

BOBBY L. RUSH

1ST DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEES:

RANKING MEMBER, ENERGY
COMMUNICATIONS AND TECHNOLOGY

ASSISTANT WHIP



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Received & Inspected

AUG 14 2017

FCC Mail Room

August 7, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554-0004

Dear Chairman Pai:

I write to express my grave concern over what I hope is an unintended consequence of your recent decision to abolish the federal "Lifeline Broadband Provider" designation process and instead require all such broadband Lifeline provider applicants to seek designation from individual state commissions. I represent one of the facilities-based applicants whose designation you rescinded in a Bureau order on February 3. It proposes to serve low-income residents on the South Side of Chicago with high-speed broadband on a Lifeline basis.

I agree with your view that the Communications Act reserves the authority to grant these Lifeline designations to the states. However, the service provider in my district has been advised by commissioners in Illinois that they cannot grant such designations because of FCC rule 54.201(j), which clearly states: "A state commission shall not designate a common carrier as a Lifeline Broadband Provider eligible telecommunications carrier." Therefore, Lifeline applicants are stuck in a regulatory "Catch-22": the FCC will not consider new broadband Lifeline designations on the basis that only the states may do so, and the states won't consider them because they are preempted from doing so by the FCC.

I would note that in your statements on March 29 and in recent letters to at least 15 of my colleagues that you stated that "new companies can enter the program using this process, and I encourage them to continue to do so" and "nor did the *Order* affect the designation of Lifeline broadband carriers by state commissions; that process proceeds apace... New companies can enter the program using this process, and I encourage them to continue to do so." Evidently, though, this is not true, because the FCC preemption rule remains in force, and state commissions will not move until the FCC formally abolishes it. I recognize that rulemaking is the standard way to abolish a rule, but am also cognizant that rulemaking might not happen in the near future due to your other priorities.

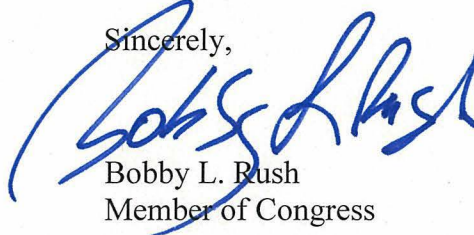
I also recognize your legitimate concerns regarding possible waste, fraud, and abuse by wireless resellers in the Lifeline program, and the problems noted in the recent GAO Report and in your recent directives to the universal service administrator. My constituent, however, is a facilities-

based provider and a certified Minority Business Enterprise with a 15-year track record. As long as this regulatory barrier remains in effect, underserved people on the South Side of Chicago and in communities all over America are being denied affordable broadband service under the Lifeline program.

I trust you agree that this is an anomalous and very unfair situation. Therefore, I ask your commitment to correct it immediately, either by initiating and completing the appropriate rulemaking before the end of this year, or by otherwise suspending the effectiveness of the state preemption rule. State commissions need a clear signal that they can go forward on a firm legal footing and my low income constituents should be able to start receiving this badly-needed and affordable high-speed broadband service through the Lifeline program without further delay.

I look forward to working with you to reach an equitable solution on this urgent problem. Should you or your staff have any questions please do not hesitate to contact my Chief of Staff, Yardly Pollas, at Yardly.Pollas@mail.house.gov or by telephone at (202) 225-4372.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bobby L. Rush", is written over the typed name and title.

Bobby L. Rush
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

October 23, 2017

The Honorable Bobby L. Rush
U.S. House of Representatives
2188 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rush:

Thank you for your letter regarding the designation of eligible telecommunications carriers (ETCs) to provide broadband service as Lifeline providers. You indicate that a state commission apparently advised a constituent company that it is unable to grant such a designation because section 54.201(j) of the Commission's rules preempts states from doing so. Your views are very important and will be entered into the record of the proceeding.

The Commission is committed to promoting digital opportunity and access to modern communications services for our nation's low-income families. However, the Commission must always act within the legal authority given to it by Congress. State commissions continue to retain the primary authority to designate Lifeline-only ETCs and ETCs that receive both high-cost and Lifeline funding, which are all eligible to receive Lifeline support for broadband.

Congress gave state governments, not the Commission, the primary responsibility for designating ETCs to participate in universal service under Section 214 of the Communications Act. Any ETC can receive universal service support for all Lifeline-supported services, including broadband. Section 54.201(j) of the Commission's rules only purports to limit state action with regard to the particular category of Lifeline Broadband Providers, and not to other ETC designations. States continue to play an important role in traditional non-LBP ETC designations, where state law grants them authority to do so.¹ To be clear, the statute and the Commission's rules do not prevent a state from exercising its jurisdiction to designate ETCs, which allows the designated carrier to provide and seek Lifeline reimbursement for voice *and* broadband services.² Indeed, since February 2017, eleven companies in fourteen different states have received ETC designations to participate in the Lifeline program, including one company that was previously granted designation as an LBP.³ These designations enable the carriers to provide Lifeline-supported voice and

¹ 2016 Lifeline Order, 31 FCC Rcd. at 4067, para. 286.

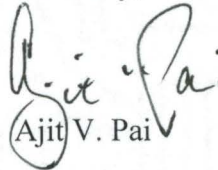
² 2016 Lifeline Order, 31 FCC Rcd at 4068, para. 288.

³ See *Application of Boomerang Wireless, LLC d/b/a enTouch Wireless, Hiawatha, Iowa, Seeking Designation as an Eligible Telecommunications Carrier in the State of Nebraska for the Limited Purpose of Offering Wireless Lifeline Service to Qualified Households*, Nebraska Public Service Commission Application No. C-4852/NUSF-105 (Feb. 7, 2017); *Petition of Boomerang Wireless, LLC EnTouch Wireless, Hawai'i Public Utilities Commission, Decision And Order No. 34431* (Mar. 3, 2017); *Illinois Electric Cooperative, Illinois Commerce Commission, Order, 16-0191* (Mar. 22, 2017); *Midcontinent Communications Designated Eligible Carrier Application*, North Dakota Public

broadband services within the designated service areas granted by the state.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai

Service Commission, Case No. PU-17-50 (Mar. 29, 2017); *Application of Midcontinent Commc'ns, A S. Dakota Gen. P'ship, for a Certificate of Convenience & Auth. to Provide Telecommunications Servs. Within the State of Kansas, & for Designation as an Eligible Telecommunications Carrier*, Kansas State Corporation Commission, Docket No. 17-MCCT-254-ETC (Apr. 13, 2017); *Application of Bommerang Wireless dba EnTouch Wireless for Designation as an Eligible Telecommunications Carrier*, South Dakota Public Utilities Commission, TC13-035 (Apr. 28, 2017); *Petition of Vitelcom Cellular Inc., for Designation as an Eligible Telecommunications Carrier – Lifeline Only*, Government of the Virgin Islands of the United States of America, Public Service Commission, Docket No. 661, Order No. 55/2017 (May 2, 2017); *Petition of the City of Burlington, Vermont, d/b/a Burlington Telecom, for Designation As an Eligible Telecommunications Carrier in the State of Vermont for the Purpose of Offering Lifeline Serv. to Eligible Low-Income Households*, Vermont Public Service Board, Case No. 8883 (May 22, 2017); *Application of BlueBird Communications, LLC, for Designation as an Eligible Telecommunications Carrier*, Wisconsin Public Service Commission, 626-TI-100 (June 5, 2017); *Petition of Peoples Telecom, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Kentucky Public Service Commission, Case No. 2017-00061 (June 9, 2017); *Application of Flat Wireless, LLC d/b/a Cleartalk Wireless for Designation as an Eligible Telecommunications Carrier (ETC) & Eligible Telecommunications Provider (ETP)*, Texas Public Utility Commission, Docket No. 46667 (June 12, 2017); *The Application of Assist Wireless, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Michigan Public Service Commission, Case No. U-18348 (July 31, 2017); *Application of Glob. Connection Inc. of Am. d/b/a Stand Up Wireless to be Designated as an Eligible Telecommunications Carrier in the State of Nevada Pursuant to NAC 704.680461 & Section 254 of the Telecommunications Act of 1996*, Nevada Public Utilities Commission, Docket No. 17-05018 (Aug. 18, 2017); *Application of Cross Cable Television, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Oklahoma Corporation Commission, Order No. 667619 (Aug. 30, 2017); *Application of Q Link Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Arkansas*, Arkansas Public Service Commission, Order (Sept. 6, 2017).