



N A R U C  
National Association of Regulatory Utility Commissioners

December 16, 2020

John Williams  
Biden-Harris Transition Team on the FCC  
Presidential Transition Headquarters  
Washington, DC

**Re: Help for the Biden-Harris Telecommunications Transition team.**

Mr. Williams:

I wanted to thank you and the other members of the FCC transition team, former NARUC alumna Mignon Clyburn, Edward “Smitty” Smith, and Paul de Sa for being responsive to outreach from the National Association of Regulatory Utility Commissioners (NARUC) commissioners and staff on President-elect Biden’s FCC transition plans. With the responsibilities that you have been given, each of you must be inundated with recommendations.

NARUC has a unique perspective and can help. For over 125 years, NARUC member utility commissions from every state, the District of Columbia and all U.S. Territories, have led the way in developing and implementing novel policies to promote the deployment of all utility services in the telecommunications, gas, water and electric sectors. More often than not, these state programs have been the prototypes for cutting edge Congressional or federal agency initiatives involving critical infrastructures. That has made NARUC a gateway to an expanse of expertise and practical experience. With over 200 state utility commissioners, and an enormous pool of staff experts operating in a variety of circumstances, NARUC can offer unparalleled access to professional analysis and practical experience to the Administration. We provide an unbiased source of information, free of competing business agendas, in any policy debate.

NARUC would appreciate the opportunity to address concerns about the FCC’s current operations and several dockets that deserve immediate attention with the transition team. If your schedules permit, we would like to arrange a zoom meeting.

In the meantime, NARUC recommends the new Administration consider appointing state commissioners to vacancies on the FCC and related posts in other federal agencies. State commissioners live at the bleeding edge of telecommunications policy formation. They are tested. They have real world experience. They routinely experience the unexpected and, less often, counterproductive consequences of well-meaning federal policy. NARUC has well in excess of 200 state Commissioners with incredible diversity in political affiliations, academic credentials, professional experience, and cultural heritage. As serving Commissioners, they have all been vetted by the press and on-the-job training. The majority of commissioners that are appointed/elected by the legislature/governor, have also survived a separate vetting process before taking office. NARUC can help you identify suitable candidates. Indeed, the accomplishments of former FCC Commissioner Clyburn, also a State commission alumna, is an illustration why prior administrations have frequently appointed a disproportionate

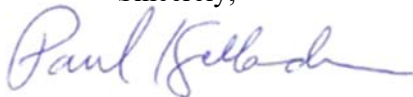
share of State commissioners to the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission.

Appendix A contains detailed recommendations on several open FCC proceedings that need immediate attention. Appendix B contains the names and contact information for key NARUC Commissioners from every region of the country, as well as NARUC's Washington-based advocacy staff. You should feel free to contact me personally at any time should you have any questions or concerns.

Also, NARUC's next national meeting will be held virtually on February 4-11 in Washington, D.C. We would be very pleased to provide the Administration with a platform, in a plenary session, to address key Administration telecommunications and broadband policy agenda as well as views on cooperative work with NARUC's member commissions.

Again, congratulations to each of you for being chosen for the critical task of transitioning telecommunications and broadband policy. NARUC looks forward to working with you, the transition team and the new Administration.

Sincerely,

A handwritten signature in blue ink that reads "Paul Kjellander". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul Kjellander  
NARUC President

**cc: The Honorable Mignon Clyburn  
The Honorable Edward "Smitty" Smith  
The Honorable Paul de Sa**

## APPENDIX A – NARUC RECOMMENDATIONS

### I. What should be the top policy priorities for the new Administration?

There are several strategic considerations the new Administration should carefully consider while formulating its policy plans for the Biden Administration. One that is almost always overlooked when structuring a policy is the stark fact that Administrations do change. In the rush to promote a particular policy agenda, often commissioners fail to consider that a new Administration with different priorities will at some point take over. Policy makers should assure its regulatory pronouncements reflect that fact. One way to protect the sustainability of any policy – illustrated most recently by recent litigation over net neutrality, is to make certain State commissions retain authority to act as a final backstop to protect consumers, as well as insure the integrity of federal programs and carrier services. This administration should encourage state broadband, universal service, and consumer protection programs. Many States have their own broadband and lifeline programs and, in 1996, it is clear Congress expected the FCC and the States to work together in a coordinated way to promote services and deployment - leveraging experience, enforcement, and limited personnel and physical resources. That said, there are a number of specific open proceedings at the FCC that require immediate attention:

#### A. Reclassify Broadband and Interconnected VoIP as *telecommunications services* and withdraw from the appeal of California’s Net Neutrality laws. WC Docket No. 17-108, 17-287, & 11-42

The next FCC leadership team must prioritize restoring the agency’s (and state commission) authority to protect consumers and competition in the broadband market. Under the next Administration, FCC leadership should quickly commence a proceeding to reclassify both broadband and Interconnected Voice over Internet Protocol (I-VoIP) as “telecommunications services” under Title II of the Communications Act of 1934. This reclassification will put the FCC on the firmest legal ground to: (1) restore or strengthen the 2015 network neutrality rules that prohibit providers of broadband Internet access from blocking, throttling, or otherwise discriminating against certain Internet traffic; (2) fund broadband through the FCC’s four universal service programs; (3) protect consumers from fraud and privacy violations; (4) promote broadband competition; and (5) protect public safety. FCC leadership should simultaneously work with Congress to develop legislation to codify this authority as law, thereby protecting against potential future agency policy reversals.

With respect to broadband, the agency should not repeat past mistakes. Any order should make clear that state commission retain backup authority to oversee both any new federal rules and their own State broadband and universal service programs. States should retain, as Congress specified in 47 U.S.C. § 214, their role as default “eligible telecommunications carrier” designator. By also reclassifying I-VoIP services, the FCC will validate needed federal and state cooperation and, as Congress specified in 47 U.S.C. § 253, assure that States can impose “on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

#### B. Engage the Joint Board on meaningful contribution reform. WC Docket 06-122

Another problem that needs immediate engagement is reform of the federal universal service fund (USF) contribution mechanism. It is past time to engage with the Federal-State Joint Board on Universal Service on a compromise approach to contribution reform. Movement on a reform proposal stalled in 2016 even though a majority of the board favored fast action. Earlier this month, the Universal Service Administrative Company filed estimates that indicate the federal USF contribution assessment factor for the 1<sup>st</sup> Quarter 2021 will increase from 27.1% to 31.8%. This is the highest quarterly contribution factor in the history of the USF. The State members of the Joint Board have already submitted a recommended decision back in October of 2019. Note, the FCC’s actions here will provide guidance to States on how they can legally revise contribution mechanisms for State universal service programs. Any FCC action must make clear that State contribution mechanisms that follow the

FCC's final proposed collection mechanism do not "burden" the federal fund and potentially can also access aspects of broadband access services.

The FCC should immediately re-engage the Joint Board on the referred contribution issues.

**C. Restore full Lifeline Support to Voice services. WC Dockets 11-42, 09-197, & 10-90.**

Starting in 2019, each December, the FCC has continued to shift support away from voice only Lifeline services. This December, the amount available to support phone service was further reduced from \$7.25 to \$5.25. The impact of this decline in support is potentially severe. When the agency sought comment on reinstating full financial support for voice-only service in rural areas only, the record showed widespread support for restoring full subsidies for voice services in all areas. This Administration should act quickly to restore that support. This continued reduction in support for lifeline voice service, continues to make no sense. And it has real-world impacts. Universal Service Administrative Company data shows that, as of November 2019, 30 percent of Lifeline customers still subscribe to plans that only qualify for Lifeline by virtue of meeting the minimum service standards for voice service<sup>1</sup> NARUC, and many others, are on record<sup>2</sup> opposing this shift. For those customers that get lifeline service for voice, the reduction simply directly increases the costs of service making it more difficult to afford.

The FCC should act *sua sponte* on reconsideration and adjust these reductions as soon as possible.

**D. Terminate the WC Docket 20-71 proceeding to De-Tariff federal Access Charges.**

Last Spring, the FCC released a proposed rulemaking in the proceeding captioned *In the Matter of Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket 20-71, Notice of Proposed Rulemaking (rel. April 1, 2020). The NPRM suggests mandatory elimination of ex-ante pricing regulation and detariffing of certain federal telephone access charges. Among other things, the NPRM advances the facially illegal notion that the FCC has authority to require the inclusion of these detariffed interstate fees in interstate rates that remain subject to State oversight. Literally all the twenty-two filed initial comments found some critical fault in the NPRM's proposals, either opposing it outright or supporting modifications that are, on their face, inconsistent with the NPRM's stated (albeit flawed) rationale for acting, i.e., avoiding customer confusion. The most common modification suggested? Creation of a permissive separately listed interstate surcharge to replace the existing ones listed on customer bills that the NPRM proposes to eliminate entirely. Common sense suggests customer confusion is the only likely outcome from either alternative. The suggestion to roll the interstate charges into intrastate rates is also inconsistent with earlier FCC precedent seeking to make implicit subsidies explicit. The parallel FCC proposals to assess 25% of intrastate local exchange voice service revenues to support the federal USF contradicts existing court precedent.

This proceeding is a prescription for wasteful litigation and confusion and should be terminated.

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<sup>1</sup> See USAC, *High-Cost and Low Income Committee Briefing Book*, at 62 (January 27, 2020) (Lifeline Business Update, App. B: Lifeline Business Update) (showing 17.20% of Lifeline customers taking bundled plans meeting the voice minimum standards & 11.95% taking voice-only plans), at: <https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2020/2020-01-HCLI-Briefing-Book.pdf>

<sup>2</sup> *Comments of the National Association of Regulatory Utility Commissioners supporting the Request to Waive Implementation of the Scheduled December 2020 Lifeline Minimum Standards* (filed Sept 14, 2020), WC Docket Nos. 11-42, 09-197, & 10-90, available online at <https://www.fcc.gov/ecfs/filing/10914768115490>

## II. How can the FCC advance racial equity and empower workers?

The best thing the agency can do here is to make certain that disadvantaged communities actually have a forum to seek relief when (i) standard phone or broadband services either are not provided at all or (ii) the quality and reliability of the services that are provided is substandard. The easy way is to, as suggested earlier, classify Broadband Internet Access Services (BIAS) and I-VOIP as *telecommunications services*.

With respect to broadband, the FCC should make clear in its BIAS reclassification order that the States retain authority to enforce at least up to any federal net neutrality/service quality standards. Since BIAS is “mixed use” – and includes intrastate traffic – basically states have jurisdiction unless the FCC says their exercise of that jurisdiction conflicts with federal policy, e.g., the so-called “impossibility exception.”

By finally classifying I-VoIP services as a *telecommunications service*, the FCC will validate needed federal and state cooperation and provide additional protections for service quality and reliability to disadvantaged communities. Classification will assure, as Congress specified in 47 U.S.C. § 253, that States can impose “on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

The FCC also needs to make certain NOT to provide any incentives for carriers to only seek a federal lifeline subsidy. There are States that have complementary Lifeline programs that provide additional subsidies to low income Americans. An earlier misguided (and illegal) effort to bypass the Section 214 default state Eligible Telecommunications Carrier designation process - effectively allowed the carriers to choose whether disadvantaged groups could access the additional state subsidies. Coordination of State and Federal Lifeline and universal service/deployment programs is crucial.

The FCC could also set up a consumer website that assists with comparison shopping and also lists options and how/if one qualifies for federal/state Lifeline subsidies. And of course, the FCC should continue to support both the completed and ongoing work of several existing FCC federal advisory committees, including, e.g., the Broadband Deployment Advisory Committee’s October 2020 white paper addressing ways to improve job skills training and development opportunities for the broadband infrastructure deployment workforce and the ongoing work of the Advisory Committee on Diversity and Digital Empowerment. Consistent with those efforts, last July, NARUC adopted two resolutions encouraging strategic partnerships to foster talented and diverse professionals in the utility industry and engagement of diverse financial and professional service providers by investor-owned utilities. To bridge the retirement epidemic and need for greater inclusion in the industry, the first resolution called for expansion on the support of long-term strategic partnerships between utilities, commissions, and other interested stakeholders and academic and professional institutions that serve underrepresented communities. The second resolution supported supplier diversity in financial services to include all professional services because the American economy improves when there is equitable access and participation by all industry participants.

## III. What does the FCC need to operate effectively?

The short answer is credible information. Without information, an economic agency cannot judge when intervention is necessary – where the market is failing to provide service at reasonable and affordable rates, or there are excessive network or service outages, or the market otherwise fails to protect consumers or control prices. This covers everything from where network facilities and services are deployed to outage data and measures of service quality. Obviously, the FCC needs to expeditiously complete the proceeding to require and collect more accurate and timely broadband deployment information. The lack of accurate broadband maps, and the lack of transparency in Internet Service Provider broadband access service availability and pricing hampers the Agency’s ability to gain a clear and accurate understanding of the availability and affordability of broadband in America as Congress instructed.

#### **IV. What resources can help the FCC carry out its mission?**

As any former FCC employee from the 1980-1990s would tell you today, the most underutilized resource available to the FCC is coordinated action with the States. Back in the day, the States and the FCC did do joint audits. Coordination with the former Accounting and Audits Division and the old Wireline Competition Bureau was tight. Indeed, after the 1996 Act passed, at the FCC's request, some State Commission staff actually worked at the FCC for a few months because most of the Act was derived from ongoing State experiments in competition.

Where rules and oversight is necessary, the FCC should assure that its orders make clear that States with authority from State legislatures can exercise it. NARUC's member commissions share the FCC's interest in ensuring all Americans get affordable access to the best telecommunications services. State commissions are in the best position to understand the conditions in their respective state, and have the local knowledge and expertise to assist the FCC in both crafting effective policy and ensuring adequate local enforcement of rules.

#### **V. What qualities are key to a successful FCC Commissioner?**

Commission leaders have a difficult job balancing the competing interests of industry and consumers. The next FCC Chair will have to craft a plan that will both encourage industry to build out more robust and expanded broadband infrastructure, while making sure that the people that rely on that infrastructure in their daily lives are able to afford service and are protected from unfair or deceptive practices.

A successful commissioner will listen. A successful commissioner will seek advice and counsel about various proposals from key stakeholder groups BEFORE committing to a course of action. Ideally, a successful commissioner will have some background in regulatory oversight. The fact is, with over 200 state utility commissioners, and an enormous pool of staff experts operating in a variety of circumstances in all states and territories, NARUC can offer unparalleled access to professional analysis and practical experience to assist the Administration's examination of pro-consumer policies for these industries. We provide an unbiased source of information, *free of competing businesses' agendas*, in any policy debate.

That's one of the reasons why successive Administrations have made certain that the FCC's sister agency – the Federal Energy Regulatory Commission (FERC) – has always had at least one former State Commissioner on its roster. It is also one reason the FERC Commissioners always come to NARUC's meetings. Former NARUC commissioners, including Transition Team member Mignon Clyburn, have also been common on the FCC's roster and have made frequent appearances at NARUC's meetings.

State commissioners are very familiar with the challenges these regulatory balancing acts require, and they possess the skills to effectively navigate the rough waters. As pointed out in the cover letter, State commissioners live at the bleeding edge of telecommunications policy formation. They are tested. They have real world experience. We can help you identify suitable candidates. The Biden administration should consider appointing a state commissioner when considering any appointments to the FCC.

## APPENDIX B – KEY NARUC CONTACTS

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