



N A R U C
National Association of Regulatory Utility Commissioners

June 30, 2020

The Honorable Roger Wicker
Chairman
Senate Committee on Commerce, Science
& Transportation
U.S. Senate
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Commerce, Science
& Transportation
U.S. Senate
Washington, DC 20510

RE: Supplement to the Record of the June 24th Hearing on Oversight of the Federal Communications Commission (FCC)

**Continuing the State-Federal Universal Service Partnership
Keeping State Cops on the Beat**

Dear Chairman Wicker and Ranking Member Cantwell:

The National Association of Regulatory Utility Commissioners (NARUC) represents public service commissions in all 50 states, the District of Columbia and U.S. Territories charged with assuring affordable utility services at just and reasonable rates. As Congress intended, NARUC's members play a key role in the Federal Communications Commission's (FCC) universal service programs.

During the June 24th FCC oversight hearing, there was one exchange with an FCC Commissioner, in the archived video starting at 3:17.07, which presented, as his opinion, a flawed picture of the importance of the State role in designating so-called "Eligible Telecommunications Carriers" or "ETCs." Under current law, only carriers with an ETC designation can access subsidies from the FCC's Universal Service Fund to provide service and/or deploy broadband access network facilities and service. In response, NARUC respectfully requests this letter be included in the record of that proceeding.

Oversight of taxpayer dollars used to subsidize service in areas that lack competition is crucial.

In the blog post that sparked the question, FCC Commissioner O'Reilly advanced the facially illogical proposition that reducing State oversight of federal USF subsidy expenditures will lead, in his opinion, to less fraud and abuse in the programs and better service to your constituents served by that program. Four years ago, before he became FCC Chairman, in response to a similar proposal to cut states out of the ETC designation process for broadband lifeline service, then-Commissioner Ajit Pai said that idea was:

... a disaster in the making. We need more cops on the beat, not fewer.

And the state commissions thus far have the best track record. Recall that it was the state commissioners on the Federal-State Joint Board—not the FCC—that identified the growing waste, fraud, and abuse in the Lifeline program in 2010. It was the Massachusetts Department of Telecommunications and Cable that audited TracFone, which "revealed that only 51 percent of those sampled could be recertified for Lifeline eligibility." It was the Florida Public Service Commission that cracked down on carriers receiving Lifeline subsidies for consumers who never used the service. It was the California Public Utilities Commission that established electronic

verification procedures to reduce eligibility and duplicate-subscriber fraud. And it was the Oklahoma Corporation Commission that “first identified fraudulent funding requests from Icon Telecom.”

States are still the best cops on the beat.

It is the commissions in Florida, Kansas, Kentucky, Michigan, Minnesota, Washington, and Wisconsin that have revoked the designations of Lifeline carriers for abuse. It is the Michigan Public Service Commission that recertifies Lifeline carriers each year to make sure they are complying with state and federal law. It is the California Public Utilities Commission that “has found inaccurate and misleading statements in FCC-approved compliance plans.”

{Footnotes omitted}

In a more recent November 14, 2019 released Order,¹ the FCC 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/sprint-received-lifeline-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.

In doing all this, states have brought to bear personnel and resources far greater than the Commission alone could offer.

{All but one footnote omitted – emphasis added.}

Both these Commissioner Pai and the November 14, 2019 FCC order statements were made in the context of broadband and voice Lifeline services. Commissioner Pai took many of those examples from a very bipartisan letter from NARUC signed by 96 Commissioners from 37 states that focused on that proceeding.²

If the subsidized carriers in the upcoming FCC Rural Digital Opportunity Fund (RDOF) auction are designated as ETCs, they too will accrue the obligation to provide Lifeline service. They also will have, in many states, enhanced oversight of their use of taxpayer and ratepayer funded subsidies to provide that Lifeline service. If they are not designated ETCs, as some argue they should not be, Congress will need to revise the structure of the relevant statute and/or, the FCC will have to revise its regulations, to insure those Lifeline obligations remain.

¹ *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 (FCC19-111 rel November 15, 2019), ¶ 22, online at: <https://docs.fcc.gov/public/attachments/FCC-19-111A1.pdf>.*

² *Letter from 96 Commissioners representing 37 State Commissions to FCC Chairman Wheeler et. al., WC Docket Nos. 11-42 09-197 (March 20, 2016), online here: <https://ecfsapi.fcc.gov/file/60001550265.pdf>.*

But Lifeline programs aside, states have a similar oversight track record with respect to ETC designations sought by Voice-over-Internet-Protocol telephone service providers (and often broadband providers) to subsidize infrastructure where there is no business case for providing service without a subsidy, as in the RDOF proceeding. If an RDOF auction winner gets an ETC designation from a state, that state will also oversee that carrier's expenditures to ensure they actually meet their RDOF broadband deployment commitments.

Anyone can certainly understand why a carrier seeking a subsidy to provide service would want to limit and constrain oversight of (1) how that taxpayer subsidy is expended to rollout infrastructure, as well as (2) the quality of service provided using that subsidy (as by definition, the areas receiving subsidies will not support any competing services/competition to discipline the provider).

However, it is difficult to understand why any federal policy maker with even a remote familiarity with the history of federal universal service programs would want to constrain oversight of this expenditure of taxpayer dollars or, worse still, limit avenues for constituents to complain about substandard or non-existent service provided under that federal program.

Continuation of the State-Federal universal service partnership is both efficient and necessary.

The suggestions presented during the hearing, and in the blog, by FCC Commissioner O'Reilly that States lack expertise or the ability to oversee subsidy programs that target broadband and voice services are, at best overbroad and, without question, misleading. At least 22 state high cost programs target network infrastructures and 42 States and the District of Columbia provide some form of state universal service support.³ Several states also have stand-alone broadband infrastructure funding programs.

Congress has always recognized that universal service is a shared obligation between states and the federal government. That federal-state partnership is vital to assure efficient expenditures of state and federal tax payer dollars to subsidize both carriers and consumers.

For many states, the state role in ETC designation process is the linchpin of that partnership.

Earlier in Wednesday's hearing, at 1:22:41 in the archived recording, Chairman's Pai statements implicitly acknowledge state expertise with respect to broadband subsidy programs, and explicitly specify the crucial need for state and federal authorities to cooperate to ensure that state and federal universal service programs specifically targeting broadband continue to mesh:

Senator Fischer: *Chairman Pai, Nebraska is one of several states across the country with its own universal service fund. I think that federal state communication here is particularly important. In the past, the FCC and the Nebraska Universal Service Fund has encouraged the support of projects in a very complementary way. As we look to the FCC's upcoming initiatives I want to understand how today's FCC views that dynamic. So Mr. Chairman, do you believe that the FCC has effective ways to interface with state commissions for those that have universal service funds so that both the state and the federal funds are maximized for the most efficiency?*

Chairman Pai: *Thank you for the question Senator and I do hope that you can hear me. The answer to your question is yes. In fact the very first vote I held after I became chairman was to cement a partnership with the State of New York to make sure Federal and State funds for broadband deployment in rural areas were working in concert. Over the years since I've become chairman we've had cooperative relationships like that with other*

³ Lichtenberg, Sherry, Ph.D., *State Universal Service Funds 2018: Updating the Numbers*, National Regulatory Research Institute, April, 2019, page 12, at <https://pubs.naruc.org/pub/3EA33142-00AE-EBB0-0F97-C5B0A24F755A> ("Eight states . . . have no state funds. Although they have no state USF, a number of these states provide support through separate entities not managed by the state commission. . . . New York provides broadband support both through the state USF and the "New NY" broadband initiative.")

states too- Pennsylvania among others, in fact just a week..uh.. two weeks ago I had a great conversation with Broadband leaders in Washington State about making sure that we are working in concert - not just on rural broadband but things like on e-rate and tribal broadband - to make sure we stretch every taxpayer dollar whether it comes from the State or federal level - as far as possible to close that digital divide.

Senator Fischer: You know we want to make sure we don't have duplication but we also want make sure that we have very very efficient and coordinating efforts? Do you agree with that?

Chairman Pai: I couldn't agree more Senator. It's important from the consumer perspective for all levels of government to be working together - not in siloes and certainly not at logger heads.

Senator Fischer: Great. I know Nebraska has a very dynamic – a very thoughtful and involved Public Service Commission so I hope we can continue that partnership to be beneficial to the customers and citizens in my state.

Chairman Pai is right. Working together collaboratively is the best way to assure efficient expenditure and oversight of federal and state taxpayer-funded subsidies. The current procedures for possible designation and dual oversight of carriers that can receive federal subsidies is crucial to protect both taxpayer expenditures and the constituents served by those expenditures. Logically, the only thing one can say for sure about eliminating the ETC designation process and the state's role in it, is it can only

Restrict oversight and increase fraud and abuse of both the federal Lifeline program and related federal broadband infrastructure expenditures;

Undermine existing state Lifeline programs (this assumes in eliminating the ETC designation process, Congress reworks the act to require the continued provision of Lifeline Services – an obligation that only falls on ETCs); and

Result in the provision of relatively unchecked substandard services to consumers by some subsidized providers – in areas where – by definition – there is no competition to discipline the subsidized provider.⁴

If you have any questions about this letter, please do not hesitate to contact either of us or NARUC's General Counsel Brad Ramsay at jramsay@naruc.org or 202.257.0568.

Respectfully Submitted,



Brandon Presley
NARUC President

Karen Charles Peterson
Chair, NARUC Committee on Telecommunications

⁴ Mr. O'Reilly also speculated in his testimony that eliminating the ETC designation process might result in numerous other carriers bidding in the procedure. This speculation is unsupported and runs counter to the available evidence. After all, the existing requirement for getting an ETC designation certainly has not hindered a range of non-traditional providers, including, e.g., electric coops, from participating extensively in the RDOF proceeding. The idea that the unspecified additional costs associated with getting an ETC designation would bar a serious bidder is, at best, a bit specious. To those whose pleadings demonstrate they expect to bid in the auction, it cannot be questioned that the "ETC cost" is more than compensated by the potential subsidy and revenue streams anticipated. The need for a designation certainly hasn't constrained bidders so far and the idea, that anyone seriously interested in the auction would change their mind just based on that issue, seems implausible. There certainly isn't any concrete evidence suggesting that is the case.