



N A R U C
National Association of Regulatory Utility Commissioners

April 19, 2021

The Honorable Rosa DeLauro
Chair, Appropriations Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Kay Granger
Ranking Member, Appropriations Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Chair, Energy & Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member, Energy & Commerce Committee
U.S. House of Representatives
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The Honorable Richard Neal
Chair, Ways & Means Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member, Ways & Means Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick Leahy
Chair, Appropriations Committee
U.S. Senate
Washington, DC 20010

The Honorable Richard Shelby
Ranking Member, Appropriations Committee
U.S. Senate
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The Honorable Maria Cantwell
Chair, Commerce, Science & Transportation
Committee
U.S. Senate
Washington, DC 20010

The Honorable Roger Wicker
Ranking Member, Commerce, Science & Transportation
Committee
U.S. Senate
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The Honorable Ron Wyden
Chair, Finance Committee
U.S. Senate
Washington, DC 20010

The Honorable Mike Crapo
Ranking member, Finance Committee
U.S. Senate
Washington, DC 20010

RE: *Congress must protect low-income Americans. Changes to the FCC Lifeline program should not eliminate the requirement for carriers to be designated an Eligible Telecommunications Carrier (ETC) under 47 U.S. C. § 214. Elimination can only increase fraud and abuse in the Lifeline program, undermine existing complementary State Lifeline subsidy programs benefiting the poor, and result in the provision of substandard services to Lifeline consumers.*

Dear Chairwomen, Chairmen, and Ranking Members,

On April 6, 2021, each of you received a letter from 46 organizations (Coalition Letter) urging dramatic reform of the FCC's Lifeline programs to include an increased subsidy similar to the temporary Emergency Broadband Benefit Program (EBBP) included in the December 23, 2020 passed Consolidated Appropriations Act, 2021.

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 to your constituents. As Congress directed, NARUC's members play a key role in the Federal Communications Commission's (FCC) universal service programs.

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. The Lifeline program provides subsidized access to telecommunications services to low income Americans. Many states have complementary Lifeline programs that provide additional funds to those consumers.

The designation process frequently is the basis that allows state oversight of the designated carrier's Lifeline operations.

Unfortunately, the Coalition letter also included a request to:

remove the current requirement that service providers must become Eligible Telecom Carriers to participate in the program,¹

States have been a crucial partner with the FCC, with demonstrated success blocking carrier diversions of Lifeline program funds to non-existent customers as well as ensuring that Lifeline consumers get the specified services. On its face, this proposal to take enforcement and oversight authority from *your* state commission is an extremely poor policy choice – a choice which can only have three results:

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 providers.

Carriers have been pushing some version of this proposal to streamline or eliminate the ETC designation process since at least 2015. Everyone involved in the debate recognizes that there will be some FCC certification and oversight procedures similar to those required by the ETC designation procedure and the existing FCC implementing rules.

Neither Congress nor the FCC is going to hand out billions and eschew any carrier accountability. But, by targeting the ETC designation process, the carriers hope to eliminate the current default State role in that procedure.² That in turn will eliminate any state oversight of the services provided – oversight which heretofore, has assured expenditures benefit the intended recipients and not carriers' bottom lines.

The carrier signatories to the April 2021 Coalition letter were, if not the original source of the quoted text, undoubtedly strong advocates for its inclusion. It is obvious why carriers want to basically eliminate, or at least, severely constrain oversight of how Lifeline funds are actually used.

It is also obvious why they would want to limit examination of the quality of the services they are required to provide to low income customers.

¹ Coalition letter at 2.

² In July of 2015, in response to an FCC request for comment on a similar bypass of the default State ETC designation process, NARUC passed a [Resolution on ETC Designations for Lifeline Broadband Service](#). NARUC also filed a *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>. That letter also pointed out the obvious deficits in any approach to qualify carriers to receive federal Lifeline subsidies that effectively removes states from the process.

It is more difficult to understand why federal policy makers in Congress with even a remote familiarity with the history of federal universal service programs would want to limit oversight of this expenditure of taxpayer dollars or, worse still, *limit avenues for constituents to complain about substandard (or non-existent) services provided*, outside of the emergency created by the pandemic.

It seems likely the signatory public interest organizations were understandably interested in and focused upon the expansion of the Lifeline program proposed. We hope they will consider separating their advocacy for the expansion of the Lifeline program from the carrier-driven attempt to remove oversight and enforcement inherent in the ETC designation procedure - oversight which, as described below, has served consumers and the program itself so well to-date.

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

Fraud and abuse divert funds away from the very consumers Congress expects to benefit from the Lifeline program. State commissions remain a significant barrier to such diversions through the conduct of ETC designations and thereafter by monitoring designated carrier activities.

The FCC is unlikely to access sufficient resources to fill the resulting deficit.

By definition, changing the current Lifeline ETC designation procedure into an FCC only registration and oversight regime can only reduce the scrutiny imposed on any carrier's "national" application and that carrier's subsequent operations. The FCC has acknowledged the crucial role states play. In a recent November 14, 2019 Order,³ 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/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.

More than four years ago, in response to a similar proposal to federalize and streamline the ETC designation process for broadband lifeline service – and eliminate the state role in the certification process, then-Commissioner Ajit Pai 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.”

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>. (Emphasis Added)*

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}⁴

The undeniable impact of elimination of the ETC designation procedure: *consumers will have less protection and the program is 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.⁵ 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.⁶

In 1996, Congress made clear in 47 U.S.C. §§ 214(e),⁷ 253⁸ 254,⁹ 1301-3,¹⁰ 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.

⁴ 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*).

⁵ 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*.

⁶ 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*.

⁷ 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.”)

⁸ 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}

⁹ 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}

State Lifeline programs are a crucial part of that equation. Not all states offer additional subsidies, but several state Lifeline programs provide support subsidies ranging from \$2.50 to well over \$10.00 per month to qualifying federal Lifeline recipients.¹¹

For obvious reasons, in the states that do offer these additional funds to low income households, 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 at least some sort of registration or qualification. If Congress chooses instead to eliminate the ETC designation process, and thereby – necessarily also 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, it could, long term, 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.*¹²

Eliminating the ETC process and creating a new FCC oversight and registration program will ultimately have the very same impact on State programs.

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 state support offered by states that have matching programs, including, e.g. California. In those states, low-income constitutes will pay more for vital services.

Removing the state ETC Designation Role can only result in the provision of substandard services.

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

Unfortunately, the FCC could not likely 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

¹⁰ 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}

¹¹ 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** subsidy is **\$2.50**, whereas New York's subsidy varies. **Michigan** is unusual in that it requires just jurisdictional carriers to instead offer rate reductions ranging from **\$8.25 to \$12.35**.

¹² 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.

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, 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.¹³

And it is evident that is what states do. As the Pennsylvania PSC noted, at 3, in as 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 254.¹⁴

California provided specific examples of how that commission protects consumers courtesy of the ETC designation procedure. At pages 2-3 of the attachment to a 2016 *ex parte*,¹⁵ 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, "ensures 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."¹⁶

The most likely result of eliminating the ETC designation process: some carriers will provide substandard services that would have been either prevented 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 carrier would want to avoid any State service quality oversight. But, again, it is difficult to understand why advocates for Lifeline service would support an industry-driven proposal that would likely reduce service quality received by Lifeline consumers served by that carrier - along with the reducing options for those customers to have valid concerns about their service addressed or at least investigated.

There is no evidence that requiring ETC certifications inhibits carrier entry into the Lifeline market.

Any registration and oversight regime imposes costs. However, a carrier's decision of whether to provide the federal Lifeline subsidy will always come down to whether that carrier sees an overall opportunity to recover its costs and earn a return. As the level of the subsidy increases, a carrier may no longer have the option not to participate in areas where it faces competitors that do.

One thing is clear: federal policy makers are not going to just hand out taxpayers' cash to carriers without requiring accountability. Even the current – well named – “Emergency” Broadband Benefit program has a

¹³ It is not clear how States with State Lifeline complementary subsidies will handle this circumstance.

¹⁴ 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>.

¹⁵ 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}

¹⁶ *Id.*

registration procedure – albeit truncated because of the pandemic – and also permits continued oversight of program expenditures.¹⁷

The Coalition letter claims congress should eliminate the existing registration and oversight procedure, *i.e.*, the ETC designation process because it “. . . *unnecessarily limits carrier participation – and therefore competition and consumer choice – in the provision of broadband services to low-income communities.*”

There are two obvious flaws with that argument.

First, there will be a substitute registration procedure and oversight. The Coalition letter fails to provide any, much less a compelling, explanation of why any substitute procedure would not also “unnecessarily limit[] carrier participation.”

Moreover, 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 – the number of carriers competing to provide Lifeline service increased significantly. There was a business case and as a result, many wireless carriers pressed to get into the market. There has been some consolidation, but, *e.g.*, even now – according to the Universal Service Administration Company’s website, <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report>, NARUC’s D.C. office is served by four different federal Lifeline carriers. Given carrier participation in the EBBP, a compelling business case for wireline Lifeline – similar to what the country saw with wireless - may be in the offing.

In any case, assuring that federal and State regulators can work together collaboratively is the best way to assure efficient expenditure and oversight of both federal and state taxpayer-funded Lifeline program subsidies. The current ETC designation procedure that assures some level of dual oversight of carriers that can receive federal subsidies is crucial to protect both the Lifeline program and the consumers it serves.

If you have questions about this letter, 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.

Sincerely,

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¹⁷ 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 ¶141 “Enforcement”, ¶ 141 “Audits”, ¶ 110 “Tracking and Reporting of Available funding”, ¶36 “Conditions and Requirements for Participating Providers”, ¶ 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.”

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