first place. I believe that leaving the States out of the ETC designation process for [Broadband] Lifeline could essentially destroy nearly all the existing State programs.³⁵

One thing is clear, if the ETC designation process, and the States' default role, is eliminated, some carriers will, at least in the first instance, decide if a low-income consumer may have access to the additional support offered by states like California that have matching programs. In those states, low-income constituents will pay more for vital services.

Removing the state ETC Designation Role will likely increase the provision of substandard services.

Service quality problems with Lifeline service and Lifeline providers will continue, as will disputes, and fraudulent schemes. The same is true of the ACP and the FCC's high-cost programs. Customers will continue to have complaints, but who will resolve them?

Unfortunately, the FCC likely could not access sufficient resources to handle universal service policy – including Lifeline – alone. That, along with the desire to maintain strong state matching programs, is exactly the reason why Congress specified the role the states have today. If there is no state role with respect to the revised Lifeline broadband-voice program or high-cost funding, and therefore no state

³⁵ See, *Letter from 96 Commissioners representing 37 State Commissions to FCC Chairman Wheeler et. al.*, WC Docket Nos. 11-42 09-197 (March 20, 2016), at p. 3.

oversight authority, it will be difficult for any commission to justify assigning staff to either promote or protect users of such programs or to monitor carrier high-cost expenditures.³⁶

And it is evident that is what states do. As the Pennsylvania PSC noted, at 3, in a February 2016 *ex parte*:

[S]eparating the ETC designation process from an entity's ability to participate and receive federal Lifeline support would undermine the ability of the States and the Commission to protect consumers for services supported by Section 254, as required by Section 254(i). . . [The current ETC designation procedure] makes it easier for the Commission to focus on complex interstate matters, knowing that the States can utilize their ETC designation authority to ensure adequate consumer protection for services supported by Section 254.³⁷

California provided specific examples of how that commission protects consumers through the ETC designation procedure. At pages 2-3 of the attachment to a 2016 *ex parte*,³⁸ three State commissioners pointed out that California has rejected Lifeline plans “with wireless local loop service that did not reliably identify caller location when calling E911 and did not reliably complete calls,” as well as plans “that cost a Lifeline customer more than comparable retail plans.”

The California commission also, where it has jurisdiction, “ensure[d] compliance with FCC consumer protection rules. For example, one [wireless Lifeline reseller] did not comply with CTIA handset unlocking policies, and staff withheld ETC designation approval until the company was in compliance.”³⁹

Another likely result of eliminating or circumscribing the ETC designation process is that some carriers will provide substandard services that could be either prevented or corrected if States retain their current role. In the States that have low-income subsidy or support programs that complement the ACP

³⁶ It is not clear how States with State Lifeline complementary subsidies will handle this circumstance.

³⁷ See, February 22, 2016 *Letter from David E. Screven, Assistant Counsel for the Pennsylvania Public Utility Commission to FCC Secretary*, in WC Docket No. 11-42, at: <https://ecfsapi.fcc.gov/file/60001515632.pdf>.

³⁸ See, e.g., February 2016 *California Ex Parte*, noting, among other things, in the attachment at 2, that “CPUC staff has found inaccurate and misleading statements in *FCC-approved* compliance plans regarding the technical capability of purported [wireless lifeline service provider’s] subject matter experts.” {emphasis added}

³⁹ *Id.*

and FCC lifeline programs, the commission, as a result of state legislation or judicial fiat,⁴⁰ is unable to claim jurisdiction unless the carrier chooses to seek State ETC designation. Where the carrier instead chooses certification by the FCC for ACP access, those jurisdictions may lack the option to compel a carrier to also offer those complementary State Lifeline subsidies that further assist low-income consumers located in their jurisdictions.

What should Congress do?

Congress should leave the ETC designation process intact and eliminate the pandemic-inspired emergency partial bypass of the ETC process for the ACP program. Ideally any new legislation would also specify that nothing prohibits States from (i) auditing in-state carrier expenditures of federal support from any agency and revoking or conditioning access to future federal subsidies or support if the audit/investigation uncovers malfeasance, (ii) handling customer concerns about the subsidized/supported services, and (iii) requiring carriers to offer complementary State low-income subsidies or support where they are available. Moreover, federal requirements should be floors – not ceilings -- on State enforcement/public safety requirements⁴¹ and procedures. Finally, any new federal regime should not interfere with existing or future state infrastructure or low-income programs – including the State’s funding mechanism. Congress should not pass legislation that requires additional state legislation to implement or encourages unproductive litigation over the scope of state authority to protect program integrity and consumers.

There is No Evidence that Requiring ETC Certifications as a Prerequisite to receiving USF Support Diminishes Carrier Interest in FCC High-Cost or Lifeline/ACP Programs.

As noted earlier, many carriers that advocate for the elimination of the ETC designation process have, nevertheless, been authorized to receive support – and often significant amounts of support – in those programs. Those carriers argue that requiring ETC certifications will inhibit carrier entry into one of the FCC universal service programs and in particular the Lifeline/ACP market. But there are at least two flaws

⁴⁰ See, e.g., *Charter Advanced Services, LLC v. Lange*, 903 F.3d 715, 718 (8th Cir. 2018) (Charter).

⁴¹ See, February 17, 2022 *Comments of the National Association of State Consumer Advocates*, at p. 5, online at: <https://www.fcc.gov/ecfs/filing/1021730271405> (“Section 54.202 of the FCC’s regulations require [] ETC applicant[s] to “demonstrate its ability to remain functional in emergency situations...” including a demonstration of reasonable back-up power, ability to reroute traffic around damaged facilities, and capability to manage traffic spikes during an emergency. [] The specific public interest broadband performance requirements associated with an award of High Cost support are described in terms of speed, latency, and usage allowances, also as part of the FCC’s ETC designation standards.”) (footnotes omitted)

with that “argument.” First, even without the current State focused ETC designation procedure there will still necessarily be some substitute registration procedure in place of the designation procedure and some regulatory oversight.⁴²

Secondly, other than speculation by carriers with an obvious interest in limiting oversight, there is no evidence that the requirement to become an ETC has ever inhibited (or “limited”) competition with respect to the federal Lifeline program. Indeed, the only available evidence suggests the precise opposite. After the Bush-era FCC permitted “non-facilities” based wireless Lifeline only providers to participate in the program, the number of carriers competing to provide Lifeline service increased significantly. The level of funding provided meant there was a business case for a profit seeking company to provide service and, as a result, many wireless carriers pressed to get into the market. Given carrier participation in the ACP, the carriers lobbying on the program, and the level of compensation provided, it appears that the new ACP program has presented a compelling business case for broadband, similar to what the country saw with wireless. According to recent FCC reports, the program is already serving more than 20 million consumers.⁴³

The FCC’s innovative high-cost fund initiatives show similar trends. If there is money on the table, the carriers will come. The FCC’s 2016 [Rural Broadband Experiment Projects](#) involved 15 states, 43 winning bids, and awarded \$41,284,392 on a budget of \$100 Million. The subsequent Connect America Phase II Auction concluded with 195 authorized applicant combinations, totaling \$1.48 Billion authorized in 10-year support, covering 708,494 locations in 45 states. Also, 10 applicants were authorized to receive CAF Phase II auction support in conjunction with New York’s New NY Broadband Program totaling \$65.49 million in 10-year support, covering 47,200 NY locations. Most recently, in the FCC’s recent 2020 Rural Digital Opportunity Fund Auction [386 bidders](#) qualified to participate in Phase One auction for \$16 billion dollars – an auction which resulted in [1764 winning bids](#). Some strong advocates for elimination of

⁴² Currently some carriers must get their ETC designation from the FCC. Generally speaking, State ETC designations have been concluded more quickly than those left to the FCC. The exception: the emergency expedited “registration” procedure for non-ETCs to get access to the ACP program starting during the pandemic. *See, e.g.*, the pandemic-induced foreshortened certification and oversight process implemented for the Emergency Broadband Funding program, in the February 26, 2021 Report and Order [FCC21-29] issued in the proceeding captioned: In the Matter of Emergency Broadband Benefit, WC Docket No. 20-445, available online at: <https://www.fcc.gov/document/fcc-adopts-report-and-order-emergency-broadband-benefit-program-0>, at ¶ 25 “Non-ETC Provider Application and Approval Process”, and at ¶ 14 “Election to Participate in Emergency Broadband Benefit Program by Existing ETCs and Bureau-Approved Providers.”

⁴³ *See* “More than 20 Million Households Enroll in Nation’s Largest Broadband Affordability Program” (FCC Press Release August 14, 2023), online at: <https://www.fcc.gov/document/20-million-households-enroll-acp> (Last accessed August 23, 2023).

the state role in the designation process, won RDOF bids and had no problem getting the State ETC designations required to access the auction funds. The fact is – there is zero evidence that requiring ETC certifications (or an alternate procedure) inhibits carrier entry into the Lifeline or ACP market or even high-cost programs.

Question (7) Currently, telecommunications companies must pay a contribution factor to the Universal Service Fund proportional to interstate end-user revenues. What reforms are necessary to ensure that the contribution factor is sufficient to preserve and advance universal service?

REFORM OF THE USF CONTRIBUTION MECHANISM IS LONG OVERDUE.

In the 2022 FCC proceedings on USF Reform, *the Minnesota Department of Commerce*, p. 1 pointed out that:

Without USF reform, there will be less services contributing to the USF, causing the contribution factor to continue to grow and driving up the cost of services. Ironically, the surcharge designed in part to bring affordability to those who need assistance, will result in price increases for ratepayers that retain traditional telecommunications services. It is unreasonable to continue to require only those customers that use interstate and international telecommunications services to support all programs funded by the USF⁴⁴),

The most recent estimates, based on the Universal Service Administrative Company August 3, 2023 4th Quarter demand projections, suggest the 4th Quarter contribution factor will break another record increasing from 29.2% to 34.1%.

Most of the arguments for immediate action to reform the contribution mechanism are raised and documented by numerous commenters are outlined in the “US Forward Report,⁴⁴ authored by Carol Matthey and filed in FCC Docket WC 21-476. That report points out, accurately, that the USF contribution methodology is under duress and requires immediate attention because, *inter alia*, (1) the current funding mechanism is not sustainable; (2) expanding the current revenues-based system to include BIAS mitigates gamesmanship and promotes transparency by removing incentives of providers to arbitrarily allocate revenues from bundled services to one service and not the other; and (3) there is significant and diverse support for the Commission to act fast to stabilize the USF.

⁴⁴ See Matthey, Carol, *USForward Report* (Sept. 2021), filed in filed in FCC Docket WC 21-476 at: <https://www.fcc.gov/ecfs/filing/102141954517172>.

Congress should instruct the FCC to broaden the USF contributions base.

Because, under the current law, revisions to the FCC's funding can affect State funding mechanisms, any new federal legislation should revisit and clarify that states have maximum discretion to adopt any mechanisms that support state programs.

Action is required now.

As referenced, *infra*, the State members of the FCC Federal State Joint Board on Universal Service ("Joint Board") have already filed one recommended decision for contribution reform. During the waning days of the Obama Administration, the Joint Board (a jurisdictionally collaborative body established by Congress in 47 U.S.C. § 410(c); see, also, 47 U.S.C. § 254(a)), chaired by then-Commissioner Rosenworcel, was, under her leadership, very close to a strong majority compromise in a proposed Board Recommended Decision to reform the contribution mechanism. Unfortunately, progress stalled after the change in administrations, which ultimately led five State members of the Joint Board to file a Recommended Decision in the record of the proceeding. See, *In the Matter of Federal State Joint Board on Universal Service*, WC Docket No. 96-45, et al., Recommended Decision of the State Members (rel. Oct. 15, 2019), at: <https://ecfsapi.fcc.gov/file/1015153264262/2019%20State%20Members%20Recommendation.pdf>. The State Members recommended that: 1) services such as broadband internet access service (BIAS) and advance business services be included in the contribution (§ 17 and 24); 2) residential customers should be assessed on the basis of the number of voice and broadband connections to the public communications network rather on the basis of revenue (§ 22); 3) 50 percent of the fund should be recovered from the assessments on residential customers and 50 percent of the fund should be recovered from assessments on business customers; (§ 23); and 4) the FCC should remove prohibitions that prevent the states from including broadband and other advanced services in their state contribution bases.

Since, as noted earlier, changes to the federal funding mechanism can impact State funding mechanisms, coordination with the Federal State Joint Board is a necessary pre-requisite for final Commission action. **Congress should require the FCC to immediately re-engage the congressionally-established Joint Board, ask for an investigation of the edge provider questions, and set a deadline for a recommendation.**

If you have questions about this comment, please do not hesitate to contact NARUC General Counsel Brad Ramsay at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.