



N A R U C  
National Association of Regulatory Utility Commissioners

September 15, 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: Crucial Omission in S. 4015, The Rural Connectivity Advancement Program Act of 2020**

**Blocking waste, fraud and abuse of federal broadband subsidies - Keeping State Cops on the Beat by Requiring Recipients to be Designated as Essential Telecommunications Carriers under 47 U.S.C. § 214 (1998)**

Dear Chairman Wicker and Ranking Member Cantwell:

During this week's September 16, 2020 Senate Committee on Commerce, Science & Transportation executive session, one of the bills the Committee that was originally on the list for consideration was *S. 4015, The Rural Connectivity Advancement Program Act of 2020*.

S. 4015 laudably seeks to encourage programs to cover the gaps that remain in broadband internet access coverage in high-cost rural areas. But unfortunately, there is a crucial omission that eliminates critical oversight of these subsidies which acts to block fraud and abuse.

The National Association of Regulatory Utility Commissioners (NARUC) is on record strongly endorsing similar measures, most recently, Senator Wicker's S. 4201, a bill that also targeted deployment in unserved rural areas. 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 to your constituents.

As Congress intended, NARUC's members play a key role in policing the Federal Communications Commission's (FCC) high cost universal service programs. Unfortunately, the use of federal telecommunications subsidy dollars continue be the target of waste, fraud and abuse. One of the most effective prophylactic provisions in the current law is the so-called Eligible Telecommunications Carrier (ETC) designation procedure prescribed at 47 U.S.C. § 214 (1998).

Unfortunately, S.4015 omits this crucial protection.

This is a significant departure from the existing statutory scheme. The result? There is no question that this inadvertent omission of the Section 214 ETC designation procedure encourages abuse of both the *Rural Connectivity Fund* created by S. 4015, but also any of your constituents that are ultimately served by that program.

Why? Because it clearly 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. For example, removal of the ETC designation procedure will allow the carrier to choose whether or not to offer customers any enhanced state Lifeline subsidy (in those states that provide additional support for low-income

lifeline services). For the majority of states that conduct designation proceedings, elimination of the ETC requirement effectively takes the most effective cops off the beat

In a November 14, 2019 Order,<sup>1</sup> the FCC described NARUC’s member state commissions 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.” . . . [FCC’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.*

As the quote makes clear, the State oversight track record is not limited to Lifeline-only ETCs but extends to carriers seeking direct subsidies for infrastructure in parts of the country where there is no business case for providing service without a subsidy. If a carrier gets a federal subsidy to provide service, the state that certifies that carrier as an ETC will also oversee that carrier’s expenditures to ensure the carrier actually meets its broadband deployment commitments.

Unfortunately, there is a long history of abuse of federal telecommunications subsidy programs. Some carriers actively promote elimination of the Section 214 ETC designation process. Why? Well, 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). But those in government have a fiduciary responsibility to our joint constituents – the American taxpayers. We all need to work to reduce fraud and abuse while assuring efficient federal and state oversight of the expenditures of taxpayer dollars proposed by S.4015. We all also have an interest to assure each of your constituents have real options to report about substandard or non-existent service provided pursuant to subsidies offered under this new fund. The fact is – as NARUC observed most recently in a unanimously passed resolution - the FCC and the States working together collaboratively is the best way to assure efficient expenditure and oversight. The current section 214 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.<sup>2</sup>

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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 *See, July 2020 adopted NARUC Resolution to Ensure that Recipients of Universal Service Fund Support Continue to Be Held to a High Standard and to Prevent Waste, Fraud, and Abuse <https://pubs.naruc.org/pub/B4E92524-155D-0A36-316C-9B1E888F9F5B>*

Logically, the only things one can say for sure about omitting the ETC designation process and the state's role in it *in any legislation* dealing with subsidizing broadband service, is it can only severely restrict oversight and increase fraud and abuse of both the federal Lifeline program and related federal broadband infrastructure expenditures, undermine existing state complementary programs, reduce even more coordination among states and the FCC on universal service issues, 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.

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](mailto:jramsay@naruc.org) or 202.257.0568.

Respectfully Submitted,



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NARUC President



Karen Charles Peterson  
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