



N A R U C
National Association of Regulatory Utility Commissioners

July 8, 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: NARUC support for S. 4021, the *Accelerating Broadband Connectivity Act of 2020*.

NARUC opposition to S. 4201, the *Rural Broadband Acceleration Act* which eliminates the requirement for targeted carriers to offer federal (and state) Lifeline subsidies to qualifying low income consumers, potentially eliminates future requirements to provide service, and eliminates additional State oversight of the expenditure of federal funds.

Congress should keep State cops on the beat – by retaining the requirement for carriers to be designated an Eligible Telecommunications Carriers to receive universal service subsidies.

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 and reliable utility services at just and reasonable rates to your constituents. As Congress intended, NARUC's members play a key role in the Federal Communications Commission's (FCC) universal service programs.

The FCC has proposed a new approach to its universal service high-cost program. The first phase of this *Rural Digital Opportunity Fund (RDOF)* program begins this October, with an auction targeting US census blocks in states that are wholly unserved with *fixed broadband* at speeds of at least 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads. The filing window for participation in the auction closes in 7 days. This auction will make available up to \$16 billion in federal Universal Service Fund (USF) subsidies to census blocks where existing data shows there is no such service available. It prioritizes bidders that offer to build networks with higher speeds.

On June 22, 2020, Senate Commerce Chairman Roger Wicker introduced, with four co-sponsors, S.4021, *The Accelerating Broadband Connectivity Act of 2020 (ABC Act)* targeting the October auction. A little over a week later, Senators Portman, Brown, Bennet and Jones introduced S. 4201, *The Rural Broadband Acceleration Act* in the Senate. S. 4201 is identical to the simultaneously introduced HR 7447. Both Senator Wicker's and Senator Portman's bills have the same laudable goal – to provide additional federal incentive payments to auction winners that agree to expedite construction and service initiation of the subsidized high-speed broadband services.

But Senator Wicker's bill is far superior. It protects the integrity of the existing auction, assures enhanced oversight of auction dollars, continues requirements that auction winners, among other things, continue to provide FCC designated supported services, and assures those winners will continue to offer Federal and, where available, State subsidies for Lifeline service for qualifying low-income households.

S. 4201, and its companion in the House, HR 7447 do not.

The problem? Senator Portman’s bill specifically eliminates the 47 U.S.C. § 214 requirement for carriers to be designated as Eligible Telecommunications Carriers (ETCs) to receive any *RDOF* funds or any enhanced payments it provides for expedited broadband infrastructure and service rollout.¹ This is a significant departure from the existing statutory scheme.

NARUC strongly opposes this bypass of requiring ETC status for subsidy “winners” in S. 4201 and its House companion HR 7447.

There is no question - eliminating the Section 214 ETC designation procedure is anti-consumer and encourages abuse of the *RDOF* program and customers served by that program. It reduces program oversight and has other broad implications for the existing State-Federal universal service partnership envisioned by Congress in the Telecommunications Act of 1996. Absent a rule or statutory change, carriers that are not designated will not have to provide federal Lifeline services or comply with other ETC requirements. Even with changes, removal of the ETC designation procedure will allow the carrier to choose whether to offer customers any enhanced state Lifeline subsidy (in those states that provide additional support for low-income lifeline services). For states that conduct designation proceedings, elimination of the ETC requirement effectively takes state cops off the beat.

In a November 14, 2019 Order,² the FCC described states as:

vigorously exercis[ing] their oversight authority to combat waste, fraud, and abuse . . . 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.³

¹ NARUC strongly endorsed HR 7022. Introduced in May, HR 7022 is the precursor to S. 4201/HR 7447 and carries the same name. HR 7022 *retained* the requirement for carriers to be designated as ETC before receiving federal subsidies and endorsed symmetrical (fiber-based) gigabit services for additional payments. In contrast, S. 4201/HR 7447 *eliminates* the requirement for symmetrical gigabit services to qualify for the additional funds, defining down gigabit to cover less robust services (aka 1 gigabit per second - one way: downstream). HR 7022 provides stronger incentives for higher speed networks.

² *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>.*

³ Earlier today a State commission staffer – commenting on a draft of this letter suggested these last two paragraphs “. . . strongly emphasizes what [S. 4201/HR 7447 is] jeopardizing. I can’t speak for all states, but as part of the ETC Certification, we look upfront for any signs of bad actors by checking for existing complaints, experience in telecommunications, and financial stability, we also look at their website and promotional materials, etc. I have denied some based on findings. Some will reply at a later date some do not.”

Those benefits to the programs efficiency and to constituents are eliminated by S. 4201/HR 4774.

Under current law, only carriers with an ETC designation can access subsidies from the FCC's UUSF mechanism to provide service and/or deploy broadband access network facilities and services. That means winners of the *RDOF* auction must become ETCs to access the auction funding support subsidy. In most cases, state commissions conduct the designation proceeding. Successful bidders of the FCC's *RDOF* auction may replace incumbent providers of voice and broadband access services in select geographic areas. Through the ETC designation process, states will exercise direct "on the ground" oversight of whether recipients of federal *RDOF* support funding are deploying network facilities and providing the required services to end-user consumers.

An ETC designation is *not* required *in advance* of the actual *RDOF* auction, *i.e.*, the ETC designations is *not* a barrier for entering and participating in the *RDOF* auction.

Section 214 specifies that a carrier designated as an ETC must "offer the services that are supported by Federal universal service mechanisms." 47 U.S.C. § 214(e)(1)(A). The services that are "supported" change from time to time based on FCC rulemaking proceedings. Currently both voice and broadband access are designated as supported services. Even if an ETC stops receiving subsidy payments, that carrier will still have to offer all listed supported services. And, significantly, an ETC has to *apply* to remove the ETC designation. If that ETC is the only carrier providing supported services in an area, according to the statute, the request to remove the designation should fail.⁴

Also, under the current FCC's rules, all high-cost ETCs, like the *RDOF* auction winners, must also comply with a series of additional requirements. As the FCC noted in its January 2020 *RDOF* order, auction winners "*like all high-cost ETCs*, will be required to report annually the number of anchor institutions to which they newly began providing service and *to comply with all relevant Lifeline rules.*"⁵ As the FCC explains later in ¶ 132 of the January Order:

All applicants should be familiar with the requirements that are applicable to ETCs and conduct due diligence to ensure that they can meet the requirements. For example, each Auction 904 support recipient must offer Lifeline voice and broadband service throughout the eligible areas covered by its winning bids to qualifying low-income consumers pursuant to the Lifeline program rules. . . .If an Auction 904 support recipient has obtained an ETC designation that covers more area than the eligible census blocks in its winning bids, that support recipient has the obligation to provide Lifeline services throughout its designated service area, including in areas where it cannot use its Auction 904 support.

A high-cost ETC may also be subject to state-specific requirements imposed by the state that designates it as an ETC.

{Footnotes omitted}

Eliminating the ETC designation procedure is eliminating the states' beneficial oversight, undermining the referenced "valuable state matching programs," and cutting off an avenue for your constituents to complain about substandard or non-existent services offered by an ETC. Last week, NARUC supplemented the record of the Senate Commerce Committee's June 24 FCC Oversight hearing. That letter, which is attached and also available

⁴ Section 214(e)(4) provides that the State commission, or by default, the FCC "shall permit" an ETC to relinquish its designation "in any area served by more than one" ETC so long as "the remaining [ETCs] ensure that all customers served by the relinquishing carrier will continue to be served."

⁵ *In the Matter(s) of Rural Digital Opportunity Fund*, WC Docket 19-126, *Connect American Fund*, WC Docket 10-90, Report and Order (FCC-20-5) (rel. Feb. 7, 2020), at ¶ 44, at: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.docx>.

online at: bit.ly/NARUC2020ETC, outlines in greater detail the importance of the ETC designation process, includes additional FCC statements and examples of state oversight of ETCs, and discusses the importance of continuing the state-federal continuing partnership established by Congress in the 1996 legislation.

As that letter indicates, anyone can understand why a carrier seeking a subsidy to provide service would want to eliminate the requirement to get an ETC designation and thereby 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).

But we also pointed out the obvious:

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 services provided under that federal program.

The FCC and the States 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.

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,

Handwritten signatures of Brandon Presley and Karen Charles Peterson in blue ink.

Brandon Presley
NARUC President

Karen Charles Peterson
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