



N A R U C
National Association of Regulatory Utility Commissioners

July 14, 2020

The Honorable Frank Pallone
Chairman
House Committee on Energy & Commerce
U.S. House
Washington, DC 20510

The Honorable Greg Walden
Ranking Member
House Committee on Energy & Commerce
U.S. House
Washington, DC 20510

RE: NARUC opposes HR 7160, the *Expanding Opportunities for Broadband Deployment Act*.

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

Recent history conclusively demonstrates State commission oversight does limit fraud and abuse of subsidies for broadband infrastructure, assures carrier-directed subsidies *intended* to support your low income constituents are not diverted, and, most importantly, that your constituents have additional protections, and additional avenues to seek redress for substandard or non-existent subsidized services.

Dear Chairman Pallone and Ranking Member Walden:

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.

On June 11, 2020, Representative Butterfield introduced HR 7160, the *Expanding Opportunities for Broadband Deployment Act*. While undoubtedly well intentioned, the bill, as introduced, at a minimum expands the opportunity for fraud and abuse of the federal lifeline program by eliminating the requirement that a carrier be designated an Eligible Telecommunications Carrier (ETCs). This ETC designation is currently conducted primarily by State Commissions.

This proposal is a significant departure from the existing statutory scheme. It is apparent that those advocating for such changes avoided explaining to the bill's sponsors the actual impact of eliminating that procedure – which definitively includes the elimination of state oversight of the expenditures of those subsidies to reduce waste and fraud, definitively undermines complementary State Lifeline programs targeting low income consumers and definitively eliminates additional consumer protections and another possible avenue for consumer relief when the federally subsidizes service is not deployed or is substandard or non-existent.

There is no question - eliminating the ETC designation procedure is anti-consumer and encourages abuse of the Federal high cost broadband infrastructure funding and low income Lifeline programs as well as the customers served by that program.

It not only reduces program oversight, but it has other broad implications for the existing State-Federal universal service partnership envisioned by Congress in the Telecommunications Act of 1996. 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).

In 2018, just seventeen States provided an additional \$457,281,779 dollars in state-funded Lifeline credits to low-income residents that complement the federal Lifeline programs.¹ As one State Lifeline expert opined² about a 2016 FCC proposal to take States out of the ETC designation process for broadband lifeline:

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.

That is precisely what HR 7160 does. For any state that conducts designation proceedings, elimination of the ETC requirement also effectively takes state cops off the beat.

In a November 14, 2019 Order,³ 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.”

...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.

¹ Lichtenberg, Sherry, Ph.D., *State Universal Service Funds 2018: Updating the Numbers*, National Regulatory Research Institute, April, 2019 at <https://pubs.naruc.org/pub/3EA33142-00AE-EBB0-0F97-C5B0A24F755A>

² *Letter from 96 Commissioners representing 37 State Commissions to FCC Opposing Proposal to Either give Broadband Lifeline subsidies to non-ETCs – or take States out of the ETC Designation process*, WC Docket Nos. 11-42 09-197 (March 20, 2016), at 3, online here: <https://ecfsapi.fcc.gov/file/60001550265.pdf>.

³ *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>.

Those benefits to the programs efficiency and to your constituents are eliminated by HR 7160.

As the FCC explains later in ¶ 132 of the January Order:

*“A high-cost ETC may also be subject to state-specific requirements imposed by the state that designates it as an ETC.”*⁴

This includes, as FCC Commissioner O’Reilly’s blog makes clear, additional protections for your constituents, including those currently facing job loss. According to that blog:

*[T]he designation often introduces new burdens: take, for example, state-specific Lifeline requirements and certain states’ disconnection rules that require ETCs to continue providing basic voice service to a customer despite a lengthy period of non-payment.*⁵

In the same blog, Mr. O’Reilly also mischaracterized and disparaged state measures to:

- “Requir[e] carriers to report on network outages...in excess of the FCC’s existing reporting system.”
- “[M]andate specific backup power requirements.”

Eliminating the ETC designation procedure is eliminating the states’ beneficial oversight, undermining the referenced “valuable state [Lifeline] matching programs” referenced by the November FCC order and cutting off an avenue for your constituents to complain about substandard or non-existent services offered by an ETC.

This is not a partisan issue. Just four years ago, in response to a similar proposal to bypass State ETC designations, NARUC sent a letter signed by 96 Commissioners of every political strip from 37 states to the agency pointing out the same basic flaws presented here.⁶ Excerpts from that letter are attached as Appendix A.

Two weeks ago, NARUC supplemented the record of the Senate Commerce Committee’s June 24 FCC Oversight hearing to respond to misleading statements introduced into the record by FCC Commissioner O’Reilly about removing the designation procedure in the context of an FCC auction. That letter, which is attached as Appendix B and also available 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 or, with Lifeline, actually provide service, as well as (2) the quality of service provided using that subsidy. By definition, the areas receiving infrastructure subsidies will not support any competing services/competition to discipline the provider. For Lifeline proposals, history has demonstrated conclusively that carrier abuse of the Lifeline program thrives even where there are multiple providers.

But we also pointed out the obvious:

⁴ *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 ¶ 132, at: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.docx>.

⁵ O’Reilly, Michael, *Removing Unnecessary Barriers and Maximizing Competition in USF Auctions*, June 18, 2020, at: <https://www.fcc.gov/news-events/blog/2020/06/18/removing-unnecessary-barriers-and-maximizing-competition-usf-auctions>

⁶ *See note 2, supra*.

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. Brandon Presley's signature is in black ink, and Karen Charles Peterson's signature is in blue ink.

Brandon Presley
NARUC President

Karen Charles Peterson
Chair, NARUC Committee on Telecommunications

APPENDIX A

EXCERPTS FROM A MARCH 20, 2016 LETTER FROM 96 COMMISSIONERS REPRESENTING 37 STATE COMMISSIONS OPPOSING

A PROPOSAL FOR A NATIONAL FCC BROADBAND LIFELINE DESIGNATION BY PASSING THE STATE ROLE IN THE DESIGNATION PROCESS

AND/OR

A PROCEDURE THAT GIVES LIFELINE FUNDS TO ENTITIES THAT HAVE NOT BEEN DESIGNATED ETCs.

<https://ecfsapi.fcc.gov/file/60001550265.pdf>.

Recent industry-driven *ex partes* argue the FCC can (i) establish an optional federal *eligible telecommunications carrier* (ETC) Broadband Lifeline designation process that ignores 47 U.S.C. § 214(e)'s mandate that States conduct such designations OR (ii) give Broadband Lifeline funds to entities that have not been designated ETCs. Both proposals eliminate crucial State oversight of the subject carrier's Lifeline services....On its face, taking these State "cops" off the beat is an extremely poor policy choice – a choice which can only have three obvious repercussions:

First, it can only increase fraud and abuse of the Lifeline program.

Second, it can only undermine existing complementary State Lifeline programs.

Third, it can only result in the provision of substandard services to Lifeline consumers by some subsidized providers. Moreover, any rational look at the history of the Lifeline program and the economics of the current market indicate none of the proposed changes are likely to lure large facilities-based carriers into the Lifeline business. If, absent State designations, low margin Lifeline Broadband service was any kind of serious draw, interested facilities-based carriers currently not subject to State oversight would have already filed a single application for certification in all States that defer ETC designations and oversight to the FCC.

...

The undersigned Ninety (96) State Public Utility Commissioners (from 37 U.S. Jurisdictions) strongly agree that both proposals (and the proposed optional bypass) must be rejected. NARUC's July 15, 2015 Resolution on ETC Designations for Lifeline Broadband Service, August 31, 2015 comments, and February 15, 2016 ex parte clearly indicate both industry-driven proposals lack merit.⁷

Removing the State ETC Designation Role can only result in additional fraud and abuse.

Fraud and abuse divert funds from consumers Congress expects to benefit from the Lifeline program. State "cops" remain a significant barrier to such diversions through the conduct of ETC designations and thereafter by monitoring designated carrier activities.[] Both industry-driven proposals, at the carrier's option, take the State cops off the beat without providing any effective replacement.

The FCC can never access sufficient resources to fill the resulting deficit.

No one can seriously contend that funneling Broadband Lifeline ETC applications to the FCC can do anything but reduce the scrutiny imposed on any carrier's "national" application and that carrier's subsequent

⁷ NARUC's August 31, 2015 comments are at: <http://apps.fcc.gov/ecfs/comment/view?id=60001199254>. NARUC's February 15, 2016 *ex parte* is online at: <http://apps.fcc.gov/ecfs/comment/view?id=60001483371>.

operations.⁸ It is, after all, no coincidence that all of the reforms to the program the FCC adopted to-date that have reduced fraud were based on pre-existing State mechanisms and Federal-State Joint Board recommendations.

To date, State oversight has been crucial. In some cases, States have revoked or refused to grant an ETC designation pursuant to Section 214(e). This capability is a crucial component for policing the Fund to eliminate bad actors. At least six States responding to an informal 2015 survey have refused an application for ETC designation filed by a carrier. Seven respondents to that survey revoked designations for questionable practices and/or violating program rules.⁹ And at least two commissions have either rejected designations to carriers that provided substandard 911 services or their questions caused the carriers to withdraw the applications.

But these numbers do not tell the whole story. In many cases, a carrier whose ETC application or existing ETC designation is being challenged will withdraw its application or relinquish its ETC status once it becomes clear it will not be granted or may be revoked. Such actions are not reflected in any statistics. Florida, for example, has had 19 ETC filings withdrawn. NARUC is not the only one to point out, for the record, the crucial oversight States provide via the designations process. Just last month, the Pennsylvania Commission told the FCC:

*[A] State's withdrawal of an ETC designation is a timely and decisive policing method for preserving the integrity of the federal Low Income program.*¹⁰

The same day, the California Commission also stated 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}

A week earlier, the Michigan Commissioners filed an *ex parte* noting that:

*The MPSC conducts a thorough review of each ETC application to ensure compliance with both federal regulations, as well as MPSC orders. The MPSC scrutinizes the information that is provided by the applicant... if this level of scrutiny is removed, it could potentially open the door for fraud and abuse. States like Michigan have more familiarity with the geographic areas and marketplace in which the ETCs are applying for designation. States generally know the provider and its business history in the state. States also communicate with each other regarding companies seeking ETC designations in an effort to be mindful of potential bad actors.*¹¹

⁸ 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: <http://apps.fcc.gov/ecfs/comment/view?id=60001484187> noting, among other things that “CPUC staff has found inaccurate and misleading statements in *FCC-approved* compliance plans regarding the technical capability of purported MVNO subject matter experts.” {emphasis added}

⁹ States responding to the 2015 survey indicating they had revoked a carrier’s ETC designation include: FL, KS, KY, MI, MN, WA, & WI. Florida revoked the designations of two companies for abuse of the Lifeline program, one of which faced criminal charges in Tampa federal court last summer (2015). See Florida PSC Docket No. 080065, *Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida*, and Docket No. 110082-TP, *Initiation of show cause proceedings against American Dial Tone, Inc., All American Telecom, Inc., Bellerud Communications, LLC, BLC Management LLC d/b/a Angles Communication Solutions, and LifeConnex Telecom, LLC for apparent violations of Chapter 364, F.S., Chapters 25-4 and 25-24, F.A.C., and FPSC Orders.*

¹⁰ 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, available online at: <http://apps.fcc.gov/ecfs/document/view?id=60001515632>.

¹¹ See, February 8, 2015 Letter from Michigan Public Service Commission Chairman Sally A. Talberg, and Commissioners John D. Quakenbush and Norman J. Saari to Marlene Dortch, FCC Secretary, in WC Docket No. 11-42, available at: <http://apps.fcc.gov/ecfs/document/view?id=60001424075>.

On top of States' initial reviews of ETC applications, informal NARUC surveys indicate that *at least* 14 States have programs to periodically conduct compliance audits on ETCs and/or of Lifeline Recipients.¹² Indeed, as the Michigan Commissioners also pointed out in their February *ex parte* that:

The MPSC re-certifies each year that the existing ETCs have provided the necessary and required information to be re-certified as an ETC for the next year. MPSC thoroughly reviews all of the submitted information to ensure the companies are complying with federal regulation and MPSC orders. The MPSC oftentimes has to follow-up with companies regarding information that was not provided or was provided incorrectly. The elimination of the states' authority could cause an increase in potential waste, fraud and abuse, errors in information filed, and the possibility of a [another] significant backlog at the FCC. {emphasis added} Id.

Many States, like Michigan, require ETCs to certify-- when they are seeking designation or submitting annual filings--that they are in compliance with all federal and State rules (as well as whether the provider's ETC designation has been suspended or revoked in any jurisdiction).

Legal considerations aside, it is difficult to understand why any advocate for Lifeline services would support either industry-driven proposal to permit a carrier's choice to eliminate crucial safeguards to the integrity of the program.

Removing the State ETC Designation Role can only undermine existing State Matching programs.

The first telephone Lifeline programs in the United States started at State commissions which have a long history of supporting such vital social programs.¹³ State Commissions have promoted enrollment of Lifeline in a variety of innovative ways – including by creating and supporting the annual *Lifeline Awareness Week*. States have also long pressed for extending Lifeline to include broadband.¹⁴

In 1996, Congress made clear in 47 U.S.C. §§ 214(e), 253, 254, 1301-3, and other provisions of the Telecommunications Act, that it expected the States to continue to play a crucial role partnering with the FCC with respect to universal service and the promotion of advanced services like broadband.

State Lifeline programs are a crucial part of that equation. Many State Lifeline programs provide support subsidies ranging from \$2.50 to well over \$10.00 per month to qualifying Lifeline recipients.¹⁵

¹² States responding to 2013, 2015, and 2016 surveys that have requirements for requiring periodic compliance audits on lifeline carriers or recipients include AK, CA, CO, FL, KS, MA, MO, MS, NE, NJ, OH, OR, WI, & VA.

¹³ 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*.

¹⁴ 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*.

¹⁵ States responding to last week's informal request about monthly Lifeline subsidies, indicated, **Vermont** provides the greater of **\$7 or 50 % of the basic service charge**, **California** provides a **\$13.50** subsidy, **Connecticut** offers **\$10.42**, the **District of Columbia** between **\$6.50 & \$8.50**, **Kansas**, **\$7.77**, **Missouri**, **\$6.50**. Several other States offer **\$3.50/month**, including **Arkansas**, **Minnesota**, **Nebraska**, and **Oregon**. **Idaho's** subsidy is **\$2.50** while New York's subsidy varies.

For obvious reasons, State legislators are not likely to welcome any approach that limits States' ability to oversee, condition, and audit the use of State provided Lifeline subsidies. To access State funds will continue to require some sort of registration or qualification. If the FCC retains the structure Congress specified and permits States to continue in their current role, it seems more than likely that State Legislators (or Commissions) will migrate existing matching programs to mirror the federal structure.

If the FCC chooses instead to eliminate the State ETC designation role, even for just carriers that seek only a national designation, it will, at a minimum, undermine State programs and cause unnecessary diversions of FCC and State resources better directed towards serving deserving Lifeline consumers. In the worse case, it could, long term, sound the death knell for State matching programs. As one State Lifeline expert said last week in an e-mail to NARUC's General Counsel:

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 BB Lifeline could essentially destroy nearly all the existing State programs.

Indeed. Both industry proposals purport to draw in large facilities-based carriers that clearly have no interest in any State oversight. It is logical to assume that any carrier that actually does seek national certification or direct access to federal funds will not be interested in submitting to any State oversight to get the extra State subsidy for their lifeline customers.

So, under either proposal, carriers will decide the amount of support subsidy their Lifeline customers may access. Even if some State matching programs survive, and even if some carriers actually seek the State subsidy for their customers (braving some level of State oversight), either proposal complicates things at the ground level significantly.

....

Again, legal considerations aside, given the obvious likely reduction in State subsidies provided to Lifeline recipients for carriers that choose to avoid any State service quality/fraud oversight, it is difficult to understand why any advocate for Lifeline services would support an option to bypass State designations.

Removing the State ETC Designation Role can only result in the provision of substandard services to Lifeline consumers by certain subsidized providers.

Service quality problems with Lifeline service and Lifeline providers will continue, as will disputes, and fraudulent schemes. Customers will have complaints.

Unfortunately, the FCC can never 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 Lifeline Broadband designation, and therefore no State oversight authority, it will be difficult for any commission to justify assigning staff to either promote or protect users of such programs.

And there is no question that that is exactly what States do today. As the Pennsylvania PSC notes, at 3, in its 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 . . . The Commission and most stakeholders agree that States are best suited to address the consumer or competitor complaints and concerns sure to arise with services supported by Section 254 under the Section 214(e)(2) designation process. This State role is a welcome, not burdensome, feature of cooperative federalism under Section 254(i). This approach

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.[]

California provides similar examples, noting at 2-3 of the attachment to its *ex parte*[] that the State 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," and "that cost a Lifeline customer more than comparable retail plans."

The CPUC also, where it has jurisdiction:

ensures compliance with FCC consumer protection rules. For example, one MVNO did not comply with CTIA handset unlocking policies, and staff withheld ETC designation approval until the company was in compliance.

The most likely result of these two industry-driven proposals: some carriers will provide substandard services that would have been either forestalled or corrected if States retain their current role. Also, Lifeline subscribers will not benefit from additional requirements for service some States add to the federal minimums.

It is easy to understand why a Lifeline-only carrier would want to avoid State service quality oversight. But, again, legal considerations aside, it is difficult to understand why any proponent of Lifeline services would support the industry-driven bypass proposal given the obvious likely reduction in service quality received by Lifeline consumers served by that carrier - along with the reduced options for those customers to have their concerns addressed or at least investigated.

APPENDIX B

NARUC LETTER TO CORRECT THE RECORD OF THE JUNE 24 SENATE OVERSIGHT HEARING

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,¹⁶ 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.¹⁷

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 to insure those Lifeline obligations remain.

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.

¹⁶ *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>.*

¹⁷ *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>.*

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.¹⁸ 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 to continue to mesh:

Senator Fisher: *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 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.*

¹⁸ 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.””)

Senator Fisher: *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 Fisher: *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.¹⁹

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

¹⁹ 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.